

**PORTABILITY ENHANCEMENT PROVISION (PEP) AGREEMENT FOR
PARTICIPATING EMPLOYERS OFFERING
A SUPPLEMENTAL DEFERRED COMPENSATION PROGRAM**

This agreement is made and entered into this _____ day of _____, _____, by and between the North Dakota Public Employees Retirement System (PERS) and _____
_____(Employer).

- I. Purpose. The purpose of this agreement is to document specific areas of responsibility with respect to the Employer's participation in the vesting of employer contributions allowed by N.D.C.C. § 54-52-11.1. The parties understand the Employer is not required to offer this additional opportunity to its employees. The vesting of employer contributions allowed by N.D.C.C. § 54-52-11.1 is only available for employees making voluntary salary reduction contributions to the Employer's eligible §457(b) deferred compensation plan or elective deferrals to the Employer's tax-qualified §403(b) tax-sheltered annuity program. The vesting provision under N.D.C.C. § 54-52-11.1 is not available for Employer elective or non-elective contributions, or employee after-tax contributions. The Employer hereby certifies it is currently offering its employees the following supplemental deferred compensation program: (initial all that apply)

_____an eligible §457(b) deferred compensation plan
_____a tax-qualified §403(b) tax-sheltered annuity program

- II. Employer Responsibilities. The Employer agrees to:
- A. Offer the option to participate in the vesting of employer contributions allowed by N.D.C.C. § 54-52-11.1 to all of its employees who are eligible to participate in both the PERS retirement program and the Employer's supplemental Internal Revenue Code section 457 or 403(b) deferred compensation program.
 - B. Notify PERS monthly, utilizing the Deferred Compensation Deduction Transmittal Form, of the name and social security number of any and all employees participating in the Employer's supplemental Internal Revenue Code section 457 or 403(b) deferred compensation program, as well as the amount the employee is contributing on a monthly basis to the supplemental deferred compensation program, and whether an employee ceases participation in the Employer's supplemental deferred compensation program.
 - C. Immediately notify PERS if the Employer discontinues its supplemental Internal Revenue Code section 457 or 403(b) deferred compensation program.
 - D. To the extent required by law for its program, be the fiduciary for its supplemental deferred compensation program, including, but not limited to, educating its employees regarding the program and ensuring compliance with applicable Internal Revenue Code provisions.
 - E. Allow PERS to periodically audit the Employer for purposes of ensuring compliance with this agreement.

III. PERS Responsibilities.

- A. PERS will credit vested employer contributions to the participating member's account balance on a monthly basis as required by N.D.C.C. § 54-52-11.1.

IV. General Terms and Conditions.

- A. Amendment. This agreement may be amended by written agreement between PERS and the Employer.
- B. Period. This agreement will be in effect as long as the Employer participates in the PERS retirement program and offers an eligible supplemental Internal Revenue Code section 457 or 403(b) deferred compensation program. If the Employer discontinues its supplemental deferred compensation program or ceases participation in the PERS retirement program, this agreement shall immediately terminate and the Employer's employees shall no longer be eligible for vesting in Employer contributions pursuant to N.D.C.C. § 54-52-11.1 for contributions made after the termination of this agreement. The Employer specifically acknowledges that participation in the PERS retirement program and offering an eligible supplemental Internal Revenue Code section 457 or 403(b) deferred compensation program are required to take advantage of the employer contribution vesting pursuant to N.D.C.C. § 54-52-11.1. Either the Employer or PERS may terminate this agreement with 60 days written notice for any reason.
- C. Delay. Neither party shall be liable for any delay in or failure of performance under this Agreement due to an act of God or due to war mobilizations, insurrections, rebellion, civil commotion, riot, act of extremist or public enemy, sabotage, labor dispute, explosion, fire, flood, storm, accident, drought, equipment failure, power failure, fuel or energy shortages, unavoidable delay of carriers, embargo, law, ordinance, act, rule or regulations of any government, whether valid or invalid.
- D. Assignment and Delegation. The Employer may not assign or otherwise transfer or delegate any right or duty without the express written consent of PERS.
- E. Applicable Law. This agreement is governed by the laws of the State of North Dakota.
- F. Vendor. The Employer is currently using the services of the following vendor, and will immediately notify PERS if the Employer changes vendor:

Vendor name: _____
Vendor contact: _____
Vendor address: _____

- G. Notices. Whenever notices and correspondence are required or permitted to be given under this Agreement, such notice shall be given by personal delivery to the other party or may be sent by first class mail, postage prepaid, to the other party at the following addresses:

