MODEL QDRO LANGUAGE FOR ACTIVE MEMBERS

OF THE NORTH DAKOTA HIGHWAY PATROL AND PUBLIC EMPLOYEES RETIREMENT

STATE OF NORTH DAKOTA IN DISTRICT COURT

COUNTY OF _____ _____ JUDICIAL DISTRICT

_____,

Plaintiff,

vs.

_____,

Defendant

QUALIFIED DOMESTIC RELATIONS ORDER

Case No.: _____

This Order is intended to meet the requirements of a "Qualified Domestic Relations Order" relating to the North Dakota **[NAME OF PLAN],** hereafter referred to as the "Plan." The Order is made pursuant to N.D.C.C. **§ [ODRO CODE § RELATING TO THE PLAN]**. The Order is an integral part of the judgment entered on **[DATE OF DIVORCE]** granting a divorce to the above-entitled parties. [This Order is also drawn pursuant to the laws of the state in which the divorce occurred relating to the equitable distribution of marital property between spouses and former spouses in actions for dissolution of a marriage.] **[OR]** [This Order is drawn pursuant to the laws of the state in which the divorce occurred relating to the provision of child support to a minor child in actions for dissolution of a marriage].

BACKGROUND INFORMATION

[MEMBER'S NAME AND SOCIAL SECURITY NUMBER] is the participating member whose last known address is **[MEMBER'S ADDRESS]**. The member's date of birth is **[MEMBER'S D.O.B.]**.

[ALTERNATE PAYEE'S NAME AND SOCIAL SECURITY NUMBER] is the alternate payee whose last known address is **[ALTERNATE PAYEE'S ADDRESS]**. The alternate payee's date of birth is **[ALTERNATE PAYEE'S D.O.B.]**.

The participating member and the alternate payee were married on **[DATE OF MARRIAGE]**.

IT IS HEREBY ORDERED THAT:

I. BENEFITS

NOTE: Distribution of benefits must be based on the member's accrued monthly benefit as opposed to the member's account balance or other estimate. The member's accrued monthly benefit can be obtained by contacting the NDPERS office. Please notify NDPERS staff that this information will be used for the purpose of preparing a domestic relations order.

Benefits under the plan are distributed as follows: (choose one)

1. The alternate payee is awarded **[%]** of the member's accrued monthly annuity benefit of **[$]** as of **[DATE OF DIVORCE]**. **[OR]**
2. The alternate payee is awarded **[$]** of the member's accrued monthly annuity benefit of **[$]** as of **[DATE OF DIVORCE]**.

II. TIME OF BENEFIT RECEIPT

Benefit payments to the alternate payee will begin: (Choose one)

1. When the participating member reaches normal retirement age under the plan. (Note: normal retirement age under the Highway Patrol Retirement System and State Law Enforcement/Public Safety Retirement Systems is age 55. Normal retirement age under the Public Employees Retirement System is age 65.) **[OR]**
2. When the participating member qualifies for early retirement. (Note: Benefits in this event are payable even if the member has not separated from covered employment and may result in a reduction in benefits if the member has not met the normal retirement age. Early retirement age under the Highway Patrol Retirement System and State Law Enforcement/ Public Safety Retirement System is age 50. Early retirement age under the Public Employees Retirement System is age 55). **[OR]**
3. When the alternate payee reaches **[DATE OR EVENT]**. (Note: The date or event must be after the date participating member would qualify for early retirement and may result in a reduction in benefits if the member does not meet the normal retirement age) **[OR]**
4. When the participating member retires. (Note: This may result in a reduction in benefits if the member does not meet the normal retirement age)

III. DURATION OF PAYMENTS TO ALTERNATE PAYEE (Choose one)

NOTE: Choose the appropriate optional language as applicable under the following rules:

- Choose option A if the benefits to the alternate payee are to be paid over the alternate payee's life. Option A must be chosen if the benefits to the alternate payee are to begin before the member's benefits are in pay status.
- Choose option B if the benefits to the alternate payee are to be paid over the member's life under the single life annuity option with no surviving spouse annuity benefits upon the member's death OR under one of the plan's term certain and life options with the alternate

payee as the survivor beneficiary for continuing annuity payments upon the member's death if the selected term has not expired.

A. OVER LIFE OF THE ALTERNATE PAYEE (Choose one)

1. The payments shall be made to the alternate payee on a monthly basis over the life of the alternate payee and shall cease upon the alternate payee's death. The payment shall be calculated on the basis of a single life annuity and will be actuarially adjusted based upon the Plan's assumptions to reflect the life expectancy of the alternate payee. (Note: In most instances, this actuarial adjustment will result in a reduced benefit) **[OR]**

2. The payments shall be made to the alternate payee on a monthly basis over the life of the alternate payee and calculated on the basis of: (Choose one)

   (a) a 10-year term certain and life option. **[OR]**

   (b) a 20-year term certain and life option.

   Upon the alternate payee's death payments will continue to the alternate payee's designated beneficiary under the term certain and life option identified above. (Note: In most instances, the actuarial adjustment for a term certain and life option will result in a reduced benefit).

B. OVER THE LIFE OF THE PARTICIPATING MEMBER (Choose one):

1. The payments shall be made to the alternate payee on a monthly basis over the life of the participating member and shall cease upon the member's death. **[OR]**

2. The payments shall be made to the alternate payee on a monthly basis over the life of the participating member with a continuing monthly annuity payable to the surviving alternate payee after the member's death if the selected term has not expired. The amount of the payments to the alternate payee will be calculated on the basis of:

(Choose one)

(a) a 10-year term certain and life option. **[OR]**

(b) a 20-year term certain and life option.

(Note: In most instances, the actuarial adjustment for a term certain and life option will result in a reduced benefit).

IV. MEMBER WITHDRAWS FROM RETIREMENT SYSTEM (Choose one)

A. If the participating member discontinues employment and withdraws the member account in a lump sum the alternate payee shall receive **[%]** of the member's account balance as of **[DATE OF DIVORCE]** accumulated with interest as required by the Plan from the divorce date until the refund is paid. **[OR]**

B. If the participating member discontinues employment and withdraws the member account in a lump sum, the alternate payee shall receive **[$]** from the member's account balance accumulated with interest as required by the Plan from **[DATE OF DIVORCE]** until the refund is paid. (Note: The dollar amount in this option cannot exceed the member's account balance as of the date of the divorce.)

V. LIMITATIONS OF THIS ORDER (Note: Order must reflect all provisions of this section.)

A. This order recognizes the existence of the right of the alternate payee to receive all or a portion of the benefits payable to the participating members as indicated above.

B. Nothing contained in this Order shall be construed to require any Plan or Plan administrator:

1. To provide to the alternate payee any type or form of benefit or any option not otherwise available to the participating member under the Plan.

2. To provide the alternate payee benefits, as determined on the basis of actuarial value, not available to the participating member.

3. To pay any benefits to the alternate payee which are required to be paid to another alternate payee under another order previously determined by the Plan administrator to be a qualified domestic relations order.

4. To apply the provisions of this Order to disability benefits that the participating member may be entitled to receive.

C. If the alternate payee dies prior to receipt of benefits under this order, the alternate payee's estate will receive a lump sum payment of **[%]** of the member's account balance as of the date of divorce plus interest until the date the distribution is paid.

(Note: The dollar amount in this option cannot exceed the member's account balance as of the date of the divorce.)

D. If the participating member dies prior to retirement, the alternate payee will receive **[%]** share of the member's pre-retirement death benefits as of **[DATE OF DIVORCE]**.

E. The benefit enhancements provided by the North Dakota legislature for service during the marital relationship which are adopted after the end of the marital relationship apply to the alternate payee's portion of benefits under this order.

F. If the participant or alternate payee receive any distribution that should not have been paid per this order, the participant or alternate payee is designated a constructive trustee for the amount received and shall immediately notify NDPERS and comply with written instructions as to the distribution of the amount received.

G. Alternate payee is ORDERED to report any payments received on any applicable income tax return in accordance with Internal Revenue Code provisions or regulations in effect at the time any payments are issued by NDPERS. The Plan is authorized to issue Form 1099R, or other applicable form on any direct payment made to alternate payee. Plan participant and alternate payee must comply with the Internal Revenue Code and any applicable regulations.

H. Alternate payee is ORDERED to provide the Plan prompt written notification of any changes in Alternate Payee's mailing address. NDPERS shall not be liable for failing to make payments to alternate payee if NDPERS does not have a current mailing address for alternate payee at time of payment.

I. Alternate payee shall furnish a certified copy of this Order to NDPERS.

J. The Court retains jurisdiction to amend this Order so that it will constitute a qualified domestic relations order under the Plan even though all other matters incident to this action or proceeding have been fully and finally adjudicated. If the System determines at any time that changes in the law, the administration of the Plan, or any other circumstances make it impossible to calculate the portion of a distribution awarded to alternate payee by this Order and so notifies the parties, either or both parties shall immediately petition the Court for reformation of the Order.

SIGNED this _____ date of _____, 20____.

_____

JUDGE PRESIDING