

**Agreement and Declaration of Trust
Establishing the**

**STATE OF NORTH DAKOTA JUDGES
HEALTH CARE SAVINGS PLAN
TRUST FUND**

EFFECTIVE _____

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ARTICLE I

ESTABLISHMENT AND PURPOSE OF TRUST FUND

- 1.01 Establishment of Trust Fund.** Effective _____, the State of North Dakota Public Employees Retirement System (PERS) Board hereby establishes this Judges Health Care Savings Plan Trust Fund in accordance with North Dakota Century Code §54-52-04 to accept, invest and dispose of the assets of the North Dakota Judges Health Care Savings Plan (the “Plan”). This Trust Fund is intended to be a tax-exempt governmental trust established under Code section 115 and an irrevocable trust under applicable law of the State of North Dakota.

The Trust Fund shall consist of such sums of money and such other property acceptable to the Trustee as shall from time to time be paid or delivered to the Trustee pursuant to this Plan and the earnings thereon. All such money and property, all investments made therewith and proceeds thereof and all earnings and profits thereon, less any payments made by the Trustee, pursuant to the terms of the Plan, shall constitute the Trust Fund.

The assets of the Trust Fund shall be irrevocable, and shall be preserved, invested and expended solely for the purposes of the Plan, including to make payments for benefits and pay the costs of administering the Plan. All assets of the Trust Fund shall be protected against the claims of creditors of the Employer, Administrator and participants of the Plan.

- 1.02 Purpose.** The assets of the State of North Dakota Judges Health Care Savings Plan shall be held in a trust established under Code section 115 and shall be an irrevocable trust under applicable law of the State of North Dakota.
- 1.03 Eligibility to Participate.** All supreme court and district court judges employed by the State of North Dakota and eligible to participate in a retirement plan under North Dakota Century Code Title 54, Chapter 52 shall participate in the Plan, as determined by the terms of the Plan. This Agreement and Declaration of Trust, does not give any participant of the Plan or any other person any legal or equitable right against the State of North Dakota, the PERS Board, the Trustee or the corpus or income of the Trust Fund unless the right is specifically provided for hereunder or in the Plan, nor does it give any participant in the Plan the right to be retained in service of the Employer.

ARTICLE II

DEFINITIONS

The following words and phrases shall, when used herein with initial capitalization, have the following meanings unless the context clearly indicates otherwise. Some of the words and phrases used in this Trust Fund are defined, for convenience, as they are introduced into the text, rather than in this Article II.

- 2.01 Administrator.** The Board or person(s) designated by the Board with the powers and duties described in the Plan to administer the Plan for the benefit of participants.
- 2.02 Board.** The Public Employees Retirement System Board.
- 2.03 Code.** The Internal Revenue Code of 1986, as amended or replaced from time to time.
- 2.04 Employer.** The State of North Dakota.
- 2.05 Plan.** The State of North Dakota Judges Health Care Savings Plan, and any modification, amendment or restatement thereof.
- 2.06 Plan Year.** The calendar year. The initial Plan Year shall commence July 1, 20__ and end December 31, 20__.
- 2.07 Trustee.** The Board or person(s) designated by the Board to act as trustee of the Trust Fund, or any successor Trustee, in accordance with Article IV.
- 2.08 Trust Fund.** The assets of the Plan held in trust, established hereunder from contributions made by the Employer and from which any benefit payments under the Plan are made.

ARTICLE III

FUNDING AND INVESTMENT OF TRUST FUND

- 3.01 Contributions.** The Trust Fund shall be funded from contributions of the Employer, made in accordance with the terms of the Plan. All contributions of the Employer shall be paid to the Trustee for deposit into the Trust Fund. Such contributions shall be invested in accordance with Section 3.03 so as to produce the best returns possible consistent with prudent investment policies and legal requirements. The Trustee is under no duty to inquire into the correctness of contributed amounts paid to the Trustee or to enforce payment of contributions by the Employer.
- 3.02 Refund of Contributions.** No contribution made to the Trust Fund may be refunded to the Employer unless a contribution was made because of a mistake of fact, and any such refund must be made within one year from the date the contribution was made, subject to the provisions of Section 6.04.
- 3.03 Investment of the Trust Fund.**
- a. The Administrator shall direct the Trustee to invest and reinvest the Trust Fund without distinction between principal and income and in such securities or property, real or personal, as the Administrator shall deem advisable.
 - b. The Administrator may from time to time, direct the Trustee to transfer all or such part of the Trust Fund as the Administrator may deem advisable to, and engage in any transaction with a common or collective trust fund or pooled investment fund which is authorized and permitted to receive investments from the Trust Fund. The Administrator may, from time to time, direct the Trustee to withdraw from such common or collective trust fund or pooled investment fund all or such part of the Trust Fund as the Administrator may deem advisable.
 - c. The Administrator shall have additional powers to direct the Trustee with respect to investment of the Trust Fund, including, but not limited, to the following:
 1. To purchase, or subscribe for, any securities or other property and to retain the same.
 2. To sell, exchange, convey, transfer, grant options to purchase, or otherwise dispose of any securities or other property held by the Trust Fund.

3. To vote upon any stocks, bonds, or other securities and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities, or other property.
 4. To cause any securities or other property to be registered in the Trustee's own name or the name of its designee, and to hold any investments in bearer form, but the books and records of the Trustee shall at all times show that all such investments are part of the Trust Fund.
- d. The Administrator may appoint one or more Investment Managers to manage all or any of the assets of the Trust Fund. For this purpose, "Investment Manager" is defined as an entity that has the power to manage, acquire, or dispose of Trust Fund assets and acknowledges fiduciary responsibility to the Plan and Trust Fund in writing. Such entity must be a person, firm, or corporation registered as an investment adviser under the Investment Advisers Act of 1940; a bank; or an insurance company, which is qualified to manage, acquire or dispose of Trust Fund assets. Any Investment Manager appointed hereunder may be removed by the Administrator at any time.

3.04 Forfeitures. Amounts forfeited in accordance with the terms of the Plan shall be used to offset administrative expenses of the Plan and Trust Fund.

ARTICLE IV

TRUSTEE

- 4.01 Appointment and Removal of Trustee.** The Board shall serve as Trustee unless and until the Board appoints an individual or entity as Trustee by mutual agreement. The Board shall have the authority to appoint a Trustee and may remove the Trustee and appoint a successor from time to time as it deems necessary for proper administration of the Trust Fund.
- 4.02 Powers and Duties of the Trustee.** The Trustee is authorized to exercise all powers conferred upon trustees by law which it may deem necessary or proper for management and protection of the Trust Fund. To the extent that the Trustee exercises authority over the management and investment of Trust Fund assets, it shall have all powers and duties now or hereafter conferred or permitted by law, including, but not limited, to the following:
- a. To hold, invest and reinvest Trust Fund assets, together with the income, in accordance with directions of the Administrator and guidelines established under the Plan, including any written investment policy, subject to the provisions of Section 3.03 d.
 - b. To retain in cash or other property unproductive of income, without liability for interest, so much of the Trust Fund assets as may be determined; to deposit cash in any bank and select any bank as custodian; and cause securities or other property to be registered and/or held in its individual name, or in the name of its designee.
 - c. To establish an individual account for each participant unless an individual account has already been so established. The Trustee shall allocate to each individual account contributions, net income or losses, expenses and payments or distributions, as directed by the Administrator.
 - d. To pay benefits to participants of the Plan, as directed by the Administrator.
 - e. To pay expenses of administration of the Trust Fund or expenses of administration of the Plan, as directed by the Administrator.
 - f. To select and appoint a designee to carry out specified duties of the Trustee as the Trustee may deem appropriate, including contracting with such designee to perform such services.
 - g. To maintain records of receipts and disbursements and furnish to the Administrator periodic reports, as directed by the Administrator.

- h. To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers and duties granted herein.
- i. To do all such acts and exercise all such powers, although not mentioned specifically herein, as the Trustee may deem necessary to carry out the purpose of the Trust Fund.

4.03 Records of Trustee. The records of the Trustee pertaining to the Plan and Trust Fund must be open to inspection of the Plan Administrator and the Employer at all reasonable times and may be audited from time to time by any persons as the Employer or Plan Administrator may specify in writing. The Trustee must furnish the Plan Administrator any information relating to the Trust Fund as the Plan Administrator deems necessary.

4.04 Payment of Expenses. All expenses of administration of the Plan and Trust Fund shall be paid out of the Trust Fund. Such expenses shall include, but shall not be limited to, fees of the Trustee, accountants, counsel and other specialists and their agents. The expenses shall constitute a liability of the Trust Fund until paid.

ARTICLE V

GENERAL PROVISIONS

- 5.01 Nonassignability.** No assets of the Trust Fund are assignable in law or in equity or subject to estate tax or execution levy, attachment, garnishment or other legal processes, except as required under applicable state and/or federal law.
- 5.02 Exclusive Benefit.** Except as provided herein and otherwise specifically permitted by law, it shall be impossible by operation of the Trust Fund, by termination, amendment, or by the happening of any contingency for any part of the corpus or income of the Trust Fund or any funds contributed thereto to be used for, or diverted to, purposes other than the payment of benefits to or on behalf of participants and defraying reasonable expenses of administering the Plan for the exclusive benefit of participants of the Plan.
- 5.03 Severability.** If any provision or provisions of the Trust Fund shall be for any reason invalid or unenforceable, this will not affect any other provision of the Trust Fund. In the event of any such holding, the Board will immediately amend the provisions to remedy the defect to the extent possible.
- 5.04 Applicable Laws.** This Trust Fund shall be governed in all respects by applicable laws of the State of North Dakota, unless superseded by federal law. This Trust Fund is intended to comply with the requirements of Code section 115 and all regulations thereunder, and is to be interpreted and applied consistent with that intent.

ARTICLE VI

AMENDMENT AND TERMINATION

6.01 Discontinuance of Contributions. It is the intention of the Employer that this Trust Fund shall be maintained indefinitely. However, the Employer reserves the right at any time or times to discontinue contributions to the Trust Fund to any extent subject to the provisions of North Dakota Century Code §54-52-04. The Employer's failure to contribute to the Trust Fund in any Plan Year will not discontinue the Trust Fund.

6.02 Amendment. It is the intention of the Board that this Trust Fund shall be maintained indefinitely. However, the Board reserves the right at any time or times to amend the Trust Fund, in accordance with the provisions of this Article VI. Any such amendment shall be by written instrument delivered to the Administrator and the Trustee.

All Plan participants and any persons claiming any interest in the Trust Fund will be bound by such amendment, provided that no amendment causes any of the Trust Fund assets to be diverted to purposes other than the exclusive benefit of participants of the Plan.

6.03 Termination. The Board specifically reserves the right to terminate this Trust Fund in whole or in part. Upon a termination of the Trust Fund, the Trustee shall take such steps as determined to be necessary or desirable to comply with applicable laws.

6.04 Assets in Excess of Liabilities. If after satisfaction of all liabilities under the Plan, including payment of individual account balances to participants and payment of reasonable fees or expenses of the Trust Fund, there is any remaining assets in the Trust Fund, such assets shall revert to the Employer if not otherwise prohibited by law.