

NORTH DAKOTA DEFINED CONTRIBUTION
RETIREMENT PLAN

Plan Document

Amended and Restated Effective October 1, 2013

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ADOPTION RESOLUTION

Resolved, that effective October 1, 2013, the State of North Dakota has adopted the attached amended and restated Defined Contribution Retirement Plan. The Plan is a profit sharing plan that is intended to satisfy the requirements of Sections 401 and 501 of the Internal Revenue Code of 1986, as amended, and its associated regulations.

Signature

Date

Executive Director
Title

ARTICLE 1.

DEFINITIONS

The following words and phrases shall, when used in this Plan, have the following meanings unless the context clearly indicates otherwise.

- 1.1 “Account balance” means the total contributions made by the employee, vested employer contributions, and any transferred amounts under Section 3.4 and any investment gains or losses.
- 1.2 “Administrator” means any entity or individual designated by the Board to provide contractual administrative services to the Plan.
- 1.3 “Beneficiary” means any person designated by a participating member to receive a benefit provided by this Plan after the death of the member.
- 1.4 “Board” means the public employees retirement system board.
- 1.5 “Code” means the federal Internal Revenue Code of 1986, as amended from time to time, and as interpreted by applicable regulations and rulings.
- 1.6 “Deferred member” means a vested member of the public employees retirement system who has not elected to receive a refund and is eligible to receive deferred vested retirement benefits under the system.
- 1.7 “Effective date” means January 1, 2000.
- 1.8 “Eligible employee” means a permanent state employee who elects to participate in the retirement plan provided in NDCC 54-52.6. “Eligible employee” does not include an employee who is eligible for the Highway Patrol Retirement System under NDCC 39-03.1, an employee who is eligible for the Teachers Fund For Retirement under NDCC 15-39.1 or an employee who is eligible for the alternate retirement program available under NDCC 15-10-17.4.
- 1.9 “Employee” means any person employed by a governmental unit, whose compensation is paid out of the governmental unit’s funds, or funds controlled or administered by the governmental unit, or paid by the federal government through any of its executive or administrative officials.
- 1.10 “Employer” means the State of North Dakota.

- 1.11 “New Member” is an eligible employee who meets any one of the following : 1) is newly hired, with no previous service credit in any retirement system under NDCC 54-52, 2) has previous service credit under one of the retirement systems under chapter 54-52 but has been off the payroll of all covered employers for a minimum of 31 days, 3) a current employee presently covered under a defined benefit retirement plan under NDCC 54-52, who is newly elected or appointed as an official in state government, or 4) who is transferring from public employment with an employer not previously eligible for the defined contribution plan.
- 1.12 “Participating member” or “participant” means an eligible employee who elects to participate in the North Dakota Defined Contribution Retirement Plan. For purposes of investment and payment of benefits under the Plan, the terms “participating member” or “participant” also includes individuals who have separated from employment with the Employer and beneficiaries, but who have retained benefit rights under the Plan.
- 1.13 “Permanent employee” means a governmental unit employee whose services are not limited in duration and who is filling an approved and regularly funded position and is employed twenty hours or more per week and at least five months each year.
- 1.14 “Plan” means the North Dakota Defined Contribution Retirement Plan, as stated herein, and as amended from time to time. This Plan shall be a profit sharing plan.
- 1.15 “Plan Year” means a twelve consecutive month period beginning any July 1 and ending the following June 30, with a short initial Plan Year beginning January 1, 2000 and ending June 30, 2000.
- 1.16 “Profit Sharing Contribution” means a discretionary contribution to the Plan made by the Employer. Profit Sharing Contributions under this Plan shall be made in accordance with Section 3.2, subsection b. and without regard to whether the Employer earns any profits.
- 1.17 “Public employees retirement system” or “system” means the defined benefit retirement plans established under North Dakota Century Code Chapter 54-52.
- 1.18 “Required Beginning Date” means April 1 of the calendar year following the later of the calendar year in which the member retires or reaches age seventy and one-half.
- 1.19 “Service” means periods of active employment with the employer, determined in the same fashion as service and prior service under North Dakota Century Code §§ 54-52-11 and 54-52-17.

- 1.20 "Trust Fund" means the assets of the Plan held in trust by the trustee.
- 1.21 "Trustee" means the public employees retirement system board, which shall serve as the Board of Trustees for this Plan.
- 1.22 "Wages" and "salaries" means earnings in eligible employment under this Plan reported as salary on a federal income tax withholding statement plus any salary reduction or salary deferral amounts under Code Sections 125, 401(k), 403(b), 414(h) or 457. "Salary" does not include fringe benefits such as payments for unused sick leave, personal leave, vacation leave paid in a lump sum, overtime, housing allowances, transportation expenses, early retirement, incentive pay, severance pay, medical insurance, workers' compensation benefits, disability insurance premiums or benefits, or salary received by a member in lieu of previously employer-provided fringe benefits under an agreement between the member and participating employer. Bonuses may be considered as salary under this Section if reported and annualized pursuant to rules adopted by the Board.

Notwithstanding any other provision of the law, the amount of wages or salary used to determine the retirement benefits of a participating member in this Plan must not exceed the amount of compensation permitted to be taken into account under Code Section 401(a)(17).

ARTICLE 2.

PARTICIPATION

- 2.1 **Eligibility.** An employee is eligible for membership under this Plan at the later of the first day of employment or the effective date of this Plan. Such eligibility, however, shall terminate at any time employment with the employer is terminated.
- 2.2 **Election to participate.** In order to participate in this Plan, an employee must make an election to participate in the defined contribution retirement plan established under NDCC 54-52.6 at any time during the first six months after the date of employment. An eligible member who is not provided a timely opportunity to enroll in the defined contribution plan within the first six months of employment may be provided additional time to make an election if:
1. The executive director determines that the member was not given an election opportunity within the first six months of employment. The executive director shall then give the member a special enrollment opportunity of three months beginning from the date a new enrollment packet is mailed to the member.
 2. The board determines that member was not given timely notice or the member was unable to make an election within the first six months. If the board determines that the member should have an additional election opportunity, the member shall have three months from the date a new enrollment packet is mailed to the member. If the employee making the election is married at the time of the election, the election is not effective unless it is signed by the individual's spouse. However, the board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.
- 2.3 **Participation in other plans.** A participating member may not participate in any other public sector retirement benefits plan for simultaneous services rendered to the same public sector employer. However, this Section does not prohibit a participant from participating in a retirement plan established by this state or other public sector employer under the Code.

ARTICLE 3.

CONTRIBUTIONS

- 3.1 **Mandatory employee contributions.** Each participating member shall contribute monthly six percent of the monthly salary or wage paid to such participant and effective 1/1/2014, seven percent. This assessment must be deducted and retained out of such salary in equal monthly installments commencing with the first month of participation in this Plan.
- 3.2 **Employer contributions.**
- a. Each employer shall contribute an amount equal to six and twelve-hundredths percent of the monthly salary or wage of a participating member and effective 1/1/2014, seven and twelve-hundredths percent. If the employee's contribution is paid by the employer under Section 3.3, the employer shall contribute, in addition, an amount equal to the required employee contributions. The employer shall pay such contribution monthly into the participating member's account from funds appropriated for payroll and salary or any other funds available for such purposes. If the employer fails to pay the contributions monthly, it is subject to a civil penalty of fifty dollars and, as interest, one percent of the amount due for each month of delay or fraction thereof after the payment became due.
 - b. Each employer, at its sole discretion, may elect to make a profit sharing contribution to the Plan. The profit sharing contribution shall be allocated among all or any part of the participating members of the Plan for such plan year in proportion to the salary or wage of the participating member. For purposes of this Section 3.2, subsection b. only, participating members include only those individuals who are eligible employees on the date the profit sharing contribution is declared by the employer. Each participating member's share of the profit sharing contribution will be allocated to his or her account balance. Profit sharing contributions shall be subject to the rules regarding vesting of employer contributions as set forth in Section 4.2.
- 3.3 **Employer pick up of employee contributions.** Each employer, at its option, may pay the employee contributions required by Section 3.1, in accordance with Code Section 414(h), for all compensation earned after December 31, 1999. The amount paid must be paid by the employer in

lieu of contributions by the employee. Employee contributions paid by the employer must be treated as employer contributions in determining tax treatment under state tax law and the federal Code. Such contributions may not be included as gross income of the employee in determining tax treatment until they are distributed or made available. The employer shall pay these employee contributions by effecting an equal cash reduction in the gross salary of the employee or by an offset against future salary increases. An employer exercising this option shall report it's choice to the board in writing.

3.4 Transfer of contributions.

- a. For an individual who elects to terminate membership in the public employees retirement system and become a participating member in this Plan, the Board shall transfer a lump sum amount from the retirement fund to the participating member's account under this Plan. However, if the individual terminates employment prior to receiving the lump sum transfer under this Section, the election made under Section 2.2 is ineffective and the member remains a member of the public employees retirement system and retains all rights and benefits under that plan.
- b. The Board shall calculate the amount to be transferred for employees electing to transfer in accordance with North Dakota Century Code Section 54-52.6-02 as follows: The actual employer contribution made, less vested employer contributions made pursuant to section 54-52-11.1, plus compound interest at the rate of one-half of one percent less than the actuarial interest assumption at the time of the election, plus the employee account balance.
- c. Pursuant to an affirmative election to join the defined contribution retirement plan, all funds under 54-52 will be transferred to the defined contribution plan.

3.5 Employee after-tax contributions. This Plan does not allow voluntary after-tax employee contributions, except as may be attributable to transferred contributions under Section 3.4.

3.6 Rollover contributions from other eligible plans.

- a. Subject to limitations and conditions adopted by the Board and in accordance with North Dakota Century Code Section 54-52.6-09.1, a Participant may make and the Plan will accept a direct rollover or regular rollover of an Eligible Rollover Distribution from an Eligible Retirement Plan as such terms are defined in Code Sections 402(c)(4) and

402(c)(8)(B), respectively, and as permitted by Section 408(d)(3) of the Code.

- b. Upon receipt of a rollover contribution, the Board shall credit the amount of any rollover contribution to the contributing Participant's Account in the Plan and shall invest such amount in accordance with the provisions of this Plan.
 - c. The Participant shall establish to the satisfaction of the Board that the amount tendered as a rollover contribution represents a qualified distribution of the Participant from an Eligible Retirement Plan maintained by the former employer(s) of the Participant. The Board shall have the authority to determine whether or not a contribution proposed by a Participant constitutes a rollover contribution eligible for rollover treatment in accordance with this Section 3.6 and Code Section 402. In making such determination, the Board may require reasonable proof of demonstration by the Participant of the eligibility of the proposed contribution for rollover treatment.
 - d. The Board shall maintain the rollover contributions for each Participant in a separate rollover account that will consist solely of the rollover contributions made by the Participant, plus any adjustments for investment gains or losses.
 - e. The rollover contribution account under this Section shall be fully vested at all times, and shall be administered and distributed according to the same terms and conditions of this Plan applicable to other Participant accounts; provided, however, that it may distributed at any time without the occurrence of a distribution event under Section 6.1.
- 3.7 **Military service leave.** Notwithstanding any other provision of this Plan, a participating member returning from qualified military service protected under the Uniformed Services Employment and Reemployment Rights Act (Chapter 43 of Title 38, United States Code) shall be provided all participation, contribution, vesting and benefit rights required under that Act and Section 414(u) of the Code, as described in North Dakota Century Code Section 54-52.6-09.4. Effective for deaths occurring on or after January 1, 2007, if a participating member dies while performing qualified military service (as defined in Code Section 414(u)(5)), this Plan shall provide vesting service and any other benefits required in accordance with Code Section 401(a)(37), but the provisions of Code Section 414(u)(9) shall not apply to this Plan.

ARTICLE 4.

VESTING

- 4.1 **Vesting of employee contributions.** A participating member is immediately one hundred percent vested in that member's contributions made to that member's account under Section 3.1 or paid by the employer under Section 3.3.
- 4.2 **Vesting of employer contributions.** A participating member vests in the employer contributions made on the member's behalf according to the following schedule:
- a. Upon completion of two years of service, fifty percent.
 - b. Upon completion of three years of service, seventy-five percent.
 - c. Upon completion of four years of service, one hundred percent.
 - d. Upon attainment of age 65 while an employee, one hundred percent.

A participating member who was a member or deferred member of the public employees retirement system and who makes an election to participate in this Plan must be credited with years of service accrued under the public employees retirement system on the effective date of participation in this Plan for the purpose of meeting vesting requirements under this Section. Any forfeiture as a result of a participating member to vest in the employer contributions must be used to defray administrative expenses.

- 4.3 **Reemployment.** If a participating member terminates employment, is paid a distribution from his account, and then becomes reemployed as an eligible employee, years of service completed before termination will not be counted for vesting. Otherwise, for purposes of vesting under the Plan, this Plan does not apply any break in service rule.

ARTICLE 5.

ACCOUNT VALUATION

- 5.1 **Separate accounts.** A separate bookkeeping account shall be established and maintained under this Plan for each participating member to which shall be credited, at times prescribed by the Board, all employee contributions and all employer contributions.
- 5.2 **Credits and debits.** Each participating member's account shall be credited or debited from time to time, under rules established by the Board, to reflect investment earnings and administrative expenses.
- 5.3 **Limited rights to assets.** The fact that separate accounts are established for each participating member shall not give any employee or others any right, title or interest in the Fund or its assets, or in any account except at the time and upon the terms and conditions provided in this Plan.

ARTICLE 6.

DISTRIBUTIONS

- 6.1 **Distribution eligibility.** A participating member's vested account balance is distributable upon the occurrence of one of the following events:
- a. The participating member has terminated employment with the employer. Termination of employment means a severance of employment by not being on the payroll of the employer for a minimum of one month. An approved leave of absence does not constitute termination of employment.
 - b. The participating member has become totally and permanently disabled according to medical evidence called for under the rules of the Board.
 - c. The participating member dies.
 - d. The participating member has reached the Required Beginning Date. In no event shall the distribution of a member's account balance commence later than the Required Beginning Date, whether or not they apply for benefits.

ARTICLE 7.

FORM OF DISTRIBUTION

- 7.1 **Distribution election.** A participating member or his beneficiary who is eligible to receive benefits under Article 6 shall receive benefits upon proper application in a manner approved by the Board as to the date benefit distributions under the Plan will begin. This election must be made consistent with the other distribution requirements of Section 6.1 and this Article 7.
- 7.2 **Payable benefits.** Benefits under this Article 7 shall be measured by participating member's vested account balance on the date or dates the benefits are payable under this Plan and shall be payable in lump sum or in periodic payments as specified by the member and as authorized by the Plan. However, members must take distribution at least annually to maintain eligibility for other NDPERS benefits.
- 7.3 **Distribution over life expectancy.** A participating member's form of distribution election under Section 7.2 must be expected to result in the distribution of the member's entire interest in this Plan within a period not exceeding the life of the member or the lives of the member and the member's beneficiary, or over a period not extending beyond the life expectancy of the participating member or the life expectancy of the member and the member's designated beneficiary.

When a participating member dies after distribution of benefits has begun the remaining portion of the member's interest shall be distributed at least as rapidly as under the method of distribution prior to the participating member's death.

When a participating member dies before distribution of benefits has begun, the entire interest of the member shall be distributed within five years of the member's death. The five year payment rule does not apply to any portion of the member's interest which is payable to a designated beneficiary over the life or life expectancy of the beneficiary and which begins within one year after the date of the participating member's death. The five year payment rule does not apply to any portion of the participating member's interest which is payable to a surviving spouse over the life or life expectancy of the spouse and which begins no later than the date the member would have reached age seventy and one-half.

- 7.4 **Additional distribution requirements.** In the case of distributions beginning before the death of a participating member, any amounts not distributed before the member's death shall be distributed at times

specified by the Secretary of the Treasury which are not later than the time determined under Code Section 401(a)(9)(G), relating to incidental death benefits and at least as rapidly as under the method being used on the date of the participating member's death.

The Plan shall comply with the minimum distribution rules under Section 401(a)(9) of the Code and the Treasury Regulations issued under that provision to the extent applicable to governmental plans. Accordingly, benefits must be distributed or begin to be distributed no later than a participating member's required beginning date (as defined in Section 1.17), and the required minimum distribution rules override any inconsistent provision of this Plan.

In addition, amounts that would have been 2009 required minimum distributions in the absence of Code Section 401(a)(9)(h), as added by the Worker, Retiree and Employer Recovery Act of 2008, including amounts that would have been first required minimum distributions payable in 2010, were paid as scheduled for 2009. Recipients of such required minimum distributions were given the opportunity to elect to stop receiving the 2009 required minimum distributions described in the preceding sentence, and a direct rollover was only offered for such distributions that would have been eligible rollover distributions without regard to Code Section 401(a)(9)(H).

- 7.5 **Small benefit cashouts.** Notwithstanding any other provision of the Plan to the contrary, the Board shall automatically distribute the benefits of a participating member in a lump sum as soon as administratively feasible after the member becomes eligible for a distribution in accordance with Section 6.1 if the total amount of the participating member's vested account balance and any amounts held in a rollover contribution account established under Section 3.6 is less than or equal to \$1,000. A participating member may waive the lump sum cash out if the member submits a written statement to the Board, within sixty days after termination of employment, requesting that the member's account balance remain in the Trust Fund.
- 7.6 **Death benefit payments.** In the event of the participating member's death prior to receiving payment in full of his benefits under this Plan, the Board shall pay the account balance of the participating member, to the member's designated beneficiary. If the deceased participant designated an alternate beneficiary with the surviving spouse's written consent, the board shall distribute the accumulated balance to the named beneficiary. If the deceased participant named more than one primary beneficiary with the surviving spouse's written consent, the board shall pay the accumulated account balance to the named primary beneficiaries in the percentages designated by the deceased participant or, if the deceased

participant had not designated a percentage for the beneficiaries, in equal percentages. If one or more of the primary beneficiaries has predeceased the deceased participant, the board shall pay the predeceased beneficiary's share to the remaining primary beneficiaries. If any beneficiary survives the deceased participant, yet dies before distribution of the beneficiary's share, the beneficiary must be treated as if the beneficiary predeceased the deceased participant. If there is no remaining primary beneficiary, the board shall pay the accumulated account balance of that deceased participant to the contingent beneficiaries in the same manner. If there is no remaining designated beneficiary, the board shall pay the accumulated account balance of that deceased participant to the deceased participant's estate.

If the surviving spouse is the beneficiary, the surviving spouse may select from a form payment as provided in NDCC Section 54-52.6-13(3). If the surviving spouse is not the sole beneficiary, the beneficiary may only choose a lump sum distribution of the accumulated balance.

7.7 Direct rollovers. A Distributee may elect, at the time and in the manner prescribed by the Board, to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the Distributee in a Direct Rollover, except that a Distributee may not elect a Direct Rollover of a distribution or series of distributions of less than \$200 in a single calendar year. For purposes of applying this Section 7.7, the following definitions shall apply:

- a. **Eligible Rollover Distribution.** An Eligible Rollover Distribution is any distribution of all or any portion of the balance of a participating member's account to the credit of the Distributee, including any after-tax employee contributions that are not includible in gross income except that an Eligible Rollover Distribution does not include:
 1. Any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the Distributee or the joint lives (or joint life expectancies) of the Distributee and his designated beneficiary, or for a specified period of ten (10) years or more;
 2. Any distribution to the extent such distribution is required under Code Section 401(a)(9);
 3. The portion of any distribution that is not includable in a Distributee's gross income (determined without regard to the

exclusion for net unrealized unappreciation with respect to Employer securities); or

4. Any corrective distribution of excess contributions and any corrective distribution of excess aggregate contributions and income allowable to such corrective distributions.

An Eligible Rollover Distribution also includes any portion of a distribution that consists of after-tax employee contributions that are not includible in gross income. However, such portion may be transferred only to an individual retirement account or annuity described in Code section 408(a) or (b), or to a qualified defined contribution plan described in Code section 401(a) or 403(a) that agrees to separately account for the after-tax employee contribution amounts so transferred.

- b. **Eligible Retirement Plan.** An Eligible Retirement Plan is an individual retirement account described in Code Section 408(a), an annuity plan described in Code Section 408 (b), an annuity plan described in Code Section 403(a), an eligible deferred compensation plan described in Code section 457(e)((1)(A), an annuity contract described in Code section 403(b) or a qualified trust described in Code Section 401(a) that accepts the Distributee's Eligible Rollover Distribution. In the case of an Eligible Rollover Distribution to a designated beneficiary other than a spouse or former spouse, an Eligible Retirement Plan is only a individual retirement account described in Code Section 408(a) or an annuity plan described in Code Section 408(b) that is treated as an inherited IRA in accordance with the provisions of Code Section 402(c)(11).
- c. **Distributee.** A Distributee includes an employee or former employee. In addition, the employee's or former employee's designated beneficiary or the employee's or former employee's spouse or former spouse, with regard to the interest of the spouse or former spouse, are Distributees.
- d. **Direct Rollover.** A Direct Rollover is a payment by the Plan to the Eligible Retirement Plan specified by the Distributee.

7.8 Benefits payable to alternate payee under qualified domestic relations order.

- a. The Board shall pay retirement benefits in accordance with the applicable requirements of any qualified domestic relations order. The Board shall review a domestic relations order submitted to it to

determine if the domestic relations order is qualified under this Section 7.8 and under rules established by the Board for determining the qualified status of domestic relations orders and administering distributions under the qualified orders. Upon determination that a domestic relations order is qualified, the Board shall notify the participating member and the named alternate payee of its receipt of the qualified domestic relations order.

- b. A “qualified domestic relations order” for purposes of this Section 7.8 means any judgment, decree or order, including approval of a property settlement, which relates to a provision of child support, spousal support or marital property rights to a spouse, former spouse, child or other dependent of a participating member, is made pursuant to a North Dakota domestic relations law, and which creates or recognizes the existence of an alternate payee’s right to, or assigns to an alternate payee the right to, receive all or a part of the benefits payable to the participating member. A qualified domestic relations order may not require the Board to provide any type of benefit, or any option, not otherwise provided under this Plan, or to provide increased benefits as determined on the basis of actuarial value. However, payment of benefits to the alternate payee under a qualified domestic relations order shall be made as soon as administratively feasible after the order is determined to be qualified, notwithstanding that the participating member has not terminated eligible employment. A qualified domestic relations order must be in a form as may be required by the Board.

7.9 Contribution limitations. The Plan shall comply with the contribution limitation rules under Section 415 of the Code, including the defined contribution limitations under Section 415(c)(1)(A) and (B) of the Code and the Treasury Regulations thereunder, as such apply to governmental plans, which are incorporated herein by reference.

- a. In accordance with the defined contribution limitations under Section 415(c) of the Code, annual additions (as defined in Section 415(c)(2) of the Code) under this Plan may not exceed the limitations set forth in Code Section 415(c)(1)(A) and (B), as adjusted under Section 415(d) of the Code, effective January first of each year following a regular legislative session.
- b. If a participating member’s aggregate annual additions exceed the defined contribution limitations under Section 415(c) of the Code, the member’s annual additions to this Plan must be reduced to the extent necessary to comply with Section 415(c) of the Code and the Treasury Regulations thereunder.

- c. "Compensation" for purposes of this Section 7.9 shall mean compensation as defined in Treasury Regulations section 1.415(c)-2(d)(3), which includes wages within the meaning of Code Section 3401(a), plus amounts that would be included in wages but for an election under Sections 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k) or 457(b) of the Code; provided, however, that any rules that limit the remuneration included in wages based on the nature or location of the employment or services performed are disregarded for purposes of this definition.
- In order to be taken into account for a limitation year, compensation must be actually paid or made available to a participating member within the limitation year. For this purpose, compensation is treated as paid on a date if it is actually paid on that date or would have been paid on that date but for an election under Sections 125, 132(f)(4), 401(k), 403(b), 408(k), 408(p)(2)(A)(i), or 457(b) of the Code. In order to be taken into account for a limitation year, compensation must be paid or treated as paid to a participating member prior to a severance from employment.
- d. If a participating member's annual additions exceed the limits set forth in this Section 7.9 for a limitation year, such excess allocations shall be corrected in accordance with the applicable provisions of the Employee Plans Compliance Resolution System (EPCRS) issued by the Internal Revenue Service (currently Revenue Procedure 2013-12).

ARTICLE 8.

ESTABLISHMENT AND ADMINISTRATION OF THE TRUST

- 8.1 **Establishment of trust.** There is hereby established a Trust Fund to be known as the North Dakota Defined Contribution Retirement Fund. This Trust Fund is intended to be a tax-exempt trust under Code Sections 401 and 501. The assets of this Plan, and all income attributable to such assets, are held in trust by the Board for the exclusive benefit of participating members and their beneficiaries.
- 8.2 **Acceptance of trust.** The Board consents to act as Trustee for this Trust Fund.
- 8.3 **Administration.** The Board shall supervise the operation of the Plan, maintain records and supply information to participating members and others. In administering this Plan, the Board shall have any applicable rights, powers and duties granted to it by law for the administration of the public employees retirement system.
- 8.4 **Specific powers and duties.** The Board shall:
- a. Exercise exclusive authority to invest and manage assets of the Plan. However, the Board shall permit each participating member to direct the investment of the individual's employer and employee contributions and earnings to one or more investment options within available categories of investment as established by the Board.
 - b. Establish and adopt a statement of investment objectives and policies setting forth the manner and parameters of the investment of the assets of the Plan. The statement of investment objectives and policies shall be established in a manner consistent with the purposes of the Plan. The Board shall monitor the performance of the investments of the Plan to ensure such remain consistent with the investment policy established by the Board.
 - c. Provide information to employees who are eligible to elect to become participating members in this Plan. The information must include at a minimum the employee's current account balance, the assumption of investment risk under a defined contribution retirement plan, administrative and investment costs, coordination of benefits information, and a comparison of projected retirement benefits under the public employees retirement system and this Plan. Notwithstanding any other provision of law, the Board is not

liable for any election or investment decision made by an employee based upon information provided to an employee under this Plan.

- d. Establish an administrative budget sufficient to perform the duties under the Plan and to draw upon authorized sources to fund the budget.
 - e. Pay Plan benefits and related taxes from the assets of the Plan.
 - f. Obtain by employment or contract all the services necessary or appropriate to administer the Plan, including actuarial, auditing, custodial, investment, legal and record keeping services.
 - g. Procure and dispose of the goods and property of the Plan necessary for its proper administration.
 - h. Have full power and authority to adopt rules and regulations for the administration of the Plan and to interpret, alter, amend or revoke any rules and regulations so adopted.
- 8.5 **Expenses.** The expenses incurred by the Board in the proper administration of the Plan shall be paid from sources made available under applicable state law, including the Trust Fund.
- 8.6 **Accounting.** For accounting purposes, the Board will maintain a summary of the account balances of each participating member whose benefits have not begun to be distributed. This accounting summary will reflect from time to time the total deferred liability of the Plan as well as the account balance for each participating member in the Plan.
- 8.7 **Compliance authority.** The Board may administratively alter the terms of the Plan as it determines to be necessary or appropriate to maintain the status of the Plan as a qualified defined contribution retirement plan under the Code.
- 8.8 **Delegation of responsibilities.** The Board may delegate the duties and authorities established under the Plan in a manner consistent with its fiduciary responsibilities as established under this Article 8.
- 8.9 **Fiduciary responsibilities.** The Board, the Administrator, and any agent or designee thereof with discretionary authority for the Plan, are fiduciaries under the Plan as to the discharge of their duties under the Plan and shall act as to their duties:

- a. Solely in the interest of the Plan's participating members and their beneficiaries;
- b. For the exclusive purpose of providing benefits to participating members and their beneficiaries and paying reasonable expenses of administering the Plan;
- c. With the care, skill, prudence and diligence under the circumstances then prevailing that a person acting a like capacity and familiar with such matters would use in the conduct of an activity of like character and purpose;
- d. Incurring only costs that are appropriate and reasonable; and
- e. In accordance with good faith interpretation of the law governing the Plan.

ARTICLE 9.

RIGHT OF APPEAL AND DETERMINATION OF DISPUTES

- 9.1 **Claim to benefits.** No participating member, beneficiary or other person shall have any right or claim to benefits under this Plan, or any right or claim to payment from the Trust Fund, other than as specified herein and under all applicable sections of North Dakota Century Code Chapter 54-52. Any dispute as to eligibility, type, amount or duration of benefits or any right or claim to payment from the Trust Fund shall be resolved pursuant to the terms of the Plan, under appeal procedures adopted by the Board.

ARTICLE 10.

AMENDMENT AND TERMINATION

- 10.1 **Right to amend plan.** The Board has the right to amend the Plan, in whole or in part, at any time and from time to time. However, no amendment shall, with respect to any participating member, reduce such benefits provided hereunder as are derived from vested contributions credited to the participating member before the effective date of any such amendment.
- 10.2 **Exclusive benefit.** Except as permitted specifically by law, it shall be impossible by operation of this Plan, by termination or amendment or by the happening of any contingency, for any part of the principle or income of the Trust Fund or any fund contributed thereto to be used for, or diverted to, purposes other than the exclusive benefit of participating members or their beneficiaries.
- 10.3 **Severability.** If any provision of the Plan or any step in the administration of the Plan is held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining provisions of the Plan, unless such illegality or invalidity prevents accomplishment of the purposes and objectives of the Plan. In the event of any such holding, the Board will immediately amend the Plan to remedy the defect.
- 10.4 **Nonforfeitable benefits upon termination.** In the event of a termination of the Plan, the rights of each participating member to all benefits accrued to date of such termination, which is the vested account balance of each participating member, shall be one hundred percent nonforfeitable and fully vested in each participating member.

ARTICLE 11.

GENERAL PROVISIONS

- 11.1 **Plan not employment contract.** The adoption of or participation in this Plan may not be deemed to give an employee the right to be retained in the employ of an employer or to interfere with the right of the employer to discharge any employee at any time.
- 11.2 **Alienation of benefits prohibited.** Neither the participating member nor his designated beneficiary, or any other designee, has any right to commute, sell, assign, transfer or otherwise convey the right to receive any payments or assets under this Plan. Such payments or assets are non-assignable and non-transferable. The participating member's rights under the Plan are not subject to the rights of creditors of the participating member, any beneficiary, the Board or the employer and shall be exempt from execution, attachment, prior assignment or any other judicial relief or order for the benefit of creditors or other third persons. This Section shall not apply to a qualified domestic relations order, as defined in Section 7.8.
- 11.3 **Beneficiary designation.** A participant or former participant in the Plan may nominate one or more individuals as a beneficiary by filing written notice of nomination with the Board. If the participating member or former member is married at the time of the nomination and the participant's spouse is not the beneficiary for one hundred percent of his account balance, the nomination is not effective unless it is signed by the participant's spouse. However, the Board may waive this requirement if the spouse's signature cannot be obtained because of extenuating circumstances.
- 11.4 **Overpayments.** The Board has the right of setoff to recover overpayments made under this Plan and to satisfy any claims arising from embezzlement or fraud committed by a participating member, deferred member, beneficiary or other person who has a claim to a distribution or any other benefit from this Plan.
- 11.5 **Plan qualification.** If the Board receives notice from the Internal Revenue Service that this Plan is not qualified for tax purposes under the Code, then the portion that will cause the disqualification does not apply.
- 11.6 **Construction.** The laws of the state of North Dakota, as amended from time to time, shall govern the construction and application of this Plan. Words used in the masculine gender shall include the feminine and words in the singular shall include the plural, as appropriate. The headings and

subheadings of this Plan have been inserted for convenience of reference only and are to be ignored in any construction of the provisions hereof.

11.7 Reemployment. Any former participating member of the defined contribution retirement plan who returns to public employment following a previous termination or retirement and is eligible to participate in a retirement plan, must resume participation in the defined contribution retirement plan. If a member of the defined contribution retirement plan begins employment in a position covered under the highway patrol retirement plan, the teachers' fund for retirement plan, or the alternate retirement plan of the state board of higher education, the member's status as a member of the defined contribution retirement plan is suspended and the member becomes a new member of the retirement plan for which that member's new position is eligible. The member's account balance remains in the defined contribution retirement plan, but no new contributions may be made to that account. The member's service credit and salary history that were forfeited as a result of the member's transfer to the defined contribution retirement plan remain forfeited, and service credit accumulation in the new retirement plan begins from the first day of employment in the new position. If the member later returns to employment that is eligible for the defined contribution plan, the member's suspension is terminated, the member again becomes a member of the defined contribution plan, and the member's account shall resume accepting contributions. The contributions to the alternate retirement plan shall remain with that plan unless at the member's option, the member elects to transfer any available balance as determined by the provisions of the alternate retirement plan into the member's account in the defined contribution retirement plan.

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