

Services Agreement



The terms set out below ('Terms') relate to the provision and use of the Portal and services supplementary to this as detailed herein, as provided by Creative Auto-Enrolment Limited to the Employer, to help the Employer comply with their auto enrolment responsibilities.

1. Definitions

- 1.1. 'Authorised User' means any person or third party designated as the authorised user by the Employer to use the Portal on the Employer's behalf.
- 1.2. 'Creative Auto Enrolment' means Creative Auto-Enrolment Limited registered in England and Wales (company no. 8554978).
- 1.3. 'Duties Date' shall be the date when your legal duties in relation to auto-enrolment responsibilities commence under applicable pensions legislation.
- 1.4. 'Employee' means the Employer's current employees only.
- 1.5. 'Employer' means the employer registering for use and using the Portal.
- 1.6. 'Group' means in relation to a company, that company, any subsidiary or any holding company from time to time.
- 1.7. 'Loss' or 'Losses' means all losses (including but not limited to loss of: business, revenue, goodwill, profits, management time, opportunity, or anticipated savings), fines, penalties, liabilities, costs, payments, claims, actions, damages and expenses, in all cases whether directly or indirectly caused.
- 1.8. 'Portal' means the online auto enrolment portal provided by Creative Auto Enrolment for use by Employers.
- 1.9. 'Scheme' means the pension scheme to which the Employees are enrolled via the Portal.
- 1.10. 'Services' mean the supplementary services in connection with the Portal, provided by Creative Auto Enrolment to the Employer.
- 1.11. 'Start Date' the date the Employer has become a participating employer to the Scheme, and Creative Auto Enrolment has made the Portal available to the Employer for access.

2. Use of the Portal and Services

- 2.1. The Portal is generally designed to assist employers in complying with their auto enrolment obligations under the Pensions Act 2008 and any subordinate auto enrolment legislation enacted under it ('the Act') as updated from time to time. Creative Auto Enrolment warrants that the proper use of the Portal by the Employer will ensure that the Employer can comply with all relevant provisions of the Act which apply to the Employer in relation to its auto enrolment obligations, but for the avoidance of doubt Creative Auto Enrolment will not be liable to the Employer for any breach of the Act which occurs as a direct or indirect result of the Employer (or its Authorised Users on its behalf):
 - 2.1.1. inputting incorrect or insufficient data or failing at any time to input data in a timely manner or at all to the Portal; or

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- 2.1.2. failing to make such contributions to the Scheme on behalf of any Employee as may be advised by Creative Auto Enrolment to be appropriate and required by statute; or
- 2.1.3. failing to adhere to any other obligations of the Employer, as set out in the Act or otherwise as required by law.
- 2.2. In providing the Portal and the Services, Creative Auto Enrolment shall comply with all requirements imposed on Creative Auto Enrolment:
 - 2.2.1. under the Act;
 - 2.2.2. under any other legislation to which Creative Auto Enrolment's activities under these Terms are subject; and
 - 2.2.3. by the Pensions Regulator, in relation to auto enrolment.
- 2.3. To comply with applicable regulations, Creative Auto Enrolment may need to carry out identity checks in relation to Employees. If Creative Auto Enrolment contacts the Employer for this reason, the Employer must provide any information requested. In the event it does not do so within the required timeframe or the Employee fails to satisfy the identity check, it may result in the Portal or Services being unavailable in respect of that Employee. Creative Auto Enrolment shall not be responsible to the Employer or any third party in the event it cannot make the Portal or Services available in respect of a particular Employee.
- 2.4. The Employer shall only have one log in to the Portal, which shall be used only by the Authorised User. The Employer shall be entitled to change the Authorised User from time to time, but Creative Auto Enrolment reserves the right to object to a named individual becoming an Authorised User, where at its sole discretion it believes it has reasonable grounds to raise such objection.

3. Terms

- 3.1. The Portal shall be made available to the Employer and its Authorised Users from the Start Date following the acceptance of these Terms.
- 3.2. Use of the Portal, by an Authorised User on behalf of the Employer shall be deemed acceptance by the Employer of these Terms. As such, the Employer should read these Terms carefully before permitting Authorised Users to access and use the Portal. If the Employer does not agree to these Terms, the Employer's Authorised Users shall not use the Portal and should not proceed.
- 3.3. The Portal must be used in accordance with the Terms (as updated from time to time) and any other instructions, recommendations or terms of use that Creative Auto Enrolment supplies via the Portal or otherwise (from time to time).
- 3.4. Creative Auto Enrolment may vary the Terms from time to time and shall notify the Employer of such changes in a timely manner. The Employer's (including use by Authorised Users) continued use of the Portal following its receipt of such notification will be deemed to be acceptance of any variation to the Terms. In the event the Employer does not agree to a variation of the Terms, it shall notify Creative Auto Enrolment of such and the Employer and all Authorised Users shall cease use of the Portal.

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3.5. The Employer shall ensure that any obligations in relation to use of the Portal set out in this Agreement or otherwise communicated shall be provided to and accepted by Authorised Users, prior to them being granted access to the Portal. The Employer is responsible for the acts and omissions of Authorised Users in relation to use of the Portal and shall indemnify Creative Auto Enrolment for any Loss it suffers as a result of Authorised Users' non-compliance with these Terms.

4. Terms of Use

4.1. The Employer is responsible for all information, data or content submitted to the Portal ('Content') by the Employer or Authorised Users and must ensure all Content is accurate, usable and shared in compliance with applicable Data Protection Legislation. The Employer shall ensure that it does not provide information of previous employees or employees who have left employment with the Employer during the term of this Agreement.

4.2. Employers shall and shall ensure that Authorised Users shall at all times comply with applicable laws and regulations and shall not, when using the Portal:

4.2.1. impersonate someone else or provide an email address or other details other than their own;

4.2.2. use the Portal to submit or transmit illegal or offensive material or malicious Content, or Content which breaches any law or contractual obligation;

4.2.3. obtain or attempt to obtain access to any programs, Content or data to interfere with, reverse engineer, decompile (other than where permitted by law), translate, disassemble or separate the components of the Portal, Creative Auto Enrolment's software, or its online services;

4.2.4. transmit, e-mail or post any material or Content that contains in any form software viruses or such programs as including but not limited to: Trojan horses, worms, time bombs, cancelbots, computer code, files or programs designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment;

4.2.5. upload, post or disseminate content that infringes the intellectual property rights of any third party;

4.2.6. use Content for purposes other than the purpose of receipt of the Services through the Portal;

4.2.7. access or attempt to access any information or Content on the Portal other than the information or Content for which the Employer's access is permitted;

4.2.8. use the Portal to transmit, or procure the transmitting of any unsolicited or unauthorised advertising or promotional material;

4.2.9. use any tool, device, process or means, to access, retrieve, scrape, or index the Content provided within the Portal;

4.2.10. attempt to gain unauthorised access to the Portal, computer systems or networks connected to the Portal through hacking or any other means;

4.2.11. remove, circumvent, disable, otherwise interfere with any security-related features of the Portal, features that prevent or restrict the use or copying of Creative Auto Enrolment's content, or features that enforce limitations on the use of the Portal.

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- 4.3. The Employer shall notify Creative Auto Enrolment upon becoming aware of any breach of the obligations in clause 4.2.
- 4.4. The Employer shall indemnify Creative Auto Enrolment for any Loss it suffers as a result of the Employer's or an Authorised User's breach of Clause 4.2 above.
- 4.5. Creative Auto Enrolment is not liable to any third party for the accuracy of any materials posted by the Employer or its Authorised Users and the Employer agrees to indemnify Creative Auto Enrolment in full for any loss, cost, damage, expense liability or claim suffered or incurred by Creative Auto Enrolment as a direct or indirect result of Content submitted or uploaded to the Portal by the Employer or its Authorised Users.
- 4.6. Creative Auto Enrolment reserves the right to disable (on a temporary or permanent basis) and with no liability to the Employer, any Authorised User access to the Portal at any time, if in its reasonable opinion the Employer and/or an Authorised User has failed to comply with any of the Terms set out in this Clause 4.2.

5. Historic Data

- 5.1. The Employer shall remain entirely responsible for all historic data relating to the compliance with its auto enrolment obligations under the Act. 'Historic data' in this clause shall mean all data relating to auto enrolment compliance and pension schemes put in place by the Employer prior to the Start Date, whether migrating to be included into the Portal or otherwise. The Employer acknowledges and agrees that appropriate Historic Data will be uploaded to the Portal for the purposes of the Employer accessing that Historic Data for its own purposes. It is the Employer's responsibility to ensure that it has a copy of such Historic Data and Creative Auto Enrolment shall have no liability whatsoever or howsoever arising in relation to the Employer's Historic Data and/or the Employer's compliance with applicable laws relating to their storage or use of the Historic Data, or compliance with relevant laws.
- 5.2. Where Creative Auto Enrolment agrees to provide additional services to those Services set out in these Terms in connection with the uploading, categorizing or otherwise storing the Historic Data within the Portal, then the Employer agrees to pay to Creative Auto Enrolment all relevant fees, costs or charges in connection with those additional services, at Creative Auto Enrolment's applicable rates and enter into any further terms applicable to the provision of that additional service to the Employer.
- 5.3. The Employer shall fully and effectively indemnify and hold Creative Auto Enrolment harmless in relation to any Losses or any other liability arising out of or in connection with the Employer's compliance with applicable laws, including (but not limited to) the Historic Data transferred into the Portal, by or on behalf of the Employer, and/or any use of that Historic Data within the Portal.

6. Portal

- 6.1. Creative Auto Enrolment will use reasonable endeavours to provide access to the Portal at all times but will not be liable for any disruption to access to the Portal or for its satisfactory functioning as a result of anything occurring outside of its control.
- 6.2. The Portal is provided on an as is basis and cannot guarantee that the Portal will be bug, error or virus free.
- 6.3. Creative Auto Enrolment will try to solve problems affecting the Portal as quickly as it can but cannot guarantee any response or resolution times.

- 6.4. Creative Auto Enrolment makes no warranties or representations as to the accuracy of the Content provided on the Portal, nor does it warrant that it monitors or verifies Content uploaded to the Portal and the Employer accepts the sole risk for Content uploaded or used on its behalf.
- 6.5. Subject to clause 6.6, Creative Auto Enrolment reserves the right to:
- 6.5.1. withdraw or amend the Portal (in part or in whole) at any time and without notice;
- 6.5.2. temporarily or permanently restrict access to some or all areas of the Portal.
- 6.6. Creative Auto Enrolment, will, where practicable, provide reasonable advance notice of any withdrawal or changes to the Portal, but where it is not practicable to give such notice, reserves the right to change any aspect of any part of the Portal and the way in which the Portal is provided, at any time, at its sole discretion and without prior notice, including but not limited to where changes are required to:
- 6.6.1. reflect changes in relevant laws and regulatory requirements or where required to do so by law; or
- 6.6.2. implement technical adjustments, updates, improvements and maintenance.
- 6.7. All warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from these Terms.

7. Security Precautions

- 7.1. The Employer shall ensure that Authorised Users keep their secure login details to the Portal confidential and do not allow unauthorised access by any person, even if that person is a colleague of the Authorised User.
- 7.2. The Employer shall, and shall procure Authorised Users shall, notify Creative Auto Enrolment immediately, in the event it believes that someone other than an Authorised User has obtained login details or otherwise accessed the Portal.

8. Operating Rules

- 8.1. Employers using the Portal authorise Creative Auto Enrolment to carry out actions and instructions on their behalf, which form part of the Services. This authority allows the Portal to automate certain duties, such as carrying out worker assessments and communications.
- 8.2. Whilst the Portal includes helpful prompts and alerts when actions need to be taken by Employers (which form part of the Services), the Employer is solely liable for compliance with its auto enrolment responsibilities.
- 8.3. The Employer will ensure that any instructions and information sent to Creative Auto Enrolment through the Portal are accurate and complete. Creative Auto Enrolment will not be liable for the consequences of any incomplete or incorrect instructions or Content sent by or on behalf of the Employer.
- 8.4. Where required, the Employer will comply with the Pensions Regulator's rules by providing information and instructions in a timely manner.

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8.5. Creative Auto Enrolment reserves the right to monitor the use and content of emails sent by or to the Employer or any Authorised User, in each case which relate to the Portal.

9. Charges

9.1. A fee of £23 per calendar month plus VAT ('Fee') will be charged for use of the Portal and Services provided by Creative Auto Enrolment. For the avoidance of doubt, the Fee will only be charged from the Employer's actual Duties Date.

9.2. The Fee will be invoiced monthly in advance, and the Employer shall pay all invoices received pursuant to these Terms within 30 days of the date of such invoice via direct debit. The Employer shall set up and maintain a direct debit mandate for the duration of the Agreement.

9.3. Creative Auto Enrolment reserves the right to change the Fee from time to time by giving the Employer 3 months' notice in writing of the change (the 'Notice Period'). If, after receiving notice of a change to the Fee, the Employer does not wish to continue to use of the Portal and Services, it may cease such use by providing notice of its intention to Creative Auto Enrolment in writing, providing it notifies Creative Auto Enrolment of such intention within 14 days prior to the expiration of the Notice Period. Continued use of the Portal following the expiration of the Notice Period shall be deemed acceptance of the change in the Fee.

9.4. In the event the Employer fails to make payment due to Creative Auto Enrolment in accordance with these Terms, then without limiting Creative Auto Enrolment's remedies pursuant to these Terms:

9.4.1. Creative Auto Enrolment shall be entitled to charge interest on the outstanding sums at a rate of 4% per annum above the Bank of England base rate; and

9.4.2. Creative Auto Enrolment shall have the right to suspend the Employer and its Authorised User's access to the Portal.

10. Use of Personal Data

10.1. Creative Auto Enrolment will not use personal data provided by the Employer, or its Authorised Users to carry out marketing directly to Employees, but it may occasionally provide the Employer with promotional material relating to various of its products or offerings, which the Employer may provide to Employees if it chooses to do so.

10.2. The parties agree to adhere to the terms set out in the Appendix in relation to use of personal data.

11. Intellectual Property Rights

11.1. Creative Auto Enrolment owns the copyright and all other intellectual property rights in the Portal and the Services including all database rights.

11.2. Creative Auto Enrolment grants to the Employer a limited, non-exclusive, non-transferrable, revocable right and licence, without the right to sub-licence, to permit the Employer and their Authorised Users, to access the Portal and use the Services solely for the Employer's internal business purposes throughout the duration of these Terms.

11.3. The Employer is the owner or licensee of all Content and warrants that it does not infringe the intellectual property rights of any third party.

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11.4. The Employer shall procure that the Authorised Users shall notify Creative Auto Enrolment immediately with full details upon becoming aware of or suspecting any infringement of the intellectual property rights of Creative Auto Enrolment.

11.5. Except as expressly permitted the Employer and Authorised Users may not post, modify, distribute, or reproduce in any way, any information (other than Content) or other proprietary information from the Portal without obtaining Creative Auto Enrolment's prior written consent.

12. Termination

12.1. The Employer is free to discontinue its use of the Portal at any time on written notice.

12.2. Subject to clause 3.3, Creative Auto Enrolment may suspend or terminate the Employer's or any Authorised User's use of the Portal at any time for any reason. Creative Auto Enrolment will inform the Employer as soon as reasonably possible of such suspension or termination. The Employer may subsequently request access which shall be subject to Creative Auto Enrolment's approval.

12.3. Termination of the Portal shall not affect any lawful instructions, requests or transactions already initiated through the Portal.

12.4. Upon termination of these Terms:

12.4.1. the Employer shall immediately make payment of all outstanding Fees due to Creative Auto Enrolment;

12.4.2. Authorised User's access to the Portal shall cease;

12.4.3. Creative Auto Enrolment shall maintain the Content of the Employer for a period of 60 days, it shall in consultation with the Employer discuss the best way to transfer such Content to the Employer;

12.4.4. Creative Auto Enrolment shall maintain a copy of all Content it is required to maintain to comply with applicable laws and regulation, for a period of 6 years after termination.

12.5. Termination or expiry of these Terms shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Terms which existed at or before the date of termination or expiry.

13. Disclaimers

13.1. The Employer is responsible for its, and its Authorised Users' access to the Portal and Creative Auto Enrolment is not responsible for maintaining the Employer's software, hardware or any other equipment necessary for the Employer or its Authorised Users to effectively and reliably use the Portal. Creative Auto Enrolment makes no warranty as to the suitability or otherwise of the Employer's equipment.

13.2. Creative Auto Enrolment makes no recommendation or representation as to the suitability, governance, performance or likely performance, regulated status or other features of any of Creative Auto Enrolment's or any member of its Group's products about which information is obtainable via the Portal.

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14. Limitation of Liability & Indemnity

14.1. Subject to clause 14.3, Creative Auto Enrolment shall not be liable whether in contract, tort, negligence, statutory duty or otherwise to the maximum extent permissible by law for any Loss arising from (including but not limited to):

14.1.1. any damage, defects, viruses or any other malfunctions caused to any equipment or other software in connection with access or use of the Portal;

14.1.2. the Content of the Portal;

14.1.3. the Portal or any part of it failing to function as normal or at all;

14.1.4. temporary or permanent inaccessibility of part or all of the Portal;

14.1.5. misuse of the Portal (including without limitation unauthorised use);

14.1.6. loss of data stored on the device that is being used to access the Portal;

14.1.7. the use of any software made available through the Portal;

14.1.8. any breach by the Employer of its duties in respect of auto-enrolment, or any other statutory duties, caused as a direct or indirect result of any of the circumstances set out in sub-clauses 14.1.1 to 14.1.7 inclusive;

in each case, unless such Loss results from Creative Auto Enrolment's breach of these Terms or its negligence.

14.2. Subject to clause 14.3, Creative Auto Enrolment's liability to the Employer in respect of any breach of these Terms or directly caused by its negligence shall not exceed £35,000 per claim.

14.3. Nothing in these Terms limits or excludes Creative Auto Enrolment's liability for death or personal injury arising from Creative Auto Enrolment's negligence, or for fraud or fraudulent misrepresentation, or any other liability which cannot be excluded or limited by law.

14.4. Subject to clause 14.3, Creative Auto Enrolment shall not be liable to the Employer or any Authorised User in respect of any liability, whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation or otherwise for any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses, including (but not limited to) for loss of profits, loss of business, loss of contracts, depletion of goodwill or similar losses, or loss of anticipated savings.

14.5. The Employer will indemnify Creative Auto Enrolment in full from and against any claim or demand made by any third party due to or arising out of:

14.5.1. data and information uploaded to the Portal by Authorised Users or via their accounts; or

14.5.2. use of the Portal by Authorised Users.

14.6. The Employer will indemnify Creative Auto Enrolment in full and on demand from and against any Loss that Creative Auto Enrolment suffers as a direct or indirect result of breach of these Terms by the Employer, its Authorised Users, or anyone who has obtained unauthorised access to the Portal with the assistance of an Authorised User.

14.7. Nothing contained in this Agreement shall be construed as limiting or excluding any rights which any party has under the Financial Services and Markets Act 2000 or other applicable regulations and legislation.

14.8. The Employer understands and agrees that Creative Auto Enrolment's provision of the Portal on the basis set out in these Terms is only viable if Creative Auto Enrolment limits its liability as set out in these Terms. The Employer further acknowledges that Creative Auto Enrolment has calculated its Fee on the basis that it will limit its liability as set out in these Terms and the Employer shall insure against any loss for which Creative Auto Enrolment has excluded and/or limited its liability under this Agreement.

15. Third Party Rights

No other party has any rights under these Terms other than the Employer and Creative Auto Enrolment. These Terms cannot be assigned or transferred to anyone else without Creative Auto Enrolment's prior written consent (such consent not to be unreasonably withheld or delayed and for the avoidance of doubt, consent shall not be deemed to be unreasonably withheld if the proposed assignment or transfer of the agreement is to one of Creative Auto Enrolment's competitors).

16. Dispute Resolution

16.1. If a dispute arises in connection with these Terms ('Dispute') then the parties shall follow the dispute resolution procedure set out in this Clause 16.

16.2. Either party shall give to the other written notice of the Dispute, setting out its nature and full particulars ('Dispute Notice'). Once the Dispute Notice has been served, the senior representatives of the Employer and Creative Auto Enrolment shall attempt in good faith to resolve the Dispute at a joint meeting.

16.3. In the event that the senior representatives fail to resolve a dispute within a period of thirty days of the date of the Dispute Notice, the Dispute will be referred to the Managing Directors of both parties who shall attempt in good faith to resolve the Dispute. The parties shall ensure that the Managing Directors consider the Dispute as soon as practicable and in any event within thirty (30) days of it being referred to them, under this Clause 16.3 ('Resolution Period').

16.4. Neither party may bring any proceedings in relation to a Dispute before the end of the Resolution Period, except to obtain urgent interlocutory relief.

16.5. If the parties have not resolved the Dispute by the end of the Resolution Period, then Clause 18.8 shall apply.

17. Confidentiality

17.1. Each party shall keep confidential all Confidential Information of the other party obtained under or in connection with these Terms and, except as required by law or for the performance of these Terms, or as permitted under this Clause 17, shall not divulge the same to any third party without the prior express written consent of the other party.

17.2. The provisions of Clause 17.1 shall not apply to:

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- 17.2.1. information obtained from a third party who is free to divulge the same; and
- 17.2.2. any information which is already in the public domain at the date of the Agreement or which subsequently comes into the public domain, otherwise than by breach of these Terms.
- 17.3. Creative Auto Enrolment will use data supplied to it to provide the Services. From time to time, it may also use Employee data supplied to Creative Auto Enrolment to offer Employees additional services and offers via the Employer. Creative Auto Enrolment does not sell Personal Data and only shares such data with third parties for the provision of the Services or in special circumstances, such as required by law.
- 17.4. The confidentiality provisions of this Agreement shall not preclude publicity referring to the existence of the relationship between the parties. Creative Auto Enrolment reserves the right to disclose the Employer's name and brief details of the application(s) developed for the Employer using Creative Auto Enrolment's software products in its own publicity materials. No in-depth information on these application(s) will be publicised by Creative Auto Enrolment without the Employer's permission.
- 17.5. The provisions of this Clause 17 shall remain in full force and effect for a period of five years from the date of termination of this Agreement.
- 18. General Provisions**
- 18.1. A failure or delay by either party to enforce any right under these Terms is not an implied waiver of the same or of any other right in the future.
- 18.2. If for any reason the Employer considers that Creative Auto Enrolment has not delivered the high standard of service that the Employer expects from Creative Auto Enrolment, then the Employer should contact Creative Auto Enrolment as soon as possible. If the Employer has a complaint, the Employer can contact Creative Auto Enrolment by telephone (0203 053 4844), email (cptcomplaints@creativeae.co.uk) or in writing (Creative Auto Enrolment, Registered Office: 250 Bishopsgate, London, EC2M 4AA.).
- 18.3. If any provision or part-provision of these Terms is or becomes invalid, illegal or unenforceable, it will be deemed deleted and such deletion of a provision or part-provision under this clause 18.3 shall not affect the validity and enforceability of the rest of the Terms.
- 18.4. The rights and obligations of the Employer under these Terms are personal to the Employer and may not be assigned, transferred, charged, sub-licensed, sub-contracted or otherwise delegated, transferred or disposed of in whole or in part.
- 18.5. All notices which are required to be given hereunder shall be in writing and shall be sent to the address of the recipient, or such other address in England as the recipient may designate by notice given in accordance with the provisions of this Clause. Any such notice may be delivered personally or by first class pre-paid post, facsimile transmission, or as a pdf attachment or otherwise via email and shall be deemed to have been served if by hand, when delivered, if by first class post 48 hours after posting and if by facsimile transmission on the next working day and if via email on the next working day where no undeliverable notification has been received by the sender.

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- 18.6. Neither party shall be liable for any loss suffered by the other or be deemed to be in default for any delays or failures in performance hereunder (except in respect of delay or non-payment) resulting from acts or causes beyond its reasonable control, or from any acts of God, acts or regulations of any governmental or supra-national authority, war or national emergency, accident, fire, riots, pandemic, epidemic, and such party shall be entitled (subject to giving the other party full particulars of the circumstances in question and to using its best endeavours to resume full performance without avoidable delay) to a reasonable extension of time for the performance of such obligations.
- 18.7. Notwithstanding any other provision of the Agreement, nothing in this Agreement confers or purports to confer any right to enforce any of its terms on any person who is not a party to it, provided that this Clause 18.7 shall not affect any right of action of a person to whom the Agreement is lawfully assigned.
- 18.8. These Terms are governed by English Law and the Employer agrees to submit to the exclusive jurisdiction of the courts of England and Wales. The Portal may be used by UK residents only.

Creative is a trading style of Creative Benefit Solutions Limited (Company No. 6293305) and Creative Auto-Enrolment Limited (Company No. 8554978). Registered Office: 250 Bishopsgate, London, EC2M 4AA.

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APPENDIX – Data Processing

DEFINITIONS:

‘Data Protection Legislation’ all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of Personal Data (including, without limitation, the privacy of electronic communications).

‘Data Controller’, ‘Data Processor’, ‘Sub-Processor’, ‘Personal Data’ and **‘Processing’** have the same meaning as set out in the Data Protection Legislation.

‘Data Subject’ has the same meaning as set out in the Data Protection Legislation.

‘UK GDPR’ has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the DPA 2018.

References to the **“Client”** in this Appendix are to the Employer, as further defined in the main Terms.

1. DATA PROTECTION

- 1.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This Appendix is in addition to, and does not relieve, remove or replace, a party’s obligations under the Data Protection Legislation.
- 1.2. The parties acknowledge that for the purposes of the Data Protection Legislation, Creative Auto Enrolment is the appointed Data Processor of the Client, and the Client is the Data Controller. Data Subjects shall be the employees of the Client, about whom Personal Data shall be provided to Creative Auto Enrolment for the purposes of providing the Services under the Terms. It is anticipated that the types and categories of Personal Data to be Processed in connection with the Services are:

Subject-matter, nature and purpose of Processing	To provide the Services set out in these Terms, including the provision of the Portal and hosting information on the Portal and the administration of pensions under an auto enrolment system.
Duration	The term for providing the Services under the Terms and for any further period as required by law or any applicable regulatory requirement.
Types of Personal Data	Names, addresses, dates of birth, identification information employee data and employment data, financial, tax and pension information (including salary) and medical information.
Categories of data subjects	Employees

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1.3. When providing Personal Data to Creative Auto Enrolment for Processing in accordance with this Appendix and the Terms, the Client (as the Data Controller) shall (a) have the sole responsibility for the accuracy, quality, integrity, legality, validity and reliability of any Personal Data provided and of the means by which it acquired the Personal Data (including but not limited to the consents or establishing the appropriate legal basis for Processing by Creative Auto Enrolment of that Personal Data); (b) ensure that Processing instructions given to Creative Auto Enrolment are compliant with applicable Data Protection Legislation and (c) ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer (and/or collection) of the Personal Data to Creative Auto Enrolment for the duration and purposes of this Agreement.

1.4. As Data Processor, Creative Auto Enrolment shall:

- a) process the Personal Data only on the written instructions of the Client, unless required to do otherwise by applicable law. In all such cases, Creative Auto Enrolment shall notify the Client of any such required Processing before this takes place;
- b) ensure that Creative Auto Enrolment has in place appropriate technical and organisational measures to protect any Personal Data against unauthorised and unlawful processing and against accidental loss, destruction, disclosure, damage or alteration;
- c) ensure that only such of Creative Auto Enrolment personnel who may be required by Creative Auto Enrolment to assist it in meeting its obligations under these Terms will have access to the Personal Data and that such personnel are bound by appropriate obligations of confidentiality and are made aware of Creative Auto Enrolment obligations and their personal duties and obligations in respect of Processing of Personal Data;
- d) at the request and option of the Client during the term of the arrangements under these Terms, return or destroy any Personal Data provided by the Client, unless required by applicable law to store the Personal Data;
- e) not transfer any Personal Data outside of the United Kingdom and the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - i. appropriate safeguards are put in place in relation to the transfer, in accordance with Data Protection Legislation;
 - ii. the Data Subject has enforceable rights and effective legal remedies;
 - iii. Creative Auto Enrolment complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
 - iv. Creative Auto Enrolment complies with reasonable instructions notified to it in advance by the Client with respect to the Processing of the Personal Data;
- f) co-operate with the Client and take such reasonable commercial steps as are directed by the Client to assist in the investigation, mitigation and remediation of any Personal Data breach;
- g) co-operate and assist the Client as may be reasonably required to allow the Client to comply with its obligations as a Data Controller, including in relation to data security, data breach notification, data protection impact assessments, the fulfilment of Data Subject's rights and any enquiry, notice or investigation by a supervisory authority or regulator;

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- h) maintain records and information to demonstrate its compliance with this Appendix;
- i) not Process Personal Data in a manner that will or is likely to result in the Client breaching its obligations under the Data Protection Legislation.

1.5. Creative Auto Enrolment shall be entitled to appoint a third party to process the Personal Data, or share Personal Data with a third party.

1.6. Creative Auto Enrolment shall notify the Client without undue delay of becoming aware of any actual or suspected, accidental, unauthorised or unlawful destruction, loss, alteration, or disclosure of, or access to, the Personal Data processed in accordance with this Appendix (“**Security Breach**”). Creative Auto Enrolment shall also provide the Client with a description of the Security Breach, the type of data that was the subject of the Security Breach and (to the extent known to us) the identity of each affected person, as soon as such information can be collected or otherwise becomes available, as well as all other information and co-operation which the Client may reasonably request relating to the Security Breach.

1.7. Creative Auto Enrolment agrees to take action immediately, at its own expense, to investigate the Security Breach and to identify, prevent and mitigate the effects of any Security Breach and, with the Client’s prior agreement, to carry out any recovery or other action necessary to remedy the Security Breach.

1.8. Creative Auto Enrolment (shall subject to clause 14.2 of the Terms) and the Client shall indemnify the other from any and against all losses, demands, claims, damages, costs, expenses (including legal costs and expenses and VAT thereon), fines and liabilities which that party suffers or incurs, directly or indirectly related in any way to any breach of this Appendix or Data Protection Legislation. For the avoidance of doubt, this Appendix governs the obligations of either party in the event that a party breaches the clauses in this Appendix or Data Protection Legislation, in substitution for any other provisions in these Terms.