**PROVIDER PARTICIPATION AGREEMENT**

**IN THE**

**NORTH DAKOTA PUBLIC EMPLYOEES RETIREMENT SYSTEM**

**DEFERRED COMPENSATION PLAN**

This Provider Participation Agreement is made and entered into this {qu ParticipationDate}, by and between the North Dakota Public Employees Retirement System Board, administrator of the North Dakota Deferred Compensation Plan, hereinafter referred to as the "Retirement Board", and, {stdOrgName} hereinafter referred to as the "Provider".

**I. Purpose and Scope of the Deferred Compensation Program**

The purpose of this Agreement is to document specific areas of responsibility with respect to the administration of the North Dakota Deferred Compensation Plan. No later than January l, 1999, all participant assets must be held in an insurance annuity contract or custodial account for the exclusive benefit of the participant and the participant’s beneficiaries as required by section 457 of the Internal Revenue Code. No deferred compensation program assets are subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever. Neither the participant nor the participant’s beneficiary has the right to commute, sell, assign, transfer, or otherwise convey the right to receive payments under the deferred compensation program. The Provider is authorized to make investments as specified by the participant. The participant is responsible for any loss which may result from investment of the deferred compensation.

# Providers’ Area of Responsibility

A. All sales representatives of the Provider who are authorized to solicit employees shall be fully qualified to explain the deferred compensation program as found under Section 457 of the Internal Revenue Code and shall be licensed by the North Dakota State Securities Commissioner for the sale of registered securities or the North Dakota State Insurance Commissioner for the sale of insurance products, or both, if applicable. All new sales representatives must complete an initial review of the Deferred Compensation Program and be certified by the Provider before the sales representative may enroll or recruit eligible participants. All sales representatives must complete an initial orientation of the deferred compensation program within one year of beginning service and all sales representatives must complete ongoing training orientation every two years as prescribed by the Retirement Board. This orientation may be obtained either through a program to be developed by the Retirement Board or through a program to be developed by the Provider and approved by the Retirement Board. Any sales representative who does not complete the required training under this provision or fails to comply with other provisions of this agreement may not enroll new participants.

B. The Provider must have a minimum of fifty participants enrolled before payroll deductions may begin. However, if the Provider was providing deferred compensation services to NDPERS members under an existing provider agreement at the time the Provider signed this provider agreement, the fifty-participant requirement does not apply.

C. The Provider shall deliver to the Retirement Board at least semi-annual reports indicating the total assets allocated to the Provider for each participant. The report must include all participants from all payroll sources (Central Payroll, Bank of North Dakota, Political Subdivisions, etc.). The reports shall include the following information:

1. Alphabetical List of Participants.
2. Social Security Number.
3. Provider contract number.
4. Type of account.
5. Beginning account balance forwarded from previous reporting period.
6. Contributions during the reporting period.
7. Transfers and rollovers from other eligible plans during the reporting period.
8. Investment earnings or losses during the reporting period.
9. Withdrawals and charges made against the account during the reporting period.
10. Transfers and direct rollovers to other eligible plans during the reporting period.
11. Balance of the account at the end of the reporting period.
12. Other information required by the Retirement Board.

The Provider must include in its report all active accounts, inactive accounts, and accounts in payout status, with the exception of accounts which have been annuitized. The report columns must be totaled. The report must be submitted within thirty days of the end of each reporting period. Failure to submit a report within thirty days of the end of a reporting period will result in the Retirement Board sending the Provider a letter advising the Provider that, if the Retirement Board does not receive the report within thirty days of the date of the letter, the Retirement Board will automatically suspend the Provider’s eligibility to enroll new members until the first day of the month following the date the Retirement Board receives the report. The Provider’s failure to submit a report within ninety days after the end of a reporting period will be considered a material breach of this agreement. At that point, the Retirement Board will inform all members who are using the Provider’s services that the Provider is in material breach of the agreement, that the Retirement Board is commencing termination of the agreement, as well as Provider’s eligibility to supply services under the Deferred Compensation program, and that the members may no longer contribute to the Deferred Compensation program using the Provider. The Retirement Board will then terminate the agreement with the Provider as provided in subsection C of section IV of this agreement.

Effective January 1, 2004, the reports required to be submitted under this paragraph C must be submitted in one of the approved electronic formats noted below within 30 days of the end of each calendar quarter. The quarterly electronic reports will be in lieu of the semi-annual reports. The Provider is encouraged to begin using the electronic format earlier than January 2004. If the Provider is unable to submit the reports in electronic format, a penalty of $500 will be assessed for each reporting period that paper reports are received. Approved electronic formats include either Excel spreadsheets or an ASCII file using the record layout provided by the Retirement Board. If the Provider is unable to produce the file in the specified layout, the Provider may request approval from the Retirement Board to use an alternate layout.

1. The Provider shall solicit and maintain beneficiary designations from each Participant.

E. The Provider shall provide to all Participants at their home addresses, no less than quarterly, account statements detailing each Participant's account activity and account balance, with the exception of accounts that have been annuitized. However, if the Provider provides inactive participants with a toll-free number those participants may utilize to review their accounts, the Provider need only provide inactive participants with semi-annual account statements.

1. No benefit payments will begin until the Provider receives the written documentation from the Retirement Board under Section III, paragraph G confirming that the plan participant has severed employment or is otherwise eligible for distribution of benefits from the Plan. Once such information has been given, the Provider will make benefit payments directly to the participant.
2. The Provider shall ensure that distributions of a participant’s benefits under the Plan for each separate account of the participant held by the Provider satisfy the minimum and required distributions of federal Internal Revenue Code Section 457(d)(2) and related provisions of Internal Revenue Code Section 401(a)(9).
3. The Provider shall withhold federal and state taxes from the benefit payments and file the required reports of said withholdings with the appropriate federal and state agencies in accordance with applicable state and federal law, including the mandatory 20% withholding requirements as such apply to Section 457 plans under federal Internal Revenue Code Section 457(d)(1)(C) and any related regulations.
4. The Provider shall comply with and administer the direct rollover requirements as such apply to Section 457 plans under federal Internal Revenue Code Section 457(d)(1)(C) and any related regulations and accept eligible rollover distributions from other eligible plans as may be permitted under Plan and federal Internal Revenue Code Section 457(e)(16). The Provider shall comply with and administer the reporting requirements of federal IRC Section 457(e)(16)(C). The Provider may require such documentation from the distributing plan as it deems necessary to administer the rollover in accordance with Code Section 402 and shall confirm that the distributing plan is an eligible retirement plan within the meaning set forth in Code Section 402(c)(8)(B). The Provider shall separately account for all eligible rollover distributions from other eligible retirement plans that the Plan accepts, including separate accounting for rollovers from an eligible deferred compensation plan described in Code Section 457(b) that is maintained by a governmental entity described in Code Section 457(e)(1)(A) and separate accounting for rollovers from all other types of eligible retirement plans.
5. The Provider shall provide the written explanation required by federal Internal Revenue Code Section 402(f) to participants and beneficiaries receiving distributions from the Plan. The Provider shall ensure that the written explanation required under this paragraph J. is provided within the time established under applicable federal regulations. The Provider must accept an application for benefits received more than 60 days before the requested benefit starting date. The Provider may accept an application for benefits received between 60 days and 30 days before the requested benefit starting date. The Provider shall not accept an application for benefits received less than 30 days before the requested benefit starting date unless the Provider has received a written waiver of the notice timing requirements established under Code section 402(f) and applicable federal regulations.
6. The Provider shall deliver the appropriate tax reporting form as required under the IRC to all annuitants, separated employees and beneficiaries receiving distributions or other appropriate forms as required by federal and state law.
7. The Provider shall allow the plan participant to "direct transfer" the participant's account to another provider and to a public sector defined benefit plan eligible to receive such transfers as permitted under the Plan pursuant to federal Internal Revenue Code Section 457(e)(17) after first receiving written consent from the Retirement Board or the Retirement Board's designated representative. All Requests for Transfer must be effected within thirty days after the Request for Transfer is signed by the Retirement Board and mailed to the Provider Contact Person or the Provider Contact Person’s designee, or within such earlier time as prescribed by the National Association of Securities Dealers (NASD) Rules of Fair Practice or 15 U.S.C. § 80a-22(e). The Provider’s failure to effect a transfer within the time prescribed by the NASD rules or 15 U.S.C. § 80a-22(e) will result in the Retirement Board reporting that violation to the applicable regulatory agency. The Provider’s failure to effect a transfer within thirty days after the Request for Transfer is signed by the Retirement Board will require the Provider to pay to the Retirement Board liquidated damages of $50.00 or .l% of the participant’s transferable account balance, whichever is greater, for each day that passes until the transfer is accomplished. The Provider must also provide to the Retirement Board written confirmation within ten days that the transfer was accomplished. The confirmation must include the date of the transfer, the dollar amount of the transfer, and the entity to which you sent the funds. Provider and Retirement Board agree that the amount of damages in the event of a failure to timely effect a transfer is currently difficult to estimate, that the amount of liquidated damages has been reviewed, and that the stated amount is reasonable in light of the additional expense to the Retirement Board in the event of a breach and is not disproportionate to the damages reasonably to be anticipated in the event of a breach. Payment of liquidated damages to the Retirement Board shall not relieve the Provider of any liability to the participant for the Provider's failure to effect a transfer as required in this paragraph.

M. The Provider shall provide to the employee a list of all investment options offered by the provider under the program. A list of the options must also be attached to this agreement and updated whenever a new investment product is offered or whenever an existing investment option is discontinued.

N. The Provider must report annually such information as the Board may require related to the Provider's investment products. In connection with this report, the Provider must also provide a list of fees and distribution options in a format as specified by the Retirement Board.

O. The Provider understands and agrees that the maintenance of the North Dakota Deferred Compensation Program as an eligible program under section 457 of the Internal Revenue Code is of great importance, and that all of the Provider’s functions are subject to a high standard of conduct in order to maintain the program’s eligible status. The Provider agrees to indemnify and save and hold harmless the Retirement Board for any loss, damage, claim, or expense arising in connection with any actions taken or omitted by the Provider, specifically including, but not limited to, actions or omissions by the Provider that adversely affect the program’s eligible status.

P. The Provider agrees to abide by the Plan and the Rules adopted and amended from time to time by the Retirement Board for the administration of the Plan. Notice of the amendment of the Plan or Rules will be provided as required by North Dakota law. Additionally, the Provider shall comply in a timely manner with all reasonable direction that the Retirement Board may provide concerning the administration of the deferred compensation program, including any procedures established by the Retirement Board for processing contributions and distributions.

Q. The Provider shall assume the risk associated with any distribution of participant assets not permitted under the plan or federal law. The Provider making an impermissible distribution must take appropriate corrective action including, but not limited to, restoring the funds to the participant's account, and holding the participant harmless for the unauthorized distribution.

R. The Provider shall fully inform the participant of all standardized distribution options available from the Provider at the time of enrollment and prior to the participant electing a distribution option.

S. The Provider must designate a Provider Contact Person who will assume, on behalf of the Provider, all administrative responsibilities associated with this agreement, including serving as liaison between the Retirement Board and the Provider’s sales representatives, ensuring that all reports are correctly and timely filed, and serving as the Provider’s reference person to handle all dispute resolutions. The Provider Contact Person must be a senior level manager with experience in handling large accounts. The Provider Contact Person or successor must also serve, on behalf of the Provider, as the Retirement Board’s “Employer Appointment of Agent” as set forth under section 3504 of the Internal Revenue Code. The Provider Contact Person, as the Retirement Board’s appointed agent, must ensure that a letter request and Form 2678 is sent to the Director of the Internal Revenue Service Center pursuant to Form 2678 and that a copy of the request letter and form is also sent to the Retirement Board.

**III. Retirement Board's Areas of Responsibility**

A. The Retirement Board must administer a plan under Section 457 of the Internal Revenue Code.

B. The Retirement Board will direct the participant's employer to make the proper payroll deductions.

C. The Retirement Board will provide employers with Participant Agreements for salary reduction authorization.

D. The Retirement Board will provide participants who separate from employment with written documentation to facilitate distribution of their accounts.

E. The Retirement Board will promulgate rules regarding the administration of the Plan and provide a copy of these rules to the Provider.

F. The Retirement Board will designate a contact person to serve as the recipient of all communications from the Provider.

1. The Retirement Board will provide appropriate documentation to Providers regarding when a participant has separated from employment for distribution of benefits in a timely manner.

***The Provider Contact Person information is updated to be as follows:***

Provider Contact Person – Include name, mailing address, phone number, fax number and email address (please print):

To Retirement Board:

North Dakota Public Employees Retirement System

400 East Broadway, Suite 505

P.O. Box 1657

Bismarck, ND 58502-1657

(701) 328-3900

IN WITNESS WHEREOF, the undersigned have executed this Agreement this \_\_\_\_\_\_ day of , 20\_\_\_\_\_\_.

**PROVIDER NAME: RETIREMENT BOARD:**

NORTH DAKOTA PUBLIC EMPLOYEES

RETIREMENT SYSTEM BOARD

Signature Date Signature Date

Name (please print) Name (please print)

Title Title