

## Appendix A

# MINIMUM CONTRACT REQUIREMENTS

**CONTRACTOR should include in their proposed contract(s), provisions that either match or have the same value as the ones outlined below. If the CONTRACTOR is unable to include any of the provisions below or have deviations to the provisions, these should be included in Appendix F.**

## 1. PARTIES

The parties to this contract (Contract) are the state of North Dakota, acting through its North Dakota Public Employees Retirement System (STATE), and *Name of Business, a type of business (e.g. Delaware corporation or privately held company)* having its principal place of business at *principal business address* (CONTRACTOR).

## 2. COMPENSATION – PAYMENTS

### a. Contractual Amount

STATE shall pay for the accepted services provided by CONTRACTOR under this Contract an amount not to exceed *[Amount]* (Contractual Amount).

The Contractual Amount is firm for the duration of this Contract and constitutes the entire compensation due CONTRACTOR for performance of its obligations under this Contract regardless of the difficulty, materials or equipment required, including fees, licenses, overhead, profit and all other direct and indirect costs incurred by CONTRACTOR, except as provided by an amendment to this Contract.

### b. Invoicing

The final cost set forth on each invoice must be equivalent to the cost for each service or goods as specified in the Scope of Work. CONTRACTOR may not submit an invoice for any service or goods specified in the Scope of Work that STATE has not fully accepted.

STATE may only expend public funds for any service or goods accepted within the Fiscal Year for which the funds are appropriated. STATE's Fiscal Year is July 1 through June 30. An invoice for any service or goods accepted within the Fiscal Year must be dated prior to July 1 and received by STATE no later than July 7 of each Fiscal Year.

### c. Payment

- 1) Payment made in accordance with this Compensation section constitutes payment in full for the services and work performed and the deliverables and work(s) provided under this Contract and CONTRACTOR may not receive any additional compensation under this Contract.

- 2) STATE shall make payment under this Contract within forty-five (45) calendar days after receipt of an approved invoice.
- 3) Payment of an invoice by STATE will not prejudice STATE's right to object to or question that or any other invoice or matter in relation to the Contract. STATE may reduce CONTRACTOR's invoice for amounts included in any invoice or payment previously made which are determined by STATE not to constitute allowable costs, on the basis of audits conducted in accordance with the terms of this Contract. STATE may reduce any payments for amounts equal to prior overpayments to CONTRACTOR.
- 4) STATE may deduct the amount owed or that will be owed to STATE by CONTRACTOR from payments that are or will become due and payable to CONTRACTOR under this Contract.

**d. Travel**

Travel costs are covered by the Contractual Amount. CONTRACTOR may not invoice STATE for travel costs.

**e. Prepayment**

STATE will not make any advance payments before performance or delivery by CONTRACTOR under this Contract.

**f. Payment of Taxes by STATE**

STATE is not responsible for and will not pay local, state, or federal taxes. STATE sales tax exemption number is E-2001. STATE will furnish a certificate of exemption upon request by CONTRACTOR.

**g. Taxpayer ID**

CONTRACTOR'S federal employer ID number is: *[Insert FEIN]*

**h. Payment Methods**

- 1) STATE may make payment using a government credit card. CONTRACTOR shall accept a government credit card without passing the processing fees for the government credit card back to STATE.
- 2) STATE may make payment using an ACH transfer, wire transfer, or by issuing a check to CONTRACTOR.

**3. TERM OF CONTRACT**

This Contract term (Term or Initial Term) begins on July 1, 2027, and ends on June 30, 2029.

**a. No Automatic Renewal**

This Contract will not automatically renew.

**b. Renewal Option**

STATE may renew this Contract upon satisfactory completion of the Initial Term. STATE may execute up to 2 (two) options to renew this Contract under the same terms and conditions for a period of 24 (twenty-four) months each (Renewal Term).

If, during the initial Term, any renewal, or extension, STATE determines a realignment of the Term is needed (e.g. to align with STATE'S fiscal biennium), the parties may agree, in writing, to a new Term with a termination date not to exceed the total available length of Contract including its initial Term, renewals, and extensions.

**4. TERMINATION**

**a. Termination for Convenience or by Agreement**

STATE may terminate this Contract upon thirty (30) days' written notice to CONTRACTOR. This Contract may be terminated by consent of both Parties executed in writing.

**b. Early Termination in the Public Interest**

STATE is entering into this Contract to carry out the public policy of the State of North Dakota, as determined by its Governor, Legislative Assembly, Agencies and Courts. If this Contract ceases to further the public policy of the State of North Dakota, STATE, in its sole discretion, by written notice to CONTRACTOR, may terminate this Contract in whole or in part.

**c. Termination for Lack of Funding or Authority**

STATE by written notice to CONTRACTOR, may terminate the whole or any part of this Contract under any of the following conditions:

- 1) If funding from federal, state, or other sources is not obtained or continued at levels sufficient to allow for purchase of the services or goods under this Contract in the indicated quantities or term.
- 2) If federal or state laws or rules are modified or interpreted in a way that the services or goods are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.

- 3) If any CONTRACTOR license, permit, or certificate required by law or rule, or by the terms of this Contract, is for any reason denied, revoked, suspended, or not renewed.

Termination of this Contract under this subsection is without prejudice to any obligations or liabilities of either Party already accrued prior to termination.

**d. Termination for Cause.**

STATE may terminate this Contract effective upon delivery of written notice to CONTRACTOR, or any later date stated in the notice:

- 1) If CONTRACTOR fails to provide services or goods required by this Contract within the time specified or any extension agreed to in writing by STATE; **or**
- 2) If CONTRACTOR fails to perform any provisions of this Contract or fails to pursue the work so as to endanger performance of this Contract in accordance with its terms.

The rights and remedies of STATE provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

**5. FORCE MAJEURE**

Neither Party will be held responsible for delay or default caused by fire, riot, terrorism, pandemic, acts of God, or war if the event was not foreseeable through the exercise of reasonable diligence by the affected Party, the event is beyond the Party's reasonable control, and the affected Party gives notice to the other Party promptly upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default. If CONTRACTOR is the affected Party and does not resume performance within fifteen (15) days or another period agreed between the Parties, STATE may seek all available remedies, up to and including termination of this Contract pursuant to its Termination Section, and STATE is entitled to a pro-rata refund of any amounts paid for which the full value has not been realized, including amounts paid toward software subscriptions, maintenance, or licenses.

**6. RIGHT TO REMEDIES AND CUMULATION OF RIGHTS**

No remedy conferred by any of the specific provisions of this Contract is intended to be exclusive of any other remedy, and each and every remedy shall be cumulative and shall be in addition to every other remedy given under this Contract, now or in the future existing at law or in equity or by statute or otherwise.

**7. NON-WAIVER**

Either party's failure to exercise any of its rights under this Contract, its delay in enforcing any right, or its waiver of its rights on any occasion, shall not constitute a waiver of such rights on

any other occasion. No course of dealing by either party in exercising any of its rights shall constitute a waiver thereof. No waiver of any provision of this Contract shall be effective unless it is in writing and signed by the party against whom the waiver is sought to be enforced.

## **8. INDEMNIFICATION**

CONTRACTOR agrees to defend, indemnify, and hold harmless the state of North Dakota, its agencies, officers, and employees (State), from and against claims based on the vicarious liability of the State or its agents, but not against claims based on the State's contributory negligence, comparative and/or contributory negligence or fault, sole negligence, or intentional misconduct. This obligation to defend, indemnify, and hold harmless does not extend to professional liability claims arising from professional errors and omissions. The legal defense provided by CONTRACTOR to the State under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the North Dakota Attorney General as a Special Assistant Attorney General as required under N.D.C.C. § 54-12-08. CONTRACTOR also agrees to reimburse the State for all costs, expenses and attorneys' fees incurred if the State prevails in an action against CONTRACTOR in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this Contract.

## **9. INSURANCE**

CONTRACTOR shall secure and keep in force during the term of this agreement and CONTRACTOR shall require all subcontractors, prior to commencement of an agreement between CONTRACTOR and the subcontractor, to secure and keep in force during the term of this agreement, from insurance companies, government self-insurance pools or government self-retention funds, authorized to do business in North Dakota, the following insurance coverages:

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$2,000,000 per occurrence.
- 2) Professional errors and omissions with minimum limits of \$1,000,000 per claim and in the aggregate, Contractor shall continuously maintain such coverage during the contract period and for three years thereafter. In the event of a change or cancellation of coverage, Contractor shall purchase an extended reporting period to meet the time periods required in this section.

The insurance coverages listed above must meet the following additional requirements:

- 1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the Contractor.
- 2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State. The policies shall be in form and terms approved by the State.

- 3) The duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.
- 4) The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy on a primary and noncontributory basis, including any excess policies (to the extent applicable), as additional insured. The State shall have all the benefits, rights, and coverages of an additional insured under these policies that shall not be limited to the minimum limits of insurance required by this agreement or by the contractual indemnity obligations of the Contractor.
- 5) A “Waiver of Subrogation” waiving any right to recovery the insurance company may have against the State.
- 6) CONTRACTOR shall provide a certificate of insurance prior to commencement of this agreement and any required endorsements as soon as practicable electronically to:  
  
North Dakota Public Employees Retirement System  
  
Executive Director Rebecca Fricke  
  
rfricke@nd.gov
- 7) Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.
- 8) Contractor shall provide at least 30-day notice of any cancellation or material change to the policies or endorsements. Contractor shall provide on an ongoing basis, current certificates of insurance during the term of the Contract. A renewal certificate will be provided 10 days prior to coverage expiration. An updated, current certificate of insurance shall be provided in the event of any change to a policy.

## **10. WORKS FOR HIRE**

All work(s) under this Contract is "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and CONTRACTOR assigns to STATE all rights and interests CONTRACTOR may have in the work(s) it prepares under this Contract, including any right to derivative use of the work(s). All software and related materials developed by CONTRACTOR in performance of this Contract for STATE are the sole property of STATE, and CONTRACTOR assigns and transfers all its right, title, and interest in the software and related materials to STATE. CONTRACTOR shall execute all necessary documents to enable STATE to protect STATE's intellectual property rights under this section.

## **11. WORK PRODUCT**

All work product, equipment or materials created for STATE or purchased by STATE under this Contract belong to STATE and must be immediately delivered to STATE at STATE's request upon termination of this Contract.

## **12. NOTICE**

All notices or other communications required under this Contract must be given by registered or certified mail and are complete on the date postmarked when addressed to the Parties at the following addresses, or by email complete on the date sent:

<b>STATE</b>	<b>CONTRACTOR</b>
Name: Rebecca Fricke	Name
Title: Executive Director	Title
Address: PO Box 1657	Address
City, State, Zip: Bismarck, ND 58502-1657	City, State, Zip
<b>STATE</b>	<b>CONTRACTOR</b>

Notice provided under this provision does not meet the notice requirements for monetary claims against the State found at N.D.C.C. § 32-12.2-04.

### **13. CONFIDENTIALITY**

CONTRACTOR may not use or disclose any information it receives from STATE under this Contract that STATE has previously identified as confidential or exempt from mandatory public disclosure except as necessary to carry out the purposes of this Contract or that STATE has authorized in advance. STATE may not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that STATE determines in its sole discretion is protected from mandatory public disclosure under a specific exception to the North Dakota public records law, N.D.C.C. ch. 44-04. The duty of STATE and CONTRACTOR to maintain confidentiality of information under this section continues beyond the Term of this Contract.

CONTRACTOR acknowledges that N.D.C.C. §§ 26.1-36-12.4, 54-52.1-05.1, 54-52.1-11, and 54-52.1-12 apply to information provided under the Contract.

### **14. COMPLIANCE WITH PUBLIC RECORDS LAWS**

Under the North Dakota public records law certain records may be open to the public upon request.

Public records may include: (a) records STATE receives from CONTRACTOR under this Contract, (b) records obtained by either Party under this Contract, and (c) records generated by either Party under this Contract.

CONTRACTOR shall contact STATE immediately upon receiving a request for information under the public records law and shall comply with STATE's instructions on how to respond to that request.

### **15. INDEPENDENT ENTITY**

CONTRACTOR is an independent entity under this Contract and is not a STATE employee for any purpose, including the application of the Social Security Act, the Fair Labor Standards Act, the Federal Insurance Contribution Act, the North Dakota Unemployment Compensation Law

and the North Dakota Workforce Safety and Insurance Act. CONTRACTOR retains sole and absolute discretion in the manner and means of carrying out CONTRACTOR's activities and responsibilities under this Contract, except to the extent specified in this Contract.

## **16. ASSIGNMENT AND SUBCONTRACTS**

CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without STATE's express written consent, provided, however, that CONTRACTOR may assign its rights and obligations under this Contract if there is a change of control or sale of all or substantially all of CONTRACTOR's assets related to this Contract, whether by merger, reorganization, operation of law, or otherwise. If Assignee is a business or entity with whom STATE is prohibited from conducting business, STATE may terminate this Contract in accordance with the Termination for Cause section of this Contract.

CONTRACTOR may enter subcontracts provided that any subcontract acknowledges the binding nature of this Contract and incorporates this Contract, including any attachments. CONTRACTOR is solely responsible for the performance of any subcontractor with whom CONTRACTOR contracts. CONTRACTOR may not contract for or incur obligations on behalf of STATE.

## **17. SPOILIATION – PRESERVATION OF EVIDENCE**

CONTRACTOR shall notify STATE promptly of all potential claims that arise or result from this Contract. CONTRACTOR also shall take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to STATE the opportunity to review and inspect such evidence, including the scene of an accident.

## **18. MERGER AND MODIFICATION, CONFLICT IN DOCUMENTS**

This Contract, including the following documents, constitutes the entire agreement between the Parties. There are no understandings, agreements, or representations, oral or written, not specified within this Contract. This Contract may not be modified, supplemented, or amended, in any manner, except by written agreement signed by both Parties.

Notwithstanding anything herein to the contrary, if there is any inconsistency or conflict among the documents making up this Contract, the documents must control in this order of precedence:

- a. The terms of this Contract as may be amended;
- b. STATE's Solicitation Amendment(s) to Request for Proposal for Group Medical and Prescription Drug Coverage ("RFP") (if applicable) ;
- c. STATE's Request for Proposal for Group Medical and Prescription Drug Coverage ("RFP"), dated *June 1, 2026*;
- d. CONTRACTOR's proposal dated *June 1, 2026*, in response to RFP for Group Medical and Prescription Drug Coverage .

Unless negotiated between the Parties and incorporated into this Contract by reference, all automated end-user agreements (e.g., click-through, shrink-wrap, or browse-wrap) are specifically excluded and null and void. Clicking shall not represent acknowledgement or agreement to any terms or conditions contained in those agreements.

## **19. UNANTICIPATED AMENDMENTS**

If additional work is required within the scope of this Contract due to a legitimate unforeseen circumstance, STATE shall provide CONTRACTOR a written description of the additional work and request CONTRACTOR to submit a proposal for accomplishing the scope of work. CONTRACTOR will not commence additional work until all Parties agree in writing.

## **20. SEVERABILITY**

If any term of this Contract is declared to be illegal or unenforceable by a court having competent jurisdiction, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the Parties are to be construed and enforced as if this Contract did not contain the illegal or unenforceable term.

## **21. APPLICABLE LAW AND VENUE**

This Contract is governed by and construed in accordance with the laws of the State of North Dakota. Any action to enforce this Contract must be adjudicated exclusively in the state District Court of Burleigh County, North Dakota. Each Party consents to the exclusive jurisdiction of the state District Court located in Burleigh County, North Dakota and waives any claim of lack of jurisdiction or *forum non conveniens*.

## **22. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL**

By entering this Contract, STATE does not agree to binding arbitration, mediation, or any other form of mandatory Alternative Dispute Resolution. The Parties may enforce the rights and remedies in judicial proceedings. STATE does not waive any right to a jury trial.

## **23. ATTORNEY FEES**

If a lawsuit is initiated by STATE to obtain performance due under this Contract, and STATE is the prevailing Party, CONTRACTOR shall pay STATE's reasonable attorney fees and costs in connection with the lawsuit, except when prohibited by N.D.C.C. § 28-26-04.

## **24. AMERICANS WITH DISABILITIES ACT (ADA) – NONDISCRIMINATION AND COMPLIANCE WITH LAWS**

- a. CONTRACTOR shall comply with all applicable federal and state laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights. (*See* N.D.C.C. Title 34 – Labor and Employment, specifically N.D.C.C. ch. 34-06.1 Equal Pay for Men and Women.)

- b. ADA Compliance** – CONTRACTOR shall ensure that all web content and mobile apps that CONTRACTOR provides or makes available in relation to this Contract comply with the Americans with Disabilities Act (ADA) and at a minimum, conform to 28 CFR § 35.200 federal Requirements for Web and Mobile Accessibility; available at: 28 CFR § 35.200. CONTRACTOR shall verify accessibility compliance through automated and manual testing.

CONTRACTOR is responsible for maintaining accessibility compliance of the web content and mobile apps throughout the Term of the Contract, including all renewals and extensions. If a compliance issue is discovered, CONTRACTOR shall provide a remediation plan, including timelines and impacts, to STATE. CONTRACTOR shall indemnify STATE for any and all claims, including penalties, costs, and expenses, related to accessibility claims under the ADA related to the services provided under this Contract.

- c.** CONTRACTOR shall file all required reports timely, make required payroll deductions, and pay all taxes and premiums owed timely, including sales and use taxes, and unemployment compensation and workers' compensation premiums.
- d.** CONTRACTOR shall have and keep current and in good standing during the Term of this Contract all licenses and permits required by law.
- e.** CONTRACTOR is prohibited from boycotting Israel for the duration of this Contract. (*See* N.D.C.C. § 54-44.4-15.) CONTRACTOR represents that it does not and will not engage in boycotting Israel during the term of this Contract. If STATE receives evidence that CONTRACTOR boycotts Israel, STATE shall determine whether the company boycotts Israel. The foregoing does not apply to contracts with a total value of less than \$100,000 or if CONTRACTOR has fewer than ten (10) full-time employees.
- f.** CONTRACTOR's failure to comply with this section is a material breach by CONTRACTOR and STATE may terminate this Contract in accordance with the Termination for Cause section of this Contract.

## **25. STATE AUDIT**

Pursuant to N.D.C.C. § 54-10-19, all records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this Contract are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors, if required. CONTRACTOR shall maintain these records for at least three (3) years following completion of this Contract and be able to provide them upon reasonable notice. STATE, State Auditor, or Auditor's designee shall provide reasonable notice to CONTRACTOR prior to conducting examination.

## **26. PRESCRIPTION DRUG COVERAGE PERFORMANCE AUDIT**

CONTRACTOR agrees to comply with all requirements of N.D.C.C. § 54-52.1-04.16, which authorizes the NDPERS Board (Board) during the term of the Contract to conduct a performance audit of the prescription drug coverage and any related pharmacy benefits management services.

In accordance with N.D.C.C. § 54-52.1-04.16, CONTRACTOR shall provide the Board and the Board's auditor full access to data regarding:

- a. The total dollars paid to the pharmacy benefits manager by the carrier and the Board;
- b. The total amount of dollars paid to the pharmacy benefits manager by the carrier which were not subsequently paid to a licensed pharmacy in the state;
- c. Payments made to all pharmacy providers;
- d. The average reimbursement, by drug ingredient cost, dispensing fee, and any other fee paid by a pharmacy benefits manager to licensed pharmacies with which the pharmacy benefits manager shares common ownership or control or is affiliated;
- e. The average reimbursement, by drug ingredient cost, dispensing fee, and any other fee paid by a pharmacy benefits manager to pharmacies licensed in the state;
- f. Any direct and indirect fees, charges, or recoupment, or any kind of assessments imposed by the pharmacy benefits manager on pharmacies licensed with which the pharmacy benefits manager shares common ownership or control or is affiliated; and
- g. Any direct and indirect fees, charges, or recoupment, or any kind of assessments imposed by the pharmacy benefits manager, on pharmacies licensed in the state.

CONTRACTOR shall also disclose to the Board and the Board's auditor all drug rebates, financial incentives, fees, and discounts.

*[For standalone pharmacy proposals or self-insured medical and pharmacy proposals, replace the sentence above with the following:*

CONTRACTOR shall also disclose to the NDPERS Board and the Board's auditor:

- (1) All drug rebates, financial incentives, fees, and discounts; and
- (2) All rebates and any other fees that provide the pharmacy benefits manager with sources of income under the Agreement, including under related contracts the pharmacy benefits manager has with third parties, such as drug manufacturers.]

## **27. LIQUIDATED DAMAGES**

The Parties agree that STATE may suffer damages due to a failure by CONTRACTOR to meet performance guarantees. Because it is difficult to fix the actual damages sustained in the event of failure to meet performance guarantees, STATE and CONTRACTOR agree the amount of damages will be the amounts agree upon in the [Performance Guarantee Exhibit].

In the event of any failure to meet performance guarantees, CONTRACTOR shall pay the agreed upon amount as liquidated damages and not as a penalty. Amounts due to STATE as liquidated damages may be deducted by STATE from any amounts payable to CONTRACTOR, and CONTRACTOR shall promptly pay STATE any amount outstanding over and above the amounts deducted from the invoice.

Delays due to causes of Force Majeure or due to STATE's responsibility extend the time for performance on a day-for-day basis. STATE may not assess liquidated damages against CONTRACTOR when the delay in delivery or performance is beyond control and without the fault or negligence of CONTRACTOR.

## **28. THIRD-PARTY RISK MANAGEMENT PROGRAM**

CONTRACTOR shall undergo the third-party security questionnaire on an annual basis at no cost to STATE, unless CONTRACTOR has received FedRAMP, StateRAMP, or HiTrust certification. CONTRACTOR shall provide completed questionnaire within twenty-one (21) calendar days of receiving a written request. CONTRACTOR shall undergo the third-party security questionnaire when a breach has occurred.

## **29. USE OF ARTIFICIAL INTELLIGENCE (AI) AND MACHINE LEARNING (ML)**

CONTRACTOR may wish to use Artificial Intelligence (AI) and Machine Learning (ML) (together AI/ML) to complete CONTRACTOR's obligations under this Contract. CONTRACTOR's use of AI/ML is subject to prior, written approval by STATE. CONTRACTOR shall provide STATE detailed information, in writing, on the use of AI/ML in completing CONTRACTOR's obligations under this Contract. CONTRACTOR agrees to submit

new information to STATE for approval any time CONTRACTOR substantially changes its use of AI/ML. STATE may terminate the Contract for cause if CONTRACTOR uses AI/ML in a manner that STATE has not approved. Use of STATE Data for training, fine-tuning, or improving AI models is strictly prohibited unless expressly authorized in writing by STATE. CONTRACTOR may not share STATE data, in any form, with a third party without express written approval by STATE.

**30. DATA SECURITY**

- a. Remote access to Data from outside the United States, including remote access to Data by authorized support staff in identified support centers, is prohibited.
- b. CONTRACTOR shall transmit, process, and store STATE Data within the continental United States.
- c. CONTRACTOR shall notify STATE at least ninety (90) days prior to any relocation of STATE’s Data to a different hosting facility. STATE may terminate the Contract without penalty if STATE does not approve of the new hosting facility.

**31. BUSINESS ASSOCIATE AGREEMENT**

Information CONTRACTOR receives from STATE or participants under this Contract may be subject to Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. Part 160 and Subparts A, C, and E of Part 164. To that extent, CONTRACTOR is required to execute a Business Association Agreement, attached herewith and incorporated by reference.

**32. COUNTERPARTS**

This Contract may be executed in multiple, identical counterparts, each of which is be deemed an original, and all of which taken together constitute one and the same contract.

**33. EFFECTIVENESS OF CONTRACT**

This Contract is not effective until fully executed by both Parties. If no start date is specified in the Term of Contract, the most recent date of the signatures of the Parties is the Effective Date.

<b>CONTRACTOR</b>	<b>STATE OF NORTH DAKOTA</b>
<i>[insert business]</i>	Acting through its <i>North Dakota Public Employees Retirement System</i>
BY: <i>[Signature]</i>	BY: <i>[Signature]</i>
<i>[Printed Name]</i>	<i>[Printed Name]Mike Seminary</i>
<i>[Title]</i>	<i>[Title] NDPERS Board Chairman</i>
Date:	Date:

## **Appendix A**

### **SCOPE OF WORK**

CONTRACTOR, in exchange for the compensation paid by STATE under this Contract, shall provide the following:

#### **For a fully-insured contract:**

In exchange for premiums paid to the CONTRACTOR, the CONTRACTOR SHALL:

- 1) Ensure that all premium rates are divisible by two.
- 2) Establish and maintain membership records based on eligibility and enrollment information provided by NDPERS.
- 3) Issue ID cards, certificates of insurance, Summary of Benefits and Coverages (SBC), and Summary of Material Modifications (SMM) in paper and/or electronic format as agreed.
- 4) Provide and stand behind health plan performance guarantees that are agreed upon by CONTRACTOR and NDPERS.
- 5) Provide required Certificate of Coverage notices to subscribers when coverage is terminated.
- 6) Receive and process enrollment files, including those for late entrants and special elections, outside annual enrollment. Establish point of contact for urgent enrollment requests outside of scheduled enrollment files.
- 7) Provide managed benefits / utilization management services through appropriately licensed and certified staff.
  - a. Please see Appendix G2 for a full-list of programs that will be managed by CONTRACTOR
- 8) Provide a dedicated service unit to adjudicate all claims and respond to Member's inquiries. Provide toll-free Member and Health Care Provider service lines between the hours of 7:30 AM and 5:00 PM CST at the office(s) in North Dakota, as appropriate. A toll-free managed benefits line for Health Care Providers will also be available between the hours of 8:00 AM and 5:00 PM CST. During nonbusiness hours, answering machine services will be available for managed benefits calls.
- 9) Adjudicate claims for all members, including claims from non-participating providers.
- 10) Pay covered insured claims in accordance with contract terms and applicable law.
- 11) Correspond with members and providers when additional information is needed to process claims.
- 12) Administer third-party liability, coordination of benefits, subrogation, and overpayment recovery activities.
- 13) Issue EOBs to members.

- 14) Maintain fraud, waste, abuse, and unlawful activity procedures.
- 15) Provide audit support, including claim samples, records, and operational review support.
- 16) Provide standard and ad hoc reporting, including claims, membership, financial, and performance reporting.
- 17) Provide claims and eligibility data feeds in agreed file formats and via secure transmission.
- 18) Establish and maintain PPO / network discount arrangements and administer out-of-area network access.
- 19) Administer pharmacy benefits and pharmacy-related clinical programs included in the insured product.
- 20) Administer wellness, fitness reimbursement, and other included member programs to the extent they are part of the insured offering.
- 21) Maintain required privacy, security, breach response, inspection, and PHI safeguard obligations.
- 22) Prepare and distribute the notice of privacy practices and support PHI access, amendment, and disclosure accounting functions.
- 23) Maintain confidentiality of NDPERS information and comply with North Dakota public records handling instructions.
- 24) Maintain all required licenses, permits, certifications, and financial capacity requirements.
- 25) Provide biennium and post-biennium accounting, including initial and final settlement calculations and refund payments owed to NDPERS.
- 26) Cooperate with NDPERS on mandated plan changes and negotiate resulting premium or contract changes in good faith.
- 27) Ensure that all services, deliverables, Apps software, and Web pages shall include all functionality necessary to materially comply with: (i) the Web Content Accessibility Guidelines (WCAG) 2.1, Level A and AA Success Criteria; and (ii) all relevant [Accessibility Laws], as defined below. For purposes of this section (Web Site Accessibility), "Accessibility Laws" means the Americans with Disabilities Act and any applicable laws.
- 28) Provide a copy of your Accessibility Conformance Report (ACR) and the Voluntary Product Accessibility Template (VPAT).

As part of this arrangement, NDPERS SHALL:

- 1) Provide accurate eligibility, enrollment, classification, and address information needed to establish and maintain member records.

- 2) Send enrollment files, coverage requests, address changes, and HIPAA 834-compliant eligibility files in agreed formats and timelines.
- 3) Use best efforts to notify the CONTRACTOR of member terminations no later than 30 days after loss of eligibility.
- 4) Retain original enrollment or change records, if that administrative model is retained.
- 5) Pay premiums to the CONTRACTOR according to the agreement payment schedule.
- 6) Use best efforts to make monthly premium payments by the agreed due date.
- 7) Provide tax exemption certificates upon request and otherwise handle NDPERS-side payment administration obligations.
- 8) Provide information needed for regulatory administration and notify the CONTRACTOR promptly of contribution-rate changes, if that approach is retained.
- 9) Participate in service reviews, governance meetings, performance guarantee oversight, and issue escalation processes.
- 10) Give direction on public-records responses when the CONTRACTOR receives a disclosure request relating to contract records.
- 11) Exercise renewal, termination, and other contract governance rights, including termination for convenience, public interest, lack of funding, or cause.

**For a self-insured medical contract:**

In exchange for a monthly administrative fee paid by NDPERS, the CONTRACTOR SHALL:

- 1) Ensure that all premium rates are divisible by two.
- 2) Administer the self-insured medical plan and any included plan options in accordance with plan terms and law.
- 3) Establish and maintain membership records from NDPERS eligibility and enrollment data.
- 4) Issue ID cards, certificates, SBCs, and SMMs as applicable.
- 5) Prepare SBCs for distribution by NDPERS.
- 6) Issue certificates of creditable coverage or other required termination-related certificates where applicable.
- 7) Provide performance guarantees agreed upon by NDPERS and related reporting.
- 8) Provide required continuation rights notices as assigned in the contract.
- 9) Receive and process enrollment files, including those for late entrants and special elections, outside annual enrollment. Establish point of contact for urgent enrollment requests outside of scheduled enrollment files.
- 10) Provide managed benefits and medical management services through qualified staff.

- 11) Provide a dedicated service unit to adjudicate all claims and respond to Member's inquiries. Provide toll-free Member and Health Care Provider service lines between the hours of 7:30 AM and 5:00 PM CST at the office(s) in North Dakota, as appropriate. A toll-free managed benefits line for Health Care Providers will also be available between the hours of 8:00 AM and 5:00 PM CST. During nonbusiness hours, answering machine services will be available for managed benefits calls.
- 12) Adjudicate all properly submitted claims on behalf of the plan using funds supplied by NDPERS/Employer.
- 13) Provide claim explanations for paid, rejected, suspended, or denied claims.
- 14) Investigate and correct overpayments and underpayments.
- 15) Correspond with members and providers when more information is needed.
- 16) Administer third-party liability programs and, by best practice, COB, subrogation, and MSP obligations.
- 17) Issue EOBs to members.
- 18) Maintain fraud, waste, abuse, and unlawful activity procedures.
- 19) Assist with enrollment servicing and member education.
- 20) Provide quarterly reporting, monthly claims data, and other required analytics and files.
- 21) Notify NDPERS monthly of prior paid-claims liability and provide detailed claims payment reports.
- 22) Suspend claims if funding is not timely received, if that mechanism remains in the final contract.
- 23) Maintain provider network discount arrangements and out-of-area access programs where included.
- 24) Administer pharmacy benefits and ensure access to PBM audit, rebate, fee, and reimbursement data required by law.
- 25) Administer wellness, fitness reimbursement, and other included member programs to the extent they are part of the insured offering.
- 26) Support annual claims audits, PBM audits, and operational reviews
- 27) Provide appeals, grievance, care coordination, case management, and healthy pregnancy support if included in scope.
- 28) Provide actuarial, ACA reporting, and legislative/legal administrative support if included in the final deal structure.
- 29) Maintain privacy, security, confidentiality, and required subcontractor controls
- 30) Provide designated contacts, account management, and service/governance meeting support.
- 31) Ensure that all services, deliverables, Apps software, and Web pages shall include all functionality necessary to materially comply with: (i) the Web Content Accessibility

Guidelines (WCAG) 2.1, Level A and AA Success Criteria; and (ii) all relevant [Accessibility Laws], as defined below. For purposes of this section (Web Site Accessibility), “Accessibility Laws” means the Americans with Disabilities Act and any applicable laws.

- 32) Provide a copy of your Accessibility Conformance Report (ACR) and the Voluntary Product Accessibility Template (VPAT).

As part of this arrangement, NDPERS SHALL:

- 1) Provide accurate eligibility, enrollment, demographic, and classification data needed to administer the plan.
- 2) Provide enrollment files, qualifying event updates, terminations, and other eligibility changes in agreed formats and timelines.
- 3) Distribute SBCs to applicants and members where the contract assigns distribution responsibility to NDPERS.
- 4) Define plan design, eligibility rules, and other sponsor-level benefit decisions.
- 5) Fund claim payments by paying monthly paid-claims liability amounts and any agreed administrative fees.
- 6) Review CONTRACTOR invoices, reports, and funding notices and raise discrepancies timely.
- 7) Provide the scope and requirements of any audit or review before activities begin.
- 8) Share audit findings with the CONTRACTOR and discuss corrective actions.
- 9) Participate in governance meetings, service reviews, and performance guarantee oversight.
- 10) Provide tax exemption documentation and handle sponsor-side payment administration obligations.
- 11) Exercise renewal, termination, public-interest, funding, and other state-contract governance rights as applicable.
- 12) Direct public-records handling and other state-agency obligations as applicable.
- 13) Determine whether certain optional services are in scope and funded, such as actuarial services, expanded care management, legal support, and enhanced audit rights.

**Additionally, for a CONTRACTOR offering Pharmacy Benefit Manager (PBM) services, the CONTRACTOR SHALL:**

- 1) Ensure that all premium rates are divisible by two.
- 2) Maintain the participating pharmacy network through the PBM.
- 3) Administer the Rx benefit across retail, mail, and specialty channels.

- 4) Manage formulary, utilization management, specialty pharmacy, and clinical edits.
- 5) Administer rebate, discount, and manufacturer remuneration programs.
- 6) Disclose all rebates, financial incentives, fees, and discounts to the NDPERS Board and its auditor.
- 7) Disclose all PBM income sources under the Agreement and related third-party contracts, except as otherwise carved out for Medicare Part D.
- 8) Provide all audit and transparency data required under N.D.C.C. § 54-52.1-04.16.
- 9) Ensure any subcontracted PBM is contractually required to provide that same data directly or indirectly to NDPERS.
- 10) Facilitate PBM audits and respond to findings, remediation requests, and corrective actions.
- 11) Provide PBM reporting, claims feeds, rebate reporting, and designated account contacts.
- 12) Support PBM implementation, transition, and transition-out activities.
- 13) Jointly administer the Pharmacy Disease Management Program where included.
- 14) Ensure that all services, deliverables, Apps software, and Web pages shall include all functionality necessary to materially comply with: (i) the Web Content Accessibility Guidelines (WCAG) 2.1, Level A and AA Success Criteria; and (ii) all relevant [Accessibility Laws], as defined below. For purposes of this section (Web Site Accessibility), “Accessibility Laws” means the Americans with Disabilities Act and any applicable laws.
- 15) Provide a copy of your Accessibility Conformance Report (ACR) and the Voluntary Product Accessibility Template (VPAT).

As part of this arrangement, NDPERS SHALL:

- 1) Approve or direct Plan-level pharmacy design decisions, including covered benefit structure and any strategic formulary positions.
- 2) Exercise audit rights through an independent auditor with no conflict of interest, consistent with the statutory framework in the draft.
- 3) Review PBM audit results, rebate disclosures, and reimbursement transparency reports.
- 4) Participate in governance, service reviews, and escalation discussions related to PBM performance.
- 5) Identify any NDPERS-required reporting, audit timing, or pharmacy program oversight expectations not already specified in the Agreement.
- 6) Direct any policy decisions on carve-outs, including treatment of Medicare Part D or other excluded programs where applicable.

**TRANSITION PLAN (if applicable)**

The CONTRACTOR shall:

Vendor contracts should address the following when discussing transition and termination in their contracts:

- Triggering events are defined. Transition obligations apply upon expiration, termination for cause, termination for convenience, partial scope transfer, subcontractor replacement, insolvency, or direction from NDPERS.
- Written transition plan is required. Vendor must submit a written transition plan within a defined period after notice, such as 10 business days.
- NDPERS approval rights are explicit. NDPERS has approval authority over the transition plan, timeline, milestones, and material changes.
- Dedicated transition governance is required. Vendor must provide a transition manager, key personnel, regular status meetings, issue tracking, and escalation procedures.
- No disruption to operations is required. Vendor must maintain uninterrupted performance for claims intake, adjudication, payment, prior authorizations, appeals/grievances, provider services, member services, reporting, and other in-scope functions.
- Continuity of care is addressed. Transition plan must include procedures for open authorizations, active treatment, care management cases, high-risk members, pending appeals, and other unresolved clinical or service matters.
- Runout and open items are allocated. Contract specifies responsibility for runout claims, adjustments, overpayments, recoveries, recoupments, subrogation, and unresolved complaints.
- Data transfer obligations are detailed. Contract requires a full data inventory, file layouts, data dictionaries, transmission format, transfer schedule, validation rules, reconciliation, error correction, and final completeness certification.
- Required data categories are listed. At minimum: eligibility, member files, provider files, claims history, prior authorization/UM records, care management notes, appeals and grievances, correspondence, reporting files, and audit trails.
- Data ownership and access rights are clear. NDPERS has the right to receive all operational data needed for transition, and vendor may not withhold data because of disputes or payment issues.

- HIPAA, privacy, and security controls apply during transition. Secure transfer, encryption, access controls, incident response, breach notification, and subcontractor flow-down obligations are expressly required.
- Knowledge transfer is required. Vendor must provide SOPs, desk procedures, business rules, system configurations, interface inventories, report logic, and staff walkthroughs.
- Communications plan is required. NDPERS-approved communications for members, providers, agencies, and internal stakeholders must include timing, templates, scripts, FAQs, and accessibility/language requirements.
- Subcontractor cooperation is required. Vendor remains responsible for all subcontractors and must ensure their participation in data transfer, knowledge transfer, and transition support.
- Testing and cutover requirements are included. Transition plan must include test files, mock conversions, reconciliation, defect resolution, and cutover readiness review.
- Completion criteria are defined. Transition is not complete until NDPERS confirms that required deliverables are received, validated, and operationally usable.
- Transition support is included at no additional cost. Data extraction, meetings, knowledge transfer, and reasonable transition assistance are covered by the contract unless NDPERS expressly approves additional charges.
- Extension of services is required if transition is incomplete. Vendor must continue needed services beyond expiration/termination as necessary to avoid disruption.
- Remedies are enforceable. Contract includes liquidated damages, service credits, payment withholding, offset rights, or performance security access for missed transition obligations.
- Survival language is included. Transition, cooperation, confidentiality, audit, records retention, and data transfer obligations survive termination until completed.