**EMPLOYER PARTICIPATION AGREEMENT**

**FOR THE**

**NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM**

# FLEXCOMP PLAN

This agreement is entered into pursuant to Section 54‑52.3 of the North Dakota Century Code by and between {stdOrgName}, {stdOCAdrCorCity}, North Dakota, as authorized by the resolution hereto attached and the NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM (NDPERS) as authorized by the Retirement Board through its chairman and executive director.

**I. PURPOSE**

The purpose to this Agreement is to establish the terms and conditions for the participation of {stdOrgName}, {stdOCAdrCorCity}, in the NDPERS FlexComp Plan.

**II. EFFECTIVE DATES**

The parties agree that this contract shall commence on {qu EffectiveDate} and shall terminate as provided in paragraph VI.

**III. EMPLOYER ELIGIBILITY**

The Employer is eligible to participate coincident with the beginning of the plan year on January 1. Preceding that date, all employees will have a minimum 60-day enrollment period.

**IV. EMPLOYER'S RESPONSIBILITIES**

A. The Employer agrees to be bound by the terms, provisions and rules of the Plan as adopted by NDPERS, and amended from time to time, with regard to the benefits, contributions, and administration of the Plan. NDPERS will provide the Employer with such terms, provisions, and rules.

B. The Employer may allow only "eligible" employees to participate in the Plan. Eligible employees include employees of the State of North Dakota and eligible district health units, as well as members of the Legislative Assembly. Employees of the State of North Dakota and eligible district health units are only eligible to participate if they are at least eighteen (18) years of age, their services are not limited in duration, their position is approved and regularly funded, and they are employed at least twenty (20) hours per week and at least twenty (20) weeks each year of employment.

C. The Employer shall notify NDPERS immediately of the following events:

1. Termination of employment;

2. Reduction of an employee's working hours or other change in employment status so that "eligibility" as defined in paragraph IV(B) is lost.

D. The Employer agrees to pay the administrative expense of the plan in accordance with NDCC 54-52.3-03.

E. The Employer shall provide NDPERS with a list of any employer provided group insurance plans for which premiums are paid through payroll deduction and may be eligible for pretax treatment under the Plan.

**V. NDPERS' RESPONSIBILITY**

A. NDPERS shall administer a Flexible Benefits Plan, qualified under Section 125 of the Internal Revenue Code, on behalf of the Employer, in accordance with the State's FlexComp Plan as it now exists or is hereafter amended. NDPERS shall provide the following administrative services:

1. Process all claims for spending account expenses and issue reimbursement checks to participants;

2. Supply all forms to be used in the daily administration of the plan;

3. Conduct annual enrollment and make available all enrollment and informational materials;

4. Issue quarterly account activity statements to all participants;

5. Provide all information regarding the Plan and its administration to the Employer and the participant.

6. Assist the Employer with bookkeeping and payroll adjustments; and

1. Prepare all forms as required by the Internal Revenue Service (currently IRS Form 5500).

**VI. TERMINATION**

NDPERS may terminate this agreement effective upon delivery of written notice to the Employer, or at such later date as may be stated in the notice, under any of the following conditions:

A. If the Employer fails to provide services called for by this agreement within the time specified or any extension agreed to by NDPERS; or

B. If the Employer fails to perform any of the other provisions of this agreement, or so fails to pursue the work as to endanger performance of this agreement in accordance with its terms, and after receipt of written notice from NDPERS, fails to correct such failures within ten days or such longer period as the NDPERS Board may authorize.

The rights and remedies of NDPERS provided in the above clause related to defaults (including breach of contract) by the Employer are not exclusive and are in addition to any other rights and remedies provided by law or under this agreement.

**VII. APPLICABLE LAW**

This Agreement shall be governed by and construed in accordance with the laws of the State of North Dakota.

**VIII. WAIVER**

The failure of NDPERS to enforce the provisions of this contract shall not constitute a waiver by NDPERS of that or any other provisions.

**IX. AMENDMENTS**

This Agreement constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding the Agreement. Employer, by the signature of the authorized governing body or public official, hereby acknowledges that the Employer has read this Agreement, understands it, and agrees to be bound by its terms and conditions.

**X. NOTICES**

Notice required under this Agreement shall be made as follows:

**NORTH DAKOTA PUBLIC**

**EMPLOYEES RETIREMENT SYSTEM: EMPLOYER:**

NDPERS \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

400 E. Broadway, Suite 505 (Business Name) PO Box 1657

Bismarck, ND 58502 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Address)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(City, State, Zip)

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(Signature) (Signature)

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(Print Name) (Print Name)

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(Title) (Title)

Dated this\_\_ day of\_\_\_\_\_\_\_\_\_\_, 20\_\_\_ Dated this\_\_ day of\_\_\_\_\_\_\_\_\_\_, 20\_\_\_