

Annex A: Draft Participation Agreement

(1) Secretary of State - Department for Education

(2) Contracting Authority

(3) Participating Body

PARTICIPATION AGREEMENT

**relating to participation in the Teachers'
Pensions Scheme**

THIS ADMISSION AGREEMENT is made on

[20__]

BETWEEN:

- (1) **The Teachers' Pensions Scheme**
- (2) The [**Contracting Authority**]; and
- (3) [x] of [address] (the "**Participating Body**").

IT IS AGREED as follows:

1. INTERPRETATION

- 1.1 In this agreement the following definitions will apply unless the context indicates they have a different meaning:

Person	Means an individual who is included in the Participation Agreement details will be provided at the point of transfer, but an admitted person will become an eligible member at the point of commencement of the outsourced contract
Contract	means a contract [to be] entered into between the Contracting Authority and the Participating Body dated []
Contracting Authority	The employer who is out-sourcing the education provision
Effective Date	means the date on which the employment of each Admitted Person is transferred from the Contracting Authority to the Participating Body
Eligible Employee	means those employees referred to in Clause 3.1
Additional Eligible Service	means a service provided by the Participating Body on behalf of Contracting Authority
Internal Dispute Resolution Procedure (IDRP)	the statutory complaint procedure of the same name which gives Admitted Bodies and/or Admitted members the right to formalise complaints about the administration of the Scheme, their membership and their retirement benefits
Participating Body	An organisation or body (who will be the new employer) admitted to the Scheme in accordance with New Fair Deal Guidance and who will be providing the service via an outsourcing agreement
Regulations	The Teachers' Pensions Regulations 2010
Scheme	Teachers' Pension Scheme (TPS)
Scheme Actuary	Means the actuaries appointed by the Secretary of State
Scheme Administrator	Means the administrator appointed by the Secretary of State
Scheme Member	Means any person who has continuing membership of the Scheme as a consequence of the application of Fair Deal
Services	Means the services set out in the Contract to be performed by the Participating Body

Sub-contractor	Means any sub-contractor appointed by the Participating Body
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- 1.2 Where the context so admits, words relating to men also relate to women and vice versa, **and words importing the singular include the plural and vice versa.**
- 1.3 References to any statutory provision include any pre-enactment, modification, re-enactment or extension of that provision for the time being in force and any statutory instruments, orders, regulations or statutory rule from time to time made under that provision.
- 1.4 References to any statutory instrument, order, regulation or statutory rule include the statutory provision under which it is made including any amendment for the time being in force.
- 1.5 The expression "person" includes any firm, organisation or body of persons (whether or not incorporated).
- 1.6 Defined terms not defined in this agreement will have the meanings given to them in the relevant part of the Regulations or Acts.
- 1.7 No clause under this Participation Agreement will in any way remove or diminish an eligible person's rights under scheme regulations.

2. PARTICIPATION

- 2.1 The Secretary of State has responsibility for the TPS under the Regulations (the **"Responsible Authority"**).
- 2.2 The Contract provided for, amongst other things, the transfer of Contracting Authority employees to the Participating Body and the provision of services to the Contracting Authority by the Participating Body (such services being referred to in this Agreement as the **"Services"**).
- 2.3 The Participating Body will, from each Effective Date, employ persons who immediately before the Effective Date were members, or were entitled to be members of the Scheme by virtue of:
 - 2.3.1 being employees of the Contracting Authority, and
 - 2.3.2 being in employment listed in Schedule 2 of the Teachers' Pensions Regulations 2010, or
- 2.4 The Secretary of State, as the Responsible Authority, has determined:

this agreement is to relate to those employees of the Participating Body described in Clause 2.3 above.

3. ELIGIBILITY FOR MEMBERSHIP

- 3.1 Any employee of the Participating Body who:
 - 3.1.1 is a person to whom Clause 2.3 applies, and
 - 3.1.2 is employed in connection with the provision of the services referred to in Clause 2.2, and
 - 3.1.3 [is wholly or mainly engaged in]

- (a) the provision of the Services] under the Contract; is eligible to be a member of the Scheme (the “**Eligible Employees**”).

3.2 Subject to Clause 4 below, an Eligible Employee shall cease to be eligible for membership (and in the case of an active member shall cease to accrue benefits) of the Scheme upon:

3.2.1 ceasing to fulfil any of the criteria listed under Clause 3.1; or

3.2.2 where they voluntarily elect to become an active member of any other occupational pension scheme provided by the Participating Body.

4. **ADMISSION OF MEMBERS/CESSATION OF MEMBERSHIP**

4.1 A person to whom Clause 3.1 applies shall, unless any such person has elected not to become a member of the Scheme by notifying the Participating Body in writing, continue to be a Scheme Member from such date (or dates) as may be agreed between the Participating Body, the Contracting Authority and the Secretary of State, and in the absence of any other agreement:

4.1.1 an employee who immediately before the Effective Date was an Scheme Member shall continue to be an Scheme Member immediately after the Effective Date without having to make an election, and

4.1.2 an employee who immediately before the Effective Date was not a Scheme Member but was eligible to be a Scheme Member shall be automatically enrolled as a Scheme Member.

4.2 The Participating Body hereby represents and warrants to the Secretary of State and the Contracting Authority that each Eligible Employee not being a Scheme Member will be automatically enrolled into the Scheme and in each subsequent automatic enrolment period for so long as the employee remains an Eligible Employee.

4.3 The Participating Body undertakes to give notice in writing to the Scheme Manager and the Scheme Administrator of any Scheme Member who ceases to be an Eligible Employee within 28 days of the cessation date.

4.4 The Participating Body hereby agrees and acknowledges that save for the Eligible Employees; none of its employees shall be eligible to gain admission as Scheme Member of the Scheme. The Participating Body agrees to indemnify the Secretary of State and the Contracting Authority for all and any losses arising in the event that any person who is not an Eligible Employee becomes, retains or claims membership of the Scheme.

4.5 The Participating Body hereby agrees to notify and consult with any Eligible Employee before making any changes to terms and conditions of employment that would render any Eligible Employee ineligible to retain admission to the Scheme as a Scheme Member. The Participating Body shall provide written confirmation to the Scheme Manager and Scheme Administrator that such notification and consultation has taken place and shall indemnify the Scheme and the Contracting Authority in respect of any losses arising from any failure of the Participating Body to notify and consult.

4.6 The Participating Body undertakes with the Scheme and the Contracting Authority that within 28 days it will give notice in writing of any material change in the terms and conditions of employment which affects the entitlement to benefits under the Scheme for any Scheme Member including any termination of employment.

4.7 The Participating Body will within 28 days give notice in writing to the Secretary of State and the Contracting Authority of any matter which may affect or is likely to affect its participation in the Scheme, and must give immediate notice in writing to the Secretary of State and the Contracting Authority of any actual or proposed change in its status which may give rise to a termination in its participation in the Scheme including (but not limited to) take-over,

reconstruction or amalgamation, liquidation or receivership or a change in the nature of its business or constitution.

5. GENERAL OBLIGATIONS OF THE PARTICIPATING BODY

5.1 The Participating Body shall remain an Admitted Body for the term of the Contract (including any extension or retender where the Participating Body continues to provide the Services or part thereof) unless and until this agreement is terminated in accordance with its terms.

5.2 The Participating Body agrees to adhere to and shall comply with all the obligations of an employer under the Scheme Regulations.

5.3 The Participating Body shall from the Effective Date adopt the practices and procedures relating to the operation of the Scheme set out in Scheme Regulations and any guidance provided by the Scheme Administrator on behalf of the Secretary of State.

5.4 The Participating Body undertakes that it shall not do anything to prejudice its participation in the Scheme.

5.5 The Participating Body will indemnify the Secretary of State and the Contracting Authority for any losses incurred by those parties arising from a breach by the Participating Body of any term of this agreement.

6. COSTS TO BE MET BY THE PARTICIPATING BODY AND ADDITIONAL LIABILITIES

6.1 The Participating Body shall pay the Secretary of State all such contributions (whether they be periodical or one off) as required of an employer under the Scheme regulations which shall include but not be limited to:

6.1.1 the monthly employer and employee contributions due to be deducted by the Participating Body;

6.1.2 such additional contributions as may be determined to compensate the Secretary of State for the Participating Body's breach of the terms of its participation in the Scheme where that breach has resulted in an increase in the Scheme's costs or liabilities,

6.2 In respect of the early retirement (other than on the grounds of ill health) of any Scheme Member, the Participating Body must:

6.2.1 at least three months before any early retirement (Premature retirement) is to take effect give notice in writing of such early retirement to the Scheme Administrator; and

6.2.2 not later than the date on which any early retirement (Premature retirement) shall take effect, pay to the Scheme, such amount or amounts as the Scheme Actuary determines to cover any additional liabilities caused by the early retirement.

6.3 The Participating Body shall not grant any benefits to any Scheme Member that would result in an increase in the Scheme's liabilities.

6.4 Any agreement between the Participating Body and the Secretary of State that results in the settlement of any one off payment being spread over a period of time or merged into the regular monthly employer contribution rate shall not deem that element to be part of the regular employer contribution rate.

7. **COST ADJUSTMENTS/CAP**

7.1 The Participating Body agrees and acknowledges that the employer contributions referred to in Clause 6.1 may be revised following a valuation of the Scheme. The Participating Body agrees to meet any increases in employer contributions required by the Secretary of State.

7.2 Pension contributions to the Scheme for the Participating Body shall be set at the same rates as all other employers who have access to the Scheme unless decided otherwise by the Secretary of State.

8. **CONTRACTING AUTHORITY INDEMNITY**

8.1 **IN THE EVENT THAT THE PARTICIPATING BODY FAILS TO COMPLY WITH ITS OBLIGATIONS UNDER THIS AGREEMENT (INCLUDING, WITHOUT LIMITATION, ITS OBLIGATIONS TO MAKE, AND ACCOUNT TO THE SECRETARY OF STATE FOR ALL EMPLOYER AND EMPLOYEE CONTRIBUTIONS AND MAKE ANY PAYMENT TO THE SECRETARY OF STATE IN ACCORDANCE WITH CLAUSE 6, THE CONTRACTING AUTHORITY AGREES TO PAY ON DEMAND** such sums as determined by the Secretary of State to compensate for the Participating Body's breach of the terms of its participation in the Scheme where that breach has resulted in an increase in the Scheme's costs or liabilities,

8.2 **WHERE THE CONTRACTING AUTHORITY RECEIVES A DEMAND FOR PAYMENT FROM THE SECRETARY OF STATE IN ACCORDANCE WITH CLAUSE 8.1 ABOVE, IT SHALL ARRANGE FOR THE PAYMENT OF SUCH SUMS TO BE MADE IMMEDIATELY TO THE SECRETARY OF STATE OR WITHIN SUCH OTHER TIME PERIOD AS THE SECRETARY OF STATE DETERMINES.**

9. **SET OFF**

The Contracting Authority may, at its discretion, set off against any payments due to the Participating Body (or, where the Participating Body is a sub-contractor, to the prime contractor) under the Contract an amount equal to any overdue employer and employee contributions and other payments due from the Participating Body to the Scheme under this Agreement.

RECORDS AND ADMINISTRATION

9.1 The Participating Body shall maintain accurate and up to date records (including payroll records) and accounts in accordance with all guidance issued by the **SECRETARY OF STATE** from time to time.

9.2 The Participating Body shall provide the **SECRETARY OF STATE'S** authorised representatives with all reasonable co-operation and assistance, including:

9.2.1 all information reasonably requested by the **SECRETARY OF STATE** on a timely basis; and

9.2.2 reasonable access to relevant Participating Body personnel.

9.3 The Participating Body shall transfer all necessary member records to any new employer on such occasions and in such a manner as required by the **SECRETARY OF STATE**.

10. **RESOLUTION OF DISPUTES**

10.1 Subject to Clause 10.2 below, any question that may arise between the parties to this Agreement relating to the construction of this Agreement, or to the rights and obligations under it, shall be referred in writing to the **SECRETARY OF STATE**.

10.2 Nothing in this Agreement shall affect the rights of the Participating Body and/or the Contracting Authority and/or Scheme Members in connection with the Internal Dispute Resolution Procedures.

11. TERMINATION

11.1 The **SECRETARY OF STATE** may terminate this agreement in any or all of the following circumstances:

11.1.1 if the Participating Body breaches any of the obligations contained within this agreement or the regulations (but where the breach is capable of remedy only where it has not been remedied within a reasonable time and in any event within 28 days of service of a notice referred to in this Clause 11.1;

11.1.2 if the Participating Body fails to pay any sums due to the **SECRETARY OF STATE** under this agreement within 28 days of the due date;

11.1.3 in the event of the insolvency, winding up or liquidation of the Participating Body; or

11.1.4 in the event of the Contract expiring (without renewal or without the Services being retendered to the Contractor in whole or part) or terminating for any reason.

The **SECRETARY OF STATE** will give written notice of termination to all other parties to this agreement, setting out the date on which termination became effective.

11.2 The agreement will automatically terminate upon:

11.2.1 the last Scheme Member ceasing to be eligible to be an active member of the Scheme under this agreement;

11.2.2 **TERMINATION OF CONTRACT UNLESS THE PARTICIPATING BODY CONTINUES TO PROVIDE THE SERVICE IN WHOLE OR PART WHERE THESE HAVE BEEN RETENDERED BY THE CONTRACTING AUTHORITY.**

11.3 Termination or cessation will not in any event affect accrued rights, obligations or commitments of either the Participating Body or the Contracting Authority intended to survive termination or cessation.

11.4 In the event of the Participating Body ceasing to participate in the Scheme the Participating Body shall ensure that all such records and data in relation to Scheme Members or former Scheme Members as may be necessary for the effective transfer of those persons or to aid the administration of the Scheme in respect of those persons shall be handed to the Scheme within 28 days of the effective date of termination.

12. SERVICE OF NOTICES

12.1 A notice under this agreement must be in writing and, unless the receiving party acknowledges receipt, is valid if (and only if) it complies with the following provisions:

12.1.1 the notice must be given by hand or sent by registered post or recorded delivery; and

12.1.2 the notice must be served:

(a) where the receiving party is a company incorporated within Great Britain, at its registered office; or

- (b) where the receiving party is the Contracting Authority, at that party's address shown in this agreement or at any alternative address that is specified in a notice given by that party to the other parties.

12.2 Unless it is returned through the Royal Mail undelivered, a notice sent by registered post or recorded delivery is to be treated as served on the third day after posting whenever and whether or not it is received.

13. **RIGHTS OF THIRD PARTIES**

No person who is not a party to this agreement shall have any right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this agreement.

14. **EXECUTED AS A DEED** by the parties on the date which first appears in this agreement.

SCHEDULE 1

LIST OF EMPLOYEES TO WHOM THIS AGREEMENT APPLIES

Surname	Initials	National Number	Insurance	TP Reference number

EXECUTED as a Deed)
(but not delivered until dated))
.....)
for and on behalf of the Contracting Authority)
in the presence of:)

Signature of witness:

Name of witness:

Address:

Occupation:

EXECUTED as a Deed (but not)
delivered until dated))
by)
)
acting by two Directors or)
a Director and the Secretary:

EXECUTED as a Deed (but not)
delivered until dated))
for and on behalf of the)
Secretary of State)
in the presence of:)