

DATED: 2014

STATES OF JERSEY PUBLIC EMPLOYEES CONTRIBUTORY RETIREMENT SCHEME

**PARTICIPATION AGREEMENT
FOR
[PORTS OF JERSEY LTD]**

TABLE OF CONTENTS

1.	DEFINITIONS INTERPRETATION AND EFFECTIVE DATE	1
2.	ADMISSION OF EMPLOYER AND EMPLOYEES	3
3.	EMPLOYER'S COVENANTS AND UNDERTAKINGS	3
4.	REGULAR CONTRIBUTIONS	4
5.	PAYMENT OF EMPLOYER CONTRIBUTIONS	4
6.	CESSATION OF PARTICIPATION	4
7.	ADDED YEARS	5
8.	PENSIONABLE ALLOWANCES	5
9.	SALARY	5
10.	PENSIONS INCREASES ACT 1972	5
11.	CONFLICT WITH THE REGULATIONS	6
12.	GOVERNING LAW AND JURISDICTION	6
	SCHEDULE	7
	APPENDIX	8
	Actuary's Certificate	8

DATE:**BETWEEN:**

- (1) **THE CHIEF MINISTER OF JERSEY** of Cyril Le Marquand House, The Parade, St Helier, Jersey JE4 8QT (the "**Chief Minister**").
- (2) **[PORTS OF JERSEY LTD]** (company number []) of [] (the "**Employer**").
- (3) **THE COMMITTEE OF MANAGEMENT OF THE STATES OF JERSEY PUBLIC EMPLOYEES CONTRIBUTORY RETIREMENT SCHEME** care of the Treasury and Resources Department, Cyril Le Marquand House, The Parade, St Helier, Jersey JE4 8UL (the "**Committee of Management**").

RECITALS:

- (A) The Employer is the company established under Article 3 of the Air and Sea Ports (Incorporation) (Jersey) Law [201-] (the "**Law**") which, subject to regulations made pursuant to Article 35 of the Law ("**Transfer Regulations**"), will with effect from [] (the "**Transfer Date**"), take over the employment of certain members of the Scheme.
- (B) The Employer has applied for the admission to participation in the Scheme of itself and the Scheme Employees (as defined below).
- (C) In accordance with provisions contained in Regulation 9(1)(b) of the General Regulations the Chief Minister, having consulted with the Committee of Management and the Actuary, wishes to admit the Employer and undertakes to admit any Scheme Employees to participation in the Scheme with effect from the Transfer Date.
- (D) In accordance with the provisions of Regulation 9(2) of the General Regulations, where an employer has applied for the admission of it and its employees to participate in the Scheme under General Regulation 9(1)(b), [and it has replaced a department or part of a department administered by a Minister of the States][and the Chief Minister in consultation with the Committee of Management has decided that the manner in which their employment has been taken over is a justifiable reason for General Regulation 9(2)(i) to (iii) to apply], the provisions of General Regulation 9(2)(i) to (iii) shall apply to the Existing Employees.
- (E) The Chief Minister has determined that the participation of the Employer and the Scheme Employees shall be subject to the terms and conditions contained in this document.
- (F) The Chief Minister has further determined that this document shall be executed by the Employer to record the Employer's acceptance of such terms.

1. DEFINITIONS INTERPRETATION AND EFFECTIVE DATE**1.1** In this document:

"1967 Regulations"	means the Public Employees (Contributory Retirement Scheme)(Jersey) Regulations 1967;
"1972 Pensions Increases Act"	means the Act of the States of Jersey revising pensions payable to retired public employees, adopted on 11 July 1972, as amended by subsequent Acts;
"Actuary"	means the Actuary to the Scheme appointed under Regulation 5 of the General Regulations;
"Employer's Contributions"	means the contributions made by the Employer;
"Existing Employees"	means employees of the Employer whose employment is transferred to the Employer on the Transfer Date pursuant to [Article [] of the Law][paragraph [] of the Transfer Regulations];
"Existing Members Regulations"	means the Public Employees (Contributory Retirement Scheme) (Existing Members) (Jersey) Regulations, 1989;
"General Regulations"	means the Public Employees (Contributory Retirement Scheme) (General) (Jersey) Regulations, 1989;
"Law"	means the Air and Sea Ports (Incorporation) (Jersey) Law 201-;
"New Employees"	means employees of the Employer who become such employees on or after the Transfer Date;
"New Members Regulations"	means the Public Employees (Contributory Retirement Scheme) (New Members) (Jersey) Regulations, 1989;
"Pensionable Allowance"	has the meaning set out in Regulation 1 of the New Members Regulations and Regulation 1 of the Existing Members Regulations as appropriate;
"Regulations"	means the 1967 Regulations, the General Regulations, the Existing Members Regulations and the New Members Regulations;
"Salary"	has the meaning set out in Regulation 1 of the 1967 Regulations, Regulation 1 of the New Members Regulations and Regulation 1 of the Existing Members Regulations as appropriate;

"Scheme" means the Public Employees Contributory Retirement Scheme established by regulations made pursuant to Article 2 of the Public Employees (Retirement) (Jersey) Law 1967 as amended by further regulations made pursuant to such Law;

"Scheme Employees" means the New Employees and the Existing Employees while such persons remain employees of the Employer.

1.2 References to enactments are to such enactments as from time to time modified, re-enacted or consolidated.

1.3 In this document unless there be something in the subject or context inconsistent with such construction words importing a singular shall include the plural and vice versa and those importing the masculine gender shall include the feminine and the neuter and vice versa in each case.

1.4 Clause headings are used for convenience only and shall not affect the construction or interpretation of this document. References to clauses are to clauses in this document.

1.5 Where the context admits references to the Committee of Management shall be to such committee as constituted from time to time.

2. **ADMISSION OF EMPLOYER AND EMPLOYEES**

2.1 The Chief Minister admits the Employer with effect from the date of this Agreement and undertakes to admit the Scheme Employees with effect from the Transfer Date to participate in the Scheme in accordance with Regulation 9(1)(b) of the General Regulations.

2.2 New Employees so admitted shall participate as members of the Scheme to whom the New Members Regulations apply.

2.3 Existing Employees shall continue to participate as members of the Scheme under such of the Regulations that applied to them immediately before the Transfer Date and the provisions of General Regulation 9(2)(i) to (iii) shall apply to them.

3. **EMPLOYER'S COVENANTS AND UNDERTAKINGS**

The Employer covenants with the Chief Minister and with the Committee of Management and with each of them and where appropriate also undertakes and confirms with them and each of them:

3.1 that it will with effect from the Transfer Date comply with and observe those provisions of the Regulations which apply to it and will further comply with the terms of this document;

3.2 that it will pay on or before the Transfer Date its share of the capitalized value from time to time of the debt transferred to the scheme when the scheme was amended with effect from 1st January 1988; and

3.3 that it gives the undertakings contained in the Schedule.

4. **REGULAR CONTRIBUTIONS**

The Employer shall contribute to the Scheme the amounts specified in the Actuary's certificate given under Regulation 9(1)(c) of the General Regulations (the "**Actuary's Certificate**") as varied from time to time.

5. **PAYMENT OF EMPLOYER CONTRIBUTIONS**

5.1 The Employer Contributions shall be paid on such dates as the Committee of Management shall specify from time to time (the "**Specified Dates**"). Where contributions due to be paid on Specified Dates are paid after such dates, the Committee of Management may require the Employer to pay in addition interest on each contribution at the rate of [0.75%] for each complete month of delay or on such other basis or at such other rate as the Committee of Management, having regard to the advice of the Actuary, shall notify to the Employer from time to time.

5.2 Contributions due and owing from the Employer and unpaid after the Specified Dates and interest due thereon in accordance with clause 5.1 shall be debts due and owing to the Scheme and the Employer undertakes to appear before the Royal Court of Jersey when called upon to do so by the Committee of Management to acknowledge its indebtedness in accordance with these provisions.

6. **CESSATION OF PARTICIPATION**

6.1 Six months' notice in writing must be given by the Employer to the Chief Minister if the Employer wishes some of the Scheme Employees (or the Employer itself and all of the Scheme Employees) to cease to participate in the Scheme.

6.2 The Chief Minister may (subject to the prior agreement of the Committee of Management) give to the Employer six months' notice in writing that some of the Scheme Employees (or that the Employer and all of the Scheme Employees) shall cease to participate in the Scheme.

6.3 Following the giving of a written notice served under clause 6.1 or 6.2, the Committee of Management shall act in accordance with Regulation 9(4) of the General Regulations and paragraphs (8) to (12) inclusive of Regulation 9 of the General Regulations shall apply in relation to any termination contribution.

7. **ADDED YEARS**

7.1 Any request by the Employer to have added years awarded in respect of a Scheme Employee must be implemented not more than 12 months (or such longer period as the Chief Minister may in any particular case agree) after the Scheme Employee was admitted to the Scheme.

7.2 The Employer may at any time request to have added years awarded in respect of an Existing Employee to whom the 1967 Regulations apply.

8. **PENSIONABLE ALLOWANCES**

The Employer shall not declare any payment or allowance to be a Pensionable Allowance without first obtaining the consent of the Chief Minister and the Committee of Management.

9. **SALARY**

For Existing Employees who were admitted to the Scheme as members to whom the 1967 Regulations apply, and notwithstanding the definition of salary contained in Regulation 1 of the 1967 Regulations, the Employer shall not declare any payment or allowance (other than basic salary or wage) as part of an employee's "salary" for pension purposes without first obtaining the agreement of the Chief Minister.

10. **PENSIONS INCREASES ACT 1972**

10.1 In respect of pensions payable to Existing Employees who are admitted to the Scheme as members to whom the 1967 Regulations apply, the 1972 Pensions Increases Act shall operate in the following way:

10.1.1 the 1972 Pensions Increases Act shall not apply unless the pension increase paid from the Scheme under Regulation 11 of the General Regulations is less than would have been paid under the 1972 Pensions Increases Act in respect of such pensions;

10.1.2 if the 1972 Pensions Increases Act applies, in addition to the pension increase (if any) paid out of the Scheme, such pensions shall be increased to the extent necessary to make good the shortfall; and

10.1.3 the shortfall if any under clause 10.1.2 shall be subdivided into:

(a) the shortfall relating to membership of the Scheme before the Transfer Date, which shall be paid by the States of Jersey; and

(b) the balance of the shortfall which shall be paid by the Employer.

11. CONFLICT WITH THE REGULATIONS

In the event of conflict between the Regulations and any terms or provisions contained in this document (including the Schedule and the Appendix to this document) the Regulations shall prevail.

12. GOVERNING LAW AND JURISDICTION

This document and the schedule to it shall be governed by and construed in accordance with the laws of the Island of Jersey to the exclusive jurisdiction of whose courts the parties hereby submit.

IN WITNESS whereof this document has been duly executed at St Helier in the Island of Jersey the day and year first above written.

SIGNED by THE CHIEF MINISTER OF JERSEY

in the presence of:

.....

Witness

SIGNED by

on behalf of

[PORTS OF JERSEY LTD]

in the presence of:

.....

Witness

SIGNED by

on behalf of the

**COMMITTEE OF MANAGEMENT OF THE
STATES OF JERSEY PUBLIC EMPLOYEES
CONTRIBUTORY RETIREMENT SCHEME**

in the

presence of:

.....

Witness

SCHEDULE**EMPLOYER'S UNDERTAKINGS**

In accordance with provisions contained in Regulation 9A of the General Regulations (the "**Regulation**") we hereby provide to the Chief Minister the following written statement under paragraph (1) of the Regulation and the following undertakings under paragraph (3) of the Regulation.

We acknowledge that the contributions certified by the Actuary as payable from time to time to the scheme in accordance with provisions contained in the initial Actuary's Certificate annexed hereto or as otherwise certified by the Actuary from time to time are due from us and should we fail to pay them they will be recoverable as a civil debt due to the Committee of Management (as defined in Regulation 1 of the General Regulations (the "**Committee**")).

We undertake that we will—

- (a) as and when required by the Committee provide to the Committee, within the period of 30 days of a written request, or such other period as may be specified by the Committee, such information as the Committee requires relating to ourselves as the Employer and to the Scheme Employees to be admitted to the Scheme (the "**Scheme**"), including information on the salary of the Scheme Employees;
- (b) provide, from time to time on demand by the Committee, such evidence as the Committee requires of our ability to pay contributions to the Scheme and of our ability to continue to pay them in the future;
- (c) pay, within the period specified by the Committee, the contributions to the Scheme that are required to be paid from time to time by the terms of our admission to participation in the Scheme, including the contributions that the Actuary certifies in accordance with Regulation 9(1)(c)(i) and (ii);
- (d) make good any shortfall in our contributions that arise from any error made by us, from a change in the salaries of the Scheme Employees, or from any other cause; and
- (e) in general, fulfil all our obligations arising out of our admission to participation in the Scheme.

Signed on behalf of [**PORTS OF JERSEY LIMITED**]

Date

APPENDIX

Actuary's Certificate

**Subject: Participation of [PORTS OF JERSEY LIMITED] in the Public Employees
Contributory Retirement Scheme (PECRS) - Certificate**