

**PARTICIPATION AGREEMENT  
FOR THE  
OPEIU NATIONAL RETIREMENT SAVINGS PLAN**

**THIS PARTICIPATION AGREEMENT** ("Agreement") made between the Board of Trustees of the OPEIU National Retirement Savings Plan (the "Plan" or "Fund") and the \_\_\_\_\_ ("Employer") (collectively the Fund and the Employer shall be referred to herein each as a "Party" and collectively as the "Parties"). An effective date ("Effective Date") for this Agreement will be established by the Plan's Recordkeeper as soon as administratively feasible following the full execution of this Agreement.

**WITNESSETH:**

**WHEREAS**, the Employer desires to have its employees participate in the Fund;

**WHEREAS**, the Fund permits employees to become eligible to participate and receive benefits thereunder pursuant to the approval of the terms of a participation agreement by the Board of Trustees ("Trustees"), and in accordance with the applicable requirements and regulations under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"); and

**WHEREAS**, subject to comportsing with the applicable compliance requirements under ERISA, the Employer and the Trustees wish to adopt this Participation Agreement to set forth the various terms and conditions governing such participation, if any, of certain employees of the Employer and the Employer's obligations with respect thereto, including contribution obligations as more fully described in Appendix A hereto;

**NOW, THEREFORE**; in consideration of the mutual agreements contained herein, and other good and valuable consideration, the Parties agree as follows:

**1. Plan Rules and Regulations and Other Documents**

The Employer shall be bound by the rules and regulations of the Plan and its Trust Agreement (the "Plan Documents"), the Statement of Policy for Collection of Employer Contributions (the "Collection Procedures"), and any other written requirements, as the Trustees may adopt and amend from time to time. In no event shall the provisions of this Participation Agreement limit any obligation of the Employer that may be set forth under the foregoing instruments.

The Employer understands that the Trustees have the sole and absolute authority to make any and all necessary rules, regulations and administrative decisions as they deem necessary to effectuate the purposes of the Plan. Such rules, regulations and administrative decisions shall be binding on the Employer and its employees who are participants in the Plan. Notwithstanding the foregoing, neither the Trustees nor their rules, regulations and administrative decisions shall increase the Employer's contribution obligations to the Plan (other than employee Elective Deferrals, as defined and permitted in the Plan and Appendix A) without the Employer's prior consent, except to the extent required by law.

The Employer agrees that all contribution reports and other data required by the Trustees (or their designee) will be submitted to the Plan in the format (electronic or paper) prescribed by the Trustees (or their designee).

## 2. Eligible Employees

The employees ("Eligible Employees") described by the Employer in Appendix A hereto will become participants in the Plan upon completing the service requirement or employment probationary period, if any, set forth in Appendix A and in the Plan. Notwithstanding the foregoing, it is expressly agreed and understood by the Employer that the Trustees shall have the sole and absolute discretion to condition, limit, terminate, or preclude participation by the Employer or for any of its non-bargaining unit employees in the Fund, as the Trustees may reasonably deem necessary, to preserve the Fund's tax exempt or collective bargaining status, or as otherwise required by the rules applicable to the Fund.

## 3. Contributions

(a) Amount of Contributions. Notwithstanding anything to the contrary, the Employer will contribute to the Plan, on behalf of each Participant, the amounts designated in Appendix A hereto.

(b) Remittance Reports. At the time funds are remitted to the Plan, the Employer shall provide the Plan Administrator (or its designee) with a remittance report in the prescribed format designated by the Plan Administrator (or its designee). In the event that the Employer does not owe any contributions for the period covered by the remittance report, the Employer must submit a remittance report in the prescribed electronic format by the date any contributions would otherwise be required stating that no contributions are due. **Further, the Employer agrees to timely remit only those Elective Deferrals or other contributions withheld or otherwise set aside after the Employer's employees commence Plan participation. In other words, the Employer agrees not to withhold, or otherwise set aside, any applicable contributions until after the effective date of this Participation Agreement.**

(c) Date by Which Contributions Are Required.

- (i) *Elective Deferral, Catch-Up, and After-Tax Roth Contributions.* Any Elective Deferral, Catch-Up, and After-Tax Roth Contributions must be remitted to the Plan on the earliest date that such amounts can reasonably be segregated from the Employer's general assets. The Employer is responsible for deducting and remitting the Eligible Employees' deferrals to the Plan Administrator (or its designee). \*In no event shall Elective Deferral, Catch-Up, and Roth Contributions be remitted to the Plan later than the fifteenth (15<sup>th</sup>) business day of the month following the month in which the amounts are withheld by the Employer. In the event that the Plan has fewer than 100 participants, the Employer must remit the contributions no later than the seventh (7<sup>th</sup>) business day following withholding by the Employer.
- (ii) *Matching Contributions.* Unless otherwise provided in your applicable Collective Bargaining Agreement or this Participation Agreement, any Matching Contributions must be remitted to the Plan Administrator (or its designee) no later than the twentieth (20<sup>th</sup>) business day immediately following the calendar-year quarter to which they relate.\*
- (iii) *Profit Sharing Contributions.* Unless otherwise provided in your applicable Collective Bargaining Agreement or this Participation Agreement, Employer Profit Sharing Contributions shall be paid in US dollars and remitted to the Plan Administrator (or its designee) on or before the twentieth (20<sup>th</sup>) business day of the month immediately following each calendar quarter to which the Profit Sharing Contribution period relates.\*

\*At the time contributions are remitted to the Plan, the Employer shall provide the Plan Administrator (or its designee) with a remittance report in the prescribed electronic format designated by the Plan administrator (or its designee). In the event that elective deferrals or employer contributions are not owed for the period covered by the remittance report, the Employer must submit a remittance report in the prescribed electronic format by the date any such amounts would otherwise be required stating that no elective deferrals or contributions are due.

(d) Failure to Remit Timely Contributions/Collections.

All contributions by the Employer must be remitted to the Trustees (or their designee) on a timely basis in accordance with this Participation Agreement and the Plan Documents and Collection Procedures. Contributions shall be made by check or by electronic funds transfer to the Fund's designated depository, and shall be accompanied by the remittance report referred to herein. The Employer shall be "delinquent" if owed contributions are not received from the Employer by the close of business on the date described in paragraph (c) above, or if the Plan Administrator (or its designee) has reason to believe that amounts reported and/or paid do not reflect the amount of contributions actually owed to the Plan. The Plan Administrator (or its designee) may also consider the Employer delinquent if it has not submitted remittance reports in the prescribed electronic format along with contributions. The Employer shall be liable for lost earnings on Participant's accounts and all costs and expenses incurred in collecting or attempting to collect contributions due pursuant to the terms of this Agreement, including attorney's fees and costs, as set forth in the Plan's Collections Procedures. Failure to remit contributions timely may result in legal action against the Employer in accordance with the Plan's Collections Procedures.

(e) Vesting in Employer Contributions. Each Participant shall be 100% vested at all times in any Elective Deferral, Catch-Up, After-Tax Roth Contributions, Employer Matching Contributions, and Profit Sharing Contributions made on his or her behalf to the Plan in accordance with the provisions selected in Appendix A hereto.

(f) Compliance with Code Section 415 Annual Additions Limitation. To the extent the Employer maintains or participates in one or more additional tax-qualified defined contribution plans that cover any Eligible Employees, the Employer shall be responsible for ensuring that contributions to the Plan and such other plan(s) do not exceed the annual addition limitation under section 415 of the Internal Revenue Code of 1986, as amended. The Plan Administrator (or its designee) shall provide the Employer with all necessary information from the Plan to enable the Employer to perform this testing.

**4. Information Necessary to Administer Plan**

(a) Initial Report. Within 10 business days of signing this Agreement, the Employer shall provide the Plan Administrator (or its designee) with information necessary to administer the Plan, including but not limited to:

- (i) The name, address, Social Security number, bargaining unit status, and compensation of each Eligible Employee; and
- (ii) Demographic information for purposes of establishing participant accounts and annual nondiscrimination testing.

(b) Updated Reports. The Employer shall provide the Plan Administrator (or its designee) with updated reports within 15 business days of any changes to the information provided in the initial report.

(c) Year-End Reports. Following the end of each plan year (the calendar year), by the date prescribed by the Plan Administrator (or its designee), the Employer shall provide the Plan Administrator (or its designee) with the demographic information that the Plan Administrator (or its designee) may require to perform the nondiscrimination testing for the Plan. To the extent that demographic data may be required for all of the Employer's employees, whether or not they are Eligible Employees, such information will be provided.

The Employer shall provide such information using the electronic format prescribed by the Plan Administrator (or its designee) and shall comply with the Plan Administrator's (or its designee's) instructions in completing such forms. In support of participation in the Plan, the Employer will cooperate with the Plan's Administrator (or its designee) and record keeper with respect to enrollment meetings for eligible employees (Plan participants). The enrollment meetings should be held as soon as practical following the establishment of the Plan.

## **5. Audit**

The Employer also hereby agrees that the Trustees shall have the authority to direct their field auditors or an independent Certified Public Accountant to audit the payroll, personnel, wage and benefit payment records of the Employer for purposes of determining the accuracy of all contributions and enabling the Fund to maintain its tax-exempt status under the Internal Revenue Code of 1986, as amended. If the Trustees determine that the Employer has not fully complied with the Plan's rules and regulations or the provisions of this Participation Agreement, the Trustees may require the Employer to pay the full cost of the audit.

## **6. Duration of Agreement**

This Participation Agreement shall remain in full force and effect until the earliest of the following: (i) execution of a new Participation Agreement by the Employer and the Trustees, or (ii) the Parties' termination of this Participation Agreement.

## **7. Miscellaneous**

(a) Modification and Termination. Any modification to this Participation Agreement shall be made in writing and with the agreement of the Employer and the Trustees. The Trustees may terminate this Participation Agreement upon thirty (30) days' advance written notice to the Employer; provided, however, the Trustees may terminate this Participation Agreement at any time, without notice, if they determine that the Employer has failed to meet its obligations hereunder. Provided that nothing herein shall diminish or affect any other or additional obligations the Employer has or may have under its applicable Collective Bargaining Agreement which covers participants upon whose behalf the Employer contributes to the Fund, the Employer may terminate this Participation Agreement upon one hundred and twenty (120) days' advance written notice to the Trustees. In the event that this Participation Agreement is terminated, the Employer shall continue to be required to make contributions on behalf of each Participant through the effective date of termination, and shall remit such contributions to the Plan no later than the close of business on the date described in paragraph (c) of Section 3.

(b) Trustees' Discretion. The Trustees shall have the sole and absolute authority to adopt any rules and regulations they deem necessary to carry out the administration of the Plan and to decide any disputes concerning the Employer's obligations under this Participation Agreement and the Plan, Trust Agreement, Collection Procedures, and any other rules and regulations.

(c) Applicable Law. To the extent not preempted by the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), this Participation Agreement shall be construed, administered, and governed in accordance with the laws of the State of New York.

(d) Severability. If any provision of this Participation Agreement shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of this Participation Agreement shall continue to be fully effective.

(e) Counterparts. This Participation Agreement may be executed in counterparts, each of which shall be deemed an original.

**8. Informational Meetings**. In support of participation in the Plan, the Employer will cooperate with the Plan's Administrator (or its designee) and record keeper with respect to informational meetings for eligible employees (Plan participants).

**9. Notices** All notices shall be sent to the Employer and the Trustees at the addresses shown below and shall be

deemed duly given when either delivered in person or sent by first class mail:

To the Employer:  
[Insert information]

To the Fund:  
Board of Trustees of the  
OPEIU National Retirement Savings Plan  
265 West 14<sup>th</sup> Street, Suite 610  
New York, NY 10011

\* \* \* \* \*

**IN WITNESS WHEREOF**, the Parties hereto have caused this Participation Agreement and the accompanying Appendix A (a copy of which is attached and incorporated hereto) to be executed by their duly authorized representatives on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**For the Board of Trustees of the OPEIU National Retirement Savings Plan**

\_\_\_\_\_  
[Insert Name]

\_\_\_\_\_  
Date

**For the Employer**

\_\_\_\_\_  
[Insert Name]

\_\_\_\_\_  
Date

APPENDIX A

In accordance with the terms of your applicable Collective Bargaining Agreement with the Office and Professional Employees International Union, AFL-CIO, CLC and pursuant to the terms of this Participation Agreement, the \_\_\_\_\_ (“Employer”) and the Board of Trustees of the OPEIU National Retirement Savings Plan hereby agree to the following with respect to the Employer’s participation in the OPEIU National Retirement Savings Plan (the “Plan”):

**Employer Name:**

**Employer Identification Number (EIN):**

**Address:**

**Primary Contact:**

**Email Address:**

**Phone Number:**

**Fax Number:**

**Eligible Employees:**

- All employees who are represented for purposes of collective bargaining by the Union or the following local union(s): \_\_\_\_\_
- The following non-collectively-bargained employees: \_\_\_\_\_
- All collectively and non-collectively-bargained employees.

**Age and Service Requirements:**

Minimum age requirement (e.g., specify age, N/A): \_\_\_\_\_

Hours of service credit (actual, equivalency or elapsed time): \_\_\_\_\_

Computation period for eligibility (e.g., specify period, N/A): \_\_\_\_\_

**Automatic Enrollment:**

- The Employer **will** use automatic enrollment.\*
  - Indicate the automatic deferral percentage: \_\_\_\_\_
  - The following employees are subject to automatic enrollment:
    - ✓ All new employees
    - ✓ All rehired employees
- The Employer **will not** use automatic enrollment.

\*Note, opt out period for automatic enrollment is 30 days post eligibility.

**Employee Elective Deferral Contributions:**

⇒ **Elective Deferrals (Pre-Tax and Roth)**

- An Eligible Employee **will** be permitted to make Elective (Pre-Tax) Deferral Contributions in accordance with the terms of the Plan.\*
  - The Employer **will not** allow employee Elective (Pre-Tax) Deferrals.
  
- An Eligible Employee **will** be permitted to make Elective (Roth) Deferral Contributions in accordance with the terms of the Plan.\*
  - The Employer **will not** allow employee Elective (Roth) Deferrals.

Choose ONE (Selection will apply to Pre-Tax and Roth Deferrals as elected above):

- Whole Percentage** up to a maximum of \_\_\_\_\_ percent (%) (e.g., 1% – 100%) of compensation including catch-up contributions (if applicable).
- Flat Dollar** up to maximum IRS limits including catch-up contributions (if applicable).
- Both Whole Percentage** up to a maximum of \_\_\_\_\_ percent (%) (e.g., 1% – 100%) of compensation **and Flat Dollar** up to maximum IRS limits including catch-up contributions (if applicable).

\*Catch-Up Contributions: An Eligible Employee will be permitted to make Catch-up Contributions from compensation in accordance with the terms of the Plan.

**Bonus** (Check only if applicable) Participants may make a separate election on the Salary Reduction Agreement form provided by the Employer which will apply only to bonus payments. There will be no deferral from bonuses unless the Participant makes a separate election for bonuses.

Frequency of deferral rate changes (e.g., unlimited or rolling “X” Days (“X” being any number 364 days or less): \_\_\_\_\_

The Employer is responsible for deducting and remitting the Eligible Employees’ deferrals to the Plan Administrator (or its designee). Any Elective Deferral, Catch-Up, and/or Roth Contributions must be remitted to the Plan on the earliest date that such amounts can reasonably be segregated from the Employer’s general assets. \* In no event shall Elective Deferral, Catch-Up, and Roth Contributions be remitted to the Plan later than the fifteenth (15<sup>th</sup>) business day of the month following the month in which the amounts are withheld by the Employer. In the event that the Plan has fewer than 100 participants, the Employer must remit the contributions no later than the seventh (7<sup>th</sup>) business day following withholding by the Employer.

**Employer Contributions:**

⇒ **Matching Contributions**

Amount of Matching Contributions: The Employer **will** make Matching Contributions on behalf of each Eligible Employee who is a participant in the Plan equal to \_\_\_\_\_ fixed percentage (%) OR \$\_\_\_\_\_ of such Eligible Employee’s Elective Deferral Contribution. Unless otherwise provided in your applicable Collective Bargaining Agreement or this Participation Agreement, Employer Matching Contributions shall be paid in US dollars and remitted to the Plan Administrator or its designee on or before the twentieth (20<sup>th</sup>) business

day of the month immediately following each calendar quarter and shall be based upon Elective Deferral Contributions made by Eligible Employees for the immediately preceding calendar quarter.\*

The Employer will make Matching Contributions on 100% of Eligible Employees' catch-up contributions. If a different percentage is applicable, indicate it here: \_\_\_\_\_

The Employer will *not* make Matching Contributions on catch-up contributions on behalf of Eligible Employees.

Indicate the Employer's matching contribution allocation for related and participating employers (*i.e.*, choose an allocation method and allocation sharing): \_\_\_\_\_

Indicate any allocation conditions: \_\_\_\_\_

The Employer **will not** make Matching Contributions on behalf of Eligible Employees.

⇒ **Profit Sharing Contributions**

Amount of Profit Sharing Contributions: The Employer **will** make Profit Sharing Contributions on behalf of each Eligible Employee who is a participant in the Plan equal to (*allocation formula must meet applicable nondiscrimination requirements and terms of the Plan, and is subject to prior approval of the Trustees*):

\_\_\_\_\_

Unless otherwise provided in your applicable Collective Bargaining Agreement or this Participation Agreement, Employer Profit Sharing Contributions shall be paid in US dollars and remitted to the Plan Administrator (or its designee) on or before the twentieth (20<sup>th</sup>) business day of the month immediately following each calendar quarter to which the Profit Sharing Contribution period relates.\*

Indicate the Employer's non-elective contribution formula for related and participating employers: \_\_\_\_\_

Indicate the Employer's non-elective contribution allocation: \_\_\_\_\_

Indicate the Employer's non-elective contribution allocation for related and participating employers (*i.e.*, choose an allocation method and allocation sharing): \_\_\_\_\_

Identify computation period (e.g., payroll period): \_\_\_\_\_

Indicate any allocation conditions: \_\_\_\_\_

The Employer **will not** make Profit Sharing Contributions on behalf of Eligible Employees.

\*At the time contributions are remitted to the Plan, the Employer shall provide the Plan Administrator (or its designee) with a remittance report in the prescribed electronic format designated by the Plan Administrator (or its designee). In the event that elective deferrals or employer contributions are not owed for the period covered by the remittance report, the Employer must submit a remittance report in the prescribed electronic format by the date any such amounts would otherwise be required stating that no elective deferrals or contributions are due.



**Payroll Frequency:**

Indicate Employer's payroll frequency):

- Weekly
- Biweekly
- Semimonthly
- Monthly
- Quarterly
- Other: \_\_\_\_\_

**Loan Repayments:**

Indicate manner in which Plan loan repayments will be made:

- Payroll Deduction (frequency of loan repayments will be every payroll period and must be timely remitted to the Plan by the Employer)
- Coupon (frequency will be monthly through direct billing to the participant from the Plan's third party record-keeper)
- ACH or Coupon (frequency will be monthly through direct billing to the participant from the Plan's third party record-keeper)

\*Individuals who are repaying loans through payroll deduction and subsequently terminate employment prior to satisfaction of their loan repayment, will have to contact the Plan's Recordkeeper to convert their repayment method to either Coupon or ACH.

**Other Qualified Plans Maintained by the Employer:**

The Employer maintains *no* other tax-qualified defined contribution plans in which Eligible Employees are eligible to participate.

The Employer maintains the following other tax-qualified defined contribution plan(s) in which

Eligible Employees are eligible to participate: \_\_\_\_\_

\_\_\_\_\_