



NORTH DAKOTA
PUBLIC EMPLOYEES
RETIREMENT SYSTEM

Board Meeting Agenda

Location: WSI Board Room, 1600 East Century Avenue, Bismarck ND
By phone: 701.328.0950 Conference ID: 528 414 373#
Date: Tuesday, May 13, 2025
Time: 8:30 A.M. [Join the meeting now](#)

I. MINUTES

- A. April 4, 2025

II. CONFLICT OF INTEREST DISCLOSURE CONSIDERATION

III. DEFINED BENEFIT

- A. Elected County Official Participation – Rebecca (Board Action) ***EXECUTIVE SESSION**
- B. State Public Safety Plan Employer Contribution Rate – MaryJo (Board Action)

IV. MEMBER

- A. Retirement Appeal Case 920 – Michaela (Board Action) ****EXECUTIVE SESSION**
- B. Retirement Appeal Case 921 – MaryJo (Board Action) ****EXECUTIVE SESSION**

V. PRESENTATIONS

- A. About the Patient Diabetes Management Program
 - 1. 2024 Annual Report
 - 2. 2025-2027 Contract (Board Action)
- B. Sanford Health Plan Updates
 - 1. Executive Summary 2024 Quarter 4
 - 2. 2024 Oscar+ Campaigns

VI. GROUP INSURANCE / FLEXCOMP

- A. Employee Assistance Program (EAP) Contracts – Katheryne (Board Action)
- B. Medicare Part D Plan Premium Projection and Request for Proposal (RFP) – Rebecca (Board Action)
- C. Sanford Health Plan Specialty Medication Dispensing Limit – Rebecca (Board Action)
- D. Final Health Plan Premiums and Plan Design – Rebecca (Board Action)

VII. RETIREE HEALTH INSURANCE CREDIT

- A. Retiree Health Insurance Credit (RHIC) Combined Records – Michaela (Board Action)

VIII. LEGISLATION / ADMINISTRATIVE RULES

- A. Legislation Implementation Update – Rebecca (Board Action)

IX. OPERATIONS / ADMINISTRATIVE

- A. Contracts Under \$10,000 – Rebecca (Information)

NDPERS BOARD MEETING AGENDA

TUESDAY, May 13, 2025

PAGE 2

- B. Board Strategic Planning Meeting – Rebecca (Board Action)
- C. Quarterly Consultant Fees – Derrick (Information)
- D. 2025 – 2027 Budget Overview – Derrick (Board Action)
- E. Executive Director Review and Salary Recommendation – Representative Dockter (Board Action)
- F. Next Meeting date: June 10, 2025

*Executive Session pursuant to N.D.C.C. §44-04-19.1(9) and §44-04-19.2 to discuss negotiating strategy or provide negotiating instructions to its attorney or other negotiator.

**Executive Session pursuant to N.D.C.C. §44-04-19.2, §44-04-19.2(1) and/or §54-52-26 to discuss confidential records or confidential member information.



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Memorandum

TO: NDPERS Board

FROM: Rebecca Fricke

DATE: May 13, 2025

SUBJECT: Elected County Official Participation

NDPERS recently received guidance from our federal tax counsel regarding a conflict between federal law and North Dakota state law specific to participation of non-state elected officials in the NDPERS retirement plans.

As stated below, N.D.C.C. § 54-52-02.11 allows for county elected officials to enroll in the retirement plan within the first six months of their term.

54-52-02.11. Participation requirements for nonstate elected officials.

1. Before January 1, 2025, eligible elected officials of participating counties, at their individual option, may enroll in the defined benefit plan within the first six months of their term.
2. After December 31, 2024, eligible elected officials of participating counties, at their individual option, may enroll in the defined contribution retirement plan under chapter 54-52.6 within the first six months of their term.

The above provision was codified into law during the 2003 legislative session as it had been the practice of NDPERS to administer the plan this way. The provision was previously administered since 1982 under N.D. Admin. Code § 71-02-02-01(5), which further allowed both an enrollment and waiver opportunity within the six months of taking office or at the beginning of a new term:

71-02-02-01. Membership - General rule.

When an eligible employee becomes a member of the public employees retirement system, the following requirements apply:

1. A temporary employee must submit a completed participation agreement within six months of the date of hire as a temporary employee or within six months of a change in status from a permanent to temporary position. If no application is made and filed with the office, an irrevocable waiver of participation will occur for as long as the employee is in temporary status.
2. Delinquent payments of over thirty days, for reasons other than leave of absence or seasonal employment, will result in termination of eligibility to participate as a temporary member.
3. Upon taking a refund, future participation as a temporary member is waived.
4. A member may not contribute concurrently to the plan within any given month as both a permanent and a temporary member. Permanent employment has precedence.
5. Elected officials of participating counties and elected state officials, at their individual option, must enroll or waive participation in writing within six months of taking office or beginning a new term. If no application is made and filed with the office, an irrevocable waiver of participation will occur until the official makes application within six months from the start of a new term.

When reviewing a separate issue with Ice Miller, NDPERS was advised that this law and administrative rule conflicts with federal restrictions on Cash or Deferred Arrangements (CODA) , which prohibit allowing a waiver of participation once an employee has previously been eligible to participate in a retirement plan with the same employer in an eligible position requiring contributions on a pre-tax basis. Revenue Ruling ("Rev. Rul.") 2006-43. Applying the IRS' rulings regarding impermissible CODAs, employees may not receive a new election on whether to continue to make pre-tax contributions into the retirement plan if the employee remains with the same employer in an eligible position even if there is a break in service between the positions. Ice Miller referenced the following additional Federal Regulations that supersede North Dakota state law: Return-to-Work IRS Treas. Reg. 26 C.F.R. § 1.401-1(a)(2)(i); Rev. Rul. 74-254, 1974-1 C.B. 94; Internal Revenue Code ("Code") 26 U.S.C. § 401(a)(36); and CODA Code 26 U.S.C. § 401(k)(4)(A); IRS Treas. Reg. 26 C.F.R. §§ 1.401(k)-1(a)(3)(v) and 1.401(k)-1(e)(6).

Ice Miller has provided the Board with an Executive Summary of their analysis of the conflict between federal and state law, along with options to address the conflict, both from a CODA and a return-to-work/in-service distribution basis. These options will be discussed in the Next Steps portion of this Memorandum.

Based upon this guidance and as NDPERS becomes aware of a retiree record being impacted, NDPERS will research the retiree's benefit eligibility. Without a change to NDPERS' law, if the benefit is not in compliance with federal law, NDPERS will be required to suspend the retiree's retirement benefit and retiree health insurance credit benefit and request for funds to be returned to ensure the NDPERS retirement plan remains compliant under federal law.

Example:

A member that previously participated in a NDPERS retirement plan with a county is elected to an elected official position with the same county.

- Result: Both positions are with the same employer and contribute on a pre-tax basis. Therefore; the elected county official is required to participate in the retirement plan. This participation requirement applies even if the employee has a bona fide break in service.

NDPERS has provided notice to the participating counties of the discrepancy between federal and state law. This notice can be found on the NDPERS website: [County Employers participating in NDPERS Retirement](#). The notice included that federal law supersedes state law. NDPERS has also notified the North Dakota Association of Counties of the issue. In addition, a press release was issued.

NDPERS NEXT STEPS

In-Service Distributions

- 1) The Board can establish policy with a retroactive effective date to address the return-to-work/in-service distribution impact that this conflict has on individuals that have previously opted out of the retirement plan (due to state law provisions) and begun receiving distributions.
 - a. Policy Options:
 - i. Option 1: Allowing in-service distributions for all elected county officials if the official is at the Plan's normal retirement date. If being reemployed by the same employer without a bona fide break in service, retirees will need to be educated that if they are under age 59 1/2, then the retirement benefit will be subject to a 10% early distribution penalty and the Form 1099-R will be coded as an early distribution, no known exception. In addition, corrected Forms 1099-R will need to be issued for all open tax years.
 - ii. Option 2: Allowing in-service distributions for all elected county officials if the official is at least age 59 ½.
 - iii. Staff Recommendation: Staff would recommend the first option, allowing in-service distributions as of normal retirement date, given this aligns with how we previously administered the plan prior to this conflict being discovered.
 - b. Procedural Options:
 - i. Retroactive Effective Date. The policy can provide a retroactive effective date as established by the Board. Staff would recommend a retroactive date of January 1, 2007 to coincide with Code § 401(a)(36) being adopted in federal law.

1. This would allow current elected county officials who were receiving retirement benefits to not have to repay the overpayment of benefits.
 2. This would eliminate the need for employers to make retroactive contributions back to when the opt-out provision was granted to the elected county official.
- ii. Limited Application. The policy should be specific to this situation, i.e. elected county officials who opted out of the retirement plan at the start of a new term and have since been receiving retirement benefits.
 - iii. Sunset Clause. The policy should consider including a sunset clause, such as August 1, 2027, when any legislation that will be proposed to address the issue would become law if passed during the next session.
- 2) The Board can direct staff to promulgate rules to address N.D. Admin. Code § 71-02-02-01(5) and also whatever the Board adopts as policy related to item 1. Staff will work with the Attorney General's Office on whether the need for these rules meet the criteria for promulgating emergency rules pursuant to N.D.C.C. § 28-32-03. We believe that this may be possible given the need for the rule is to meet a federal law mandate.

Impermissible CODAs

- 1) Interim Policy and Administrative Rule: The Board can establish policy to address the state law conflict with CODA to provide participation requirements for elected officials of participating counties until the 70th Legislative Assembly can address this issue in law. Ice Miller has provided staff with options to address the CODA issue prospectively.
 - a. Policy Options: Staff have reviewed and recommend consideration of:
 - i. Mandating participation – All elected county officials could be required to participate in NDPERS.
 - ii. Prohibit participation – All elected county officials would be prohibited from participating in NDPERS.
 - iii. Limit election – Only elected county officials that have not previously participated with the same employer are permitted to make an election.
 - b. Staff Recommendation: Staff would recommend the mandatory participation option, but specifying that if the elected county official meets the mandatory participation requirements, they must be enrolled. If they do not, they would be considered an optional participant, and would be given the same participation options as such (same as a temporary employee that is required to pay full contribution on after-tax basis if they opt to join). Administering the plan this way for elected county officials would be compliant with federal law and consistent with the provisions for all other types of employees.

- c. The Board can direct staff to promulgate rules to address the conflicting language of N.D.C.C. § 54-52-02.11 and CODA. Staff will work with the Attorney General's Office on whether the need for these rules meet the criteria for promulgating emergency rules pursuant to N.D.C.C. § 28-32-03. We believe that this may be possible given the need for the rule is to meet a federal law mandate.

Staff will be discussing options related to state law more with legal counsel and will bring forward a recommendation to the June meeting for the Board's consideration.

- 2) Legislation: Staff will work with legal counsel (Attorney General's Office and Ice Miller) to draft proposed legislation for the Board's review and approval.
 - a. Policy Options: The options for legislation are set forth in subsection 1 above.
 - b. Staff Recommendation: The staff recommendation for legislation is the same as the recommendation for the interim policy and administrative rule set forth in subsection 1 above.
- 3) Once approved by Board, NDPERS will work with the Chair of the Employee Benefits Programs Committee and Legislative Council to seek approval of the Committee during an Interim Meeting per the provisions of N.D.C.C. § 54-52-23:

54-52-23. Savings clause - Plan modifications.

If the board determines that any section of this chapter does not comply with applicable federal statutes or rules, the board shall adopt appropriate terminology with respect to that section as will comply with those federal statutes or rules, subject to the approval of the employee benefits programs committee. Any plan modifications made by the board pursuant to this section are effective until the effective date of any measure enacted by the legislative assembly providing the necessary amendments to this chapter to ensure compliance with the federal statutes or rules.

- 4) The proposed legislation will be prepared for submission by the Board for the 2027-2029 legislative session by the April 1, 2026, deadline.

This item has led to appeals by impacted members, which will be heard later in the agenda, and staff expect additional appeals may come forward in the future based upon whether the Board opts to adopt a policy or not.

Board Action Requested:

- 1) Determine if the Board wishes to adopt an in-service distribution policy to address those elected county officials who were permitted to opt-out of retirement at the start of a new term and began receiving retirement benefits.

- 2) Determine if the Board wishes to adopt policy regarding participation requirements for elected officials of participating counties to replace N.D.C.C. § 54-52-02.11 during the interim biennium until the 2027-2029 legislative session.
- 3) If Board adopts policies, direct staff to promulgate emergency rules to address board policies adopted.



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Memorandum

TO: NDPERS Board

FROM: MaryJo

DATE: May 13, 2025

SUBJECT: State Public Safety Plan Employer Contribution Rate

Most of the retirement plan contribution rates are set in statute by the Legislative Assembly. The exceptions to that general rule are the Political Subdivision Public Safety Plan (which is split into two plans, one for employers with prior Main service and one for employers without prior Main service), State Public Safety Plan, Bureau of Criminal Investigation, and National Guard Public Safety plan. The employer contribution amounts for those plans are set by the Board at “an amount determined by the board to be actuarially required to support the level of benefits specified in section 54-52-17.” NDCC sections 54-52-06.3 (Political Subdivision Public Safety) and 54-52-06.4 (State Public Safety Plan/BCI/National Guard Public Safety).

The Public Safety Plan employer contribution rates were approved by the Board in November 2024 with a January 1, 2026 effective date after our last actuarial valuation review. Based on the fiscal note and cost impact analyses of HB 1274 to expand the State Public Safety Plan to include correctional officers effective August 1, 2025, our actuary, Gabriel, Roeder, Smith & Company (GRS), recommends the following increase to the State Public Safety Plan employer contribution rate:

Plan	Current	HB 1274 Increase	Updated 8/1/2025	Board Approved Nov 2024	Updated 1/1/2026
State Public Safety	14.34%	+ 0.12%	14.46%	+ 1.23%	15.69%

In summary, with HB 1274, GRS has indicated that the employer contribution rate for the State Public Safety Plan needs to increase by 0.12% effective August 1, 2025.

Section 71-02-06-07 of the North Dakota Administrative Code provides guidance on the timeline for the Board to set these contributions: “The board shall set the employer’s

contribution rate on a biennial basis, but may adjust that rate if it is actuarially necessary to maintain appropriate funding levels.” HB 1274 had a fiscal note attached, which showed the agency breakdown of the expected cost for the 2025-2027 biennium. As such, NDPERS would notify impacted state agencies of the increase effective August 1, 2025 in addition to the already approved increase effective on January 1, 2026, of which the additional .12% will be need to be added.

Board Action Requested: Affirm or deny the proposed increases for the State Public Safety Plan effective August 1, 2025 and January 1, 2026 due to the passing of HB 1274.



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Memorandum

TO: NDPERS Board

FROM: Michaela Huntington

DATE: May 13, 2025

SUBJECT: Retirement Benefit Appeal Case #920

The member retired January 1, 2019, from the same county that he was now serving as a non-contributing elected county commissioner beginning December 3, 2024. Upon NDPERS receiving guidance from our federal compliance consultant regarding a conflict between federal law and North Dakota state law specific to participation of non-state elected officials in the NDPERS retirement plans, NDPERS issued the "Participation in Retirement as an Elected County Official" memo to County employers on April 3, 2025.

As a result of this NDPERS memo, a county Authorized Agent informed NDPERS that the member could be affected. NDPERS confirmed the member was affected by the federal and state law conflict. For a legal background on this conflict, please see the memo from Rebecca Fricke to the NDPERS Board dated May 13, 2025, entitled "Elected County Official Participation." ([Attachment #1](#)) Therefore, NDPERS suspended the monthly retirement benefit payments and sent a memorandum of understanding requesting repayment of an overpayment in the amount of \$19,160.08.

The member is appealing both the decision to suspend retirement benefits and the overpayment of benefits. ([Attachment #2](#))

Timeline of Events:

01/01/2019 – Retired under the Main plan
11/25/2024 – NDPERS spoke with member about upcoming County Commissioner term and provided SFN 53504 Waiver of Membership for Elected Officials Only
12/03/2024 – Start of elected term as county elected official
12/04/2024 – Authorized Agent contacted NDPERS to confirm eligibility to waive participation

12/18/2024 – NDPERS received signed “SFN 53405 Waiver of Membership for Non-State Elected Officials Only” (**Attachment #3**)

04/03/2025 – NDPERS issued employer notification memo “Participation in Retirement As An Elected County Official” to County Employers (**Attachment #4**)

04/07/2025 – Authorized Agent contacted NDPERS wondering if this specific member is affected by the 4/3/2025 memo.

04/08/2025 – NDPERS contacted Authorized Agent to confirm that county commissioner wages will need to be reported back to the start of the term

04/08/2025 – NDPERS contacted member to notify that the current retirement benefit will need to be suspended and overpayment collection was letter sent

04/09/2025 – NDPERS received the Appeal to Board request

Board Action: Affirm or deny the member’s request to appeal monthly retirement benefit suspension and the overpayment of benefits or otherwise resolve appeal pursuant to Board policy.



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Memorandum

TO: NDPERS Board

FROM: MaryJo Anderson

DATE: May 13, 2025

SUBJECT: Retirement Benefit Appeal Case #921

The member served as an employee with a county, and ran unopposed for a county commissioner seat. Upon winning the election, the member worked with the NDPERS team as indicated by the below timeline to begin drawing on his retirement benefits. While working with NDPERS, the federal law conflict with state law was discovered by NDPERS. For a legal background on this conflict, please see the memo from Rebecca Fricke to the NDPERS Board dated May 13, 2025, entitled "Elected County Official Participation." ([Attachment #1](#)) NDPERS confirmed this same federal provision affects this member now serving as an elected county official with the same employer, who is eligible to contribute on a pre-tax basis with a new elected term. Therefore, NDPERS suspended the pending retirement benefit payments.

The member is appealing the denial of retirement benefit payments. ([Attachment #2](#))

Timeline of Events:

- 05/20/2024 – Member called the NDPERS office regarding full time county employee status while also running unopposed for county commissioner. Member indicated he did not want to enroll with his county elected commissioner new term.
- 05/21/2024 – Counselor sent email ([Attachment #3](#)) and also had phone call conversation confirming commissioner salary would not be reported to NDPERS if electing to not participate in this position. Only the salary under the contributing position is reported to NDPERS for calculating Final Average Salary. Timing of his pension was discussed based upon full time position ending and commissioner position beginning. He confirmed he does not plan to enroll in retirement as a county commissioner.
- 09/04/2024 – Benefit estimate for 12/1/2024 retirement was mailed to member, per request.

- 09/10/2024 – Member reviewed elected county commissioner position with counselor and it was confirmed by NDPERS that ND state law allows for him to opt out of his elected commissioner position with his new term starting Dec 2024.
- 09/12/2024 – Member inquired more on his plans to opt-out under his new elected role in December while still contributing in full time position up until retiring.
- 10/25/2024 - Member called with questions on retirement forms and RHIC. And indicated he would send the completed forms for review before submitting.
- 12/03/2024 – Start of new term as county elected official & signed “SFN 53405 Waiver of Membership for Non-State Elected Officials Only” (Attachment #4)
- 03/05/2024 - NDPERS and Ice Miller conference call to discuss Defined Contribution Plan provisions for early retirement and required break in service
- 03/11/2025 – Upon reviewing legislative bills and federal provisions for return to work with our federal tax consultant, Ice Miller, CODA and in-service distribution provisions were also reviewed, which included the opt out provisions in state law for county commissioners.
- 03/19/2025 – NDPERS explained to member the federal restriction preventing NDPERS from proceeding with his retirement benefit application. Member called back questioning if he would be allowed to retire with a bona fide separation of 31 days or more. Staff confirmed this would not change his situation as he is returning to his same employer. Follow up letter was mailed. (Attachment #5)
- 03/21/2025 - Employer was contacted confirming commissioner wages must be reported and that as commissioner he cannot waive participation in the retirement plan with his new term.
- 03/24/2025 – NDPERS explained to member that he will need to be off covered payroll for 31 days before returning to work in any capacity with any other NDPERS-covered employer to avoid the 10% IRS penalty for not having a bona fide break in service. Member’s pending benefit payment was suspended now that he remained a contributing member and was no longer off all covered payroll for at least 31 days to begin receiving benefit payments.
- 03/25/2025 – Member called indicated he does not intend to resign as commissioner and understands he cannot draw his pension while working for the same NDPERS-covered employer even if he is off covered payroll for 31 days.
- 04/03/2025 – NDPERS issued employer notification memo “Participation in Retirement As An Elected County Official” to County Employers (Attachment #6)
- 04/09/2025 – NDPERS received the member’s Appeal to Board request

Board Action: Affirm or deny member’s monthly retirement benefit payment deferral or otherwise resolve appeal pursuant to Board policy.



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Memorandum

TO: NDPERS Board

FROM: Rebecca

DATE: May 13, 2025

SUBJECT: 2024 About the Patient Diabetes Management Program
Annual Report and Contract

Jesse Rue from the ND Pharmacists Association will be attending the meeting to provide their 2024 Annual Report (Attachment 1) of the NDPERS About The Patient Diabetes Management Program.

The program that we partner with ND pharmacists in offering to our members is pursuant to NDCC sections 54-52.1-16 and 54-52.1-17:

54-52.1-16. Uniform group insurance program - Collaborative drug therapy program - Continuing appropriation.

1. The board may establish a collaborative drug therapy program available to individuals in the medical and hospital benefits coverage group. The purpose of the collaborative drug therapy program is to improve the health of individuals in identified health populations and to manage health care expenditures.
2. Under the program, the board may involve physicians, pharmacists, and other health professionals to coordinate health care for individuals in identified health populations in order to improve health outcomes and reduce spending on care for the identified health problem. Under the program, pharmacists and other health professionals may be reimbursed for providing face-to-face collaborative drug therapy services to covered individuals in the identified health population. To encourage enrollment in the plan, the board may provide incentives to covered individuals in the identified health population which may include waived or reduced copayment for related treatment drugs and supplies.
3. The board may request the assistance of the North Dakota pharmacists association or a specified delegate to implement a formalized disease management

program with the approval of the prescriptive practices committee established in section 43-15-31.4, which must serve to standardize chronic disease care and improve patient outcomes. This program must facilitate enrollment procedures, provide standards of care, enable consistent documentation of clinical and economic outcomes, and structure an outcomes reporting system.

4. The board may seek and accept private contributions, gifts, and grants-in-aid from the federal government, private industry, and other sources for a collaborative drug therapy program for identified health populations. Any funds that may become available through contributions, gifts, grants-in-aid, or other sources to the board for a collaborative drug therapy program are appropriated to the board on a continuing basis.

54-52.1-17. Uniform group insurance program - Collaborative drug therapy program - Funding.

1. The board shall establish a collaborative drug therapy program that is to be available to individuals in the medical and hospital benefits coverage group. The purpose of the collaborative drug therapy program is to improve the health of individuals with diabetes and to manage health care expenditures.

2. The board shall involve physicians, pharmacists, and certified diabetes educators to coordinate health care for covered individuals with diabetes in order to improve health outcomes and reduce spending on diabetes care. Under the program, pharmacists and certified diabetes educators may be reimbursed for providing face-to-face collaborative drug therapy services to covered individuals with diabetes. To encourage enrollment in the plan, the board shall provide incentives to covered individuals who have diabetes which may include waived or reduced copayment for diabetes treatment drugs and supplies.

3. The North Dakota pharmacists association or a specified delegate shall implement a formalized diabetes management program with the approval of the prescriptive practices committee established in section 43-15-31.4, which must serve to standardize diabetes care and improve patient outcomes. This program must facilitate enrollment procedures, provide standards of diabetes care, enable consistent documentation of clinical and economic outcomes, and structure an outcomes reporting system.

4. The board shall fund the program from any available funds in the uniform group insurance program and if necessary the fund may add up to a two dollar per month charge on the policy premium for medical and hospital benefits coverage. A state agency shall pay any additional premium from the agency's existing appropriation.

In addition, the Pharmacists Association is seeking the Board's approval of the proposed cost to continue the program for the 2025-2027 biennium. An increase in the "not to exceed" amount is being requested in the amount of \$26,000. The current 2023-2025 biennium cost approved by the Board is not to exceed \$354,000.00. Details regarding the proposed cost are found on Attachment 2.

If approved, the ND Pharmacists Association has provided an updated contract (Attachment 3) for the 2025-2027 biennium for the Board's review and approval. The contract has been reviewed by legal counsel.

If not approved, staff will work with the ND Pharmacists Association to update a contract for the Board's consideration at the June Board meeting.

BOARD ACTION REQUESTED:

Approve the About the Patient Diabetes Program proposed cost not to exceed \$380,000.00 for the 2025-2027 biennium. If cost proposal accepted, approve the 2025-2027 contract for the About the Patient Diabetes Management Program.

Attachment 1

ANNUAL REPORT FOR NDPEERS

About the Patient Collaborative Diabetes Drug Therapy Program

North Dakota Pharmacy Services Corporation

MAY 2025

Prepared by | Jesse Rue, PharmD, BCPS

In **the lineup** for today

Here are the topics presented today: ←

1. Program Design
2. Key Health Indicators
3. Medication Related Problems
4. Member Engagement
5. Member Satisfaction
6. Budget Status Update

Program Design



At its heart, this is a program to optimize treatment plans and adherence for chronic illnesses

CALENDAR DIVIDED INTO **THREE BLOCKS**



Calendar
divided
into three
segments



Visit made
within each
segment



When visit is
made, copay
reimbursement
awarded for
segment



Without a visit,
reimbursement
isn't awarded

When a visit occurs during a block, the reimbursement is awarded for certain diabetes, hypertension and cholesterol meds as well as certain testing supplies.

FRESH **ASSETS** MAINTAIN **VIBRANCY.**



Program assets are continually refreshed to provide members with appealing and impactful educational materials, better standardizing their experiences.

Key Health Indicators

Insight into program impact in 2024 for members with diabetes and hypertension

Some Background

A few words on measures, prevalence, and personal impact to members. Hypertension and diabetes impact health and quality of life in profound ways.

DIABETES

- 01

Quality Measures often require HbA1c <9%. Good control often considered HbA1c <7% depending upon variables.
- 02

Over 9% of people in North Dakota have diabetes.
- 03

Persons with diabetes experience health expenditures >2x those without and risk of early death increases by 60%.

HYPERTENSION

- 01

Quality Measures often report Hypertension control <140/90, whereas ACC/AHA defines it as <130/80. We use the more stringent <130/80 in our report.
- 02

Over 30% of North Dakota adults have hypertension.
- 03

About 7 of 10 people having their first heart attack have high blood pressure and 8 out of 10 having first stroke.

Adapted from Health Issues for the State of ND, Biennial Reports 2021,2023, & 2025 University of North Dakota

A1c data **for** Diabetes

Program care initiatives have helped members improve their Hemoglobin A1c measurement, which is critical for long term success.

AVERAGE A1C IMPROVEMENT

Members improving their A1c for this program year did so by an average of 0.68 points.

0.68 point
A1c reduction

Pressure data for Hypertension

Program care initiatives helped members improve their blood pressure, which is critical in avoiding complications such as heart attack and stroke.

UNCONTROLLED ACHIEVING CONTROL

We evaluated patients experiencing uncontrolled blood pressure in 2024 and tracked progress. Of those, 63% found control later in the year with blood pressure reading <130/80.


**63% controlled
by end of year**

Medication Related Problems



Key to the program is resolving Medication Related Problems to avoid Adverse Drug Events

Adverse Drug Events remain a **persistent national problem.**



An ADE is an event resulting in harm from a medication. Identifying Drug Therapy Problems are a way for pharmacists to resolve issues **before they turn into a serious ADE.**

Intervening to mitigate or prevent these problems is an area where the pharmacist is addressing issues that remain unresolved elsewhere and is a unique contribution to care.

Pharmacists in this program are making over two interventions per member on average.

Problems Identified

Identifies >2 problems per member on average

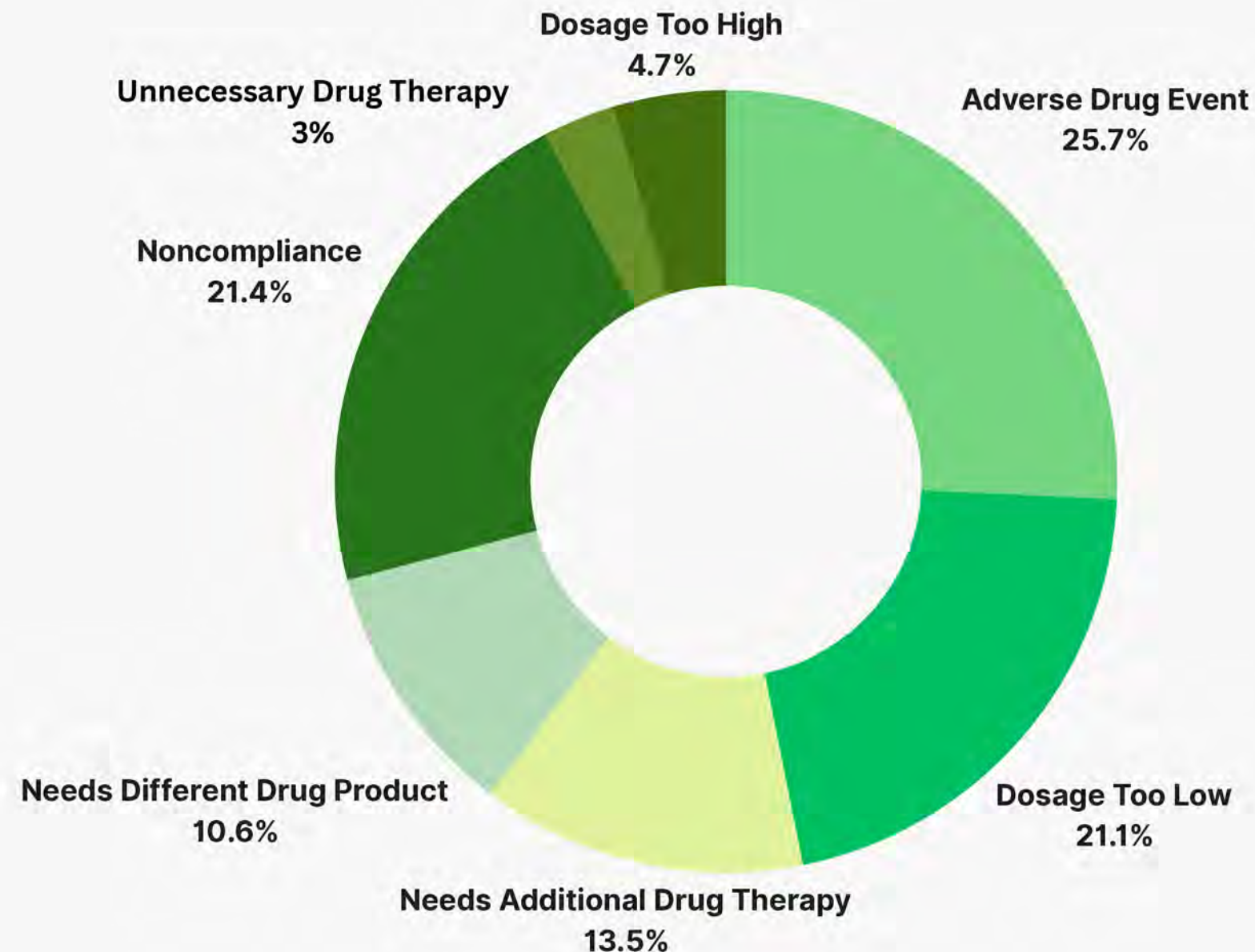
From the Federal Office of Disease Prevention and Health Promotion:

“Each year, ADEs in outpatient settings account for:

- Over 3.5 million physician office visits
- An estimated 1 million ER visits
- Approximately 125,000 hospital admissions

THE GOOD NEWS IS THAT LARGE MAJORITY OF ADE'S ARE PREVENTABLE. REDUCING ADES IS EXPECTED TO RESULT IN SAFER AND HIGHER QUALITY HEALTH CARE SERVICES, REDUCED HEALTH CARE COSTS, MORE INFORMED AND ENGAGED CONSUMERS, AND IMPROVED HEALTH OUTCOMES.”

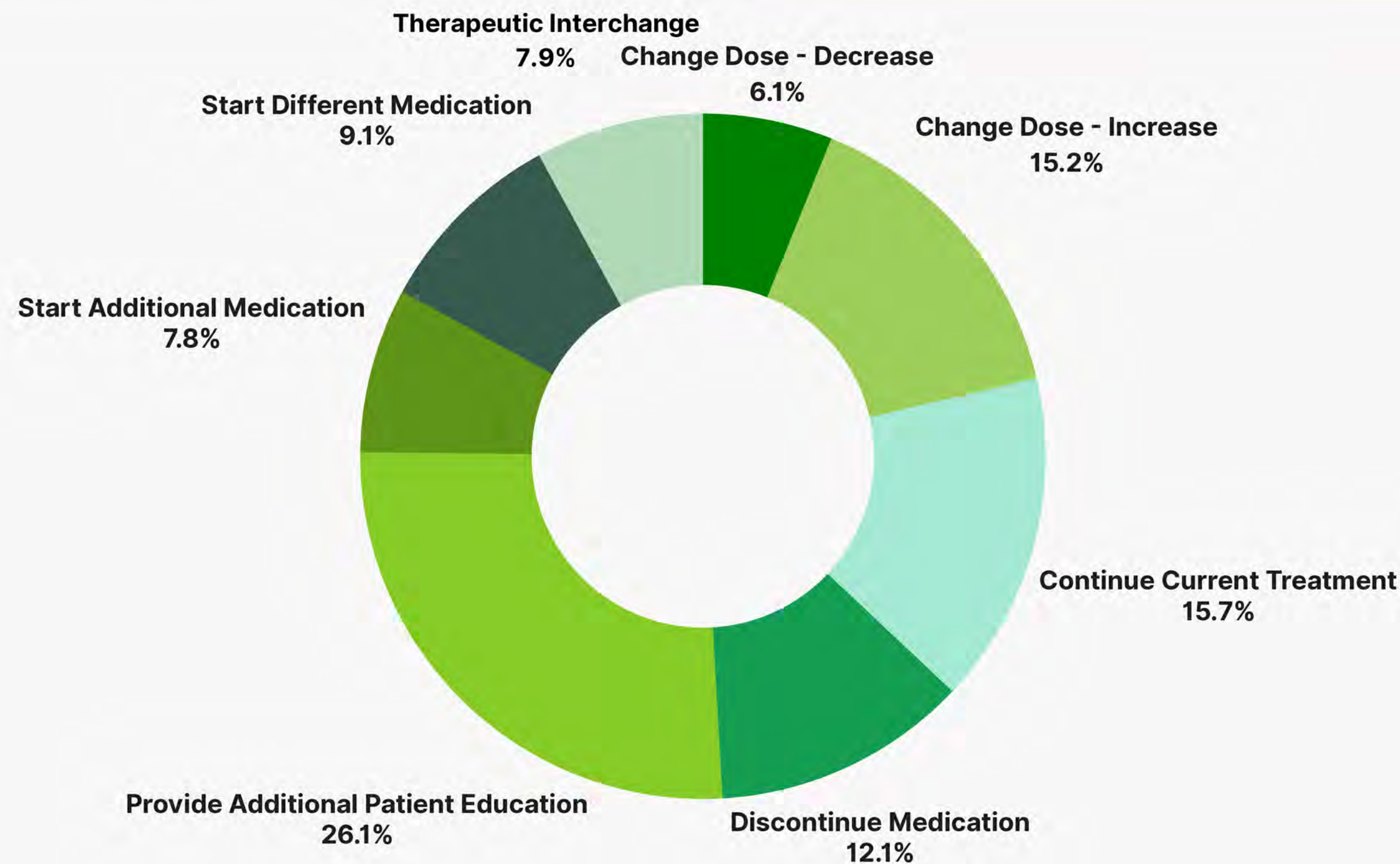
[HTTPS://HEALTH.GOV/HCQ/ADE.ASP](https://health.gov/hcq/ade.asp)



Problem Resolution

IMPROVEMENTS TO OVERALL CARE RESULTED FROM INTERVENTIONS DESCRIBED ABOVE AND IMPROVED SELF-MANAGEMENT EDUCATION THROUGH THE PROGRAM VISITS.

THIS IS THE FOUNDATION OF THE PROGRAM'S DESIGN.



Member Engagement



Chronic disease care improves when members are able to engage conveniently and often

Member Engagement

We were successful in achieving another year of engagement growth in 2024. We remained encouraged by the resiliency of members, NDPERS leadership and staff, and providers in this program as stakeholders maintained commitment to improving member health.



2020

COVID impact begins in March. Visits increase 5% for the year.

2021

COVID continues to ravage healthcare. Visits increase 27% for the year.

2022

COVID remains but lessens deeper into the calendar. Visits increase 4% for the year.

2023

Member visit growth remains a durable narrative. Visits increase 12% for the year.

2024

With an increase of 3%, we achieved another consecutive year of growth.

Member ← Satisfaction

Satisfaction with care received remains a strength of the program year over year

Member Satisfaction

Remained Strong in 2024

Member satisfaction remains consistently strong and stable year to year, indicating belief that the providers have member's best interests in mind and are effective in improving health overall.



The provider's interest in your health = **4.93**



How well the provider helps you manage your medications = **4.89**

**1 = Strongly Disagree to
5= Strongly Agree**



The provider's efforts to improve your health or stay healthy = **4.88**



The program services overall = **4.85**

Budget Status Update



A snapshot of spend in 2024 compared with budgeted amounts

Budget status snapshot

CATEGORY	ANNUAL BUDGET	ACTUAL SPEND
PATIENT COPAY INCENTIVE	\$98,000	\$112,900
PROVIDER VISITS	\$66,000	\$62,400
ADMIN FEE	\$10,000	\$10,000
MARKETING	\$2,500	\$2,500
TOTAL	\$177,000	\$187,800

The **program remains close to budget** and is tracking **similarly to recent years.**

The table displays one year of budgeted expenses and demonstrates that the program is currently near target for budget goals during the biennium.

Patient incentives have been increasing as visits have increased.



Gratitude

We appreciate the opportunity to deliver this report and are grateful to be part of your continued efforts to create healthier members and communities across North Dakota.

Thank You



Contact

Jesse Rue, PharmD, BCBS
Clinical Coordinator
About the Patient Programs

www.aboutthepatient.net
jrue@aboutthepatient.net
701-258-4968

Memorandum

NDPERS/NDPSC Collaborative Diabetes Management Program

Budget Adjustment Request for the 2025-2027 Biennium

April 22, 2025

I. Purpose

This memo requests Board approval to adjust the Diabetes Management Program biennial budget to ensure sufficient funding for rising patient copay reimbursements with minimal impact to the current overall budget.

II. Background

- The budget was last amended in April 2021, establishing an amount of \$354,000 for the 2021-2023 biennium. This was maintained for the 2023-2025 biennium.
- Member visit utilization has increased for six consecutive years. This utilization is a primary driver for the increase in the total patient copay reimbursement item.

III. Utilization & Cost Trends

Calendar Year Patient Copay Reimbursements % Change vs. Prior Year

2021	\$86,605	—
2022	\$93,600	+8.1 %
2023	\$107,963	+15.3 %
2024	\$112,930	+4.6 %

Provider incentive payments have remained relatively stable and are projected to stay within the existing allocation.

Calendar Year Provider Payments

2021	\$62,160
2022	\$64,800
2023	\$72,160
2024	\$62,400

IV. Budget History

Biennium Approved Budget

2019-2021	\$350,000
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Biennium Approved Budget

2021-2023 \$354,000

2023-2025 \$354,000

*Despite rising utilization, the overall program budget has remained **largely flat since 2019**.*

V. Proposed Budget Adjustment (2025-2027 Biennium)

Budget Line	Current Biennium (2023-2025)	Proposed 2025-2027	\$ Change
Patient Copay Reimbursements	\$197,000	\$223,000	+\$26,000
Provider Payments	\$132,000	\$132,000	\$0
All Other Categories	\$25,000	\$25,000	\$0
Total Biennium Budget	\$354,000	\$380,000	+\$26,000

VI. Rationale for Adjustment

1. **Sustained Growth in Utilization:** Six-year upward trend in patient visits and medication adherence drives higher patient-copay reimbursement volume.
2. **Cost Containment Success Elsewhere:** Provider payments and administrative budget line items would remain flat, illustrating efficient program management.

VIII. Request

We request Board consideration of an increase of \$26,000 to the budget for the patient copay reimbursement line, resulting in an overall budget of \$380,000 for the 2025-2027 biennium. All other budget line items would remain static at their 2021-2025 levels.

Prepared for the May 2025 meeting of the NDPERS Board by North Dakota Pharmacy Service Corporation (NDPSC).

AGREEMENT FOR SERVICES BETWEEN PHARMACY SERVICES CORPORATION AND NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM

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 *Pharmacy Services Corporation* having its principal place of business at 1641 Capitol Way, Bismarck, ND 58501-2195 (CONTRACTOR);

2. SCOPE OF WORK

CONTRACTOR agrees to provide the service(s) per the requirements of N.D.C.C. § 54-52.1-16 and N.D.C.C. § 54-52.1-17 and as listed in the Vendor proposal, which is attached hereto and incorporated by reference as Exhibit A.

3. COMPENSATION – PAYMENTS

a. Contractual Amount

STATE shall pay for the accepted services provided by CONTRACTOR under this Contract an amount not to exceed \$380,000 (Contractual Amount) as set forth more specifically in Exhibit A.

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. Payment

- 1) Payment made in accordance with this Compensation section shall constitute payment in full for the services and work performed and the deliverables and work(s) provided under this Contract and CONTRACTOR shall not receive any additional compensation hereunder.
- 2) STATE shall make payment under this Contract within forty-five (45) calendar days after receipt of a correct 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 thereto. CONTRACTOR's invoice will be subject to reduction for amounts included in any invoice or payment made which are determined by STATE, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute

allowable costs. At STATE's sole discretion, all payments shall be subject to reduction for amounts equal to prior overpayments to CONTRACTOR.

- 4) For any amounts that are or will become due and payable to STATE by CONTRACTOR, STATE reserves the right to deduct the amount owed from payments that are or will become due and payable to CONTRACTOR under this Contract.

c. Travel

CONTRACTOR acknowledges travel costs are covered by the Contractual Amount and shall not invoice STATE for travel costs.

d. Prepayment

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

e. 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 certificates of exemption upon request by the CONTRACTOR.

f. Taxpayer ID

CONTRACTOR'S federal employer ID number is: **450392168**.

4. TERM OF CONTRACT

This Contract term (Term or Initial Term) begins on **July 1, 2025**, and ends on **June 30, 2027**.

a. No Automatic Renewal

This Contract will not automatically renew.

b. Extension Option

STATE reserves the right to extend this Contract for an additional period, not to exceed 24 months, beyond the current termination date of this Contract.

c. Renegotiation Option

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 mutually 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.

5. TIME IS OF THE ESSENCE

CONTRACTOR hereby acknowledges that time is of the essence for performance under this Contract unless otherwise agreed to in writing by the Parties.

6. TERMINATION

a. Termination by Mutual Agreement

This Contract may be terminated by mutual consent of both Parties executed in writing.

b. Early Termination in the Public Interest

STATE is entering this Contract for the purpose of carrying 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 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 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 of the other provisions of this Contract, or so fails to pursue the work 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.

7. FORCE MAJEURE

Neither Party shall be held responsible for delay or default caused by fire, riot, terrorism, pandemic (excluding COVID-19), 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, then STATE may seek all available remedies, up to and including termination of this Contract pursuant to its Termination Section, and STATE shall be 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.

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 defend, indemnify, and hold the State harmless 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 Contract 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 Contract, 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) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$500,000 per person and \$2,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this Contract.
- 4) Employer's liability or "stop gap" insurance of not less than \$2,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- 5) 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. The amount of any deductible or self-retention is subject to approval by the State.
- 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, 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) The CONTRACTOR shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be

provided as soon as practicable.

- 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.

10. WORKS FOR HIRE

CONTRACTOR acknowledges that 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 hereby 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 shall be the sole property of STATE, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein 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:

STATE	CONTRACTOR
Name: Rebecca Fricke	Name: Michael D. Schwab
Title: Executive Director	Title: Executive Vice-President
Address: 1600 East Century Ave, Suite 2 P.O. Box 1657	Address: 1641 Capitol Way
City, State, Zip: Bismarck, ND 58502-1657	City, State, Zip: Bismarck ND 58501-2195

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 shall 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 as authorized in advance by STATE. STATE shall 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.

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 as Exhibit B.

14. COMPLIANCE WITH PUBLIC RECORDS LAWS

Under the North Dakota public records law and subject to the Confidentiality clause of this Contract, 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 agrees to contact STATE immediately upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to such 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 hereunder in the event of a change of control or sale of all or substantially all of its assets related to this Contract, whether by merger, reorganization, operation of law, or otherwise. Should Assignee be a business or entity with whom STATE is prohibited from conducting business, STATE shall have the right to terminate 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 does not have authority to contract for or incur obligations on behalf of STATE.

17. SPOILIATION – PRESERVATION OF EVIDENCE

CONTRACTOR shall promptly notify STATE of all potential claims that arise or result from this Contract. CONTRACTOR shall also 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, in the event of 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, including any BAA and/or MOU (if applicable), as may be amended;
- b. CONTRACTOR's proposal attached hereto and incorporated by reference Exhibit A.
- c. 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. 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 that term.

20. 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 such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

21. 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.

22. ATTORNEY FEES

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

23. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

CONTRACTOR agrees to 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.)

CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation and workers' compensation premiums.

CONTRACTOR shall have and keep current all licenses and permits required by law during the Term of this Contract all licenses and permits required by law.

CONTRACTOR's failure to comply with this section may be deemed a material breach by CONTRACTOR entitling STATE to terminate in accordance with the Termination for Cause section of this Contract.

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 a 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 full-time employees.

24. 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.

25. COUNTERPARTS

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

26. 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 shall be deemed the Effective Date.

CONTRACTOR	STATE OF NORTH DAKOTA
<i>Pharmacy Services Corporation</i>	Acting through its NDPERS
BY: [Signature] <i>Mike Schwab</i>	BY:
[Printed Name] <i>Mike Schwab</i>	Mike Seminary
[Title] <i>EUP</i>	Board Chairman
Date: <i>4-25-25</i>	Date:

Business Associate Agreement

This Business Associate Agreement is entered into by and between, the North Dakota Public Employees Retirement System (“NDPERS”) and the Pharmacy Services Corporation, 1641 Capitol Way, Bismarck, ND 58501-2195, each individually a “Party” and collectively the “Parties.” This Agreement is hereby incorporated into the underlying Contract, *Agreement For Services Between Pharmacy Services Corporation And North Dakota Public Employees Retirement System*, between the parties dated July 1, 2025, (hereinafter both the Agreement and underlying Contract shall collectively be referred to as the “Agreement”).

DEFINITIONS

Terms used, but not otherwise defined, in this Agreement have the same meaning as those terms in the HIPAA Rules.

Catch-all definitions:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

- a. Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR § 160.103, and in reference to the party to this Agreement, shall mean Pharmacy Services Corporation.
- b. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR § 160.103, and in reference to the party to this Agreement, shall mean NDPERS.
- c. Electronic Protected Health Information. “Electronic Protected Health Information” (ePHI) shall generally have the same meaning as the term “electronic protected health information” at 45 CFR § 160.103.
- d. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- e. Protected Health Information. “Protected Health Information” (PHI) shall generally have the same meaning as the term “protected health information” at 45 CFR § 160.103 that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity.

OBLIGATIONS OF BUSINESS ASSOCIATE

The Business Associate agrees to:

- a. Not use or disclose PHI other than as permitted or required by this Agreement or as required by law, or as otherwise authorized in writing by Covered Entity;
- b. Use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to ePHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;
- c. Not request, use, or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. § 164 if done by Covered Entity, except that Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate.
- d. Not request, use, or disclose more than the minimum amount of PHI necessary to accomplish the purpose of the use, disclosure, or request in accordance with 45 C.F.R. § 164.502(b).
- e. Not share, use, or disclose PHI in any form via any medium with any individual beyond the boundaries and jurisdiction of the United States of America without express written authorization from Covered Entity.
- f. Ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such PHI, in accordance with 45 CFR § 164.502(e)(1) and § 164.308(b).
- g. Within twenty (20) business days of receiving written notice from Covered Entity, make any amendments to PHI in a Designated Record Set, as directed or agreed to by Covered Entity pursuant to 45 CFR § 164.526, or take other measures as necessary to satisfy the Covered Entity's obligations under 45 CFR § 164.526.
- h. PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate.
- i. Report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 C.F.R. § 164.410, and any security incident of which it becomes aware;
- j. To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that it creates, receives, maintains or transmits on behalf of the Covered Entity as required by the HIPAA Rules.
- k. To make available to the Secretary the Business Associate's internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI and

ePHI received from, or created or received by Business Associate on behalf of Covered Entity, for the purpose of determining the Covered Entity's compliance with the HIPAA Rules, subject to any applicable legal privileges.

- l. Provide to Covered Entity within fifteen (15) days of a written notice from Covered Entity, information necessary to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- m. To provide, within ten (10) days of receiving a written request, information necessary for the Covered Entity to respond to an Individual's request for access to PHI about himself or herself under 45 C.F.R. § 164.524, in the event that PHI in the Business Associate's possession constitutes a Designated Record Set.

REPORTING OF A VIOLATION TO COVERED ENTITY BY BUSINESS ASSOCIATE

Business Associate shall report to Covered Entity's Breach Investigation Team (BIT) via email at ndpers-info@nd.gov any use or disclosure of PHI or ePHI not provided for by this Agreement, of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR § 164.410, and any Security Incident of which it becomes aware, immediately, and in no case later than ten (10) business days after the use or disclosure.

- a. Security Incident. "Security Incident" means (as defined by 45 CFR § 164.304), the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. For purposes of clarification of this Section, Security Incident includes use, disclosure, modification, or destruction of PHI by an employee or otherwise authorized user of its system of which Business Associate becomes aware. Business Associate shall track all Security Incidents and shall report such Security Incidents in summary fashion as may be requested by the Covered Entity.
 - i. Unsuccessful Security Incidents. Business Associate and Covered Entity agree that this Agreement constitutes notice from Business Associate of such Unsuccessful Security Incidents. By way of example, Covered Entity and Business Associate consider the following to be illustrative of Unsuccessful Security Incidents when they do not result in unauthorized access, use, disclosure, modification, or destruction of PHI or interference with an information system:
 1. Pings on Business Associate's firewall;
 2. Port Scans, which are attempts to log on to a system or enter a database with an invalid password or username;
 3. Denial-of-service attacks that do not result in a server being taken off-line; and
 4. Malware (e.g., worms, viruses).
- b. Discovery of a Violation. If the use or disclosure amounts to a breach of Unsecured PHI

or ePHI, Business Associate shall ensure its report is made to Covered Entity's Breach Investigation Team (BIT) via email at ndpers-info@nd.gov immediately upon becoming aware of the Breach, and in no case later than ten (10) business days after discovery. The Violation shall be treated as "discovered" on the first day which the Violation is known to the Business Associate or, by exercising reasonable diligence would have been known to the Business Associate. For purposes of clarification of this Section, Business Associate must notify Covered Entity of an incident involving the acquisition, access, use, or disclosure of PHI or ePHI in a manner not permitted under 45 C.F.R. Part E within ten (10) business days after an incident even if Business Associate has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA Rules.

- c. Investigation of Breach. Business Associate shall immediately investigate the Violation and report in writing within ten (10) business days to Covered Entity with the following information:
- i. Each Individual whose PHI has been or is reasonably believed to have been accessed, acquired, or disclosed during the Incident;
 - ii. A description of the types of PHI that were involved in the Violation (such as full name, social security number, date of birth, home address, account number);
 - iii. A description of unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data;
 - iv. A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized;
 - v. A description of probable causes of the improper use or disclosure;
 - vi. A brief description of what Business Associate is doing to investigate the Incident, to mitigate losses, and to protect against further Violations;
 - vii. The actions Business Associate has undertaken or will undertake to mitigate any harmful effect of the occurrence; and
 - viii. A Corrective Action Plan that includes the steps Business Associate has taken or shall take to prevent future similar Violations.
- d. Breach Notification.
- i. Business Associate shall cooperate and coordinate with Covered Entity in the preparation of any reports or notices to the Individual, required to be made under the HIPAA Rules or any other Federal or State laws, rules or regulations, provided that any such reports or notices shall be subject to the prior written approval of Covered Entity.
 - ii. Covered Entity shall make the final determination whether the Breach requires

notices to affected Individuals and whether the notices shall be made by Covered Entity or Business Associate.

- iii. For any notice regarding a Breach of Unsecured PHI caused by Business Associate that Covered Entity is required to provide pursuant to 45 C.F.R. §§ 164.404 – 164.408, Business Associate shall reimburse Covered Entity for all costs associated with Covered Entity's obligation of notifying affected Individuals, the Secretary, and the media.
- e. Mitigation. Business Associate shall mitigate to the extent practicable, and at its sole expense, any harmful effects known to the Business Associate of a use, disclosure, or loss of PHI by Business Associate in violation of the requirements of this Agreement, including, without limitation, any Security Incident or Breach of Unsecured PHI. Business Associate shall reasonably cooperate with the Covered Entity's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such threatened or actual Breach, or to recover its PHI, including complying with a reasonable Corrective Action Plan.

Permitted Uses and Disclosures by Business Associate

- a. General Use and Disclosure Provisions. Business Associate may only use or disclose the minimum PHI and ePHI to perform functions, activities, or services for, or on behalf of, Covered Entity, specifically, as necessary to perform the services set forth in the Agreement. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth in subsection b below.
- b. Specific Use and Disclosure Provisions. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI and ePHI:
 - a. As required by law.
 - b. To make uses, disclosures, and requests for PHI consistent with Covered Entity's minimum necessary policies and procedures.
 - c. For the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
 - d. To report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. §§ 164.304 and 164.502(j)(1).

Obligations of Covered Entity

- a. Covered Entity shall notify Business Associate of:
 - a. Any limitation(s) in its notice of privacy practices of Covered Entity in accordance

with 45 C.F.R. § 164.520, to the extent that any such limitation may affect Business Associate's use or disclosure of PHI.

- b. Any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that any such changes may affect Business Associate's use or disclosure of PHI.

Any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that any such restriction may affect Business Associate's use or disclosure of PHI.

- b. Covered Entity agrees that it:

- i. Has included, and will include, in Covered Entity's Notice of Privacy Practices required by the Privacy Rule that Covered Entity may disclose PHI for Health Care Operations purposes.
- ii. Has obtained, and will obtain, from Individuals any consents, authorizations and other permissions necessary or required by laws applicable to Covered Entity for Business Associate and Covered Entity to fulfill their obligations under the underlying Agreement and this Agreement.
- iii. Will promptly notify Business Associate in writing of any restrictions on the use and disclosure of PHI about Individuals that Covered Entity has agreed to that may affect Business Associate's ability to perform its obligations under the underlying Agreement or this Agreement.
- iv. Will promptly notify Business Associate in writing of any change in, or revocation of, permission by an Individual to use or disclose PHI, if the change or revocation may affect Business Associate's ability to perform its obligations under the underlying Agreement or this Agreement.

Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Subpart E of 45 CFR Part 164 if done by Covered Entity, except that the Business Associate may use or disclose PHI and ePHI for management and administration and legal responsibilities of Business Associate.

Term and Termination

- a. Term. The Term of this Agreement shall be effective as of July 1, 2025, and shall terminate when all of the PHI and ePHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI and ePHI, protections are extended to any such information, in accordance with the termination provisions in this Section.
- b. Automatic Termination. This Agreement will automatically terminate upon the termination or expiration of the Agreement or expiration of the services provided.

- c. Termination for Cause. Business Associate agrees that if in good faith Covered Entity determines that Business Associate has materially breached any of its obligations under this Agreement, Covered Entity may:
1. Exercise any of its rights to reports, access, and inspection under this Agreement;
 2. Require the Business Associate to cure the breach or end the violation within the time specified by Covered Entity;
 3. Terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity
 4. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 5. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
 6. Before exercising either (c)(2) or (c)(3), Covered Entity shall provide written notice of preliminary determination to Business Associate describing the violation and the action Covered Entity intends to take.
- d. Effect of Termination
1. Upon termination, cancellation, expiration, or other conclusion of this Agreement, Business Associate shall:
 - a. Return to Covered Entity or, if return is not feasible, destroy all PHI, ePHI, and any compilation of PHI in any media or form. Business Associate agrees to ensure that this provision also applies to PHI and ePHI in possession of subcontractors and agents of Business Associate. Business Associate agrees that any original record or copy of PHI and ePHI in any media is included in and covered by this provision, as well as all originals or copies of PHI or ePHI provided to subcontractors or agents of Business Associate. Business Associate agrees to complete the return or destruction as promptly as possible, but not more than thirty (30) business days after the conclusion of this Agreement. Business Associate will provide written documentation evidencing that return or destruction of all PHI and ePHI has been completed.
 - b. If Business Associate destroys PHI and ePHI, it shall be done with the use of technology or methodology that renders the PHI or ePHI unusable, unreadable, or undecipherable to unauthorized individuals as specified by the Secretary. Acceptable methods for destroying PHI or ePHI include:
 - a. For paper, film, or other hard copy media: shredding or destroying in order that PHI cannot be read or reconstructed; and

- b. For electronic media: clearing, purging, or destroying consistent with the standards of the National Institute of Standards and Technology (NIST).

Redaction is specifically excluded as a method of destruction of PHI and ePHI.

- c. If Business Associate believes that the return or destruction of PHI or ePHI is not feasible, Business Associate shall provide written notification of the conditions that make return or destruction not feasible. If Business Associate determines that return or destruction of PHI or ePHI is not feasible, Business Associate shall extend the protections of this Agreement to the PHI or ePHI and prohibit further uses or disclosures of the PHI and ePHI without the express written authorization of Covered Entity. Subsequent use or disclosure of any PHI and ePHI subject to this provision will be limited to the use or disclosure that makes return or destruction not feasible.

Miscellaneous

- a. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA Rules and any other applicable laws or regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended.
- c. Survival. The respective rights and obligations of Business Associate under Section 7(d), related to "Effect of Termination," of this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity and Business Associate to comply with the HIPAA Rules.
- e. Headings. Paragraph Headings used in this Agreement are for the convenience of the Parties and shall have no legal meaning in the interpretation of this Agreement.
- f. Severability. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.
- g. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to

confer, nor shall anything this Agreement confer, upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

- h. Applicable Law and Venue. This Business Associate Agreement is governed by and construed in accordance with the laws of the State of North Dakota. Any action commenced to enforce this Contract must be brought in the state District Court of Burleigh County, North Dakota.
- i. Contact Persons. Business Associate shall identify “key contact persons” in Attachment A for all matters relating to this Agreement and shall notify Covered Entity of any change in these key contacts during the term of this Agreement in writing within ten (10) business days.
- j. Business Associate agrees to comply with all the requirements imposed on a business associate under Title XIII of the American Recovery and Reinvestment Act of 2009, the Health Information Technology for Economic and Clinical Health (HI-TECH) Act, and, at the request of NDPERS, to agree to any reasonable modification of this Agreement required to conform the Agreement to any Model Business Associate Agreement published by the Department of Health and Human Services.

Entire Agreement

This Agreement and the underlying Agreement contains all of the agreements and understandings between the parties with respect to the subject matter of this Agreement. No agreement or other understanding in any way modifying the terms of this Agreement will be binding unless made in writing as a modification or amendment to this Agreement and executed by both parties.

IN WITNESS OF THIS, **NDPERS** [“Covered Entity”] and **Pharmacy Services Corporation** [“Business Associate”] agree to and intend to be legally bound by all terms and conditions set forth above and hereby execute this Agreement as of the effective date set forth above.

For Covered Entity:

Mike Seminary, Board Chairman
ND Public Employees Retirement System

Date

For Business Associate:

Mike Schwab
Signature

Mike Schwab
Printed Name

EUP
Title

4-25-25
Date

ATTACHMENT "A"
BUSINESS ASSOCIATE KEY CONTACT PERSONS

When applicable, Business Associate shall notify Covered Entity of any change in key contacts during the term of this Agreement in writing within ten business days.

Website URL (if applicable):	
------------------------------	--

FIRST POINT OF CONTACT	
Name:	Mike Schwab
Title:	EUP
Address:	1641 Capital Way
Phone Number:	701-258-4922
Fax Number:	
Email Address:	mschwab@nodakpharmacy.net

SECOND POINT OF CONTACT	
Name:	
Title:	
Address:	
Phone Number:	
Fax Number:	
Email Address:	

Business Associate

(Signature): Mike Schwab

(Print Name): Mike Schwab

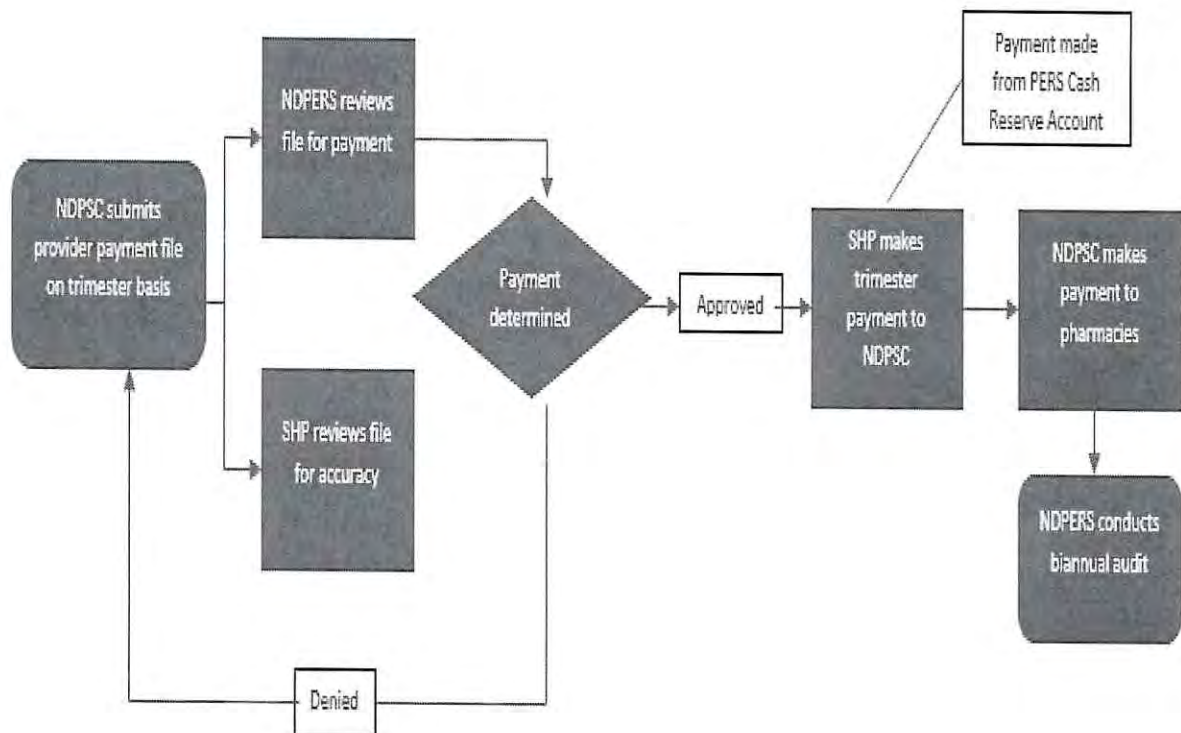
(Title): EUP

(Date): 4-25-25

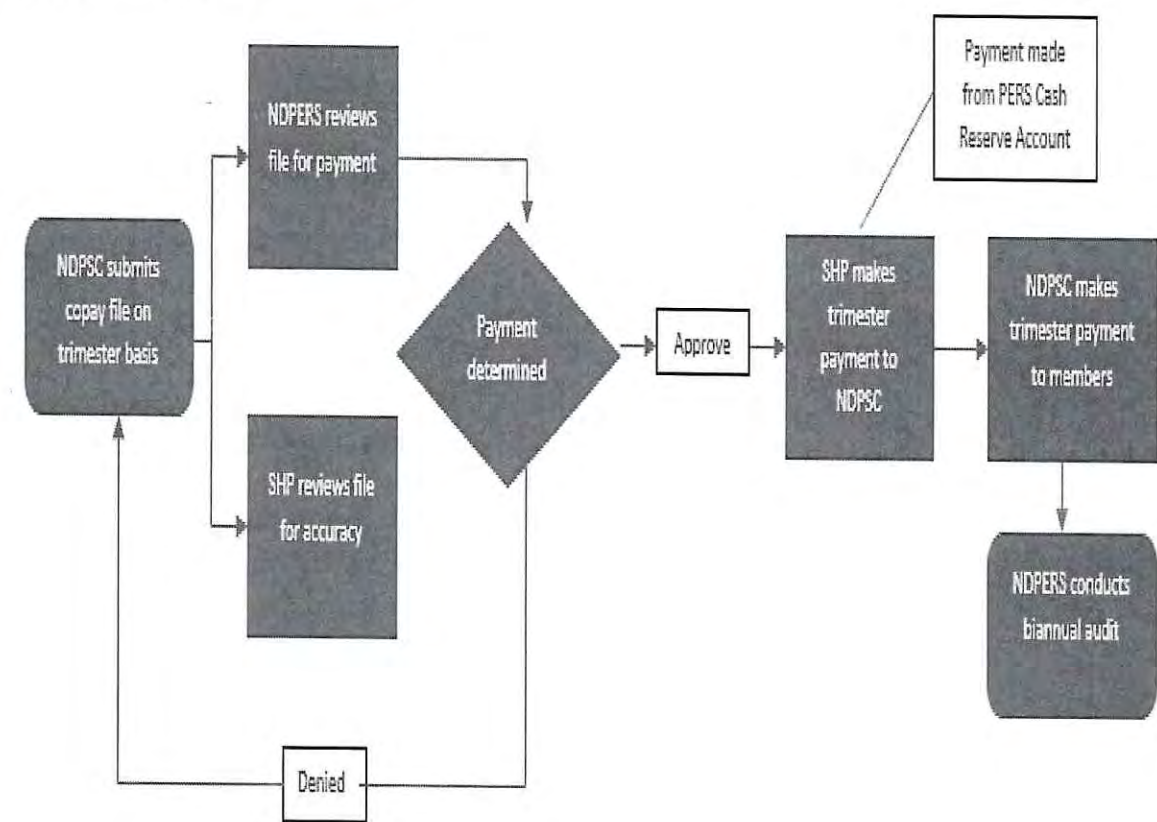
Exhibit A

BIENNIUM BUDGET	
COPAY INCENTIVES	\$223,000
PROVIDER VISITS	\$132,000
ADMIN FEE	\$20,000
MARKETING	\$5,000
TOTAL COST	\$380,000

Provider Payment



Copay Reimbursement





North Dakota
Public Employees Retirement System
1600 East Century Avenue, Suite 2 • PO Box 1657
Bismarck, North Dakota 58502-1657

Rebecca Fricke
Executive Director
(701) 328-3900
1-800-803-7377

Fax (701) 328-3920 Email ndpers-info@nd.gov Website www.ndpers.nd.gov

Memorandum

TO: NDPERS Board

FROM: Rebecca

DATE: May 13, 2025

SUBJECT: Sanford Health Plan (SHP) Updates

SHP will review the attached Executive Summary Quarter 4 2024 and answer any questions you may have. Representatives from Humana are also available to discuss any questions related to the Medicare Part D Plan information, labeled as NDPERS EGWP, found on page 17 of the summary.

In addition, SHP representatives will discuss the results of the 2024 Oscar+ campaigns conducted for NDPERS members.

This item is informational and does not require any action by the Board.

NDPERS Executive Summary

Quarter 4 | 2024

Presented May 2025



CONTENTS

Page 3

Section 1: Membership

Page 5

Section 2: Claims Analysis

Page 9

Section 3: Utilization

Page 10

Section 4: High Dollar Cases

Page 12

Section 5: Pharmacy

Page 18

Section 6: Wellness Continuum

Page 26

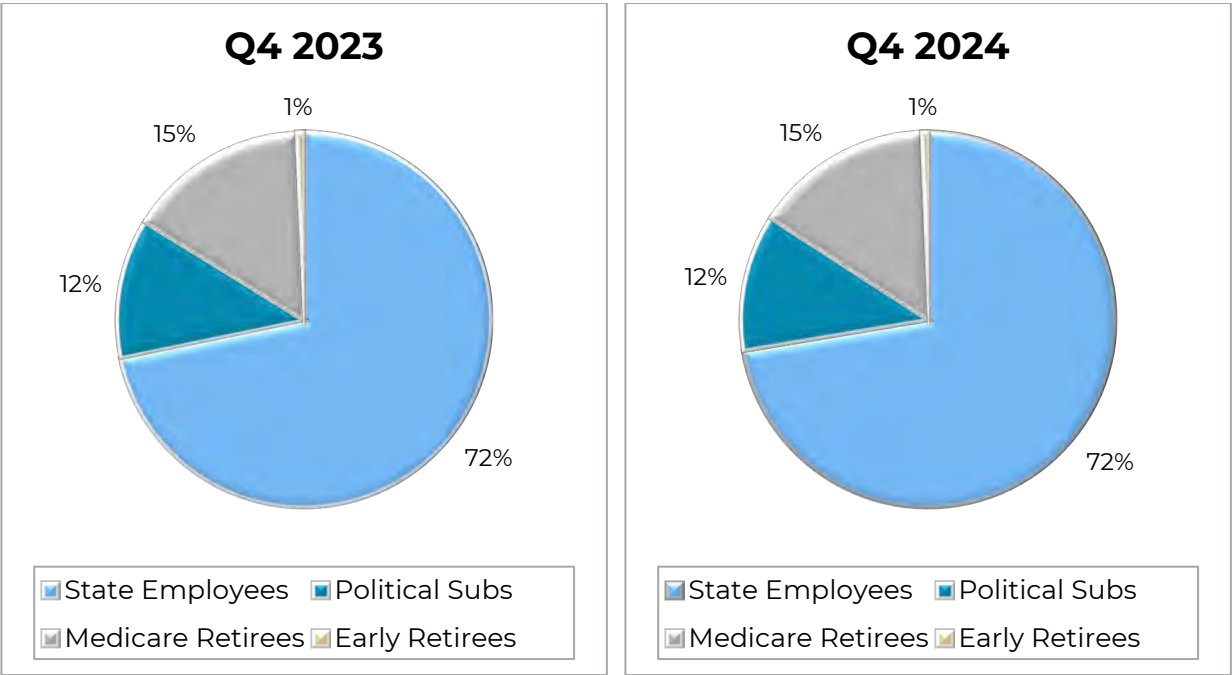
Section 7: Performance Guarantees

SECTION 1: MEMBERSHIP
ANNUAL MEMBERSHIP SUMMARY

Exhibit 1.1

MEASURE	Q4 2023	Q4 2024	PERCENT CHANGE
State Employees	41,915	42,841	2.2%
Political Subs	7,040	6,959	-1.1%
Medicare Retirees	9,079	9,065	-0.2%
Early Retirees	395	338	-14.5%
TOTAL	58,428	59,203	1.3%

Exhibit 1.2



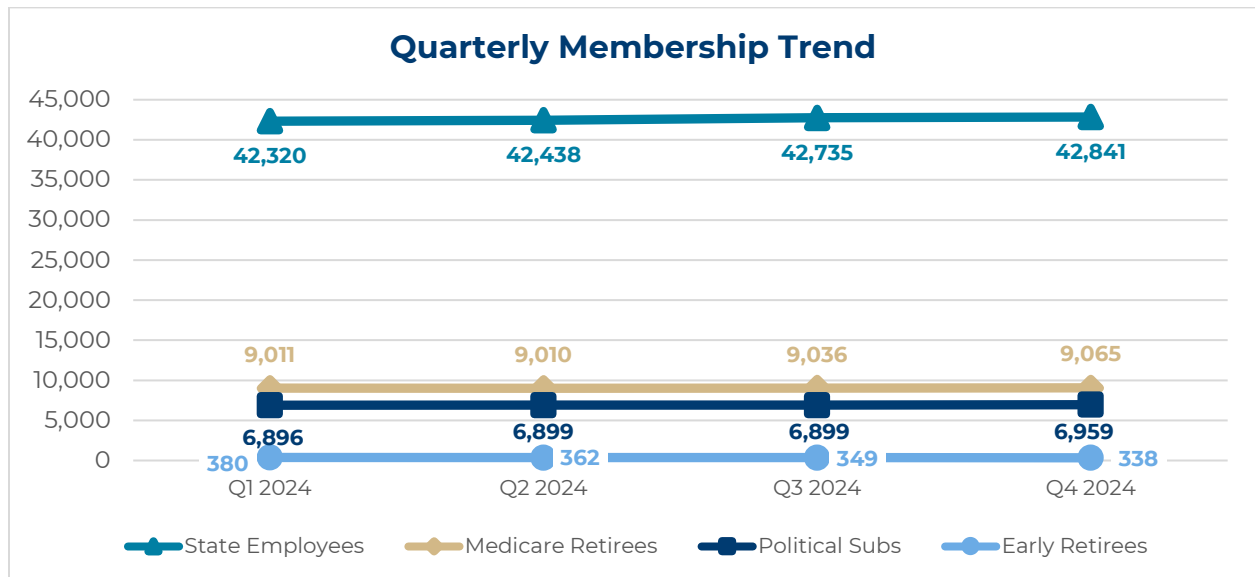
MEMBERSHIP TREND

Exhibit 1.3

MEASURE	Q4 2023	Q4 2024	% CHANGE	BENCHMARK	% VARIANCE
Average Employees	18,436	18,609	0.9%		
Average Members	49,318	49,849	1.1%		
Average Contract Size	2.68	2.68	0.1%		
Average Age	33.8	33.7	-0.5%		
% Female	50.9%	50.8%	-0.2%	50.8%	0%
HCCs (% of Members)	1.0%	0.9%	-2.7%	0.9%	5.8%

*Includes State Employees, Early Retirees & Political Subs.

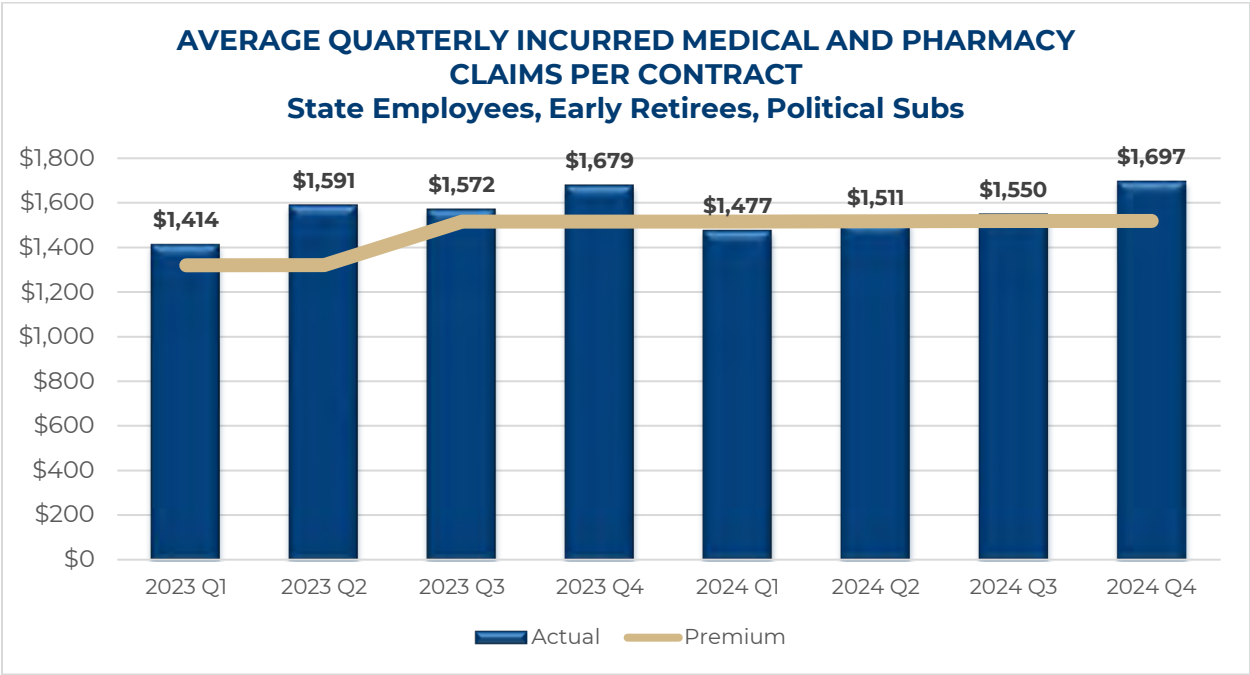
Exhibit 1.4



SECTION 2: CLAIMS ANALYSIS

PAID CLAIMS PER CONTRACT PER MONTH

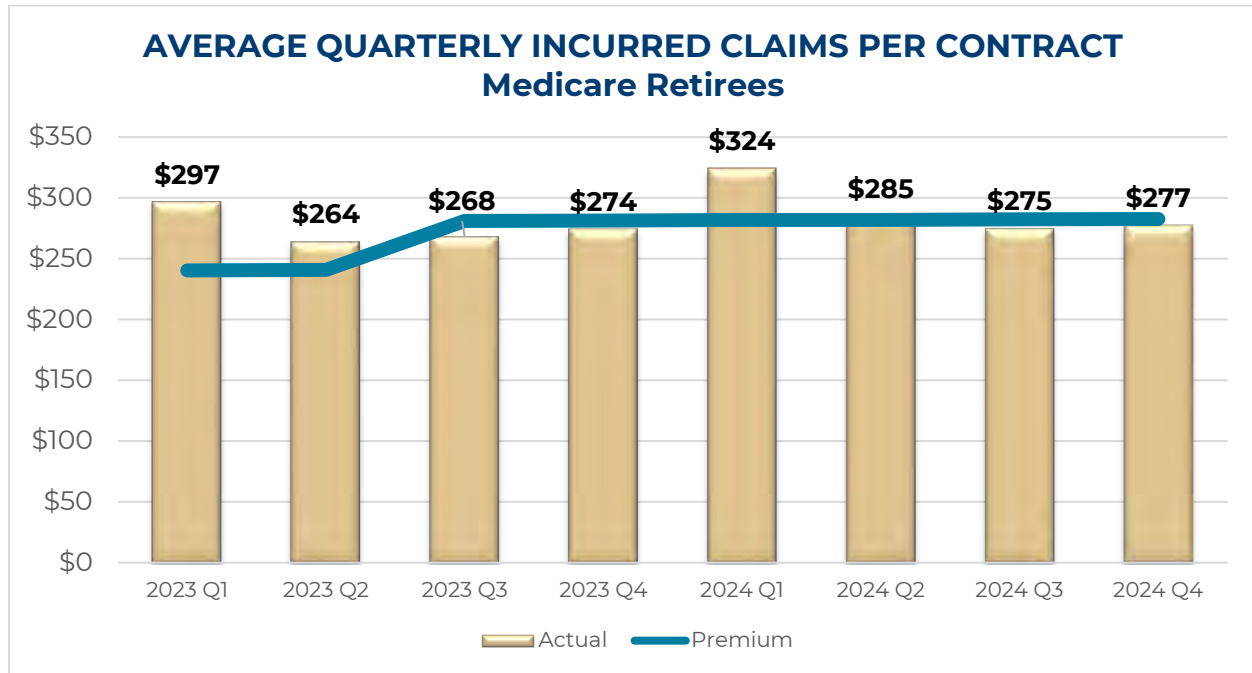
Exhibit 2.1



*Incurred between January 1 and December 31, 2024 with paid date as of March 31, 2025. Final Adjusted Claims.
*NDPERS Active contracts have approximately 2.68 members per contract.
*Includes medical claims and prescriptions without IBNR.
*Additional medical claims may be received.

PAID CLAIMS PER CONTRACT PER MONTH

Exhibit 2.2



*Incurred between January 1 and December 31, 2024 with paid date as of March 31, 2025. Final Adjusted Claims.

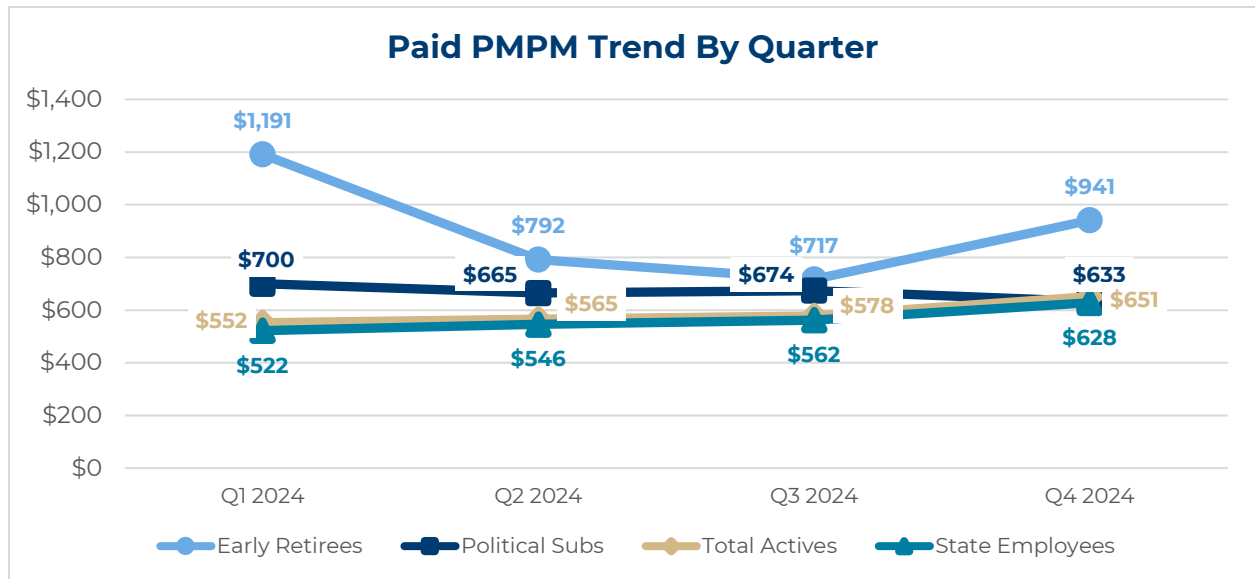
*Includes medical claims only excludes prescription drug coverage (Medicare Part D).

*Additional medical claims may be received.

*Medicare Retirees contracts have approximately 1.37 members per contract.

PAID PER MEMBER PER MONTH (PMPM) TREND BY QUARTER

Exhibit 2.3



*Incurred between January 1 and December 31, 2024 with paid date as of March 31, 2025. Final Adjusted Claims.

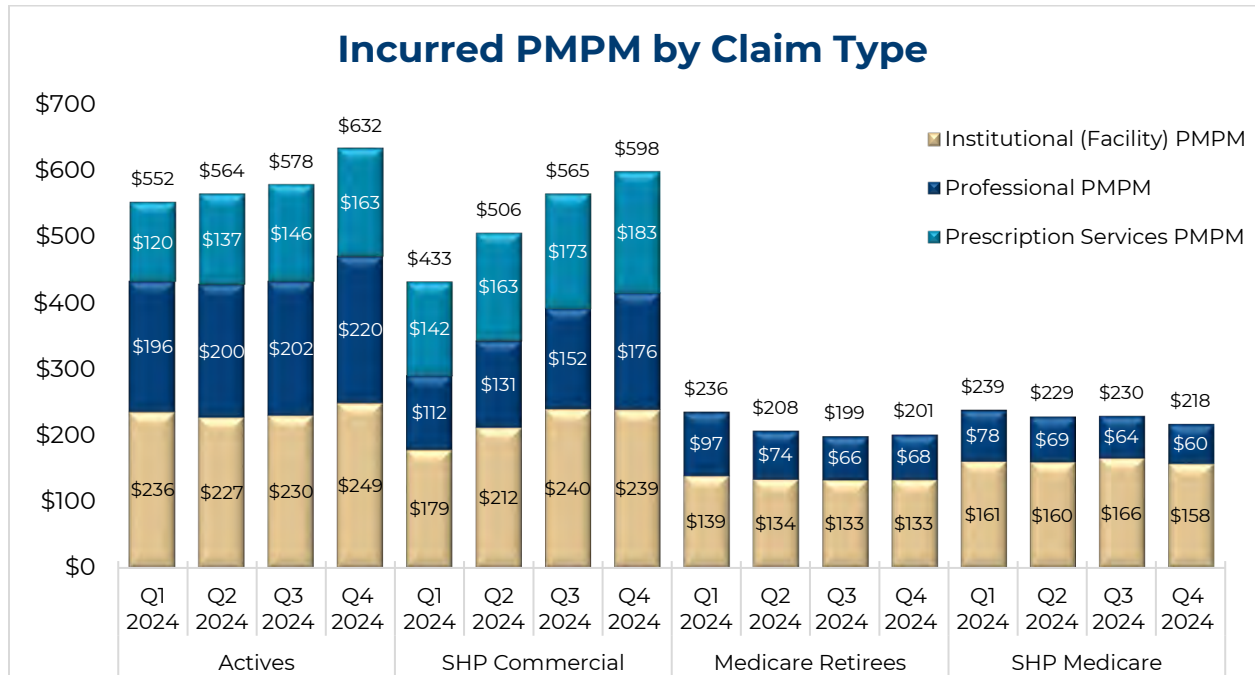
*Total Actives = State Employees + Early Retirees + Political Subs

*Medical claims and Prescription services without IBNR.

*Additional medical claims may be received.

INCURRED PMPM BY CLAIM TYPE

Exhibit 2.4



*Incurred between January 1 and December 31, 2024 with paid date as of March 31, 2025. Final Adjusted Claims.

*Medical claims and prescription services without IBNR.

*Additional medical claims may be received.

SECTION 3: UTILIZATION

MEDICAL COST DRIVERS: ACTIVES

Exhibit 3.1

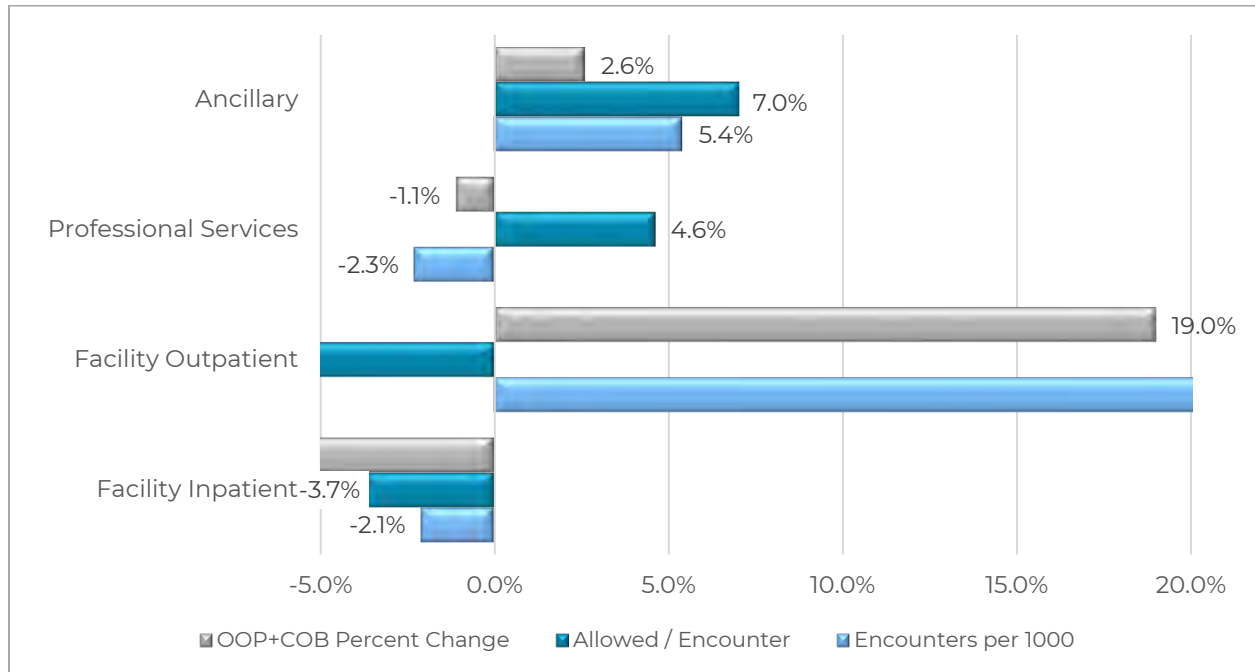


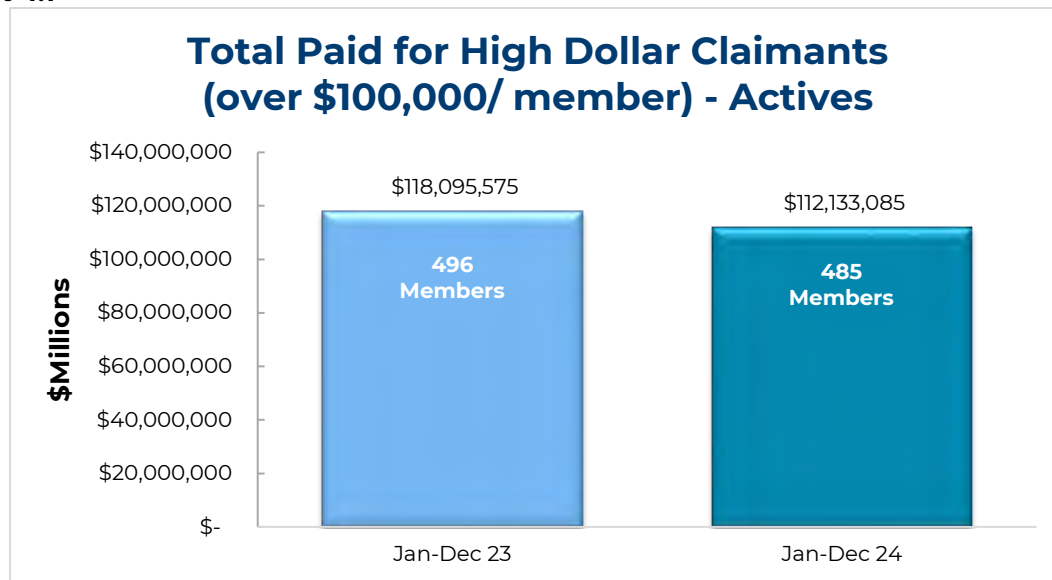
Exhibit 3.2

MEASURE	FACILITY INPATIENT	FACILITY OUTPATIENT	PROFESSIONAL SERVICES	ANCILLARY
Encounters per 1000 Prior Period	50	2,357	13,083	1,711
Encounters per 1000 Current Period	49	3,053	12,786	1,804
% Change	-2.1%	29.5%	-2.3%	5.4%
Amount Allowed per Encounter Prior Period	\$26,377	\$658	\$184	\$365
Amount Allowed per Encounter Current Period	\$25,402	\$557	\$192	\$391
% Change	-3.7%	-15.4%	4.6%	7.0%
OOP+COB PMPM Prior Period	\$0.34	\$16.09	\$38.40	\$3.11
OOP+COB PMPM Current Period	\$0.29	\$19.14	\$37.98	\$3.19
% Change	-14.5%	19.0%	-1.1%	2.6%

*Prior Period: January- December 2023. Current period: January – December 2024. Paid through March 31, 2025.

SECTION 4: HIGH DOLLAR CASES: ACTIVES

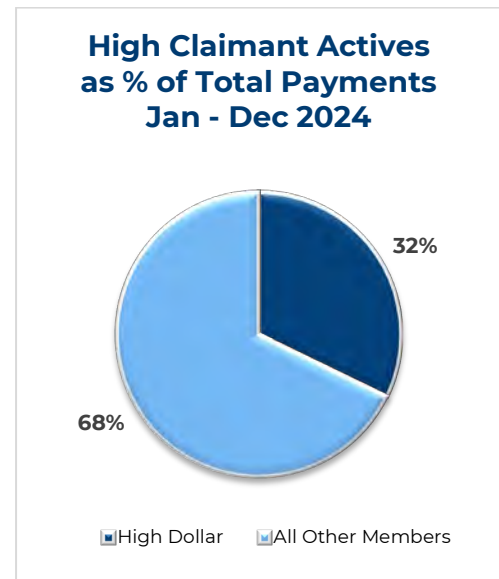
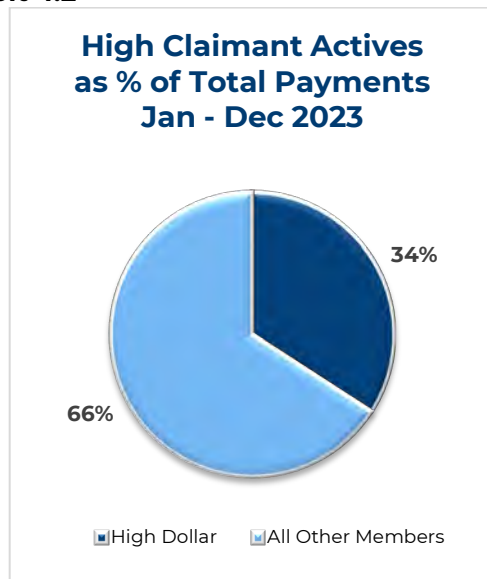
Exhibit 4.1



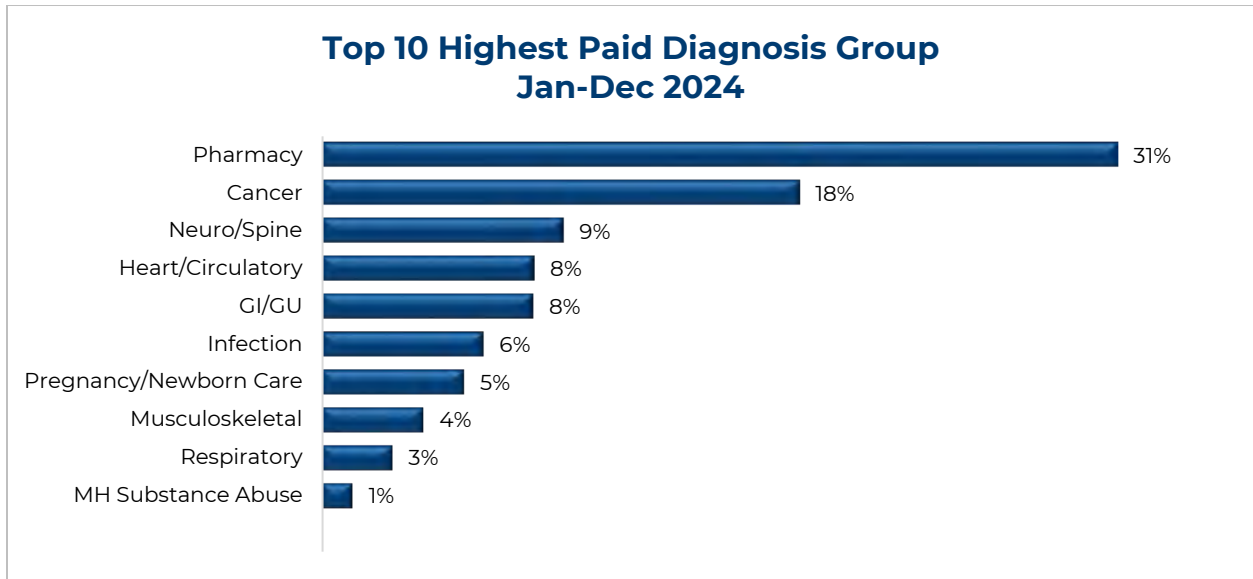
*Medical & Pharmacy claims without IBNR.

*Additional medical claims may be received for 2024 services.

Exhibit 4.2



ACTIVE MEMBERS		
	Jan-Dec 2023	Jan-Dec 2024
Avg. Paid/High Claimant	\$238,096	\$231,202
% of Total Payments	34%	32%

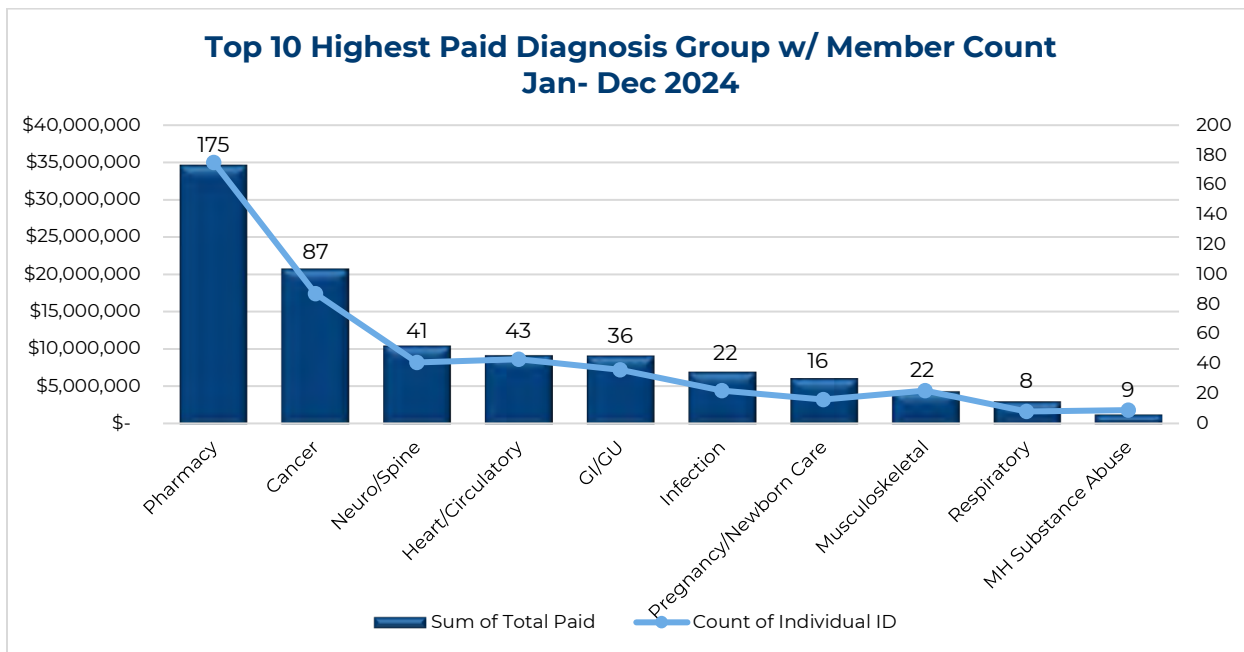
Exhibit 4.3


*The remaining 7% represent 8 diagnosis groups.

*High dollar cases consist of combined medical claims and prescriptions with a total of \$100K or greater.

*Includes Medical claims and Prescription services without IBNR.

*Additional medical claims may be received.

Exhibit 4.4


*The remaining 7% represent 9 diagnosis groups.

*High dollar cases consist of combined medical claims and prescriptions with a total of \$100K or greater.

*Includes Medical claims and Prescription services without IBNR.

*Additional medical claims may be received.

SECTION 5: PHARMACY

Exhibit 5.1

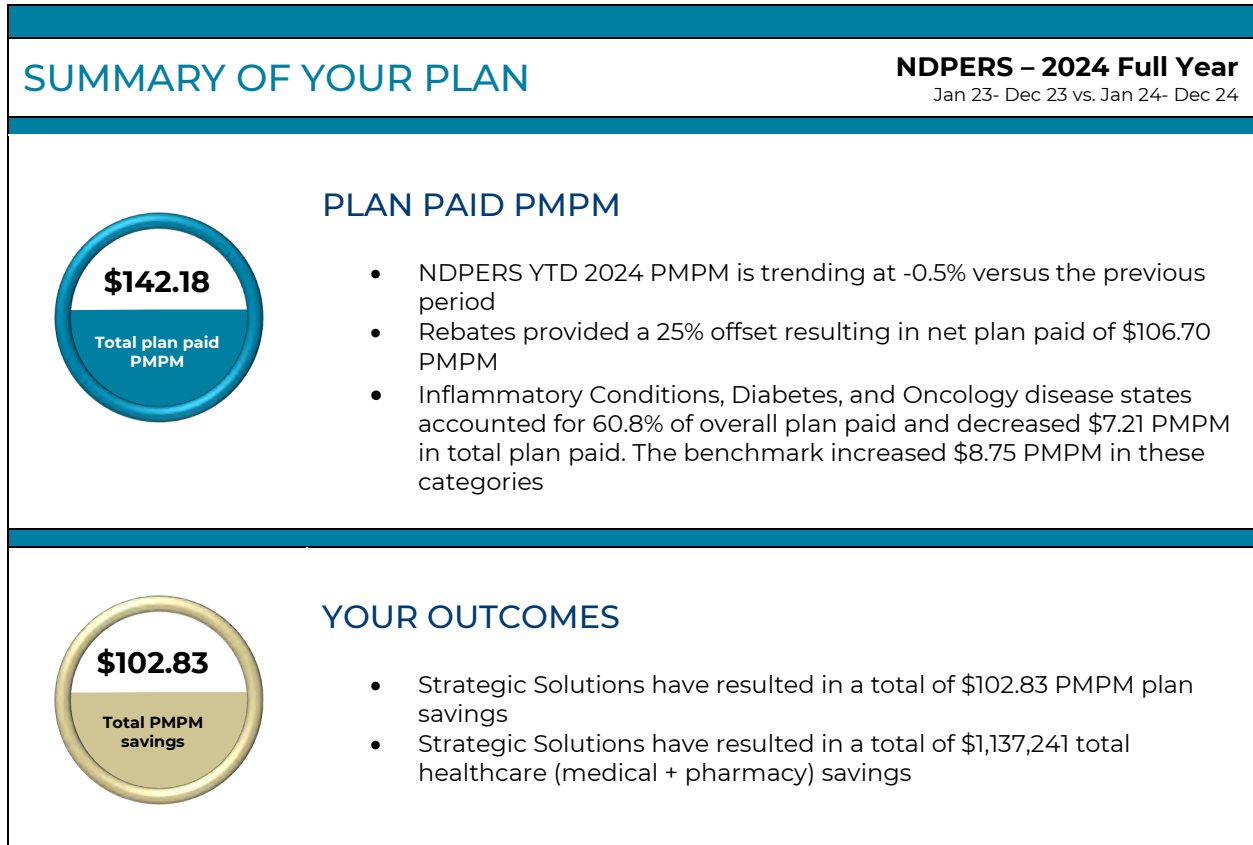


Exhibit 5.2

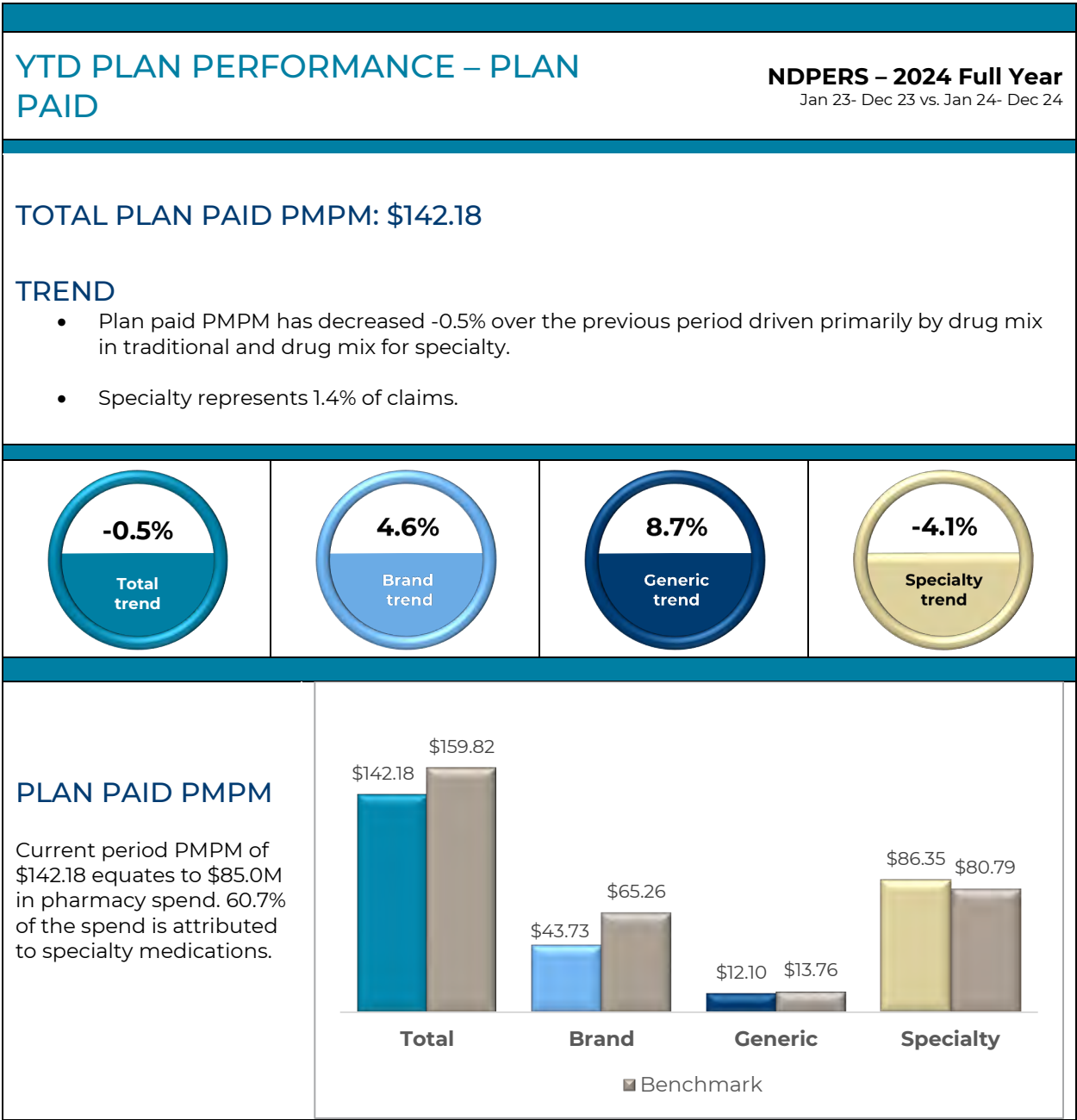
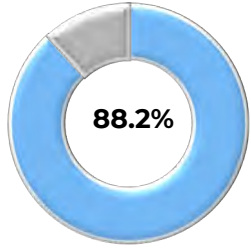
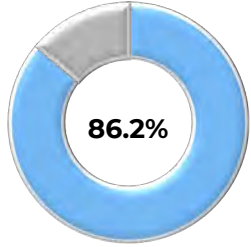
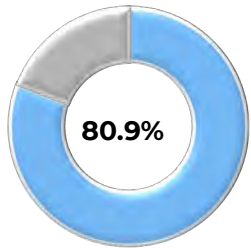


Exhibit 5.4



Exhibit 5.5

TOP 5 THERAPY CLASSES			
PRIOR AUTHORIZATION			
 <p>88.2%</p> <p>Prior authorization savings from top 5 therapeutic class interventions</p>	GPI-4 Description	Number of Cases	Plan Paid Savings
	Chronic Inflammatory Disease	352	\$4,482,164
	GLP-1 Receptor Agonists	1,050	\$2,936,658
	Oncology	55	\$313,039
	Migraine Products	121	\$221,377
	Narcolepsy	5	\$218,258
QUANTITY LIMITS			
 <p>86.2%</p> <p>Quality limits savings from top 5 therapeutic class interventions</p>	GPI-4 Description	Number of Cases	Plan Paid Savings
	Chronic Inflammatory Disease	75	\$1,769,764
	GLP-1 Receptor Agonists	105	\$756,590
	Migraine Products	889	\$600,981
	Multiple Sclerosis	3	\$271,220
	Pulmonary Arterial Hypertension	5	\$103,728
STEP THERAPY			
 <p>80.9%</p> <p>Step therapy savings from top 5 therapeutic class interventions</p>	GPI-4 Description	Number of Cases	Plan Paid Savings
	Atypical Antipsychotics	90	\$258,333
	Diabetes Monitoring and Testing Supplies	347	\$128,505
	Migraine Products	63	\$114,522
	Antidepressants	44	\$36,457
	Urinary Antispasmodics & OAB Drugs	27	\$30,522

NDPERS EGWP: HUMANA

Exhibit 5.6

DESCRIPTION	Q4 2023	Q4 2024	CHANGE
Avg. Members per Month	9,064	9,026	-0.4%
Average Member Age	76.9	77.1	0.3%
Members Utilizing Benefit	8,701	8,629	-0.8%
% Members Utilizing Benefit	96.0%	95.6%	-0.4%
Total Rx	482,539	490,538	1.7%
Total Rx PMPM	2.59	2.60	0.4%
Generic Fill Rate	89.6%	89.4%	-0.2%
Maintenance 90 Day Utilization (by days supplied)	79.4%	79.9%	0.6%
Retail – Maintenance 90 Day Utilization	77.6%	78.1%	0.6%
Home Delivery – Maintenance 90 Day Utilization	1.8%	1.8%	0.0%
Total Specialty Rx	612	742	21.2%
Specialty % of Plan Paid	23.0%	28.9%	25.7%

SECTION 6: WELLNESS CONTINUUM

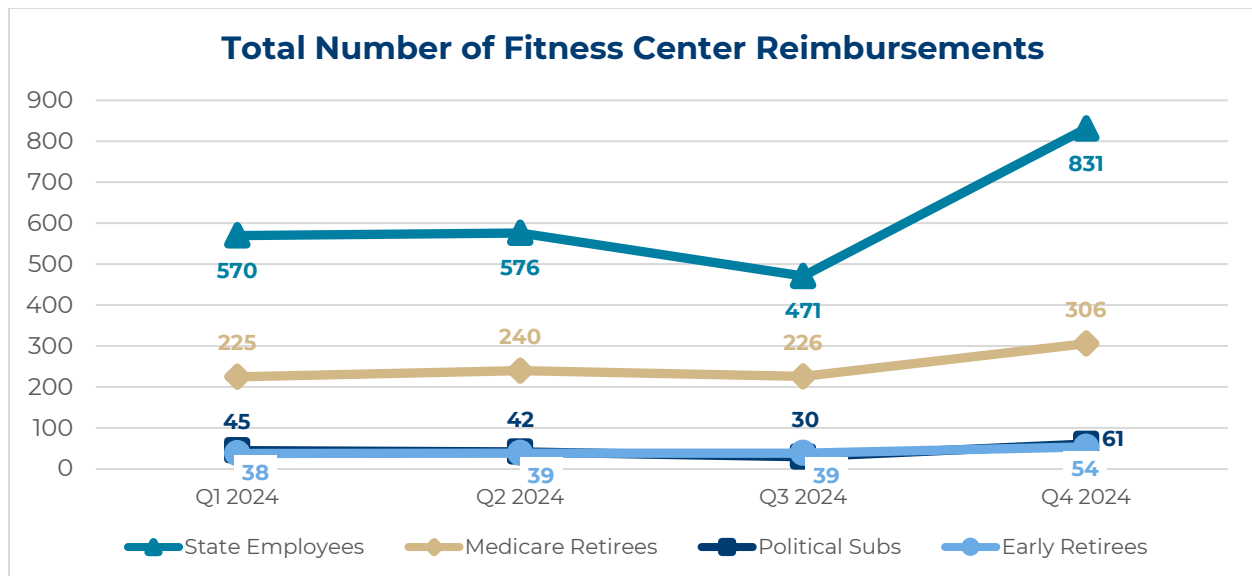
An integrated approach to health management

+Wellness is a family of services that identifies and delivers personalized, whole-person care to members based upon where they are on the wellness continuum. It helps ensure appropriate intervention, diagnoses and treatment plans while navigating members to appropriate resources and high-value specialty care when needed.



DAKOTA WELLNESS PROGRAM FITNESS CENTER REIMBURSEMENT

Exhibit 6.1



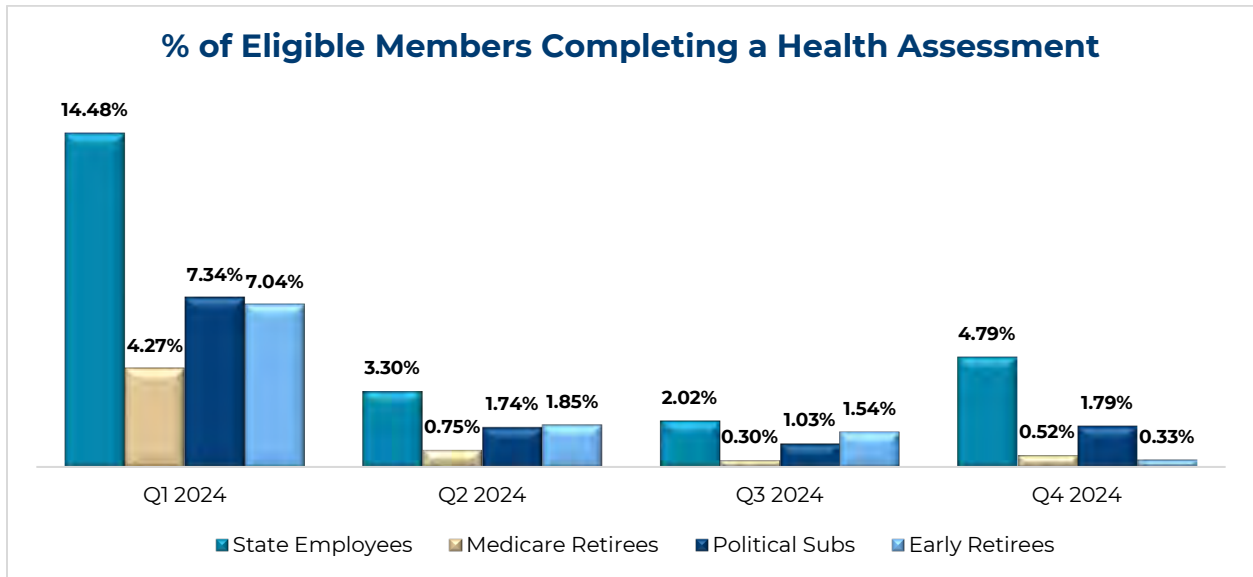
*Chart values are number per quarter and not accumulated.

WELLNESS CONTINUUM



HEALTH ASSESSMENT

Exhibit 6.2



*Percentages are based on numbers per quarter and are not accumulated.

MONTHLY WELLNESS THEMES

Exhibit 6.3

Monthly themes keep the wellness program fresh throughout the year and keeps members engaged in their individual wellness pursuit. Newsletter, e-blasts and worksite posters are used to introduce themes.



Dakota Wellness Program

Mastering Emotional Health:
Strategies for Well-Being

Emotional health is vital for overall well-being, enabling individuals to navigate life's challenges effectively. It involves understanding and managing emotions, both positive and negative, while seeking support when needed. Research suggests emotional health is a skill that can be cultivated, with numerous strategies for improvement.

Here are a few strategies for mastering emotional health:

- SELF-AWARENESS:** Recognize and address emotions and their triggers
- EXPRESSION:** Communicate feelings constructively to avoid internalizing stress
- REFLECTION:** Think before reacting impulsively, promoting thoughtful responses
- PURPOSE:** Find meaning in life through work, relationships or personal pursuits

Learn more in the
Dakota Wellness Program Newsletter.

NDPERS 2022-2023

SANFORD
HEALTH PLAN



Dakota Wellness Program

Mastering Goal Setting:
The Key to Success

Goal setting is the roadmap to success, providing direction, purpose, and motivation in life. By setting clear and achievable goals, individuals can define what they want to accomplish and create a plan to make it happen. Goals give us something to strive for, fueling our ambition and determination. They provide a sense of focus and clarity, guiding our actions and decisions towards desired outcomes.

- It helps prioritize tasks and activities, ensuring that time and resources are allocated efficiently
- It fosters accountability and self-discipline
- It promotes personal growth and development

In essence, goal setting is not just about achieving specific outcomes, it is about living with intention and purpose, continuously striving to become the best version of oneself.

Learn more in the
Dakota Wellness Program Newsletter.

NDPERS 2022-2023

SANFORD
HEALTH PLAN



Dakota Wellness Program

Forging Fortitude:
Unleashing the Power of Inner Strength

Developing inner strength is similar to forging a resilient fortress within oneself, a sanctuary of unwavering resolve and courage amidst life's challenges. It begins with self-awareness, the conscious recognition of one's strengths and weaknesses, and a commitment to nurturing the former while mitigating the latter. Here are some suggestions to foster inner strength.

- Recognizing that true strength lies not in the absence of vulnerability, but in the courage to confront it.
- Reframing obstacles as opportunities for growth.
- Viewing failures as valuable lessons rather than insurmountable barriers.

Learn more in the
Dakota Wellness Program Newsletter.

NDPERS 2022-2023

SANFORD
HEALTH PLAN

Q4 QUARTERLY WELLNESS CHALLENGE

STRESS LESS

- The challenge was for members to take 5 minutes or more each day to relieve stress.
- Participants needed to meet the goal at least 21 out of 28 days.
- Eligible for rewards by meeting at least 14 days.
- Print and digital communication materials, including de-stress tips and activity ideas.
- **Participation:**
 - **Members Enrolled:** 1,256
 - **Percentage of Challenge-eligible Users:** 12.1%
 - **Total Visits:** 22,436 visits
 - **Average Visits per Unique User:** 18

Stress Challenge Overview

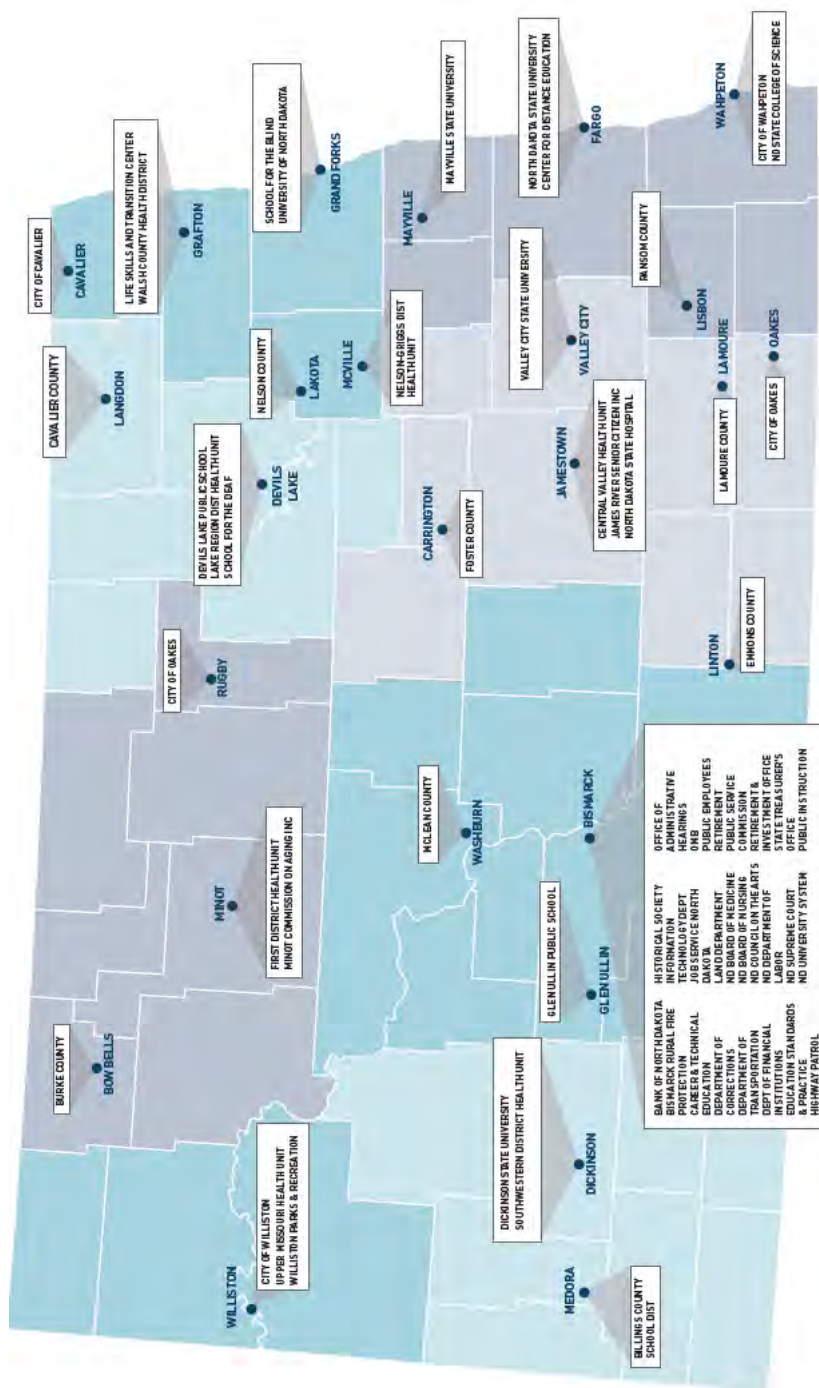
Feel the healing effect of taking “you” time during the Stressless Challenge.

The Challenge: Take 5 minutes or more each day to relieve stress.

- Meet the goal at least 21 out of 28 days.
- Eligible for rewards by meeting least 14 days.
- Print and digital communication materials.
 - Including de-stress tips and activity ideas.



The Sanford Health Plan NDPERS wellness team continues to engage members across the state, despite pandemic-related in-person restrictions. Wellness educators support agency wellness coordinators and provide worksite education and activities in a virtual format. This map shows where participants are from.



**TOTAL NUMBER
OF AGENCIES
VISITED
(UNDUPLICATED)**

WEBINARS/ PRESENTATIONS/ EVENTS:

Make it Happen Mindfulness Exercise without Perfection

Love your Job
Promoting Healthy Behaviors
with Positivity
Overcoming Stress

**TOTAL MEMBER
ATTENDANCE
THIS QUARTER:**
1,984



Preventive Screening Rates

Exhibit 6.4

MEASURE	GOAL by 6/30/25	OUTCOME DATE	CURRENT
FOCUS AREAS			
Breast cancer screening rates	80%	December 31, 2024	81%
Cervical cancer screening rates	85%	December 31, 2024	66%
Colorectal cancer screening rates	60%	December 31, 2024	69%



POPULATION HEALTH TARGETED COHORTS

Exhibit 6.5

PCP (PRIMARY CARE PROVIDER) ATTRIBUTION

PROGRAM OVERVIEW

The purpose of the PCP Attribution outreach was to connect with members that do not have a PCP to discuss the importance of having an established PCP and offer assistance.

- Assistance provided:
- Identify a PCP
 - Schedule an Annual Wellness Visit
 - Discuss preventive screening care gaps
 - Set up My Sanford Chart

ATTRIBUTION CAMPAIGN PERFORMANCE METRICS: TELEPHONIC				
LINE OF BUSINESS	MEMBERS OUTREACHED	MEMBERS CONTACT MADE	MEMBERS ACCEPTED ASSISTANCE	SCHEDULE RATE
NDPERS	4,385	1,187	174	4.0%

Member Accepted Assistance		
assistance provided		
37 members 3%	101 members 9%	36 members 3%
Helped Identify PCP and/or schedule annual wellness visit	Helped member navigate sites for independent scheduling	Confirmed upcoming scheduled appointments

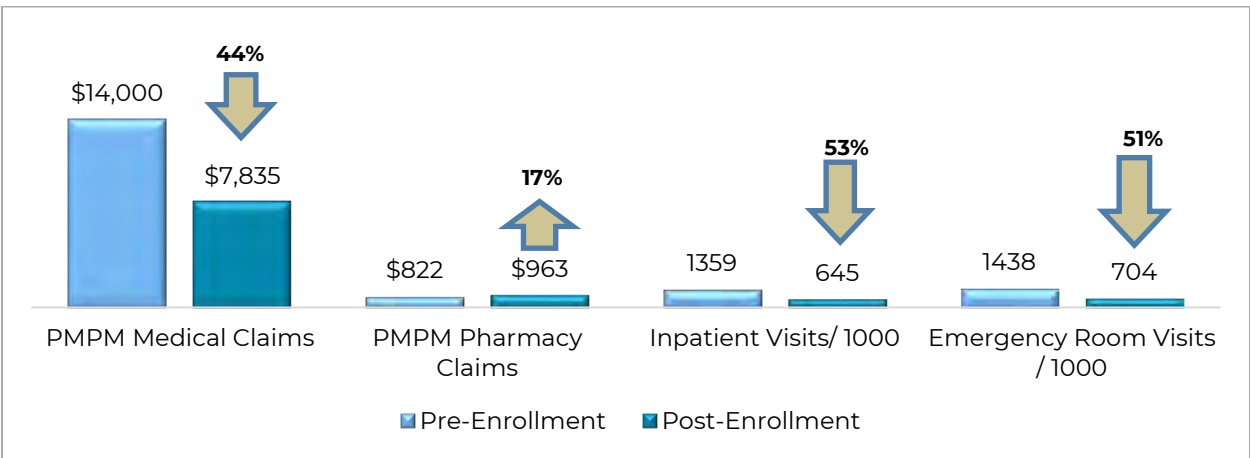
WELLNESS CONTINUUM



CARE MANAGEMENT ENGAGEMENT

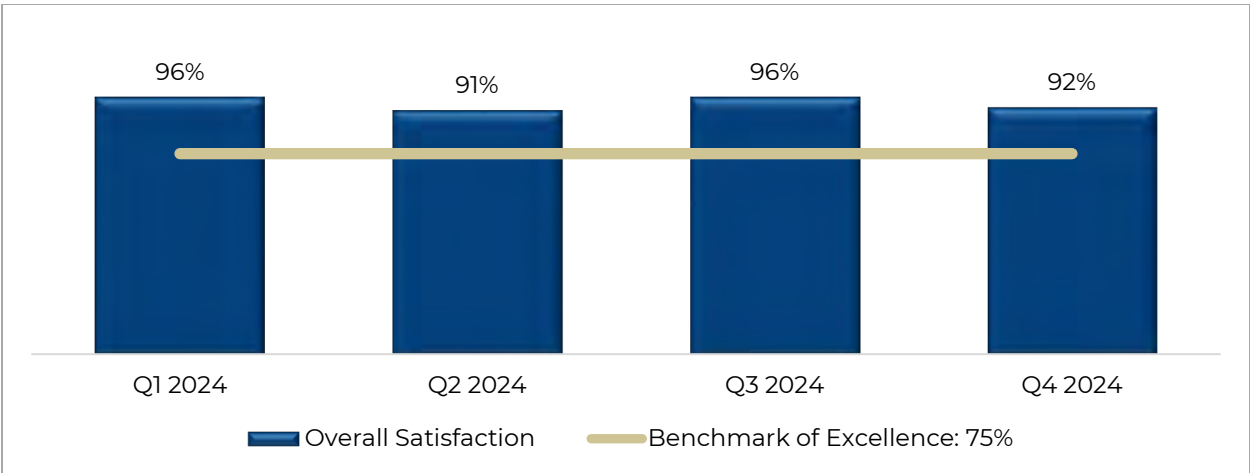
Exhibit 6.6

CARE MANAGEMENT PERFORMANCE METRICS				
January 1 – December 31, 2024				
OFFERED	RESPONDED		ENGAGED	
3,086	1,581	51%	523	33%



SURVEY SCORE

Exhibit 6.7



SECTION 7: PERFORMANCE GUARANTEES

Exhibit 7.1

MEASURE	GOAL	MEASUREMENT PERIOD	Q4 2024 REPORTING PERIOD	CURRENT
WELLNESS				
Health risk assessment completion	18%	7/1/23 – 6/30/25	7/1/23 – 12/31/24	17.81%
Worksite interventions agency participation	75%	7/1/23 – 6/30/25	7/1/23 – 12/31/24	70.7%
Fitness reimbursement participation	5%	1/1/24 – 12/31/24	1/1/24 – 12/31/24	5.4%
Wellness redemption center payments	\$850,000	1/1/24 – 12/31/24	1/1/24 – 12/31/24	\$1,052,803
Wellness redemption center rate	9%	1/1/24 – 12/31/24	1/1/24 – 12/31/24	11.73%
HEALTH OUTCOMES				
Healthy Pregnancy Program	+3%	7/1/24 – 6/30/25	7/1/23 – 12/31/24	20%
Diabetes Prevention Program	5%	1/1/24 – 12/31/24	1/1/24 – 12/31/24	8%
Breast cancer screening rates	80%	7/1/23 – 6/30/25	7/1/23 – 12/31/24	81%
Cervical cancer screening rates	85%	7/1/23 – 6/30/25	7/1/23 – 12/31/24	66%
Colorectal cancer screening rates	60%	7/1/23 – 6/30/25	7/1/23 – 12/31/24	69%
PROVIDER NETWORK / CONTRACTING				
PPO network participation rate	Hospital, MDs & DOs: 92%	7/1/23 – 6/30/25	7/1/23 – 12/31/24	100% Hospital 97% MD/DO
Provider network minimum discount	30%	7/1/23 – 6/30/25	1/1/24 – 12/31/24	44.9%
CUSTOMER SERVICE & CLAIMS				
Claims financial accuracy	99%	7/1/24 – 6/30/25	7/1/24 – 12/31/24	99.98%
Claims payment accuracy	98%	7/1/24 – 6/30/25	7/1/24 – 12/31/24	99.84%
Claim timeliness	95%	7/1/24 – 6/30/25	7/1/24 – 12/31/24	98.23%
Claims processing accuracy	95%	7/1/24 – 6/30/25	7/1/24 – 12/31/24	99.8%
Average speed of answer	30 seconds	7/1/24 – 6/30/25	7/1/24 – 12/31/24	10 seconds
Call abandoned rate	5% or less	7/1/24 – 6/30/25	7/1/24 – 12/31/24	0.16%
First call resolution	95%	7/1/24 – 6/30/25	7/1/24 – 12/31/24	96.3%
Written inquiry response time	95%	7/1/24 – 6/30/25	7/1/24 – 12/31/24	99.55%
PHARMACY & FINANCIAL				
Prescription drug turnaround times	98%	7/1/23 – 6/30/25	7/1/24 – 12/31/24	100%
Network Pharmacy Access	<5%	7/1/24 – 6/30/25	7/1/24 – 12/31/24	100%
About the Patient program payment	5 days	7/1/24 – 6/30/25	7/1/24 – 12/31/24	100%
Interest Rate determined by PERS/SHP	Quarterly	7/1/23 – 6/30/25	7/1/24 – 12/31/24	100%



Sanford Health Plan <> +Oscar 2024 Recap

Updated: Week of February 10th, 2025



2024 Campaigns

Q1			Q2			Q3			Q4		
Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec
		AWV*									
			Newsletter								
				Benefits							
							HEDIS*				
								Immunization*			

Total: 5 Campaigns

* = Conversions available



YTD Stats

Over the course of 5 campaigns launched this year, we have seen consistently high engagement with NDPERS members which indicates high potential for risk adjustment returns.

35,479

Total Outreached

All members on the eligibility file with a valid email address and/or phone number who were eligible to receive a communication

85.8%

Impression Rate

Ratio of emails opened and/or SMS received over communications received

30,430

Total Impressed

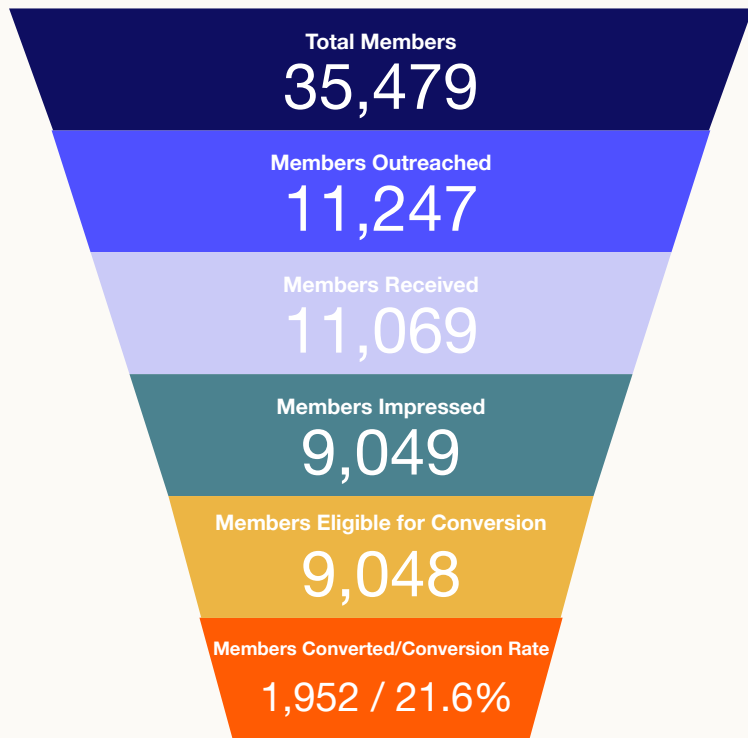
All members who opened an email or received an SMS

1.4%

Email Unsubscribe Rate

Rate of members who unsubscribed from communications

Campaign Funnel - HEDIS Example



Members Outreached	All members on the eligibility file.
Members Outreached	All members on the eligibility file who are 18+ and have a valid email address and/or phone number who were eligible to receive a communication.
Members Received	All enrolled members who successfully received at least one campaign communication.
Members Impressed	All members who opened at least one email or received at least one SMS.
Members Eligible for Conversion	All members who opened at least one email or received at least one SMS within the conversion time frame (i.e. 30 days)
Members Converted/ Conversion Rate	All eligible members who fulfill the CTA of the campaign after opening and email and/or receiving an SMS.

Campaign Engagement Metrics

NDPERS members are extremely engaged across both email and SMS, often engaging with campaigns more than other LOBs.

Campaign	Email					SMS				
	Total Outreached	Impressions	Impression Rate	Click Thru Rate	Opt-outs	Total Outreached	Impressions	Impression Rate	Click Rate	Opt-outs
Newsletter	31,759	19,774	62.3%	3.8%	0.5%	N/A	N/A	N/A	N/A	N/A
AWV	25,316	11,887	47.0%	3.1%	0.2%	4,126	4,126	100%	15.6%	0.0%
Benefits	25,147	15,403	61.3%	3.4%	0.5%	12,620	12,620	100%	7.9%	0.0%
Immunization	25,047	15,717	62.8%	1.4%	0.7%	12,630	12,630	100%	16.0%	0.0%
HEDIS	9,906	6,759	68.2%	3.3%	0.5%	4,761	4,761	100%	7.6%	0.0%

NOTE: Click thru rate is a function of clicks on URLs within comms that were opened, whereas click rate is a function of clicks on URLs within comms that were sent

NDPERS Members Converted

Members are considered converted if they interacted with an email or SMS and scheduled a doctor's appointment to address their relevant gaps within 90 days.

6,759

Impressed Members

1,952

Converted Members

21.6%

Scheduled



Category	Gap	Average Conversion Rate	NDPERS Conversion Rate
Preventive Screenings	Blood Pressure Reading	35.0%	28.4%
	Breast Cancer Screening	24.7%	30.1%
	Cervical Cancer Screening	7.6%	10.3%
	Colorectal Cancer Screening	5.8%	9.5%
Diabetic Screenings	Diabetic Eye Exam	8.0%	12.7%
	A1C Screening	Unavailable	Unavailable

At the overall gap-level, **NDPERS members outperformed the average CTA completion nearly across the board.**

Due to missing data in the OQM extract, **+Oscar was unable to track A1C screening conversions. Any data Sanford has on this would help +Oscar calculate this value.**

NDPERS Members Converted

Members are considered converted if they interacted with an email or SMS and completed a vaccine appointment within 30 days.

25,047

Impressed Members

1,309

Converted Members

5.9%

Scheduled



Immunization	Average Conversion Rate	NDPERS Conversion Rate
Flu	3.4%	3.8%
RSV	3.0%	1.1%
Covid	2.4%	2.7%
Pneumococcal	0.6%	0.6%
Zoster	0.3%	0.4%
Tdap	0.1%	0.2%

Immunization rates were calculated via claims data. **This represents a subsection of a likely much larger picture, as members often get immunizations in non-clinical settings (libraries, the workplace, pharmacies, etc.).**

In the next iteration of this campaign, +Oscar will include a survey to gather information about where members got their flu shots to get a better understanding of the true conversion rate.

NDPERS Members Converted

Members are considered converted if they interacted with an email or SMS and scheduled their AWV within 30 days.

64,887

Impressed Members

1,723

Converted Members

27.1%

Scheduled

This represents one of the **highest AWV conversion rates +Oscar has seen among its clients** (typical rates are in single digits).

Per the national average value for AWVs (\$800), **this campaign generated a total value of ~\$1.4 million.**



**North Dakota
Public Employees Retirement System**
1600 East Century Avenue, Suite 2 • PO Box 1657
Bismarck, North Dakota 58502-1657

Rebecca Fricke
Executive Director
(701) 328-3900
1-800-803-7377

Fax (701) 328-3920 Email ndpers-info@nd.gov Website www.ndpers.nd.gov

Memorandum

TO: NDPERS Board

FROM: Katheryne Korom

DATE: May 13, 2025

SUBJECT: Employee Assistance Program (EAP) Contracts

At the April Board meeting, the Board awarded EAP contracts to CHI St. Alexius Health, The Village, Bree Health (eni NexGen), ComPsych, and TELUS Health pending successful contract negotiations. The attached contracts from CHI St. Alexius Health, The Village, Bree Health (eni NexGen), and ComPsych were drafted by NDPERS legal staff and approved by representatives from each provider. TELUS Health withdrew their proposal.

BOARD ACTION REQUESTED:

Approve the contracts and Board Chairman's signature for the Employee Assistance Program with CHI St. Alexius Health, The Village, Bree Health (eni NexGen), and ComPsych for the July 1, 2025, through June 30, 2027, contract period.

Attachments

Appendix A – CONTRACT

CONTRACT FOR SERVICES BETWEEN EMPLOYEE NETWORK, INC. AND NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM

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 *Employee Network, Inc.* having its principal place of business at *1040 Vestal Parkway East, Vestal, NY 13850* (CONTRACTOR);

2. SCOPE OF WORK

CONTRACTOR, in exchange for the compensation paid by STATE under this Contract, shall provide the services as specified in the 2025 bid document and referenced in Exhibit A – SOW.

3. COMPENSATION – PAYMENTS

a. Contractual Amount

STATE shall pay for the accepted services provided by CONTRACTOR under this Contract an amount not to exceed **\$1.54 PEPM**(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. Payment

- 1) Payment made in accordance with this Compensation section shall constitute payment in full for the services and work performed and the deliverables and work(s) provided under this Contract and CONTRACTOR shall not receive any additional compensation hereunder.
- 2) STATE shall make payment under this Contract within forty-five (45) calendar days after receipt of a correct 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 thereto. CONTRACTOR's invoice will be subject to reduction for amounts included in any invoice or payment made which are determined by STATE, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute allowable costs. At STATE's sole discretion, all payments shall be subject to reduction for amounts equal to prior overpayments to CONTRACTOR.

- 4) For any amounts that are or will become due and payable to STATE by CONTRACTOR, STATE reserves the right to deduct the amount owed from payments that are or will become due and payable to CONTRACTOR under this Contract.

c. Travel

CONTRACTOR acknowledges travel costs are covered by the Contractual Amount and shall not invoice STATE for travel costs.

d. Prepayment

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

e. 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 certificates of exemption upon request by the CONTRACTOR.

f. Taxpayer ID

CONTRACTOR'S federal employer ID number is: **16-1285790**.

4. TERM OF CONTRACT

This Contract term (Term) begins on **July 1, 2025** and ends on **June 30, 2027**.

a. No Automatic Renewal

This Contract will not automatically renew.

5. TIME IS OF THE ESSENCE

CONTRACTOR hereby acknowledges that time is of the essence for performance under this Contract unless otherwise agreed to in writing by the Parties.

6. TERMINATION

a. Termination by Mutual Agreement

This Contract may be terminated by mutual consent of both Parties executed in writing.

b. Early Termination in the Public Interest

STATE is entering this Contract for the purpose of carrying 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 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 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 of the other provisions of this Contract, or so fails to pursue the work 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.

7. FORCE MAJEURE

Neither Party shall be held responsible for delay or default caused by fire, riot, terrorism, pandemic (excluding COVID-19), 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, then STATE may seek all available remedies, up to and including termination of this Contract pursuant to its Termination Section, and STATE shall be 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.

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 defend, indemnify, and hold the State harmless 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 Contract and CONTRACTOR shall require all subcontractors, prior to commencement of a contract 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) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$500,000 per person and \$2,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- 4) Employer's liability or "stop gap" insurance of not less than \$2,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- 5) 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. The amount of any deductible or self-retention is subject to approval by the STATE.

- 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 Contract shall not be limited by the insurance required in this Contract.
- 4) The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, 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 CONTRACT 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) The CONTRACTOR shall furnish a certificate of insurance to the undersigned STATE representative prior to commencement of this Contract. All endorsements shall be provided as soon as practicable.
- 7) Failure to provide insurance as required in this Contract is a material breach of contract entitling the STATE to terminate this Contract 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.

10. WORKS FOR HIRE

CONTRACTOR acknowledges that 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 hereby 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 shall be the sole property of STATE, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein 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:

STATE	CONTRACTOR
Name: Mike Seminary	Name: Gene Raymondi
Title: Board Chairman	Title: CEO
Address: 1600 East Century Ave, Suite 2 PO Box 1657	Address: 1040 Vestal Parkway East
City, State, Zip: Bismarck, ND 58502-1657	City, State, Zip: Vestal, NY 13850

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 shall 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 as authorized in advance by STATE. STATE shall 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.

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 as Exhibit B.

14. COMPLIANCE WITH PUBLIC RECORDS LAWS

Under the North Dakota public records law and subject to the Confidentiality clause of this Contract, 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 agrees to contact STATE immediately upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to such 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 hereunder in the event of a change of control or sale of all or substantially all of its assets related to this Contract, whether by merger, reorganization, operation of law, or otherwise. Should Assignee be a business or entity with whom STATE is prohibited from conducting business, STATE shall have the right to terminate 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 does not have authority to contract for or incur obligations on behalf of STATE.

17. SPOLIATION – PRESERVATION OF EVIDENCE

CONTRACTOR shall promptly notify STATE of all potential claims that arise or result from this Contract. CONTRACTOR shall also 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, in the event of 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, including all attachments and exhibits, as may be amended;
- b. STATE's Request for Proposal ("RFP") number 192.02-03-25,
- c. CONTRACTOR's proposal in response to RFP number 192.02-03-25.
- d. 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. 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 that term.

20. 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 such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

21. 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.

22. ATTORNEY FEES

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

23. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

CONTRACTOR agrees to 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.)

CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation and workers' compensation premiums.

CONTRACTOR shall have and keep current and in good standing all licenses and permits required by law during the Term of this Contract all licenses and permits required by law.

CONTRACTOR's failure to comply with this section may be deemed a material breach by CONTRACTOR entitling STATE to terminate in accordance with the Termination for Cause section of this Contract.

24. 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.

25. COUNTERPARTS

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

26. 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 shall be deemed the Effective Date.

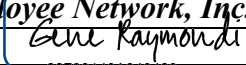
CONTRACTOR	STATE OF NORTH DAKOTA
<small>DocuSigned by:</small> <i>Employee Network, Inc.</i>	Acting through its NDPERS
BY: 	BY:
<small>22739140A99D0423...</small> <i>Gene Raymond</i>	Mike Seminary
CEO	NDPERS Board Chairman
Date: 4/9/2025 3:24 PM EDT	Date:

EXHIBIT A - Scope of Work

A. Member Orientation

- 1) The vendor shall conduct the member orientation for state employees in the EAP. This effort will consist of the following activities:
 - a) Prepare and print appropriate informational material for distribution to all employers.
 - b) Conduct all presentations in a courteous, prudent, and professional manner without any pressure or harassment. The emphasis of all presentations and informational material shall be placed upon a factual representation of the features of the EAP.
 - c) Attend and present information at the NDPERS virtual Employer Conference upon request per the guidelines provided by NDPERS.
 - d) Participate in NDPERS or agency wellness and benefit fairs or meetings upon request.
- 2) If the EAP vendor selected by the agency is not the vendor that provided services during the 2023-2025 biennium, the EAP vendor must:
 - a) Distribute informational material to all agency employees advising them of the change in vendors and supplying appropriate reference material.
 - b) If requested by the employer, hold an informational meeting for agency employees.

B. Minimum Services

- 1) Confidential, voluntary, short-term assessment, and counseling sessions for employees and families experiencing life problems of any kind. The EAP will provide counseling for problems related, but not limited to: stress, addiction, family, work, grief, tobacco, alcohol and drugs, marriage and divorce, depression, parent-child relationships, child/spouse abuse, aging, eating disorders, finances, school, gambling, suicide, and mental health. Proper referrals will be made if more extensive or further counseling is needed and the number of personal counseling sessions is exhausted.
- 2) Intervention, assessment, referral, and ongoing consultation with supervisors or employees regarding problems in the workplace.
- 3) Consultation and case management regarding challenging workplace problems, such as harassment, conflict resolution, violence, critical incidents, work performance, and change.

- 4) Educational programs, including training of State supervisory personnel on the use of EAP services and employee seminars.
- 5) Administrative services, including employee communications.
- 6) The table in Section VII - 9 shows the minimum requirements for selected features of the EAP.
- 7) All services proposed as part of the EAP must be available within the proposed geographic area.
- 8) Before March 1 of each year, the vendor will provide NDPERS an aggregate report of services provided to NDPERS members for the previous calendar year and the results of a member satisfaction survey.

C. Consulting

The vendor will be expected to serve as a consultant for the EAP to the agency and to the NDPERS Board, Executive Director, and NDPERS staff. In this capacity, the vendor may be expected to attend meetings to present findings and recommendations as required. The NDPERS Board meets on a monthly basis. The vendor must provide the following:

- 1) Information on proposed state and federal laws affecting the EAP.
- 2) General assistance to NDPERS regarding the administration of the EAP.
- 3) Advice in determining the eligibility and services of the EAP.
- 4) The effect of changes in law or administrative interpretations on the operations of the EAP.

Exhibit B - Business Associate Agreement

This Business Associate Agreement is entered into by and between, the North Dakota Public Employees Retirement System (“NDPERS”) and the **EMPLOYEE NETWORK, INC.**, each individually a “Party” and collectively the “Parties.” This Agreement is hereby incorporated into the underlying Contract, **CONTRACT FOR SERVICES BETWEEN EMPLOYEE NETWORK, INC. AND NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM**, between the parties dated **July 1, 2025** (hereinafter both the Agreement and underlying Contract shall collectively be referred to as the “Agreement”).

DEFINITIONS

Terms used, but not otherwise defined, in this Agreement have the same meaning as those terms in the HIPAA Rules.

Catch-all definitions:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

- a. Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR § 160.103, and in reference to the party to this Agreement, shall mean Employee Network, Inc.
- b. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR § 160.103, and in reference to the party to this Agreement, shall mean NDPERS.
- c. Electronic Protected Health Information. “Electronic Protected Health Information” (ePHI) shall generally have the same meaning as the term “electronic protected health information” at 45 CFR § 160.103.
- d. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- e. Protected Health Information. “Protected Health Information” (PHI) shall generally have the same meaning as the term “protected health information” at 45 CFR § 160.103 that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity.

OBLIGATIONS OF BUSINESS ASSOCIATE

The Business Associate agrees to:

- a. Not use or disclose PHI other than as permitted or required by this Agreement or as required by law, or as otherwise authorized in writing by Covered Entity;
- b. Use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to ePHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;
- c. Not request, use, or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. § 164 if done by Covered Entity, except that Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate.
- d. Not request, use, or disclose more than the minimum amount of PHI necessary to accomplish the purpose of the use, disclosure, or request in accordance with 45 C.F.R. § 164.502(b).
- e. Not share, use, or disclose PHI in any form via any medium with any individual beyond the boundaries and jurisdiction of the United States of America without express written authorization from Covered Entity.
- f. Ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such PHI, in accordance with 45 CFR § 164.502(e)(1) and § 164.308(b).
- g. Within twenty (20) business days of receiving written notice from Covered Entity, make any amendments to PHI in a Designated Record Set, as directed or agreed to by Covered Entity pursuant to 45 CFR § 164.526, or take other measures as necessary to satisfy the Covered Entity's obligations under 45 CFR § 164.526.
- h. PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate.
- i. Report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 C.F.R. § 164.410, and any security incident of which it becomes aware;
- j. To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that it creates, receives, maintains or transmits on behalf of the Covered Entity as required by the HIPAA Rules.
- k. To make available to the Secretary the Business Associate's internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI and ePHI received from, or created or received by Business Associate on behalf of Covered

Entity, for the purpose of determining the Covered Entity's compliance with the HIPAA Rules, subject to any applicable legal privileges.

- l. Provide to Covered Entity within fifteen (15) days of a written notice from Covered Entity, information necessary to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- m. To provide, within ten (10) days of receiving a written request, information necessary for the Covered Entity to respond to an Individual's request for access to PHI about himself or herself under 45 C.F.R. § 164.524, in the event that PHI in the Business Associate's possession constitutes a Designated Record Set.

REPORTING OF A VIOLATION TO COVERED ENTITY BY BUSINESS ASSOCIATE

Business Associate shall report to Covered Entity's Breach Investigation Team (BIT) via email at ndpers-info@nd.gov any use or disclosure of PHI or ePHI not provided for by this Agreement, of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR § 164.410, and any Security Incident of which it becomes aware, immediately, and in no case later than ten (10) business days after the use or disclosure.

- a. Security Incident. "Security Incident" means (as defined by 45 CFR § 164.304), the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. For purposes of clarification of this Section, Security Incident includes use, disclosure, modification, or destruction of PHI by an employee or otherwise authorized user of its system of which Business Associate becomes aware. Business Associate shall track all Security Incidents and shall report such Security Incidents in summary fashion as may be requested by the Covered Entity.
 - i. Unsuccessful Security Incidents. Business Associate and Covered Entity agree that this Agreement constitutes notice from Business Associate of such Unsuccessful Security Incidents. By way of example, Covered Entity and Business Associate consider the following to be illustrative of Unsuccessful Security Incidents when they do not result in unauthorized access, use, disclosure, modification, or destruction of PHI or interference with an information system:
 1. Pings on Business Associate's firewall;
 2. Port Scans, which are attempts to log on to a system or enter a database with an invalid password or username;
 3. Denial-of-service attacks that do not result in a server being taken off-line; and
 4. Malware (e.g., worms, viruses).
- b. Discovery of a Violation. If the use or disclosure amounts to a breach of Unsecured PHI

or ePHI, Business Associate shall ensure its report is made to Covered Entity's Breach Investigation Team (BIT) via email at ndpers-info@nd.gov immediately upon becoming aware of the Breach, and in no case later than ten (10) business days after discovery. The Violation shall be treated as "discovered" on the first day which the Violation is known to the Business Associate or, by exercising reasonable diligence would have been known to the Business Associate. For purposes of clarification of this Section, Business Associate must notify Covered Entity of an incident involving the acquisition, access, use, or disclosure of PHI or ePHI in a manner not permitted under 45 C.F.R. Part E within ten (10) business days after an incident even if Business Associate has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA Rules.

- c. Investigation of Breach. Business Associate shall immediately investigate the Violation and report in writing within ten (10) business days to Covered Entity with the following information:
 - i. Each Individual whose PHI has been or is reasonably believed to have been accessed, acquired, or disclosed during the Incident;
 - ii. A description of the types of PHI that were involved in the Violation (such as full name, social security number, date of birth, home address, account number);
 - iii. A description of unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data;
 - iv. A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized;
 - v. A description of probable causes of the improper use or disclosure;
 - vi. A brief description of what Business Associate is doing to investigate the Incident, to mitigate losses, and to protect against further Violations;
 - vii. The actions Business Associate has undertaken or will undertake to mitigate any harmful effect of the occurrence; and
 - viii. A Corrective Action Plan that includes the steps Business Associate has taken or shall take to prevent future similar Violations.
- d. Breach Notification.
 - i. Business Associate shall cooperate and coordinate with Covered Entity in the preparation of any reports or notices to the Individual, required to be made under the HIPAA Rules or any other Federal or State laws, rules or regulations, provided that any such reports or notices shall be subject to the prior written approval of Covered Entity.

- ii. Covered Entity shall make the final determination whether the Breach requires notices to affected Individuals and whether the notices shall be made by Covered Entity or Business Associate.
- iii. For any notice regarding a Breach of Unsecured PHI caused by Business Associate that Covered Entity is required to provide pursuant to 45 C.F.R. §§ 164.404 – 164.408, Business Associate shall reimburse Covered Entity for all costs associated with Covered Entity's obligation of notifying affected Individuals, the Secretary, and the media.
- e. Mitigation. Business Associate shall mitigate to the extent practicable, and at its sole expense, any harmful effects known to the Business Associate of a use, disclosure, or loss of PHI by Business Associate in violation of the requirements of this Agreement, including, without limitation, any Security Incident or Breach of Unsecured PHI. Business Associate shall reasonably cooperate with the Covered Entity's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such threatened or actual Breach, or to recover its PHI, including complying with a reasonable Corrective Action Plan.

Permitted Uses and Disclosures by Business Associate

- a. General Use and Disclosure Provisions. Business Associate may only use or disclose the minimum PHI and ePHI to perform functions, activities, or services for, or on behalf of, Covered Entity, specifically, as necessary to perform the services set forth in the Agreement. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth in subsection b below.
- b. Specific Use and Disclosure Provisions. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI and ePHI:
 - a. As required by law.
 - b. To make uses, disclosures, and requests for PHI consistent with Covered Entity's minimum necessary policies and procedures.
 - c. For the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
 - d. To report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. §§ 164.304 and 164.502(j)(1).

Obligations of Covered Entity

- a. Covered Entity shall notify Business Associate of:

- a. Any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 C.F.R. § 164.520, to the extent that any such limitation may affect Business Associate's use or disclosure of PHI.
- b. Any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that any such changes may affect Business Associate's use or disclosure of PHI.
Any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that any such restriction may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity agrees that it:
 - i. Has included, and will include, in Covered Entity's Notice of Privacy Practices required by the Privacy Rule that Covered Entity may disclose PHI for Health Care Operations purposes.
 - ii. Has obtained, and will obtain, from Individuals any consents, authorizations and other permissions necessary or required by laws applicable to Covered Entity for Business Associate and Covered Entity to fulfill their obligations under the underlying Agreement and this Agreement.
 - iii. Will promptly notify Business Associate in writing of any restrictions on the use and disclosure of PHI about Individuals that Covered Entity has agreed to that may affect Business Associate's ability to perform its obligations under the underlying Agreement or this Agreement.
 - iv. Will promptly notify Business Associate in writing of any change in, or revocation of, permission by an Individual to use or disclose PHI, if the change or revocation may affect Business Associate's ability to perform its obligations under the underlying Agreement or this Agreement.

Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Subpart E of 45 CFR Part 164 if done by Covered Entity, except that the Business Associate may use or disclose PHI and ePHI for management and administration and legal responsibilities of Business Associate.

Term and Termination

- a. Term. The Term of this Agreement shall be effective as of July 1, 2025, and shall terminate when all of the PHI and ePHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI and ePHI, protections are extended to any such information, in accordance with the termination provisions in this Section.
- b. Automatic Termination. This Agreement will automatically terminate upon the termination or expiration of the Agreement or expiration of the services provided.

c. Termination for Cause. Business Associate agrees that if in good faith Covered Entity determines that Business Associate has materially breached any of its obligations under this Agreement, Covered Entity may:

1. Exercise any of its rights to reports, access, and inspection under this Agreement;
2. Require the Business Associate to cure the breach or end the violation within the time specified by Covered Entity;
3. Terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity
4. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
5. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
6. Before exercising either (c)(2) or (c)(3), Covered Entity shall provide written notice of preliminary determination to Business Associate describing the violation and the action Covered Entity intends to take.

d. Effect of Termination

1. Upon termination, cancellation, expiration, or other conclusion of this Agreement, Business Associate shall:
 - a. Return to Covered Entity or, if return is not feasible, destroy all PHI, ePHI, and any compilation of PHI in any media or form. Business Associate agrees to ensure that this provision also applies to PHI and ePHI in possession of subcontractors and agents of Business Associate. Business Associate agrees that any original record or copy of PHI and ePHI in any media is included in and covered by this provision, as well as all originals or copies of PHI or ePHI provided to subcontractors or agents of Business Associate. Business Associate agrees to complete the return or destruction as promptly as possible, but not more than thirty (30) business days after the conclusion of this Agreement. Business Associate will provide written documentation evidencing that return or destruction of all PHI and ePHI has been completed.
 - b. If Business Associate destroys PHI and ePHI, it shall be done with the use of technology or methodology that renders the PHI or ePHI unusable, unreadable, or undecipherable to unauthorized individuals as specified by the Secretary. Acceptable methods for destroying PHI or ePHI include:
 - a. For paper, film, or other hard copy media: shredding or destroying in order that PHI cannot be read or reconstructed; and

- b. For electronic media: clearing, purging, or destroying consistent with the standards of the National Institute of Standards and Technology (NIST).

Redaction is specifically excluded as a method of destruction of PHI and ePHI.

- c. If Business Associate believes that the return or destruction of PHI or ePHI is not feasible, Business Associate shall provide written notification of the conditions that make return or destruction not feasible. If Business Associate determines that return or destruction of PHI or ePHI is not feasible, Business Associate shall extend the protections of this Agreement to the PHI or ePHI and prohibit further uses or disclosures of the PHI and ePHI without the express written authorization of Covered Entity. Subsequent use or disclosure of any PHI and ePHI subject to this provision will be limited to the use or disclosure that makes return or destruction not feasible.

Miscellaneous

- a. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA Rules and any other applicable laws or regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended.
- c. Survival. The respective rights and obligations of Business Associate under Section 7(d), related to "Effect of Termination," of this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity and Business Associate to comply with the HIPAA Rules.
- e. Headings. Paragraph Headings used in this Agreement are for the convenience of the Parties and shall have no legal meaning in the interpretation of this Agreement.
- f. Severability. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

- g. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything this Agreement confer, upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- h. Applicable Law and Venue. This Business Associate Agreement is governed by and construed in accordance with the laws of the State of North Dakota. Any action commenced to enforce this Contract must be brought in the state District Court of Burleigh County, North Dakota.
- i. Contact Persons. Business Associate shall identify “key contact persons” in Attachment A for all matters relating to this Agreement and shall notify Covered Entity of any change in these key contacts during the term of this Agreement in writing within ten (10) business days.
- j. Business Associate agrees to comply with all the requirements imposed on a business associate under Title XIII of the American Recovery and Reinvestment Act of 2009, the Health Information Technology for Economic and Clinical Health (HI-TECH) Act, and, at the request of NDPERS, to agree to any reasonable modification of this Agreement required to conform the Agreement to any Model Business Associate Agreement published by the Department of Health and Human Services.

Entire Agreement


This Agreement and the underlying Agreement contains all of the agreements and understandings between the parties with respect to the subject matter of this Agreement. No agreement or other understanding in any way modifying the terms of this Agreement will be binding unless made in writing as a modification or amendment to this Agreement and executed by both parties.

IN WITNESS OF THIS, **NDPERS** [“Covered Entity”] and **Employee Network, Inc.** [“Business Associate”] agree to and intend to be legally bound by all terms and conditions set forth above and hereby execute this Agreement as of the effective date set forth above.

For Covered Entity:

Mike Seminary, Board Chairman
ND Public Employees Retirement System

For Business Associate:

DocuSigned by:

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Signature
Gene Raymondi

Printed Name

CEO

Title

4/9/2025 | 3:24 PM EDT

Date

Date

ATTACHMENT “A”
BUSINESS ASSOCIATE KEY CONTACT PERSONS

When applicable, Business Associate shall notify Covered Entity of any change in key contacts during the term of this Agreement in writing within ten business days.

Website URL (if applicable):	www.breehealth.com
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FIRST POINT OF CONTACT	
Name:	Jordan Woloch
Title:	Managing Director, Customer Relations
Address:	1040 Vestal Parkway East, Vestal, NY 13850
Phone Number:	607-754-1048, ext. 2014
Fax Number:	N/A
Email Address:	jwoloch@eniweb.com

SECOND POINT OF CONTACT	
Name:	Gene Raymondi
Title:	CEO
Address:	1040 Vestal Parkway East, Vestal, NY 13850
Phone Number:	607-754-1048, ext. 2110
Fax Number:	N/A
Email Address:	graymondi@eniweb.com

Business Associate

DocuSigned by:
(Signature): Gene Raymondi
22739140A940423...

(Print Name): Gene Raymondi

(Title): CEO

(Date): 4/9/2025 | 3:24 PM EDT

Appendix A – CONTRACT

CONTRACT FOR SERVICES BETWEEN CHI St Alexius Employee Assistance Program AND NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM

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 *CHI St Alexius Health Employee Assistance Program* having its principal place of business at *900 E Broadway Bismarck, ND 58501* (CONTRACTOR);

2. SCOPE OF WORK

CONTRACTOR, in exchange for the compensation paid by STATE under this Contract, shall provide the services as specified in the 2025 bid document and referenced in Exhibit A – SOW.

3. COMPENSATION – PAYMENTS

a. Contractual Amount

STATE shall pay for the accepted services provided by CONTRACTOR under this Contract an amount not to exceed ~~\$1.54 per employee~~ (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. Payment

- 1) Payment made in accordance with this Compensation section shall constitute payment in full for the services and work performed and the deliverables and work(s) provided under this Contract and CONTRACTOR shall not receive any additional compensation hereunder.
- 2) STATE shall make payment under this Contract within forty-five (45) calendar days after receipt of a correct 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 thereto. CONTRACTOR's invoice will be subject to reduction for amounts included in any invoice or payment made which are determined by STATE, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute allowable costs. At STATE's sole discretion, all payments shall be subject to reduction for amounts equal to prior overpayments to CONTRACTOR.

- 4) For any amounts that are or will become due and payable to STATE by CONTRACTOR, STATE reserves the right to deduct the amount owed from payments that are or will become due and payable to CONTRACTOR under this Contract.

c. Travel

CONTRACTOR acknowledges travel costs are covered by the Contractual Amount and shall not invoice STATE for travel costs.

d. Prepayment

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

e. 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 certificates of exemption upon request by the CONTRACTOR.

f. Taxpayer ID

CONTRACTOR'S federal employer ID number is: *450227152*.

4. TERM OF CONTRACT

This Contract term (Term) begins on *July 1, 2025* and ends on *June 30, 2027*.

a. No Automatic Renewal

This Contract will not automatically renew.

5. TIME IS OF THE ESSENCE

CONTRACTOR hereby acknowledges that time is of the essence for performance under this Contract unless otherwise agreed to in writing by the Parties.

6. TERMINATION

a. Termination by Mutual Agreement

This Contract may be terminated by mutual consent of both Parties executed in writing.

b. Early Termination in the Public Interest

STATE is entering this Contract for the purpose of carrying 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 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 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 of the other provisions of this Contract, or so fails to pursue the work 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.

7. FORCE MAJEURE

Neither Party shall be held responsible for delay or default caused by fire, riot, terrorism, pandemic (excluding COVID-19), 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, then STATE may seek all available remedies, up to and including termination of this Contract pursuant to its Termination Section, and STATE shall be 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.

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 defend, indemnify, and hold the State harmless 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 Contract and CONTRACTOR shall require all subcontractors, prior to commencement of a contract 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) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$500,000 per person and \$2,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- 4) Employer's liability or "stop gap" insurance of not less than \$2,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- 5) 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. The amount of any deductible or self-retention is subject to approval by the STATE.

- 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 Contract shall not be limited by the insurance required in this Contract.
- 4) The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, 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 CONTRACT 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) The CONTRACTOR shall furnish a certificate of insurance to the undersigned STATE representative prior to commencement of this Contract. All endorsements shall be provided as soon as practicable.
- 7) Failure to provide insurance as required in this Contract is a material breach of contract entitling the STATE to terminate this Contract 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.

10. WORKS FOR HIRE

CONTRACTOR acknowledges that 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 hereby 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 shall be the sole property of STATE, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein 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:

STATE	CONTRACTOR
Name: Mike Seminary	Name Lindsae Timm
Title: Board Chairman	Title Director
Address: 1600 East Century Ave, Suite 2 PO Box 1657	Address 900 E Broadway
City, State, Zip: Bismarck, ND 58502-1657	City, State, Zip Bismarck ND 58501

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 shall 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 as authorized in advance by STATE. STATE shall 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.

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 as Exhibit B.

14. COMPLIANCE WITH PUBLIC RECORDS LAWS

Under the North Dakota public records law and subject to the Confidentiality clause of this Contract, 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 agrees to contact STATE immediately upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to such 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 hereunder in the event of a change of control or sale of all or substantially all of its assets related to this Contract, whether by merger, reorganization, operation of law, or otherwise. Should Assignee be a business or entity with whom STATE is prohibited from conducting business, STATE shall have the right to terminate 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 does not have authority to contract for or incur obligations on behalf of STATE.

17. SPOILIATION – PRESERVATION OF EVIDENCE

CONTRACTOR shall promptly notify STATE of all potential claims that arise or result from this Contract. CONTRACTOR shall also 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, in the event of 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, including all attachments and exhibits, as may be amended;
- b. STATE's Request for Proposal ("RFP") number 192.02-03-25,
- c. CONTRACTOR's proposal in response to RFP number 192.02-03-25.
- d. 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. 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 that term.

20. 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 such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

21. 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.

22. ATTORNEY FEES

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

23. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

CONTRACTOR agrees to 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.)

CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation and workers' compensation premiums.

CONTRACTOR shall have and keep current and in good standing all licenses and permits required by law during the Term of this Contract all licenses and permits required by law.

CONTRACTOR's failure to comply with this section may be deemed a material breach by CONTRACTOR entitling STATE to terminate in accordance with the Termination for Cause section of this Contract.

24. 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.

25. COUNTERPARTS

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

26. 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 shall be deemed the Effective Date.

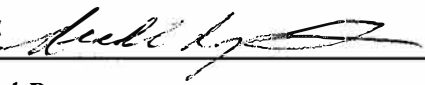
CONTRACTOR	STATE OF NORTH DAKOTA
<i>CHI St Alexius Employee Assistance Program</i>	Acting through its NDPERS
BY: 	BY:
<i>Reed Reyman</i>	Mike Seminary
<i>President/CEO</i>	NDPERS Board Chairman
Date: <i>4/11/25</i>	Date:

EXHIBIT A - Scope of Work

A. Member Orientation

- 1) The vendor shall conduct the member orientation for state employees in the EAP. This effort will consist of the following activities:
 - a) Prepare and print appropriate informational material for distribution to all employers.
 - b) Conduct all presentations in a courteous, prudent, and professional manner without any pressure or harassment. The emphasis of all presentations and informational material shall be placed upon a factual representation of the features of the EAP.
 - c) Attend and present information at the NDPERS virtual Employer Conference upon request per the guidelines provided by NDPERS.
 - d) Participate in NDPERS or agency wellness and benefit fairs or meetings upon request.
- 2) If the EAP vendor selected by the agency is not the vendor that provided services during the 2023-2025 biennium, the EAP vendor must:
 - a) Distribute informational material to all agency employees advising them of the change in vendors and supplying appropriate reference material.
 - b) If requested by the employer, hold an informational meeting for agency employees.

B. Minimum Services

- 1) Confidential, voluntary, short-term assessment, and counseling sessions for employees and families experiencing life problems of any kind. The EAP will provide counseling for problems related, but not limited to: stress, addiction, family, work, grief, tobacco, alcohol and drugs, marriage and divorce, depression, parent-child relationships, child/spouse abuse, aging, eating disorders, finances, school, gambling, suicide, and mental health. Proper referrals will be made if more extensive or further counseling is needed and the number of personal counseling sessions is exhausted.
- 2) Intervention, assessment, referral, and ongoing consultation with supervisors or employees regarding problems in the workplace.
- 3) Consultation and case management regarding challenging workplace problems, such as harassment, conflict resolution, violence, critical incidents, work performance, and change.

- 4) Educational programs, including training of State supervisory personnel on the use of EAP services and employee seminars.
- 5) Administrative services, including employee communications.
- 6) The table in Section VII - 9 shows the minimum requirements for selected features of the EAP.
- 7) All services proposed as part of the EAP must be available within the proposed geographic area.
- 8) Before March 1 of each year, the vendor will provide NDPERS an aggregate report of services provided to NDPERS members for the previous calendar year and the results of a member satisfaction survey.

C. Consulting

The vendor will be expected to serve as a consultant for the EAP to the agency and to the NDPERS Board, Executive Director, and NDPERS staff. In this capacity, the vendor may be expected to attend meetings to present findings and recommendations as required. The NDPERS Board meets on a monthly basis. The vendor must provide the following:

- 1) Information on proposed state and federal laws affecting the EAP.
- 2) General assistance to NDPERS regarding the administration of the EAP.
- 3) Advice in determining the eligibility and services of the EAP.
- 4) The effect of changes in law or administrative interpretations on the operations of the EAP.

Exhibit B - Business Associate Agreement

This Business Associate Agreement is entered into by and between, the North Dakota Public Employees Retirement System ("NDPERS") and the CHI St Alexius Employee Assistance Program, 900 E Broadway Bismarck ND 58501, each individually a "Party" and collectively the "Parties." This Agreement is hereby incorporated into the underlying Contract, **CONTRACT FOR SERVICES BETWEEN CHI St Alexius Employee Assistance Program AND NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM**, between the parties dated July 1st, 2025 (hereinafter both the Agreement and underlying Contract shall collectively be referred to as the "Agreement").

DEFINITIONS

Terms used, but not otherwise defined, in this Agreement have the same meaning as those terms in the HIPAA Rules.

Catch-all definitions:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

- a. Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR § 160.103, and in reference to the party to this Agreement, shall mean CHI St Alexius Employee Assistance Program.
- b. Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR § 160.103, and in reference to the party to this Agreement, shall mean NDPERS.
- c. Electronic Protected Health Information. "Electronic Protected Health Information" (ePHI) shall generally have the same meaning as the term "electronic protected health information" at 45 CFR § 160.103.
- d. HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- e. Protected Health Information. "Protected Health Information" (PHI) shall generally have the same meaning as the term "protected health information" at 45 CFR § 160.103 that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity.

OBLIGATIONS OF BUSINESS ASSOCIATE

The Business Associate agrees to:

- a. Not use or disclose PHI other than as permitted or required by this Agreement or as required by law, or as otherwise authorized in writing by Covered Entity;
- b. Use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to ePHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;
- c. Not request, use, or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. § 164 if done by Covered Entity, except that Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate.
- d. Not request, use, or disclose more than the minimum amount of PHI necessary to accomplish the purpose of the use, disclosure, or request in accordance with 45 C.F.R. § 164.502(b).
- e. Not share, use, or disclose PHI in any form via any medium with any individual beyond the boundaries and jurisdiction of the United States of America without express written authorization from Covered Entity.
- f. Ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such PHI, in accordance with 45 CFR § 164.502(e)(1) and § 164.308(b).
- g. Within twenty (20) business days of receiving written notice from Covered Entity, make any amendments to PHI in a Designated Record Set, as directed or agreed to by Covered Entity pursuant to 45 CFR § 164.526, or take other measures as necessary to satisfy the Covered Entity's obligations under 45 CFR § 164.526.
- h. PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate.
- i. Report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 C.F.R. § 164.410, and any security incident of which it becomes aware;
- j. To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that it creates, receives, maintains or transmits on behalf of the Covered Entity as required by the HIPAA Rules.
- k. To make available to the Secretary the Business Associate's internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI and ePHI received from, or created or received by Business Associate on behalf of Covered

Entity, for the purpose of determining the Covered Entity's compliance with the HIPAA Rules, subject to any applicable legal privileges.

- l. Provide to Covered Entity within fifteen (15) days of a written notice from Covered Entity, information necessary to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- m. To provide, within ten (10) days of receiving a written request, information necessary for the Covered Entity to respond to an Individual's request for access to PHI about himself or herself under 45 C.F.R. § 164.524, in the event that PHI in the Business Associate's possession constitutes a Designated Record Set.

REPORTING OF A VIOLATION TO COVERED ENTITY BY BUSINESS ASSOCIATE

Business Associate shall report to Covered Entity's Breach Investigation Team (BIT) via email at ndpers-info@nd.gov any use or disclosure of PHI or ePHI not provided for by this Agreement, of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR § 164.410, and any Security Incident of which it becomes aware, immediately, and in no case later than ten (10) business days after the use or disclosure.

- a. Security Incident. "Security Incident" means (as defined by 45 CFR § 164.304), the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. For purposes of clarification of this Section, Security Incident includes use, disclosure, modification, or destruction of PHI by an employee or otherwise authorized user of its system of which Business Associate becomes aware. Business Associate shall track all Security Incidents and shall report such Security Incidents in summary fashion as may be requested by the Covered Entity.

- i. Unsuccessful Security Incidents. Business Associate and Covered Entity agree that this Agreement constitutes notice from Business Associate of such Unsuccessful Security Incidents. By way of example, Covered Entity and Business Associate consider the following to be illustrative of Unsuccessful Security Incidents when they do not result in unauthorized access, use, disclosure, modification, or destruction of PHI or interference with an information system:

1. Pings on Business Associate's firewall;
2. Port Scans, which are attempts to log on to a system or enter a database with an invalid password or username;
3. Denial-of-service attacks that do not result in a server being taken off line; and
4. Malware (e.g., worms, viruses).

- b. Discovery of a Violation. If the use or disclosure amounts to a breach of Unsecured PHI

or ePHI, Business Associate shall ensure its report is made to Covered Entity's Breach Investigation Team (BIT) via email at ndpers-info@nd.gov immediately upon becoming aware of the Breach, and in no case later than ten (10) business days after discovery. The Violation shall be treated as "discovered" on the first day which the Violation is known to the Business Associate or, by exercising reasonable diligence would have been known to the Business Associate. For purposes of clarification of this Section, Business Associate must notify Covered Entity of an incident involving the acquisition, access, use, or disclosure of PHI or ePHI in a manner not permitted under 45 C.F.R. Part E within ten (10) business days after an incident even if Business Associate has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA Rules.

c. Investigation of Breach. Business Associate shall immediately investigate the Violation and report in writing within ten (10) business days to Covered Entity with the following information:

- i. Each Individual whose PHI has been or is reasonably believed to have been accessed, acquired, or disclosed during the Incident;
- ii. A description of the types of PHI that were involved in the Violation (such as full name, social security number, date of birth, home address, account number);
- iii. A description of unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data;
- iv. A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized;
- v. A description of probable causes of the improper use or disclosure;
- vi. A brief description of what Business Associate is doing to investigate the Incident, to mitigate losses, and to protect against further Violations;
- vii. The actions Business Associate has undertaken or will undertake to mitigate any harmful effect of the occurrence; and
- viii. A Corrective Action Plan that includes the steps Business Associate has taken or shall take to prevent future similar violations.

d. Breach Notification.

- i. Business Associate shall cooperate and coordinate with Covered Entity in the preparation of any reports or notices to the Individual, required to be made under the HIPAA Rules or any other Federal or State laws, rules or regulations, provided that any such reports or notices shall be subject to the prior written approval of Covered Entity.

- ii. Covered Entity shall make the final determination whether the Breach requires notices to affected Individuals and whether the notices shall be made by Covered Entity or Business Associate.
 - iii. For any notice regarding a Breach of Unsecured PHI caused by Business Associate that Covered Entity is required to provide pursuant to 45 C.F.R. §§ 164.404 – 164.408, Business Associate shall reimburse Covered Entity for all costs associated with Covered Entity's obligation of notifying affected Individuals, the Secretary, and the media.
- e. Mitigation. Business Associate shall mitigate to the extent practicable, and at its sole expense, any harmful effects known to the Business Associate of a use, disclosure, or loss of PHI by Business Associate in violation of the requirements of this Agreement, including, without limitation, any Security Incident or Breach of Unsecured PHI. Business Associate shall reasonably cooperate with the Covered Entity's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such threatened or actual Breach, or to recover its PHI, including complying with a reasonable Corrective Action Plan.

Permitted Uses and Disclosures by Business Associate

- a. General Use and Disclosure Provisions. Business Associate may only use or disclose the minimum PHI and ePHI to perform functions, activities, or services for, or on behalf of, Covered Entity, specifically, as necessary to perform the services set forth in the Agreement. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth in subsection b below.
- b. Specific Use and Disclosure Provisions. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI and ePHI:
 - a. As required by law.
 - b. To make uses, disclosures, and requests for PHI consistent with Covered Entity's minimum necessary policies and procedures.
 - c. For the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
 - d. To report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. §§ 164.304 and 164.502(j)(1).

Obligations of Covered Entity

- a. Covered Entity shall notify Business Associate of:

- a. Any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 C.F.R. § 164.520, to the extent that any such limitation may affect Business Associate's use or disclosure of PHI.
- b. Any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that any such changes may affect Business Associate's use or disclosure of PHI.

Any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that any such restriction may affect Business Associate's use or disclosure of PHI.

b. Covered Entity agrees that it:

- i. Has included, and will include, in Covered Entity's Notice of Privacy Practices required by the Privacy Rule that Covered Entity may disclose PHI for Health Care Operations purposes.
- ii. Has obtained, and will obtain, from Individuals any consents, authorizations and other permissions necessary or required by laws applicable to Covered Entity for Business Associate and Covered Entity to fulfill their obligations under the underlying Agreement and this Agreement.
- iii. Will promptly notify Business Associate in writing of any restrictions on the use and disclosure of PHI about Individuals that Covered Entity has agreed to that may affect Business Associate's ability to perform its obligations under the underlying Agreement or this Agreement.
- iv. Will promptly notify Business Associate in writing of any change in, or revocation of, permission by an Individual to use or disclose PHI, if the change or revocation may affect Business Associate's ability to perform its obligations under the underlying Agreement or this Agreement.

Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Subpart E of 45 CFR Part 164 if done by Covered Entity, except that the Business Associate may use or disclose PHI and ePHI for management and administration and legal responsibilities of Business Associate.

Term and Termination

- a. Term. The Term of this Agreement shall be effective as of July 1, 2025, and shall terminate when all of the PHI and ePHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI and ePHI, protections are extended to any such information, in accordance with the termination provisions in this Section.
- b. Automatic Termination. This Agreement will automatically terminate upon the termination or expiration of the Agreement or expiration of the services provided.

c. Termination for Cause. Business Associate agrees that if in good faith Covered Entity determines that Business Associate has materially breached any of its obligations under this Agreement, Covered Entity may:

1. Exercise any of its rights to reports, access, and inspection under this Agreement;
2. Require the Business Associate to cure the breach or end the violation within the time specified by Covered Entity;
3. Terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity
4. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
5. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
6. Before exercising either (c)(2) or (c)(3), Covered Entity shall provide written notice of preliminary determination to Business Associate describing the violation and the action Covered Entity intends to take.

d. Effect of Termination

1. Upon termination, cancellation, expiration, or other conclusion of this Agreement, Business Associate shall:
 - a. Return to Covered Entity or, if return is not feasible, destroy all PHI, ePHI, and any compilation of PHI in any media or form. Business Associate agrees to ensure that this provision also applies to PHI and ePHI in possession of subcontractors and agents of Business Associate. Business Associate agrees that any original record or copy of PHI and ePHI in any media is included in and covered by this provision, as well as all originals or copies of PHI or ePHI provided to subcontractors or agents of Business Associate. Business Associate agrees to complete the return or destruction as promptly as possible, but not more than thirty (30) business days after the conclusion of this Agreement. Business Associate will provide written documentation evidencing that return or destruction of all PHI and ePHI has been completed.
 - b. If Business Associate destroys PHI and ePHI, it shall be done with the use of technology or methodology that renders the PHI or ePHI unusable, unreadable, or undecipherable to unauthorized individuals as specified by the Secretary. Acceptable methods for destroying PHI or ePHI include:
 - a. For paper, film, or other hard copy media: shredding or destroying in order that PHI cannot be read or reconstructed; and

- b. For electronic media: clearing, purging, or destroying consistent with the standards of the National Institute of Standards and Technology (NIST).

Redaction is specifically excluded as a method of destruction of PHI and ePHI.

- c. If Business Associate believes that the return or destruction of PHI or ePHI is not feasible, Business Associate shall provide written notification of the conditions that make return or destruction not feasible. If Business Associate determines that return or destruction of PHI or ePHI is not feasible, Business Associate shall extend the protections of this Agreement to the PHI or ePHI and prohibit further uses or disclosures of the PHI and ePHI without the express written authorization of Covered Entity. Subsequent use or disclosure of any PHI and ePHI subject to this provision will be limited to the use or disclosure that makes return or destruction not feasible.

Miscellaneous

- a. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA Rules and any other applicable laws or regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended.
- c. Survival. The respective rights and obligations of Business Associate under Section 7(d), related to "Effect of Termination," of this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity and Business Associate to comply with the HIPAA Rules.
- e. Headings. Paragraph Headings used in this Agreement are for the convenience of the Parties and shall have no legal meaning in the interpretation of this Agreement.
- f. Severability. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

- g. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything this Agreement confer, upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- h. Applicable Law and Venue. This Business Associate Agreement is governed by and construed in accordance with the laws of the State of North Dakota. Any action commenced to enforce this Contract must be brought in the state District Court of Burleigh County, North Dakota.
- i. Contact Persons. Business Associate shall identify "key contact persons" in Attachment A for all matters relating to this Agreement and shall notify Covered Entity of any change in these key contacts during the term of this Agreement in writing within ten (10) business days.
- j. Business Associate agrees to comply with all the requirements imposed on a business associate under Title XIII of the American Recovery and Reinvestment Act of 2009, the Health Information Technology for Economic and Clinical Health (HI-TECH) Act, and, at the request of NDPERS, to agree to any reasonable modification of this Agreement required to conform the Agreement to any Model Business Associate Agreement published by the Department of Health and Human Services.

Entire Agreement

This Agreement and the underlying Agreement contains all of the agreements and understandings between the parties with respect to the subject matter of this Agreement. No agreement or other understanding in any way modifying the terms of this Agreement will be binding unless made in writing as a modification or amendment to this Agreement and executed by both parties.

IN WITNESS OF THIS, **NDPERS** ["Covered Entity"] and **CHI St Alexius Employee Assistance Program** ["Business Associate"] agree to and intend to be legally bound by all terms and conditions set forth above and hereby execute this Agreement as of the effective date set forth above.

For Covered Entity:

Mike Seminary, Board Chairman
ND Public Employees Retirement System

Date

For Business Associate:

Signature

Reed E. Rayman
Printed Name

President
Title

4/11/25
Date

ATTACHMENT "A"
BUSINESS ASSOCIATE KEY CONTACT PERSONS

When applicable, Business Associate shall notify Covered Entity of any change in key contacts during the term of this Agreement in writing within ten business days.

Website URL (if applicable): <https://www.chistalexiushealth.org/services/employee-assistance-program>

FIRST POINT OF CONTACT	
Name:	Lindsae Timm
Title:	Director
Address:	900 E Broadway Bismarck ND 58501
Phone Number:	701-530-7232
Fax Number:	701-530-7193
Email Address:	lindsae.timm@commonspirit.org

SECOND POINT OF CONTACT	
Name:	Mary Conlon
Title:	Manager
Address:	900 E Broadway Bismarck ND 58501
Phone Number:	701-530-7325
Fax Number:	701-530-7193
Email Address:	mary.conlon@commonspirit.org

Business Associate

(Signature): 

(Print Name): Reed E Rayman

(Title): President

(Date): 4/11/25

Appendix A – CONTRACT

CONTRACT FOR SERVICES BETWEEN (ComPsych Corporation) AND NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM

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 [*ComPsych Corporation*] having its principal place of business at [*455 N. Cityfront Plaza Drive, Chicago, IL 60611*] (CONTRACTOR);

2. SCOPE OF WORK

CONTRACTOR, in exchange for the compensation paid by STATE under this Contract, shall provide the services as specified in the 2025 bid document and referenced in Exhibit A – SOW.

3. COMPENSATION – PAYMENTS

a. Contractual Amount

STATE shall pay for the accepted services provided by CONTRACTOR under this Contract an amount of \$1.30 per employee per month (“pepm”) (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. Payment

- 1) Payment made in accordance with this Compensation section shall constitute payment in full for the services and work performed and the deliverables and work(s) provided under this Contract and CONTRACTOR shall not receive any additional compensation hereunder.
- 2) STATE shall make payment under this Contract within forty-five (45) calendar days after receipt of a correct 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 thereto. CONTRACTOR's invoice will be subject to reduction for amounts included in any invoice or payment made which are determined by STATE, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute allowable costs. At STATE’s sole discretion, all payments shall be subject to reduction for amounts equal to prior overpayments to CONTRACTOR.

- 4) For any amounts that are or will become due and payable to STATE by CONTRACTOR, STATE reserves the right to deduct the amount owed from payments that are or will become due and payable to CONTRACTOR under this Contract.

c. Travel

CONTRACTOR acknowledges travel costs are covered by the Contractual Amount and shall not invoice STATE for travel costs.

d. Prepayment

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

e. 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 certificates of exemption upon request by the CONTRACTOR.

f. Taxpayer ID

CONTRACTOR'S federal employer ID number is: 36-3739783.

4. TERM OF CONTRACT

This Contract term (Term) begins on *July 1, 2025* and ends on *June 30, 2027*.

a. No Automatic Renewal

This Contract will not automatically renew.

5. TIME IS OF THE ESSENCE

CONTRACTOR hereby acknowledges that time is of the essence for performance under this Contract unless otherwise agreed to in writing by the Parties.

6. TERMINATION

a. Termination by Mutual Agreement

This Contract may be terminated by mutual consent of both Parties executed in writing.

b. Early Termination in the Public Interest

STATE is entering this Contract for the purpose of carrying 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 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 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 if a material breach remains uncured by CONTRACTOR for more than thirty (30) days after CONTRACTOR's receipt of a notice from STATE describing the breach with reasonable specificity:

- 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. If CONTRACTOR fails to deliver goods or to provide Services which satisfy CONTRACTORs obligations under this Contract, State shall have the right to withhold any and all payments due under this Contract. STATE may withhold any and all such payments due under this Contract to CONTRACTOR without penalty or work stoppage by CONTRACTOR, until such failure to perform is cured or, if the failure to perform is not cured, the contract is terminated pursuant to this section; **or**
- 2) If CONTRACTOR fails to perform any of the other provisions of this Contract, or so fails to pursue the work 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.

7. FORCE MAJEURE

Neither Party shall be held responsible for delay or default caused by fire, riot, terrorism, pandemic (excluding COVID-19), 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, then STATE may seek all available remedies, up to and including termination of this Contract pursuant to its Termination Section, and STATE shall be 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.

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 defend, indemnify, and hold the State harmless 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 Contract and CONTRACTOR shall require all subcontractors, prior to commencement of a contract 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) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$500,000 per person and \$2,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- 4) Employer's liability or "stop gap" insurance of not less than \$2,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- 5) 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. The amount of any deductible or self-retention is subject to approval by the STATE.
- 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 Contract shall not be limited by the insurance required in this Contract.
- 4) The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, 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 CONTRACT 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) The CONTRACTOR shall furnish a certificate of insurance to the undersigned STATE representative prior to commencement of this Contract. All endorsements shall be provided as soon as practicable.
- 7) Failure to provide insurance as required in this Contract is a material breach of contract entitling the STATE to terminate this Contract 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.

10. WORKS FOR HIRE

CONTRACTOR acknowledges that all STATE-specific reports ("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 hereby 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 work(s) developed by CONTRACTOR in performance of this Contract for STATE shall be the sole property of STATE, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein 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 STATE-specific reports 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:

STATE	CONTRACTOR
Name: Mike Seminary	Name: Dale Grenolds
Title: Board Chairman	Title: Chief Operating Officer
Address: 1600 East Century Ave, Suite 2 PO Box 1657	Address: 455 N. Cityfront Plaza Drive
City, State, Zip: Bismarck, ND 58502-1657	City, State, Zip: Chicago, IL 60611

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 shall 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 as authorized in advance by STATE. STATE shall 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.

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 as Exhibit B.

14. COMPLIANCE WITH PUBLIC RECORDS LAWS

Under the North Dakota public records law and subject to the Confidentiality clause of this Contract, 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 agrees to contact STATE immediately upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to such 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 hereunder in the event of a change of control or sale of all or substantially all of its assets related to this Contract, whether by merger, reorganization, operation of law, or otherwise. Should Assignee be a business or entity with whom STATE is prohibited from conducting business, STATE shall have the right to terminate 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 does not have authority to contract for or incur obligations on behalf of STATE.

17. SPOLIATION – PRESERVATION OF EVIDENCE

CONTRACTOR shall promptly notify STATE of all potential claims that arise or result from this Contract. CONTRACTOR shall also 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, in the event of 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, including all attachments and exhibits, as may be amended;
- b. STATE's Request for Proposal ("RFP") number 192.02-03-25,
- c. CONTRACTOR's proposal in response to RFP number 192.02-03-25.
- d. 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. 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 that term.

20. 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 such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

21. 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.

22. ATTORNEY FEES

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

23. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

CONTRACTOR agrees to 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.)

CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation and workers' compensation premiums.

CONTRACTOR shall have and keep current and in good standing all licenses and permits required by law during the Term of this Contract all licenses and permits required by law.

CONTRACTOR's failure to comply with this section may be deemed a material breach by CONTRACTOR entitling STATE to terminate in accordance with the Termination for Cause section of this Contract.

24. 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.

25. COUNTERPARTS

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

26. 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 shall be deemed the Effective Date.

CONTRACTOR	STATE OF NORTH DAKOTA
ComPsych Corporation	Acting through its NDPERS
<i>Dale Grenolds</i>	BY:
Dale Grenolds	Mike Seminary
Chief Operating Officer	NDPERS Board Chairman
Date: April 11, 2025	Date:

EXHIBIT A - Scope of Work

A. Member Orientation

- 1) The vendor shall conduct the member orientation for state employees in the EAP. This effort will consist of the following activities:
 - a) Prepare and print appropriate informational material for distribution to all employers.
 - b) Conduct all presentations in a courteous, prudent, and professional manner without any pressure or harassment. The emphasis of all presentations and informational material shall be placed upon a factual representation of the features of the EAP.
 - c) Attend and present information at the NDPERS virtual Employer Conference upon request per the guidelines provided by NDPERS.
 - d) Participate in NDPERS or agency wellness and benefit fairs or meetings upon request.
- 2) If the EAP vendor selected by the agency is not the vendor that provided services during the 2023-2025 biennium, the EAP vendor must:
 - a) Distribute informational material to all agency employees advising them of the change in vendors and supplying appropriate reference material.
 - b) If requested by the employer, hold an informational meeting for agency employees.

B. Minimum Services

- 1) Confidential, voluntary, short-term assessment, and counseling sessions for employees and families experiencing life problems of any kind. The EAP will provide counseling for problems related, but not limited to: stress, addiction, family, work, grief, tobacco, alcohol and drugs, marriage and divorce, depression, parent-child relationships, child/spouse abuse, aging, eating disorders, finances, school, gambling, suicide, and mental health. Proper referrals will be made if more extensive or further counseling is needed and the number of personal counseling sessions is exhausted.
- 2) Intervention, assessment, referral, and ongoing consultation with supervisors or employees regarding problems in the workplace.
- 3) Consultation and case management regarding challenging workplace problems, such as harassment, conflict resolution, violence, critical incidents, work performance, and change.

- 4) Educational programs, including training of State supervisory personnel on the use of EAP services and employee seminars.
- 5) Administrative services, including employee communications.
- 6) The table in Section VII - 9 shows the minimum requirements for selected features of the EAP.
- 7) All services proposed as part of the EAP must be available within the proposed geographic area.
- 8) Before March 1 of each year, the vendor will provide NDPERS an aggregate report of services provided to NDPERS members for the previous calendar year and the results of a member satisfaction survey.

C. Consulting

The vendor will be expected to serve as a consultant for the EAP to the agency and to the NDPERS Board, Executive Director, and NDPERS staff. In this capacity, the vendor may be expected to attend meetings to present findings and recommendations as required. The NDPERS Board meets on a monthly basis. The vendor must provide the following:

- 1) Information on proposed state and federal laws affecting the EAP.
- 2) General assistance to NDPERS regarding the administration of the EAP.
- 3) Advice in determining the eligibility and services of the EAP.
- 4) The effect of changes in law or administrative interpretations on the operations of the EAP.

Exhibit B - Business Associate Agreement

This Business Associate Agreement is entered into by and between, the North Dakota Public Employees Retirement System (“NDPERS”) and COMPSYCH CORPORATION, 455 N. CITYFRONT PLAZA DRIVE, CHICAGO, IL 60611, each individually a “Party” and collectively the “Parties.” This Agreement is hereby incorporated into the underlying Contract, **CONTRACT FOR SERVICES BETWEEN COMPSYCH CORPORATION AND NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM**, between the parties dated July 1, 2025 (hereinafter both the Agreement and underlying Contract shall collectively be referred to as the “Agreement”).

DEFINITIONS

Terms used, but not otherwise defined, in this Agreement have the same meaning as those terms in the HIPAA Rules.

Catch-all definitions:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

- a. Business Associate. “ComPsych Corporation” shall generally have the same meaning as the term “business associate” at 45 CFR § 160.103, and in reference to the party to this Agreement, shall mean ComPsych Corporation.
- b. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR § 160.103, and in reference to the party to this Agreement, shall mean NDPERS.
- c. Electronic Protected Health Information. “Electronic Protected Health Information” (ePHI) shall generally have the same meaning as the term “electronic protected health information” at 45 CFR § 160.103.
- d. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- e. Protected Health Information. “Protected Health Information” (PHI) shall generally have the same meaning as the term “protected health information” at 45 CFR § 160.103 that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity.

OBLIGATIONS OF BUSINESS ASSOCIATE

The Business Associate agrees to:

- a. Not use or disclose PHI other than as permitted or required by this Agreement or as required by law, or as otherwise authorized in writing by Covered Entity;
- b. Use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to ePHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;
- c. Not request, use, or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. § 164 if done by Covered Entity, except that Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate.
- d. Not request, use, or disclose more than the minimum amount of PHI necessary to accomplish the purpose of the use, disclosure, or request in accordance with 45 C.F.R. § 164.502(b).
- e. Not share, use, or disclose PHI in any form via any medium with any individual beyond the boundaries and jurisdiction of the United States of America without express written authorization from Covered Entity.
- f. Ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such PHI, in accordance with 45 CFR § 164.502(e)(1) and § 164.308(b).
- g. Within twenty (20) business days of receiving written notice from Covered Entity, make any amendments to PHI in a Designated Record Set, as directed or agreed to by Covered Entity pursuant to 45 CFR § 164.526, or take other measures as necessary to satisfy the Covered Entity's obligations under 45 CFR § 164.526.
- h. PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate.
- i. Report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 C.F.R. § 164.410, and any security incident of which it becomes aware;
- j. To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that it creates, receives, maintains or transmits on behalf of the Covered Entity as required by the HIPAA Rules.
- k. To make available to the Secretary the Business Associate's internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI and ePHI received from, or created or received by Business Associate on behalf of Covered

Entity, for the purpose of determining the Covered Entity's compliance with the HIPAA Rules, subject to any applicable legal privileges.

- l. Provide to Covered Entity within fifteen (15) days of a written notice from Covered Entity, information necessary to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- m. To provide, within ten (10) days of receiving a written request, information necessary for the Covered Entity to respond to an Individual's request for access to PHI about himself or herself under 45 C.F.R. § 164.524, in the event that PHI in the Business Associate's possession constitutes a Designated Record Set.

REPORTING OF A VIOLATION TO COVERED ENTITY BY BUSINESS ASSOCIATE

Business Associate shall report to Covered Entity's Breach Investigation Team (BIT) via email at ndpers-info@nd.gov any use or disclosure of PHI or ePHI not provided for by this Agreement, of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR § 164.410, and any Security Incident of which it becomes aware, immediately, and in no case later than ten (10) business days after the use or disclosure.

- a. Security Incident. "Security Incident" means (as defined by 45 CFR § 164.304), the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. For purposes of clarification of this Section, Security Incident includes use, disclosure, modification, or destruction of PHI by an employee or otherwise authorized user of its system of which Business Associate becomes aware. Business Associate shall track all Security Incidents and shall report such Security Incidents in summary fashion as may be requested by the Covered Entity.
 - i. Unsuccessful Security Incidents. Business Associate and Covered Entity agree that this Agreement constitutes notice from Business Associate of such Unsuccessful Security Incidents. By way of example, Covered Entity and Business Associate consider the following to be illustrative of Unsuccessful Security Incidents when they do not result in unauthorized access, use, disclosure, modification, or destruction of PHI or interference with an information system:
 1. Pings on Business Associate's firewall;
 2. Port Scans, which are attempts to log on to a system or enter a database with an invalid password or username;
 3. Denial-of-service attacks that do not result in a server being taken off-line; and
 4. Malware (e.g., worms, viruses).
- b. Discovery of a Violation. If the use or disclosure amounts to a breach of Unsecured PHI

or ePHI, Business Associate shall ensure its report is made to Covered Entity's Breach Investigation Team (BIT) via email at ndpers-info@nd.gov immediately upon becoming aware of the Breach, and in no case later than ten (10) business days after discovery. The Violation shall be treated as "discovered" on the first day which the Violation is known to the Business Associate or, by exercising reasonable diligence would have been known to the Business Associate. For purposes of clarification of this Section, Business Associate must notify Covered Entity of an incident involving the acquisition, access, use, or disclosure of PHI or ePHI in a manner not permitted under 45 C.F.R. Part E within ten (10) business days after an incident even if Business Associate has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA Rules.

c. Investigation of Breach. Business Associate shall immediately investigate the Violation and report in writing within ten (10) business days to Covered Entity with the following information:

- i. Each Individual whose PHI has been or is reasonably believed to have been accessed, acquired, or disclosed during the Incident;
- ii. A description of the types of PHI that were involved in the Violation (such as full name, social security number, date of birth, home address, account number);
- iii. A description of unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data;
- iv. A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized;
- v. A description of probable causes of the improper use or disclosure;
- vi. A brief description of what Business Associate is doing to investigate the Incident, to mitigate losses, and to protect against further Violations;
- vii. The actions Business Associate has undertaken or will undertake to mitigate any harmful effect of the occurrence; and
- viii. A Corrective Action Plan that includes the steps Business Associate has taken or shall take to prevent future similar Violations.

d. Breach Notification.

- i. Business Associate shall cooperate and coordinate with Covered Entity in the preparation of any reports or notices to the Individual, required to be made under the HIPAA Rules or any other Federal or State laws, rules or regulations, provided that any such reports or notices shall be subject to the prior written approval of Covered Entity.

- ii. Covered Entity shall make the final determination whether the Breach requires notices to affected Individuals and whether the notices shall be made by Covered Entity or Business Associate.
 - iii. For any notice regarding a Breach of Unsecured PHI caused by Business Associate that Covered Entity is required to provide pursuant to 45 C.F.R. §§ 164.404 – 164.408, Business Associate shall reimburse Covered Entity for all costs associated with Covered Entity's obligation of notifying affected Individuals, the Secretary, and the media.
- e. Mitigation. Business Associate shall mitigate to the extent practicable, and at its sole expense, any harmful effects known to the Business Associate of a use, disclosure, or loss of PHI by Business Associate in violation of the requirements of this Agreement, including, without limitation, any Security Incident or Breach of Unsecured PHI. Business Associate shall reasonably cooperate with the Covered Entity's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such threatened or actual Breach, or to recover its PHI, including complying with a reasonable Corrective Action Plan.

Permitted Uses and Disclosures by Business Associate

- a. General Use and Disclosure Provisions. Business Associate may only use or disclose the minimum PHI and ePHI to perform functions, activities, or services for, or on behalf of, Covered Entity, specifically, as necessary to perform the services set forth in the Agreement. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth in subsection b below.
- b. Specific Use and Disclosure Provisions. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI and ePHI:
 - a. As required by law.
 - b. To make uses, disclosures, and requests for PHI consistent with Covered Entity's minimum necessary policies and procedures.
 - c. For the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
 - d. To report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. §§ 164.304 and 164.502(j)(1).

Obligations of Covered Entity

- a. Covered Entity shall notify Business Associate of:

- a. Any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 C.F.R. § 164.520, to the extent that any such limitation may affect Business Associate's use or disclosure of PHI.
 - b. Any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that any such changes may affect Business Associate's use or disclosure of PHI.
Any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that any such restriction may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity agrees that it:
- i. Has included, and will include, in Covered Entity's Notice of Privacy Practices required by the Privacy Rule that Covered Entity may disclose PHI for Health Care Operations purposes.
 - ii. Has obtained, and will obtain, from Individuals any consents, authorizations and other permissions necessary or required by laws applicable to Covered Entity for Business Associate and Covered Entity to fulfill their obligations under the underlying Agreement and this Agreement.
 - iii. Will promptly notify Business Associate in writing of any restrictions on the use and disclosure of PHI about Individuals that Covered Entity has agreed to that may affect Business Associate's ability to perform its obligations under the underlying Agreement or this Agreement.
 - iv. Will promptly notify Business Associate in writing of any change in, or revocation of, permission by an Individual to use or disclose PHI, if the change or revocation may affect Business Associate's ability to perform its obligations under the underlying Agreement or this Agreement.

Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Subpart E of 45 CFR Part 164 if done by Covered Entity, except that the Business Associate may use or disclose PHI and ePHI for management and administration and legal responsibilities of Business Associate.

Term and Termination

- a. Term. The Term of this Agreement shall be effective as of July 1, 2025, and shall terminate when all of the PHI and ePHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI and ePHI, protections are extended to any such information, in accordance with the termination provisions in this Section.
- b. Automatic Termination. This Agreement will automatically terminate upon the termination or expiration of the Agreement or expiration of the services provided.

- c. Termination for Cause. Business Associate agrees that if in good faith Covered Entity determines that Business Associate has materially breached any of its obligations under this Agreement, Covered Entity may:

1. Exercise any of its rights to reports, access, and inspection under this Agreement;
2. Require the Business Associate to cure the breach or end the violation within the time specified by Covered Entity;
3. Terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity
4. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
5. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
6. Before exercising either (c)(2) or (c)(3), Covered Entity shall provide written notice of preliminary determination to Business Associate describing the violation and the action Covered Entity intends to take.

- d. Effect of Termination

1. Upon termination, cancellation, expiration, or other conclusion of this Agreement, Business Associate shall:
 - a. Return to Covered Entity or, if return is not feasible, destroy all PHI, ePHI, and any compilation of PHI in any media or form. Business Associate agrees to ensure that this provision also applies to PHI and ePHI in possession of subcontractors and agents of Business Associate. Business Associate agrees that any original record or copy of PHI and ePHI in any media is included in and covered by this provision, as well as all originals or copies of PHI or ePHI provided to subcontractors or agents of Business Associate. Business Associate agrees to complete the return or destruction as promptly as possible, but not more than thirty (30) business days after the conclusion of this Agreement. Business Associate will provide written documentation evidencing that return or destruction of all PHI and ePHI has been completed.
 - b. If Business Associate destroys PHI and ePHI, it shall be done with the use of technology or methodology that renders the PHI or ePHI unusable, unreadable, or undecipherable to unauthorized individuals as specified by the Secretary. Acceptable methods for destroying PHI or ePHI include:
 - a. For paper, film, or other hard copy media: shredding or destroying in order that PHI cannot be read or reconstructed; and

- b. For electronic media: clearing, purging, or destroying consistent with the standards of the National Institute of Standards and Technology (NIST).

Redaction is specifically excluded as a method of destruction of PHI and ePHI.

- c. If Business Associate believes that the return or destruction of PHI or ePHI is not feasible, Business Associate shall provide written notification of the conditions that make return or destruction not feasible. If Business Associate determines that return or destruction of PHI or ePHI is not feasible, Business Associate shall extend the protections of this Agreement to the PHI or ePHI and prohibit further uses or disclosures of the PHI and ePHI without the express written authorization of Covered Entity. Subsequent use or disclosure of any PHI and ePHI subject to this provision will be limited to the use or disclosure that makes return or destruction not feasible.

Miscellaneous

- a. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA Rules and any other applicable laws or regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended.
- c. Survival. The respective rights and obligations of Business Associate under Section 7(d), related to "Effect of Termination," of this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity and Business Associate to comply with the HIPAA Rules.
- e. Headings. Paragraph Headings used in this Agreement are for the convenience of the Parties and shall have no legal meaning in the interpretation of this Agreement.
- f. Severability. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

- g. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything this Agreement confer, upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- h. Applicable Law and Venue. This Business Associate Agreement is governed by and construed in accordance with the laws of the State of North Dakota. Any action commenced to enforce this Contract must be brought in the state District Court of Burleigh County, North Dakota.
- i. Contact Persons. Business Associate shall identify “key contact persons” in Attachment A for all matters relating to this Agreement and shall notify Covered Entity of any change in these key contacts during the term of this Agreement in writing within ten (10) business days.
- j. Business Associate agrees to comply with all the requirements imposed on a business associate under Title XIII of the American Recovery and Reinvestment Act of 2009, the Health Information Technology for Economic and Clinical Health (HI-TECH) Act, and, at the request of NDPERS, to agree to any reasonable modification of this Agreement required to conform the Agreement to any Model Business Associate Agreement published by the Department of Health and Human Services.

Entire Agreement

This Agreement and the underlying Agreement contains all of the agreements and understandings between the parties with respect to the subject matter of this Agreement. No agreement or other understanding in any way modifying the terms of this Agreement will be binding unless made in writing as a modification or amendment to this Agreement and executed by both parties.


IN WITNESS OF THIS, **NDPERS** [“Covered Entity”] and COMPSYCH CORPORATION [“Business Associate”] agree to and intend to be legally bound by all terms and conditions set forth above and hereby execute this Agreement as of the effective date set forth above.

For Covered Entity:

Mike Seminary, Board Chairman
ND Public Employees Retirement System

Date

For Business Associate:



Signature

Dale Grenolds

Printed Name

Chief Operating Officer

Title
April 11, 2025

Date

ATTACHMENT "A"
BUSINESS ASSOCIATE KEY CONTACT PERSONS

When applicable, Business Associate shall notify Covered Entity of any change in key contacts during the term of this Agreement in writing within ten business days.

Website URL (if applicable):	www.compsych.com
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FIRST POINT OF CONTACT	
Name:	Mike Garfield
Title:	Senior Vice President, Global Business Development
Address:	455 N. Cityfront Plaza Drive, Chicago, IL 60611
Phone Number:	312-953-3859
Fax Number:	312-660-7591
Email Address:	mgarfield@compsych.com

SECOND POINT OF CONTACT	
Name:	Jason Pagels
Title:	Vice President, Business Development
Address:	455 N. Cityfront Plaza Drive, Chicago, IL 60611
Phone Number:	312-371-9177
Fax Number:	312-660-7591
Email Address:	jpagels@compsych.com

Business Associate

(Signature): 

(Print Name): Dale Grenolds

(Title): Chief Operating Officer

(Date): April 11, 2025

Appendix A – CONTRACT

The Village Family Service Center

CONTRACT FOR SERVICES BETWEEN (~~Insert Name of Contractor~~) AND NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM

1. PARTIES

The parties to this contract (Contract) are the state of North Dakota, acting through its *North Dakota Public Employees Retirement System* (ST A TE), and *The Village Family Service Center* having its principal place of business at **2701 12th Ave S Fargo, ND 58103** (CONTRACTOR);

2. SCOPE OF WORK

CONTRACTOR, in exchange for the compensation paid by STATE under this Contract, shall provide the services as specified in the 2025 bid document and referenced in Exhibit A – SOW.

3. 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).

\$1.54

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. Payment

- 1) Payment made in accordance with this Compensation section shall constitute payment in full for the services and work performed and the deliverables and work(s) provided under this Contract and CONTRACTOR shall not receive any additional compensation hereunder.
- 2) STATE shall make payment under this Contract within forty-five (45) calendar days after receipt of a correct 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 thereto. CONTRACTOR's invoice will be subject to reduction for amounts included in any invoice or payment made which are determined by STATE, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute allowable costs. At STATE's sole discretion, all payments shall be subject to reduction for amounts equal to prior overpayments to CONTRACTOR.

- 4) For any amounts that are or will become due and payable to STATE by CONTRACTOR, STATE reserves the right to deduct the amount owed from payments that are or will become due and payable to CONTRACTOR under this Contract.

c. Travel

CONTRACTOR acknowledges travel costs are covered by the Contractual Amount and shall not invoice STATE for travel costs.

d. Prepayment

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

e. 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 certificates of exemption upon request by the CONTRACTOR.

f. Taxpayer ID

CONTRACTOR'S federal employer ID number is: **45-0226423**.

4. TERM OF CONTRACT

This Contract term (Term) begins on **July 1, 2025** and ends on **June 30, 2027**.

a. No Automatic Renewal

This Contract will not automatically renew.

5. TIME IS OF THE ESSENCE

CONTRACTOR hereby acknowledges that time is of the essence for performance under this Contract unless otherwise agreed to in writing by the Parties.

6. TERMINATION

a. Termination by Mutual Agreement

This Contract may be terminated by mutual consent of both Parties executed in writing.

b. Early Termination in the Public Interest

STATE is entering this Contract for the purpose of carrying 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 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 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 of the other provisions of this Contract, or so fails to pursue the work 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.

7. FORCE MAJEURE

Neither Party shall be held responsible for delay or default caused by fire, riot, terrorism, pandemic (excluding COVID-19), 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, then STATE may seek all available remedies, up to and including termination of this Contract pursuant to its Termination Section, and STATE shall be 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.

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 defend, indemnify, and hold the State harmless 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 Contract and CONTRACTOR shall require all subcontractors, prior to commencement of a contract 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) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$500,000 per person and \$2,000,000 per occurrence.
- 3) Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.
- 4) Employer's liability or "stop gap" insurance of not less than \$2,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- 5) 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. The amount of any deductible or self-retention is subject to approval by the STATE.

- 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 Contract shall not be limited by the insurance required in this Contract.
- 4) The state of North Dakota and its agencies, officers, and employees (State) shall be endorsed on the commercial general liability policy, 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 CONTRACT 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) The CONTRACTOR shall furnish a certificate of insurance to the undersigned STATE representative prior to commencement of this Contract. All endorsements shall be provided as soon as practicable.
- 7) Failure to provide insurance as required in this Contract is a material breach of contract entitling the STATE to terminate this Contract 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.

10. WORKS FOR HIRE

CONTRACTOR acknowledges that 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 hereby 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 shall be the sole property of STATE, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein 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:

STATE	CONTRACTOR
Name: Mike Seminary	Name Kelly Olson - The Village Family Service Center
Title: Board Chairman	Title President and CEO
Address: 1600 East Century Ave, Suite 2 PO Box 1657	Address 2701 12th Ave S
City, State, Zip: Bismarck, ND 58502-1657	City, State, Zip Fargo, ND 58103

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 shall 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 as authorized in advance by STATE. STATE shall 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.

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 as Exhibit B.

14. COMPLIANCE WITH PUBLIC RECORDS LAWS

Under the North Dakota public records law and subject to the Confidentiality clause of this Contract, 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 agrees to contact STATE immediately upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to such 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 hereunder in the event of a change of control or sale of all or substantially all of its assets related to this Contract, whether by merger, reorganization, operation of law, or otherwise. Should Assignee be a business or entity with whom STATE is prohibited from conducting business, STATE shall have the right to terminate 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 does not have authority to contract for or incur obligations on behalf of STATE.

17. SPOILIATION – PRESERVATION OF EVIDENCE

CONTRACTOR shall promptly notify STATE of all potential claims that arise or result from this Contract. CONTRACTOR shall also 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, in the event of 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, including all attachments and exhibits, as may be amended;
- b. STATE's Request for Proposal ("RFP") number 192.02-03-25,
- c. CONTRACTOR's proposal in response to RFP number 192.02-03-25.
- d. 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. 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 that term.

20. 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 such court and waives any claim of lack of jurisdiction or *forum non conveniens*.

21. 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.

22. ATTORNEY FEES

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

23. NONDISCRIMINATION AND COMPLIANCE WITH LAWS

CONTRACTOR agrees to 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.)

CONTRACTOR agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes, unemployment compensation and workers' compensation premiums.

CONTRACTOR shall have and keep current and in good standing all licenses and permits required by law during the Term of this Contract all licenses and permits required by law.

CONTRACTOR's failure to comply with this section may be deemed a material breach by CONTRACTOR entitling STATE to terminate in accordance with the Termination for Cause section of this Contract.

24. 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.

25. COUNTERPARTS

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

26. 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 shall be deemed the Effective Date.

CONTRACTOR	STATE OF NORTH DAKOTA
<i>The Village Family Service Center</i>	Acting through its NDPERS
BY: <i>Kelly Olson</i>	BY: <i>Mike Seminary</i>
<i>Kelly Olson</i>	Mike Seminary
<i>President and CEO</i>	NDPERS Board Chairman
Date: <i>2/21/2025</i>	Date:

EXHIBIT A - Scope of Work

A. Member Orientation

- 1) The vendor shall conduct the member orientation for state employees in the EAP. This effort will consist of the following activities:
 - a) Prepare and print appropriate informational material for distribution to all employers.
 - b) Conduct all presentations in a courteous, prudent, and professional manner without any pressure or harassment. The emphasis of all presentations and informational material shall be placed upon a factual representation of the features of the EAP.
 - c) Attend and present information at the NDPERS virtual Employer Conference upon request per the guidelines provided by NDPERS.
 - d) Participate in NDPERS or agency wellness and benefit fairs or meetings upon request.
- 2) If the EAP vendor selected by the agency is not the vendor that provided services during the 2023-2025 biennium, the EAP vendor must:
 - a) Distribute informational material to all agency employees advising them of the change in vendors and supplying appropriate reference material.
 - b) If requested by the employer, hold an informational meeting for agency employees.

B. Minimum Services

- 1) Confidential, voluntary, short-term assessment, and counseling sessions for employees and families experiencing life problems of any kind. The EAP will provide counseling for problems related, but not limited to: stress, addiction, family, work, grief, tobacco, alcohol and drugs, marriage and divorce, depression, parent-child relationships, child/spouse abuse, aging, eating disorders, finances, school, gambling, suicide, and mental health. Proper referrals will be made if more extensive or further counseling is needed and the number of personal counseling sessions is exhausted.
- 2) Intervention, assessment, referral, and ongoing consultation with supervisors or employees regarding problems in the workplace.
- 3) Consultation and case management regarding challenging workplace problems, such as harassment, conflict resolution, violence, critical incidents, work performance, and change.

- 4) Educational programs, including training of State supervisory personnel on the use of EAP services and employee seminars.
- 5) Administrative services, including employee communications.
- 6) The table in Section VII - 9 shows the minimum requirements for selected features of the EAP.
- 7) All services proposed as part of the EAP must be available within the proposed geographic area.
- 8) Before March 1 of each year, the vendor will provide NDPERS an aggregate report of services provided to NDPERS members for the previous calendar year and the results of a member satisfaction survey.

C. Consulting

The vendor will be expected to serve as a consultant for the EAP to the agency and to the NDPERS Board, Executive Director, and NDPERS staff. In this capacity, the vendor may be expected to attend meetings to present findings and recommendations as required. The NDPERS Board meets on a monthly basis. The vendor must provide the following:

- 1) Information on proposed state and federal laws affecting the EAP.
- 2) General assistance to NDPERS regarding the administration of the EAP.
- 3) Advice in determining the eligibility and services of the EAP.
- 4) The effect of changes in law or administrative interpretations on the operations of the EAP.

Exhibit B - Business Associate Agreement

This Business Associate Agreement is entered into by and between, the North Dakota Public Employees Retirement System (“NDPERS”) and the The Village Family Service Center, 2701 12th Ave S Fargo, ND 58103, each individually a “Party” and collectively the “Parties.” This Agreement is hereby incorporated into the underlying Contract, **CONTRACT FOR SERVICES BETWEEN The Village Family Service Center AND NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM**, between the parties dated July 1, 2025 (hereinafter both the Agreement and underlying Contract shall collectively be referred to as the “Agreement”).

DEFINITIONS

Terms used, but not otherwise defined, in this Agreement have the same meaning as those terms in the HIPAA Rules.

Catch-all definitions:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

- a. Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR § 160.103, and in reference to the party to this Agreement, shall mean The Village Family Service Center.
- b. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR § 160.103, and in reference to the party to this Agreement, shall mean NDPERS.
- c. Electronic Protected Health Information. “Electronic Protected Health Information” (ePHI) shall generally have the same meaning as the term “electronic protected health information” at 45 CFR § 160.103.
- d. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- e. Protected Health Information. “Protected Health Information” (PHI) shall generally have the same meaning as the term “protected health information” at 45 CFR § 160.103 that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity.

OBLIGATIONS OF BUSINESS ASSOCIATE

The Business Associate agrees to:

- a. Not use or disclose PHI other than as permitted or required by this Agreement or as required by law, or as otherwise authorized in writing by Covered Entity;
- b. Use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to ePHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;
- c. Not request, use, or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. § 164 if done by Covered Entity, except that Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate.
- d. Not request, use, or disclose more than the minimum amount of PHI necessary to accomplish the purpose of the use, disclosure, or request in accordance with 45 C.F.R. § 164.502(b).
- e. Not share, use, or disclose PHI in any form via any medium with any individual beyond the boundaries and jurisdiction of the United States of America without express written authorization from Covered Entity.
- f. Ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such PHI, in accordance with 45 CFR § 164.502(e)(1) and § 164.308(b).
- g. Within twenty (20) business days of receiving written notice from Covered Entity, make any amendments to PHI in a Designated Record Set, as directed or agreed to by Covered Entity pursuant to 45 CFR § 164.526, or take other measures as necessary to satisfy the Covered Entity's obligations under 45 CFR § 164.526.
- h. PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate.
- i. Report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 C.F.R. § 164.410, and any security incident of which it becomes aware;
- j. To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that it creates, receives, maintains or transmits on behalf of the Covered Entity as required by the HIPAA Rules.
- k. To make available to the Secretary the Business Associate's internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI and ePHI received from, or created or received by Business Associate on behalf of Covered

Entity, for the purpose of determining the Covered Entity's compliance with the HIPAA Rules, subject to any applicable legal privileges.

- l. Provide to Covered Entity within fifteen (15) days of a written notice from Covered Entity, information necessary to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- m. To provide, within ten (10) days of receiving a written request, information necessary for the Covered Entity to respond to an Individual's request for access to PHI about himself or herself under 45 C.F.R. § 164.524, in the event that PHI in the Business Associate's possession constitutes a Designated Record Set.

REPORTING OF A VIOLATION TO COVERED ENTITY BY BUSINESS ASSOCIATE

Business Associate shall report to Covered Entity's Breach Investigation Team (BIT) via email at ndpers-info@nd.gov any use or disclosure of PHI or ePHI not provided for by this Agreement, of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR § 164.410, and any Security Incident of which it becomes aware, immediately, and in no case later than ten (10) business days after the use or disclosure.

- a. Security Incident. "Security Incident" means (as defined by 45 CFR § 164.304), the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. For purposes of clarification of this Section, Security Incident includes use, disclosure, modification, or destruction of PHI by an employee or otherwise authorized user of its system of which Business Associate becomes aware. Business Associate shall track all Security Incidents and shall report such Security Incidents in summary fashion as may be requested by the Covered Entity.
 - i. Unsuccessful Security Incidents. Business Associate and Covered Entity agree that this Agreement constitutes notice from Business Associate of such Unsuccessful Security Incidents. By way of example, Covered Entity and Business Associate consider the following to be illustrative of Unsuccessful Security Incidents when they do not result in unauthorized access, use, disclosure, modification, or destruction of PHI or interference with an information system:
 1. Pings on Business Associate's firewall;
 2. Port Scans, which are attempts to log on to a system or enter a database with an invalid password or username;
 3. Denial-of-service attacks that do not result in a server being taken off-line; and
 4. Malware (e.g., worms, viruses).
- b. Discovery of a Violation. If the use or disclosure amounts to a breach of Unsecured PHI

or ePHI, Business Associate shall ensure its report is made to Covered Entity's Breach Investigation Team (BIT) via email at ndpers-info@nd.gov immediately upon becoming aware of the Breach, and in no case later than ten (10) business days after discovery. The Violation shall be treated as "discovered" on the first day which the Violation is known to the Business Associate or, by exercising reasonable diligence would have been known to the Business Associate. For purposes of clarification of this Section, Business Associate must notify Covered Entity of an incident involving the acquisition, access, use, or disclosure of PHI or ePHI in a manner not permitted under 45 C.F.R. Part E within ten (10) business days after an incident even if Business Associate has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA Rules.

- c. Investigation of Breach. Business Associate shall immediately investigate the Violation and report in writing within ten (10) business days to Covered Entity with the following information:
- i. Each Individual whose PHI has been or is reasonably believed to have been accessed, acquired, or disclosed during the Incident;
 - ii. A description of the types of PHI that were involved in the Violation (such as full name, social security number, date of birth, home address, account number);
 - iii. A description of unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data;
 - iv. A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized;
 - v. A description of probable causes of the improper use or disclosure;
 - vi. A brief description of what Business Associate is doing to investigate the Incident, to mitigate losses, and to protect against further Violations;
 - vii. The actions Business Associate has undertaken or will undertake to mitigate any harmful effect of the occurrence; and
 - viii. A Corrective Action Plan that includes the steps Business Associate has taken or shall take to prevent future similar Violations.
- d. Breach Notification.
- i. Business Associate shall cooperate and coordinate with Covered Entity in the preparation of any reports or notices to the Individual, required to be made under the HIPAA Rules or any other Federal or State laws, rules or regulations, provided that any such reports or notices shall be subject to the prior written approval of Covered Entity.

- ii. Covered Entity shall make the final determination whether the Breach requires notices to affected Individuals and whether the notices shall be made by Covered Entity or Business Associate.
 - iii. For any notice regarding a Breach of Unsecured PHI caused by Business Associate that Covered Entity is required to provide pursuant to 45 C.F.R. §§ 164.404 – 164.408, Business Associate shall reimburse Covered Entity for all costs associated with Covered Entity's obligation of notifying affected Individuals, the Secretary, and the media.
- e. Mitigation. Business Associate shall mitigate to the extent practicable, and at its sole expense, any harmful effects known to the Business Associate of a use, disclosure, or loss of PHI by Business Associate in violation of the requirements of this Agreement, including, without limitation, any Security Incident or Breach of Unsecured PHI. Business Associate shall reasonably cooperate with the Covered Entity's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such threatened or actual Breach, or to recover its PHI, including complying with a reasonable Corrective Action Plan.

Permitted Uses and Disclosures by Business Associate

- a. General Use and Disclosure Provisions. Business Associate may only use or disclose the minimum PHI and ePHI to perform functions, activities, or services for, or on behalf of, Covered Entity, specifically, as necessary to perform the services set forth in the Agreement. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth in subsection b below.
- b. Specific Use and Disclosure Provisions. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI and ePHI:
 - a. As required by law.
 - b. To make uses, disclosures, and requests for PHI consistent with Covered Entity's minimum necessary policies and procedures.
 - c. For the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
 - d. To report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. §§ 164.304 and 164.502(j)(1).

Obligations of Covered Entity

- a. Covered Entity shall notify Business Associate of:

- a. Any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 C.F.R. § 164.520, to the extent that any such limitation may affect Business Associate's use or disclosure of PHI.
- b. Any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that any such changes may affect Business Associate's use or disclosure of PHI.

Any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that any such restriction may affect Business Associate's use or disclosure of PHI.

b. Covered Entity agrees that it:

- i. Has included, and will include, in Covered Entity's Notice of Privacy Practices required by the Privacy Rule that Covered Entity may disclose PHI for Health Care Operations purposes.
- ii. Has obtained, and will obtain, from Individuals any consents, authorizations and other permissions necessary or required by laws applicable to Covered Entity for Business Associate and Covered Entity to fulfill their obligations under the underlying Agreement and this Agreement.
- iii. Will promptly notify Business Associate in writing of any restrictions on the use and disclosure of PHI about Individuals that Covered Entity has agreed to that may affect Business Associate's ability to perform its obligations under the underlying Agreement or this Agreement.
- iv. Will promptly notify Business Associate in writing of any change in, or revocation of, permission by an Individual to use or disclose PHI, if the change or revocation may affect Business Associate's ability to perform its obligations under the underlying Agreement or this Agreement.

Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Subpart E of 45 CFR Part 164 if done by Covered Entity, except that the Business Associate may use or disclose PHI and ePHI for management and administration and legal responsibilities of Business Associate.

Term and Termination

- a. Term. The Term of this Agreement shall be effective as of July 1, 2025, and shall terminate when all of the PHI and ePHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI and ePHI, protections are extended to any such information, in accordance with the termination provisions in this Section.
- b. Automatic Termination. This Agreement will automatically terminate upon the termination or expiration of the Agreement or expiration of the services provided.

- c. Termination for Cause. Business Associate agrees that if in good faith Covered Entity determines that Business Associate has materially breached any of its obligations under this Agreement, Covered Entity may:

1. Exercise any of its rights to reports, access, and inspection under this Agreement;
2. Require the Business Associate to cure the breach or end the violation within the time specified by Covered Entity;
3. Terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity
4. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
5. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
6. Before exercising either (c)(2) or (c)(3), Covered Entity shall provide written notice of preliminary determination to Business Associate describing the violation and the action Covered Entity intends to take.

d. Effect of Termination

1. Upon termination, cancellation, expiration, or other conclusion of this Agreement, Business Associate shall:
 - a. Return to Covered Entity or, if return is not feasible, destroy all PHI, ePHI, and any compilation of PHI in any media or form. Business Associate agrees to ensure that this provision also applies to PHI and ePHI in possession of subcontractors and agents of Business Associate. Business Associate agrees that any original record or copy of PHI and ePHI in any media is included in and covered by this provision, as well as all originals or copies of PHI or ePHI provided to subcontractors or agents of Business Associate. Business Associate agrees to complete the return or destruction as promptly as possible, but not more than thirty (30) business days after the conclusion of this Agreement. Business Associate will provide written documentation evidencing that return or destruction of all PHI and ePHI has been completed.
 - b. If Business Associate destroys PHI and ePHI, it shall be done with the use of technology or methodology that renders the PHI or ePHI unusable, unreadable, or undecipherable to unauthorized individuals as specified by the Secretary. Acceptable methods for destroying PHI or ePHI include:
 - a. For paper, film, or other hard copy media: shredding or destroying in order that PHI cannot be read or reconstructed; and

- b. For electronic media: clearing, purging, or destroying consistent with the standards of the National Institute of Standards and Technology (NIST).

Redaction is specifically excluded as a method of destruction of PHI and ePHI.

- c. If Business Associate believes that the return or destruction of PHI or ePHI is not feasible, Business Associate shall provide written notification of the conditions that make return or destruction not feasible. If Business Associate determines that return or destruction of PHI or ePHI is not feasible, Business Associate shall extend the protections of this Agreement to the PHI or ePHI and prohibit further uses or disclosures of the PHI and ePHI without the express written authorization of Covered Entity. Subsequent use or disclosure of any PHI and ePHI subject to this provision will be limited to the use or disclosure that makes return or destruction not feasible.

Miscellaneous

- a. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA Rules and any other applicable laws or regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended.
- c. Survival. The respective rights and obligations of Business Associate under Section 7(d), related to "Effect of Termination," of this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity and Business Associate to comply with the HIPAA Rules.
- e. Headings. Paragraph Headings used in this Agreement are for the convenience of the Parties and shall have no legal meaning in the interpretation of this Agreement.
- f. Severability. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

- g. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything this Agreement confer, upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- h. Applicable Law and Venue. This Business Associate Agreement is governed by and construed in accordance with the laws of the State of North Dakota. Any action commenced to enforce this Contract must be brought in the state District Court of Burleigh County, North Dakota.
- i. Contact Persons. Business Associate shall identify "key contact persons" in Attachment A for all matters relating to this Agreement and shall notify Covered Entity of any change in these key contacts during the term of this Agreement in writing within ten (10) business days.
- j. Business Associate agrees to comply with all the requirements imposed on a business associate under Title XIII of the American Recovery and Reinvestment Act of 2009, the Health Information Technology for Economic and Clinical Health (HI-TECH) Act, and, at the request of NDPERS, to agree to any reasonable modification of this Agreement required to conform the Agreement to any Model Business Associate Agreement published by the Department of Health and Human Services.

Entire Agreement

This Agreement and the underlying Agreement contains all of the agreements and understandings between the parties with respect to the subject matter of this Agreement. No agreement or other understanding in any way modifying the terms of this Agreement will be binding unless made in writing as a modification or amendment to this Agreement and executed by both parties.

IN WITNESS OF THIS, **NDPERS** ["Covered Entity"] and The Village Family Service Center ["Business Associate"] agree to and intend to be legally bound by all terms and conditions set forth above and hereby execute this Agreement as of the effective date set forth above.

For Covered Entity:

Mike Seminary, Board Chairman
ND Public Employees Retirement System

Date

For Business Associate:

Kelly Olson
Signature

Kelly Olson
Printed Name

President + CEO
Title

2/21/2025
Date

ATTACHMENT "A"
BUSINESS ASSOCIATE KEY CONTACT PERSONS

When applicable, Business Associate shall notify Covered Entity of any change in key contacts during the term of this Agreement in writing within ten business days.

Website URL (if applicable):	thevillagefamily.org
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FIRST POINT OF CONTACT	
Name:	Sara Enger
Title:	Account Executive
Address:	2701 12 th Ave S
Phone Number:	701-451-4900
Fax Number:	651-925-0057
Email Address:	jenger@thevillagefamily.org

SECOND POINT OF CONTACT	
Name:	Tina Anim
Title:	Community Based Program Manager
Address:	2701-12 th Ave S
Phone Number:	701-451-4900
Fax Number:	651-925-0057
Email Address:	tanim@thevillagefamily.org

Business Associate

(Signature): Kelly Olsen

(Print Name): Kelly Olsen

(Title): President & CEO

(Date): 2/21/2025



**North Dakota
Public Employees Retirement System**
1600 East Century Avenue, Suite 2 • PO Box 1657
Bismarck, North Dakota 58502-1657

Rebecca Fricke
Executive Director
(701) 328-3900
1-800-803-7377

Fax (701) 328-3920 Email ndpers-info@nd.gov Website www.ndpers.nd.gov

Memorandum

TO: NDPERS Board

FROM: Rebecca

DATE: May 13, 2025

SUBJECT: Medicare Part D Plan 2026 Premium Projection

Per the terms of the contract with Humana for the Employer Group Waiver Plan (EGWP), referred to as the Medicare Part D product, we have received a preliminary projection for the 2026 premium.

Humana's preliminary projection for the 2026 premium is \$72.88 per member, per month (PMPM). This is an increase of \$12.14 per month over the current monthly premium of \$60.74. The information provided by Humana as part of their preliminary projection is provided in Attachment 1. Per Humana, the projection takes into account rating factors including; claims experience, Center for Medicare & Medicaid Services (CMS) reimbursements, pharmacy trends that include pipeline drugs, demographics, plan benefits, CMS mandates and regulatory changes. In addition, as discussed at the April meeting, there are significant changes being made to all Medicare Part D plans for the 2026 plan year due to the Inflation Reduction Act (IRA).

In 2025 Part D plans experienced regulatory changes under the Inflation Reduction Act (IRA) which included the Part D redesign. As we look to 2026, the IRA will include the following for Part D plans:

- Initiation of maximum fair prices (MFPs) through the Medicare Drug Price Negotiation Program
 - 2026: 10 Part D medications
 - 2027: 15 Part D medications will be added to the Medicare Drug Price Negotiation Program
- Insulin copay cap as the lesser of \$35 copay (per 30-day supply) or 25% of MFP

Humana has provided the following additional comments regarding this preliminary projection and will be available at the meeting to answer questions the Board may have:

- Projected Allowed Amount Increase Drivers
 - Due to unfavorable emerging experience
 - Oncology drug utilization
- Projected Trend Decrease Driver
 - Direct Negotiation program starting in 2026
- Projected CMS Federal Reinsurance is up due to the increase in the allowed amount.
- Projected CMS Direct Subsidy is up significantly due to the increased National Average Bid driven by IRA.
- Projected Rebates are down significantly due to Direct Negotiation program starting in 2026.

Given we have a number of newer Board members, staff felt it would be helpful to share some recent history related to the Part D premiums. In 2021, the Board awarded the bid for the product and the plan was transitioned from Express Scripts Incorporated (ESI) to Humana for the 2022 plan year. The following table provides information on the premiums since that time:

Plan Year	Vendor	Premium PMPM	% Change
2021	ESI	\$89.32	N/A
2022	Humana	\$66.72	-25.3%
2023	Humana	\$69.72	4.5%
2024	Humana	\$64.72	-7.7%
2025	Humana	\$60.74	-6.6%

Staff have asked Deloitte for analysis regarding the reasonableness of the preliminary projection and will have information at the meeting regarding their analysis for the Board's consideration.

The normal process for renewal is that Humana will finalize the premium for the upcoming plan year after the Center for Medicaid and Medicare Services (CMS) releases the federal subsidy level for Part D plans. This occurs in late July each year. Humana then determines if they need to adjust premiums accordingly based on the subsidy amount and the experience of the plan. Per the terms of the contract, Humana must provide the final premium for the Board's consideration by August 15 for consideration at the August Board meeting. Deloitte will again be utilized to analyze the reasonableness of the final premium.

At this time, staff would recommend that the Board defer a decision on whether to bid the Medicare Part D Plan in order to consider the final renewal premium offered by Humana in August. This recommendation is made due to:

- The overall ease of administration of the product for NDPERS processes
- The minimal disruption our members continue to experience with Humana

- The responsiveness of Humana when questions regarding NDPERS processes or members have been raised
- An understanding that a substantial amount of the increase is due to the IRA, CMS reimbursements, CMS mandates and regulatory changes, and would likely be included in any vendor quote should the product be bid since any vendor bidding on the product would have to build in the same items in the plan design.

Should the Board approve, staff will continue to review the information provided by Humana to confirm consistent plan design to the current plan year and will also work with Humana on 2026 Performance Guarantees. If staff have questions, we will work with Humana to have these resolved prior to the final decision by the Board in August.

If in August the final renewal premium exceeds the projected premium and is a rate that the Board does not wish to renew, then staff will have the final Medicare Part D RFP prepared for the August Board meeting so that it can be approved for immediate release.

If the Board does not agree to the staff recommendation, then staff provide Attachment 2 which is the Request for Proposal (RFP) for this product for the Board to approve so that the RFP can be released in June.

Board Action Requested:

Provide direction on whether to defer a bid for the 2026 plan year for the Medicare Part D Plan until after Humana provides their final renewal premium in August 2025.



Group Medicare Renewal



2026 Renewal Information

April 30, 2025

Thank you for being a loyal Humana customer. Our commitment to providing exceptional healthcare solutions remains unwavering, and we look forward to continuing our partnership. We are pleased to deliver the 2026 Group Medicare Part D Prescription Drug Plan renewal for North Dakota Public Employees Retirement System (NDPERS). Attached to this PDF file you will find the following information for your review:

- 2026 Rate Sheet
- 2026 Rate Exhibit
- 2026 Plan Design Exhibit
- 2026 Performance Guarantee Agreement

We look at multiple factors when determining rates including, but not limited to, claims trend, benefit changes, CMS reimbursement changes and regulatory changes. Two major factors impacting rates for 2026 include the CMS Rate Announcement and the Inflation Reduction Act (IRA).

2026 CMS Rate Announcement

- Each year, the Centers for Medicare & Medicaid Services (CMS) is required to update Medicare Advantage (MA) and Medicare Part D payment rates and make technical updates to the program.
- On April 7, CMS published the Medicare Part D Rate Notice for 2026 plans, which included the following key updates with regards to PDP:
 - A change in the calculation of the Rx normalization factor, resulting in higher payment for PDP plans.

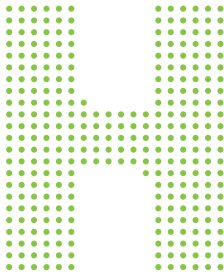
No significant changes were made to Employer Group Waiver Plan (EGWP) payments.

Important industry headwinds will impact renewals:

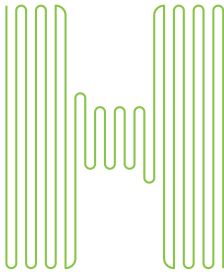
- Continued higher trends for pharmacy due to increased utilization and new biosimilar and brand medications to market, and
- Uncertainty tied to Part D funding because of the IRA Part D changes in 2025 flows into future years which impacts Part D benchmarks and 2026 negotiated drug pricing.

Part D Redesign

One piece of the IRA is the redesign of Part D Benefit. Beginning in 2026, the Part D benefit will be restructured to cap beneficiary out-of-pocket spending at \$2,100 per plan year for covered Part D drugs. Beneficiaries will also have the option to “smooth” these costs across the plan year via the Medicare Prescription Payment Plan.

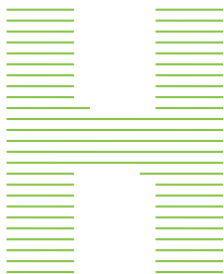


- Like 2025, accumulation towards the \$2,100 IRA MOOP is based on “incurred costs.” This is different than how the MOOP plans worked prior to 2025, which was based only on the retiree’s out of pocket cost.
- The coverage gap continues to be eliminated.
- A new shared liability is established in the catastrophic phase.
 - Plans will now be responsible for 60%, manufacturers for 20%, and the government for 20% brand and 40% generic.
- In 2024, cost sharing for Part D drugs was eliminated for beneficiaries in the catastrophic phase of coverage (previously they paid 5%).



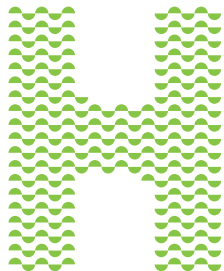
CMS defined standard parameter changes:

Stage	2025	2026
Deductible	\$590	\$615
Initial Coverage Limit (ICL)	Not Applicable	Not Applicable
Out-of-pocket threshold	\$2,000 (required by IRA)	\$2,100



New in 2026 - Value Added Services

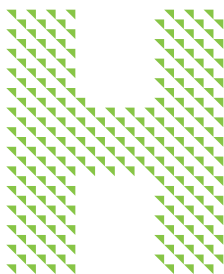
- Laundry service discount - Poplin
- Virtual wellbeing discount - SWORKIT



Humana places tremendous value on our relationship with North Dakota Public Employees Retirement system (NDPERS). We will continue to explore ways to stabilize costs while providing the value and service that NDPERS and its retirees expect and deserve. We appreciate the trust and confidence you have placed in Humana and look forward to our continued partnership.

Next Steps

As you review the 2026 renewal, please let me know if you have any questions. We will work to prepare the BAFO rate following release of the July Part D benchmarks and by the deadline of August 15th, in advance of the August Board meeting. Once finalized, we can then work with you on the 2026 contract amendment and begin processing the renewal.



Sincerely,

Julie Bodenski
Account Executive
Humana Group Medicare

cc: Stephanie Heller, Director Account Management



Humana Medicare Group Plan – Premium Information

NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM - PDP

Date: 4/28/2025
Plan Names: Humana Medicare Group Plan
Rx Formulary: Custom PDP
Additional Medication Buy-Ups: Group Plus Formulary - 26800
Coughs and Colds, EDs Enhanced

Plan Year	Final Billed Premium (Per Member Per Month)
1/1/2026 - 12/31/2026	\$72.88

PDP 037 161 Rx Benefit Overview

Prescription Drugs (Retail 30 day supply)

Custom PDP \$5 copay plus 15% coinsurance / \$15 copay plus 25%
coinsurance / \$25 copay plus 50% coinsurance / \$25 copay plus 50%
coinsurance from \$0 to Catastrophic

See attached sheet for rating assumptions and stipulations. The benefits presented above are a high-level summary. Please consult the Plan Design Exhibit for a more detailed list of covered services, member cost shares, services subject to deductibles and any plan limitations.

HUMANA MEDICARE EMPLOYER PDP PLAN

2026 PDP for North Dakota Public Employees Retirement System (NDPERS) Plan 037 Option 161
Group Plus Formulary - PDG 50
With Package(s): 2 (Cough/Cold), 7 (Erectile Dysfunction)
Effective Date: 01/01/2026 - 12/31/2026

30 day Supplies

PDP Option Number	30 day Standard Retail from \$0 to Catastrophic (1)				30 day Standard Retail from Catastrophic to Unlimited	Part D MOOP (2)
	Tier 1*	Tier 2	Tier 3	Tier 4		
PDP 157	\$5 copayment; 15% coinsurance of remaining cost share	\$15 copayment; 25% coinsurance of remaining cost share	\$25 copayment; 50% coinsurance of remaining cost share	\$25 copayment; 50% coinsurance of remaining cost share	\$0	\$2,100

PDP Option Number	30 day Standard Mail Order from \$0 to Catastrophic (1)				30 day Standard Mail Order from Catastrophic to Unlimited	Part D MOOP (2)
	Tier 1*	Tier 2	Tier 3	Tier 4		
PDP 157	\$5 copayment; 15% coinsurance of remaining cost share	\$15 copayment; 25% coinsurance of remaining cost share	\$25 copayment; 50% coinsurance of remaining cost share	\$25 copayment; 50% coinsurance of remaining cost share	\$0	\$2,100

Note: Part D vaccines recommended by the Advisory Committee on Immunization Practices (ACIP) for adults may be available at no cost.
Note: Plan covered insulin products will not exceed \$35 for a one-month supply no matter what cost-sharing tier it's on.

*Tier 1: Generic or Preferred Generic - Generic or brand drugs that are available at the lowest cost share for this plan.
Tier 2: Preferred Brand - Generic or brand drugs that Humana offers at a lower cost than Tier 3 Non-Preferred Drug.
Tier 3: Non-Preferred Drug - Generic or brand drugs that Humana offers at a higher cost than Tier 2 Preferred Brand drugs.
Tier 4: Specialty Tier - Some injectables and other higher-cost drugs.

90 day Supplies

PDP Option Number	90 day Standard Retail (3) from \$0 to Catastrophic (1)				90 day Standard Retail (3) from Catastrophic to Unlimited	Part D MOOP (2)
	Tier 1*	Tier 2	Tier 3	Tier 4		
PDP 157	\$5 copayment; 15% coinsurance of remaining cost share	\$15 copayment; 25% coinsurance of remaining cost share	\$25 copayment; 50% coinsurance of remaining cost share	N/A	\$0	\$2,100

PDP Option Number	90 day Standard Mail Order (3) from \$0 to Catastrophic (1)				90 day Standard Mail Order (3) from Catastrophic to Unlimited	Part D MOOP (2)
	Tier 1*	Tier 2	Tier 3	Tier 4		
PDP 157	\$5 copayment; 15% coinsurance of remaining cost share	\$15 copayment; 25% coinsurance of remaining cost share	\$25 copayment; 50% coinsurance of remaining cost share	N/A	\$0	\$2,100

Note: Part D vaccines recommended by the Advisory Committee on Immunization Practices (ACIP) for adults may be available at no cost.

Footnotes

1 Catastrophic: When a member's Part D Maximum Out-of-Pocket (MOOP) cost reaches \$2,100 (enhanced drug coverage claims are excluded from accrual towards the Part D MOOP), Humana then pays 100% of covered Part D Rx claims, including enhanced drug coverage.

2 Part D MOOP: When a member's Part D Maximum Out-of-Pocket (MOOP) cost reaches \$2,100 (enhanced drug coverage claims are excluded from accrual towards the Part D MOOP), Humana then pays 100% of covered Part D Rx claims, including enhanced drug coverage.

3 Retail and Mail Order: The benefit for a 90-day supply is limited to Rx formulary Tiers 1-2 and most drugs on Tier 3. Regardless of tier placement, Specialty drugs are limited to a 30-day supply.

Out of Network: Emergency Situations

When a member purchases a drug at an out-of-network pharmacy in an emergency situation:

a. the member will pay the same coinsurance as would have applied at a network pharmacy, but at the out-of-network pharmacy price, and/or,

b. the member will pay the same copayment as would have applied at a network pharmacy, plus the difference between the out-of-network pharmacy price and the network pharmacy price.

This information is not a complete description of benefits. Contact the plan for more information. Limitations, copayments and restrictions may apply. Benefits, premiums and/or member cost-share may change each year. Part D benefit parameters, regulated by the Centers for Medicare and Medicaid Services (CMS), can impact Part D benefits on an annual basis. The formulary and pharmacy network may change at any time. The member will receive notice when necessary. Please refer to the Evidence of Coverage for additional information regarding covered services and limitations or any other contractual conditions. For a complete description of benefits, exclusions and limitations please refer to the actual Evidence of Coverage. If a discrepancy arises between this information and the actual Evidence of Coverage, the Evidence of Coverage will prevail in all instances.

Humana is a Medicare Employer Prescription Drug plan with a Medicare contract. Enrollment in this Humana plan depends on contract renewal.

HUMANA GROUP MEDICARE PRESCRIPTION DRUG PLAN VALUE ADDED SERVICES

Effective Date: 01/01/2026 - 12/31/2026

The benefit and discount information presented here are current as of the date of this document. If a change should occur prior to implementation, Humana will clarify any change and notify the group sponsor. The products and services described below are neither offered nor guaranteed under our contract with the Medicare program. In addition, they are not subject to the Medicare appeals process. Any disputes regarding these products and services should be addressed with Customer Care by calling the number on the back of the member's Humana membership card. CMS does not permit discussing the below services with potential enrollees prior to enrollment.

	Benefit	Description	2025	2026
Extra Services (VAIS)	<ul style="list-style-type: none"> CAM Integrative Services Discount (Tivity) - Not available in Puerto Rico 	Discounts for complementary and alternative medicine services including acupuncture, chiropractic, massage, vitamins, healthy meal plans, footwear and more. Services must be received from participating designated providers.	Available	Available
	<ul style="list-style-type: none"> Dental Discount (Florida GoldPlus) - Available in Florida only 	Discounts on dental services. Services must be received from participating dental providers.	Available	Available
	<ul style="list-style-type: none"> Dental Discount (HumanaDental) - Not available in Florida or Puerto Rico 	Discounts on dental services. Services must be received from participating dental providers.	Available	Available
	<ul style="list-style-type: none"> Healthy Hearing Discount (HearUSA) - Available in Florida only 	Discounts on select hearing aids, accessories and hearing assistance products.	Available	Available
	<ul style="list-style-type: none"> Hearing Discount (TruHearing) - Not available in Florida or Puerto Rico 	Discounts on select hearing aids. Services must be received at participating hearing centers.	Available	Available
	<ul style="list-style-type: none"> Personal Emergency Response System (Lifeline® Medical Alert Systems) 	Discounts on select medical alert systems, medication dispensers and emergency response smartwatch.	Available	Available
	<ul style="list-style-type: none"> Meal Delivery Discount (Mom's Meals) 	Discounts on home delivered meals to help support nutritional needs.	Available	Available
	<ul style="list-style-type: none"> Bill Management Service (Silver Bills) 	Discount on monthly bill management services.	Available	Available
	<ul style="list-style-type: none"> Dental Health (Truthbrush) 	Discounts on toothbrush tracking devices that monitors dental habits and performance through the use of an app.	Available	Available
	<ul style="list-style-type: none"> Vision Discount (EyeMed) 	Discounts from participating providers on routine vision services such as: Exam, contact lens fitting and follow-up, lenses, frames and laser vision correction.	Available	Available
	<ul style="list-style-type: none"> Travel Discount (International Medical Group) 	Discounts on medical services and evacuation protection when travelling outside of the U.S.	Available	Available
	<ul style="list-style-type: none"> Pet Telehealth (Petzey) 	Discounts on unlimited pet telehealth visits.	Available	Available
	<ul style="list-style-type: none"> Laundry Service Discount (Poplin) 	Discount on select laundry services.	Not Available	Available
	<ul style="list-style-type: none"> Total Wellbeing Discount (SWORKIT) 	Discount on virtual wellbeing program.	Not Available	Available
	<ul style="list-style-type: none"> Prescription Medication Discount 	Discounts on select non-covered prescription drugs received from a network pharmacy (Quantity limits may apply).	Available	Available

Humana is a Medicare Employer plan with a Medicare contract. Enrollment in this Humana plan depends on contract renewal.

Humana's Group Medicare Performance Guarantee Agreement

North Dakota Public Employees Retirement Systems



2026 Group Medicare Performance Standards for PDP Only

Effective January 1, 2026 through December 31, 2026

Minimum Annual Average Membership Requirement: None

PG#	Category	Target	Standard & Measurement Criteria	Amount at Risk
1	Plan Performance Review	Measurement methodology shall be measured from date of delivery of the plan performance review in calendar days	Within ten (10) calendar days following delivery of performance reviews to NDPERS, vendor shall develop and submit a corrective action plan (CAP) of issues identified for approval by NDPERS, and implement such plan within the time prescribed in the approved CAP.	Semi- annually \$1,000 per calendar day beyond the due date
2.1	Customer Satisfaction Surveys	Vendor will provide annual survey results to confirm compliance with performance standard	Member satisfaction surveys will be designed by the vendor and approved by NDPERS. Vendor will invite a random sample of members to participate in the survey to collect a statistically significant number of completed surveys. Member satisfaction rate will meet 90% or higher using a 1-5 scale of Completely Satisfied, Very Satisfied, Satisfied, Dissatisfied, Very Dissatisfied. Final survey questions and methodology will be agreed upon by vendor and NDPERS.	Annually \$25,000 per year
2.2	Customer Satisfaction Surveys - Illustrative Only	Illustrative Group Specific Results Only - see 2.1	Illustrative Group Specific Results Only - see 2.1	Illustrative Group Specific Results Only - see 2.1
3	Team Meetings	Compliance to be monitored and assessed by NDPERS	NDPERS requires monthly team meetings to address all planning / implementation, business, financial, clinical / formulary (including new drug review) and operational needs	Monthly \$5,000 for each meeting missed
4	NDPERS board meetings	Compliance to be monitored and assessed by NDPERS	Vendor will participate in quarterly performance reviews to examine operational and financial performance	Quarterly \$5,000 for each quarter missed
5	Electronic Eligibility	Vendor will provide quarterly reports to confirm compliance with performance standard	Eligibility files will be installed in an electronic medium, logged within eight (8) hours and status will be effective within vendor's system within eighteen (18) hours from date of receipt, seven (7) days per week.	Quarterly \$500 for each missed file deadline
6	Manual Eligibility	Vendor will provide quarterly reports to confirm compliance with performance standard	Manual eligibility will be loaded within eight (8) hours upon receipt or notification and must be applied and active in the vendor's system within one (1) business day.	Quarterly \$500 for each missed file deadline
7	Error Reports	Vendor will provide quarterly reports to confirm compliance with performance standard	An error report on all eligibility file updates will be produced within eighteen (18) hours from the update.	Quarterly \$500 for each missed file deadline
8	Data Files	Will be available to NDPERS on request	Monthly data files (membership, medical, pharmacy) will be available by the 15th of the following month.	Monthly \$1,000 for each month not met
9	Claims Financial Accuracy	Claims Financial Accuracy will be 99% or greater, each year of the biennium. Measured as the absolute value of financial errors divided by the total paid value of audited dollars paid based on quarterly internal audit of statistically valid sample.	Vendor will provide annual reports to confirm compliance with performance standard	Annually \$12,500 per year
10	Claims Payment Accuracy	Vendor will provide annual reports to confirm compliance with performance standard	Claims Payment incidence Accuracy will be 98% or greater, each year of the biennium. Measured as the percent of Claims processed without financial payment error.	Annually \$12,500 per year
11	Claims Processing Accuracy	Claims Procedural Accuracy will be 95% or greater, each year of the biennium. Measured as the percent of Claims processed without non-financial error.	Vendor will provide annual reports to confirm compliance with performance standard	Annually \$12,500 per year
12	Claim Timeliness	Clean claims processing within 14 calendar days will be 95% or greater, each year of the biennium. Measured from the date the claim is received to the date claim is processed	Vendor will provide annual reports to confirm compliance with performance standard	Annually \$12,500 per year
13	Average Speed to Answer (ASA)	Vendor will provide semi-annual reports to confirm compliance with performance standard	Average Speed of Answer will be 30 seconds or less, each year of the biennium. Vendor will have an established measurement process that shall be reviewed with NDPERS	Semi-annually \$10,000 per year
14	Call Abandonment	Vendor will provide annual reports to confirm compliance with performance standard	Call Abandonment rate will be 5% or less, each year of the biennium	Annually \$10,000 per year
15 a	Accuracy and Timelines/	Vendor must evaluate a statistically valid sample of inquiries with reports provided.	a.) 95% percent of callers receive accurate information. Calls requiring additional research is excluded from the computation of this metric.	15a, 15b, and 15c Annually \$12,500 per year

Humana's Group Medicare Performance Guarantee Agreement

North Dakota Public Employees Retirement Systems



2026 Group Medicare Performance Standards for PDP Only

Effective January 1, 2026 through December 31, 2026

Minimum Annual Average Membership Requirement: None

PG#	Category	Target	Standard & Measurement Criteria	Amount at Risk
15 b	First Call Resolution	Vendor must evaluate a statistically valid sample of inquiries with reports provided.	b.) 95% percent of inquiries must be resolved during the initial call (excluding appeals, billing, errors and escalations).	15a, 15b, and 15c Annually \$12,500 per year
15 c	Written Inquiry Response Time	Vendor must evaluate a statistically valid sample of inquiries with reports provided.	c.) ≥ 90% response to written inquiries within 30 calendar days	15a, 15b, and 15c Annually \$12,500 per year
16	Prescription drug turnaround time – clean prescriptions	Vendor will provide quarterly reports to confirm compliance with performance standard	98% within two (2) business days if no intervention required	Quarterly \$1,000 for each point below standard-
17	Prescription drug mail dispensing accuracy	Vendor will provide annual reports to confirm compliance with performance standard	99.9% Mail service dispensing accuracy rate. Fields measured include member name, drug strength, directions, quantity and prescriber name.	Annually \$12,500 per year
18	Prescription drug home delivery member notifications	Vendor will provide annual reports to confirm compliance with performance standard	Vendor is required to notify a member when a mail service prescription is changed or there is any expected shipping delay and provide reporting details to NDPERS capturing all occurrences by member/DOS/Issue	Annually \$12,500 per year
19	Prescription drug specialty pharmacy delivery	Vendor will provide annual reports to confirm compliance with performance standard	98% of prescriptions will be delivered and received by patients on the specified date of delivery	Annually \$12,500 per year
20	Network Pharmacy Access	Vendor will provide annual reports to confirm compliance with performance standard	Pharmacy network composition will not be reduced by more than 5% in North Dakota compared to the network submitted in the RFP	Annually \$12,500 per year
21	Data Systems Availability and Adjudication	Book of business level	Guarantees an annual average 99% system availability of the point-of-sale adjudication system on a book of business basis. This standard excludes downtime attributed to regularly scheduled systems maintenance or systems downtime	Annually \$12,500 per year

Humana agrees to meet the performance standards as outlined above in providing administrative services for North Dakota Public Employees Retirement Systems. This agreement is contingent upon Humana being the only Part D Prescription Drug option for Medicare eligible retirees. The agreement will be for the contract period beginning January 1, 2026. This Performance Guarantee offering is based on a PDP Only plan offering. Performance results will be reported quarterly based upon center results for the member and claims services categories, not client specific results (except where otherwise stated) within 60 days after the end of the reporting period. Results will be assessed based on the annual results with payment of any penalties due following the end of the plan year. Please note that the performance standards are influenced by key market indicators (including changes in rules and standards from CMS) which could impact our performance standard metrics.

During implementation if significant changes to the Client's Plan, or in the event a benefit change notification is not received from the Client on a timely basis, Humana will not be responsible for performance results or penalty amounts as described within this Agreement.

ACCEPTED AND AGREED:

By: _____ Date: _____

In order for this contract to be binding, signatures are required from the client. This signed exhibit must be returned to the Humana Account Executive prior to implementation and no later than 30 days post effective date.



Request for Proposal

Fully Insured and Self-Insured Medicare Part D Employer Group Waiver Plan (EGWP) + Wrap

Release Date: May 19, 2025

Due Date: July 3, 2025

Effective Date: January 1, 2026

Contents

I.	Proposal Timetable	2
II.	Delivery of Proposal	3
III.	Objective of the RFP	5
IV.	Overview of the NDPERS Program	9
IX.	Confidentiality	13
Appendix A	NDPERS Response Template	Attached
Appendix B	Medicare Part D EGWP+Wrap Questionnaire	Attached
Appendix C	Medicare Part D EGWP+Wrap Cost Proposal	Attached
Appendix D	Medicare Part D EGWP+Wrap Formulary & Network Match	Attached
Appendix E	Medicare Part D EGWP+Wrap Model Contract	Attached
Appendix F	Medicare Part D EGWP+Wrap Services to be Performed	Attached
Appendix G	Medicare Part D EGWP+Wrap Performance Guarantees	Attached
Appendix H	Medicare Part D EGWP+Wrap Confidential Information	Attached
Appendix I	Medicare Part D EGWP+Wrap Proposed Deviations	Attached
Exhibit 1	2023 Medicare Part D EGWP+Wrap Prescription Drug Claims	Attached*
Exhibit 2	2024 Medicare Part D EGWP+Wrap Prescription Drug Claims	Attached*
Exhibit 3	2023 & 2024 Medicare Part D EGWP+Wrap Enrollment	Attached
Exhibit 4	2025 Medicare Part D EGWP+Wrap Utilization Management	Attached
Exhibit 5	2025 Member Roster as of March 2025	Attached
Exhibit 6	Medicare Part D Eligibility File Layout	Attached

**Password to access protected files may be requested from the RFP Coordinator via email*

I. Proposed Timetable

The timeline is provided below for informational purposes. NDPERS reserves the right to change the dates. Every effort will be made to notify Vendors of changes to the proposed timeline. Proposed 2025 schedule:

Activity	Date/Time
RFP Published	May 19, 2025
Questions Due	June 6, 2025
Question Answers Posted	June 13, 2025
Proposals Due	July 3, 2025
NDPERS Staff Interviews	August 2025
NDPERS Board Presentations, if deemed necessary by the NDPERS Board	August 2025
Selection of Vendor	August 2025
Contract Effective Date	January 1, 2026

II. Delivery of Proposals

Instructions

All proposals should be submitted simply and economically providing a direct, concise delineation of the vendor's proposal and qualifications adhering to the proposal format guidelines outlined below.

- Proposals should be typed or printed on 8.5" x 11" paper.
- All proposals must include the transmittal letter/statement which includes the following:
 - An acknowledgment of receipt of the EGWP Drug Plan RFP specifications.
 - This letter must include the title and signature of a Duly Authorized Officer of the company.
- All proposals must include a table of contents and appropriate page number references.
- All pages of proposals must have consecutive page numbers.
- Responses to questions must include a restatement of the question (number and text) with the response immediately following.
- Appendices and other supplemental information provided with your proposal must be clearly identified.
- **Cost proposal must be submitted in a separate, sealed envelope, and clearly marked, "Cost Proposal".** Cost Proposal Exhibits will be all-inclusive.
- NDPERS will not be billed any additional amounts for services, including commissions or brokerage fees.
- North Dakota insurance law 54-52.1-10 (Exemption From State Premium Tax) provides that "All premiums, consideration for annuities, policy fees, and membership fees collected under this chapter are exempt from the tax payable pursuant to section 26.1-03-17". Thus, Offeror's responses should not reflect any amounts for premium taxes.
- Any and all deviations must be clearly noted and submitted as defined in this RFP. If you do not identify and explain deviations, your proposal will be deemed a certification that you will comply in every respect with the requirements and contractual language set forth in this RFP.

Proposal Format and Contact Information

From the date of issuance until the announcement of the finalist, Vendors should only contact the Deloitte RFP coordinators. All correspondence and questions must be submitted in writing via e-mail to Deloitte Consulting in accordance with the timeline set forth in this RFP. NDPERS personnel are not authorized to discuss this RFP with a vendor; doing so may result in disqualification. Vendors may continue to communicate with NDPERS staff regarding other relevant business matters.

Proposals should be submitted in two parts, with the cost proposal separate from the qualitative proposal (qualitative to NDPERS, complete proposals to Deloitte Consulting, see below). Late proposals will not be considered unless approved by the NDPERS Board. Proposals will be sent to two parties, as described below:

- Qualitative proposals should include:
 - Appendix A
 - Appendix B
 - Appendix D
 - Appendix E
 - Appendix F
 - Appendix G
 - Appendix H
 - Appendix I
- Cost proposal should include Appendix C and any other documentation supporting your bid financials and cost proposal deviations.

Vendors are required to submit one (1) unbound original and six (6) paper copies along with one (1) electronic copy (USB flash drive) of the *qualitative proposal* as well as one (1) electronic, editable, PDF redacted copy of the qualitative proposal on a separate flash drive (note that the electronic redacted copy may not be a picture) to:

Katheryne Korom
North Dakota PERS
1600 East Century Avenue, Suite 2
PO Box 1657
Bismarck, ND 58502

A full electronic copy of the *qualitative proposal*, *cost proposal*, and *deviations* must be emailed to Deloitte Consulting. All appendices provided in Microsoft Word or Excel with the RFP must be provided along with your proposal in Word or Excel.

PLEASE NOTE: Cost proposals should only be submitted to Deloitte Consulting. Cost proposals should follow the Confidential/Proprietary Information instructions in Appendix H. Any provisions of the Vendor's proposal that are desired to be confidential must be identified specifically on each page of the proposal and included in the table provided in Appendix H.

III. Objective of RFP

North Dakota Public Employees Retirement System – Strategic Objectives

The North Dakota Public Employees Retirement System (NDPERS) covers approximately 60,000 lives including approximately 9,100 members that participate in the Medicare Part D EGWP+Wrap plan. NDPERS has retained Deloitte Consulting LLP (“Deloitte Consulting”) to assist with the RFP process. NDPERS is issuing this RFP with the intention of finding a PBM partner that:

- Provides exceptional service, from both a member’s and NDPERS’ experience
- Adheres to Centers for Medicare & Medicaid Services (CMS) regulations for the administration of EGWP products
- Manages pharmacy costs for members and NDPERS
- Champions transparency (and other innovations) in contracting
- Brings innovation to the PBM services provided by NDPERS
- Seamlessly integrates with NDPERS medical plans and analytical partners
- Complies with North Dakota Century Code 54-52.1 and other applicable state laws

Partnership Considerations

Our goal is to select a partner that will provide the highest quality service at the most competitive price while offering industry-leading compliance controls, data security protection, and financial disclosures.

- Administration of CMS required operations, subsidies, compliance, and reporting
- Competitive fully-insured or self-insured pricing
- Pharmacy claims processing and plan administration
- Network Management
- Formulary Management
- Customer Service excellence
- Clinical programs development and administration that focus on specialty drugs and chronic conditions
- Reporting and data analytics capabilities
- Administration of late enrollment penalty (LEP) and low-income subsidy (LIS) programs

This request for proposal is intended to provide NDPERS with the necessary information to assess your capabilities and strategic fit. To the extent that you see opportunities to add value that we have not explicitly identified in the RFP, please provide additional information.

We thank you for your engagement in the process and look forward to reviewing your thoughtful responses to our request for proposal.

Special Self-Insurance Requirements for a Self-Insured Plan

The North Dakota Insurance Commissioner has oversight of NDPERS and its vendors under a self-insured arrangement:

26.1-36.6-03. Self-insurance health plans - Requirements.

The following policy provisions apply to a self-insurance health plan or to the administrative services only or third-party administrator, and are subject to the jurisdiction of the commissioner: 26.1-36-03, 26.1-36-03.1, 26.1-36-05, 26.1-36-10, 26.1-36-12, 26.1-36-12.4, 26.1-36-12.6, 26.1-36-13, 26.1-36-14, 26.1-36-17, 26.1-36-18, 26.1-36-19, 26.1-36-23, 26.1-36-29, 26.1-36-37.1, 26.1-36-38, 26.1-36-39, 26.1-36-41, 26.1-36-44, and 26.1-36-46

All self-insured arrangements must comply with the above and other applicable direction from the North Dakota Insurance Commissioner.

Pharmacy Benefit Manager (PBM) Requirement

North Dakota Century Code chapter 54-52.1 includes specific provisions for pharmacy benefits disclosures. Proposals are expected to comply with the law.

If you are unable to comply with the provisions described in North Dakota Century Code chapter 54-52.1 or other applicable state laws, you may still submit a proposal that specifies which provisions you are unable to comply with, why you are unable to comply, additional costs associated with compliance, and a recommended approach to meeting the intent of the law.

North Dakota statutes provide a preference for proposals with PBM efforts that meet the following requirements:

54-52.1-04.15. Health insurance benefits coverage – Prescription drug coverage - Transparency - Audits - Confidentiality.

1. *If the prescription drug coverage component of a health insurance benefits coverage contract received in response to a request for bids under section 54-52.1-04 utilizes the services of a pharmacy benefits manager, either contracted directly with a pharmacy benefits manager or indirectly through the health insurer, in addition to the factors set forth under section 54-52.1-04 the board shall consider and give preference to an insurer's contract that:*
 - a. *Provides the board or the board's auditor with a copy of the insurer's current contract with the pharmacy benefits management company which controls the prescriptions drug coverage offered as part of the health insurance benefits coverage, and if the*

- contract is revised or a new contract is entered, requires the insurer to provide the board with the revision or new contract within thirty days of the change.*
- b. Provides the board with monthly claims data and information on all programs being implemented or modified, including prior authorization, step therapy, mandatory use of generic drugs, or quantity limits.*
 - c. Describes the extent to which the board may customize the benefit plan design, including copayments, coinsurance, deductibles, and out-of-pocket limits; the drugs that are covered; the formulary; and the member programs implemented.*
 - d. Describes the audit rights of the board.*
- 2. The board may conduct annual audits to the extent permitted under the contract terms agreed to under subsection 1. The audits must include:*
 - a. A review of a complete set of electronic prescription coverage claims data reflecting all submitted claims, including information fields identified by the board.*
 - b. A review of a list of all programs that have been implemented or modified during the audit period under subsection 1, and in connection with each program the auditor shall report on the cost, the cost savings or avoidance, member disruption, the process for and number of overrides or approvals and disapprovals, and clinical outcomes.*
 - c. Recommendations for proposed changes to the prescription drug benefit programs to decrease costs and improve plan beneficiaries' health care treatment.*
 - 3. Information provided to the board under the contract provisions required under this section are confidential; however, the board may disclose the information to retained experts and the information retains its confidential status in the possession of these experts.*
 - 4. The board may retain an auditor of the board's choice which is not a competitor of the pharmacy benefits manager; a pharmaceutical manufacturer representative; or any retail, mail, or specialty drug pharmacy representative or vendor.*

Model Contract

NDPERS has provided in Appendix E a model contract; NDPERS proposes to use this contract as a starting point for discussions with bidders. Please review the attached and redline this contract with any changes you would propose as part of the terms of your proposal. Include the marked-up contract with your proposal submission. Firms offering this contract may be eligible for the preference provided in this section. Firms that substantially alter this contract or offer a new contract will not be eligible for this preference.

Contract Term and Renewals

The term of this contract is one year, January 1 through December 31, 2026. The NDPERS Board intends that the successful bidder will have the opportunity to renew this contract five (5) additional times. The NDPERS Board will consider the following when determining whether to renew for subsequent plan years:

1. Satisfactory renewal price
2. Whether vendor performance has met the Board's expectations, and
3. Any other information the Board chooses to consider

The above are outlined in more detail in NDCC 54-52.1-05. The renewal process will begin at the end of April when the PBM partner will submit an estimated renewal to the Board. The NDPERS Board may determine at this point to go out to bid or to defer a decision until August when the carrier will submit a formal renewal proposal and the NDPERS Board will decide to renew or go to bid.

IV. Overview of the NDPERS Program

NDPERS

The North Dakota Public Employees Retirement System is responsible for the administration of the State's retirement, health, life, dental, vision, deferred compensation, flex comp, retiree health insurance credit, and EAP programs.

Pursuant to 54-52-03, <https://www.ndlegis.gov/cencode/t54c52.pdf>, NDPERS is managed by a Board of trustees.

NDPERS is a separate agency created under North Dakota state statute and, while subject to state budgetary controls and procedures as are all state agencies, is not a state agency subject to direct executive control.

PROGRAMS

To review the benefit programs administered by NDPERS visit the NDPERS website at:

<https://www.ndpers.nd.gov/>

Current EGWP Benefit

The following table provides a summary of the current (2025) NDPERS EGWP benefit, including cost-sharing information. This plan provides coverage across all stages of an individual's benefit. Please be advised that NDPERS will request the Vendor to update the Initial Coverage Limit, Out-of-Pocket Threshold, and Catastrophic Coverage Benefit consistent with the CMS Standard Benefit in 2026.



Deductible

Pharmacy (Part D) deductible

This plan does not have a deductible.



Prescription Drug Benefits

Initial coverage (after you pay your deductible, if applicable)

You pay the following until your total out-of-pocket drug costs reach **\$2,000**. Once you reach this amount, you will enter the Catastrophic Stage.

Tier	Standard Retail Pharmacy	Standard Mail Order
30-day supply		
1 (Generic or Preferred Generic)	\$5 copay and you pay 15% of the remaining cost share	\$5 copay and you pay 15% of the remaining cost share
2 (Preferred Brand)	\$15 copay and you pay 25% of the remaining cost share	\$15 copay and you pay 25% of the remaining cost share
3 (Non-Preferred Drug)	\$25 copay and you pay 50% of the remaining cost share	\$25 copay and you pay 50% of the remaining cost share
4 (Specialty Tier)	\$25 copay and you pay 50% of the remaining cost share	\$25 copay and you pay 50% of the remaining cost share
90-day supply		
1 (Generic or Preferred Generic)	\$5 copay and you pay 15% of the remaining cost share	\$5 copay and you pay 15% of the remaining cost share
2 (Preferred Brand)	\$15 copay and you pay 25% of the remaining cost share	\$15 copay and you pay 25% of the remaining cost share
3 (Non-Preferred Drug)	\$25 copay and you pay 50% of the remaining cost share	\$25 copay and you pay 50% of the remaining cost share
4 (Specialty Tier)	N/A	N/A

There may be generic and brand-name drugs, as well as Medicare-covered drugs, in each of the tiers. To identify commonly prescribed drugs in each tier, see the Prescription Drug Guide/Formulary. To view the most complete and current Drug Guide information online, visit www.humana.com/SearchResources, locate Prescription Drug section, select www.humana.com/MedicareDrugList link; under Printable drug lists, click Printable Drug lists, select future plan year, select Group Medicare under Plan Type and search for GRP50.

ADDITIONAL DRUG COVERAGE

Original Medicare excluded drugs

Certain drugs excluded by Original Medicare are covered under this plan. You pay the cost share associated with the tier level for certain Cough/Cold, Erectile Dysfunction drugs. The amount you pay when you fill a prescription for these drugs does not count towards qualifying you for the Catastrophic Coverage stage.
Contact Humana Group Medicare Customer Care at the phone number on the back of your membership card for more details.

Catastrophic Coverage

After your total out-of-pocket costs reach **\$2,000**, you pay **\$0** for plan-covered Part D and excluded drugs.

For complete details on the plan, please review the Benefits Overview at <https://www.ndpers.nd.gov/retired-members/insurance-plans-retired-members/health-insurance-plans-retired-members/medicare>

Services

Refer to Appendix F for details about current services the current EGWP provider is administering.

Eligibility

Retirees or surviving spouses who are age 65 or entitled to Medicare and are receiving a retirement benefit from the Public Employees Retirement System, the Highway Patrolmen's Retirement System, the Teachers' Insurance and Annuity Association of America (TIAA), the Job Service Retirement System, the Judges' Retirement System, the Teachers' Fund for Retirement (TFFR), or from a participating political subdivision are eligible to receive benefits. The NDPERS supplemental medical plan and prescription drug plan (EGWP) are currently bundled products.

Thus, a retiree electing to enroll with NDPERS must participate in both the NDPERS supplemental plan (Dakota Retiree Plan) and the NDPERS EGWP plan. NDPERS expects that this requirement will continue; however, if your proposed quote would change based on an "unbundled" benefit (or if the proposal would change based on higher or lower enrollment), please describe how your proposal would change in your Appendix C submission.

If the retiree elects to enroll, their Medicare eligible spouse is also eligible to enroll for coverage within the same timeframe, as long as the retiree provides coverage for the spouse on their medical supplemental plan. NDPERS does not conduct an annual open enrollment for Medicare eligible individuals.

Applications for coverage must be submitted within thirty-one (31) days of Medicare entitlement or an NDPERS-approved qualifying event. The retiree and/or spouse must have both Medicare A & B in order to be eligible for coverage. The NDPERS qualifying events are:

- Date of retirement, defined as either:
 - The last day of active employment if member does not defer his/her retirement benefit or take a lump-sum refund of his/her retirement account, or
 - Date of first retirement check if member deferred his/her retirement benefit.
- Member's 65th birthday or eligibility for Medicare;
- Member's spouse or eligible dependent's 65th birthday or eligibility for Medicare;
- The loss of coverage in a health plan sponsored or provided by member's employer or member's spouse's employer, if covered through spouse's employer group plan. This includes loss of coverage due to the death of, or divorce from, a spouse as well as completion of COBRA continuation coverage.
- Marriage
- Birth, adoption, or appointment of children for legal guardianship.

If a member or surviving spouse does not enroll within thirty-one (31) days of any one of the above qualifying events or does not meet one of the above qualifying events, he/she will have forfeited his/her rights to enroll in the Plan.

Eligibility to receive benefits under the Benefit Plan is initially determined by the Plan Administrator and is subject to CMS requirements. NDPERS has the ultimate decision-making authority regarding eligibility to receive benefits.

V. Confidentiality

All materials submitted in response to this RFP will become property of NDPERS and, upon receipt by NDPERS, are subject to the North Dakota open records law. If the bidder submits information in response to this RFP that it believes to be confidential financial, commercial, proprietary, or trade secret information, the bidder must:

- a. Clearly mark in the body of the proposal each provision that respondent believes to be confidential. Merely marking the entire page as confidential is not sufficient, and will not be recognized as an assertion of confidential information.
- b. Complete the table provided in Appendix H, using the format provided, identifying the specific information that the responder asserts is confidential, the page and section number(s), and the reason the responder believes the information is confidential, including a specific citation to the North Dakota Open Records law. Only confidential or propriety information on this table will be considered confidential by NDPERS. All other information not on this table will be considered an open record by NDPERS.
- c. Offeror must submit a redacted copy of the proposal on a USB flash drive labeled "REDACTED" that accurately and completely redacts the information noted on the table in Appendix H.
- d. Attest whether the information sought to be protected has ever been previously publicly disclosed.
- e. Indicate the response has been reviewed by the responder's legal counsel and is so attested.

Responder is put on notice that, except for the information that is determined by NDPERS to be confidential or otherwise exempt from the North Dakota Open Records law, NDPERS must disclose to the public upon request any records it receives from Responder. If NDPERS receives a request for information that Responder has requested be kept confidential, NDPERS will review the information submitted by Responder and may also contact Responder for additional input regarding the nature of those records. However, NDPERS will be solely responsible for making the ultimate determination of whether the materials submitted are open or exempt. All information that has not been clearly identified by Responder as being confidential pursuant to this section and which NDPERS has not determined constitutes confidential or exempt information under the North Dakota Open Records law will be disclosed as an open record. NDPERS will not consider the bid cost information submitted by the Responder to be confidential under any circumstances.

Appendix A: Response Template

1. Face Sheet

Name of Proposer's Firm:

Federal Tax I.D. Number:

Principal Place of Business:

Address:

City:

State and Zip:

Contact Person:

Title:

Telephone:

Fax:

E-mail address:

2. Minimum Requirements. Indicate in the table that you will meet these requirements. If you are not able to meet these requirements, your proposal may be dismissed from consideration.

#	Minimum Requirements	Response (Will Meet / Will Not Meet)
1	Bidder must be able to provide required coverages and services by January 1, 2026.	
2	Bidder must have all applicable licenses required by North Dakota or agree to obtain necessary licensure prior to the effective dates of coverage.	
3	Bidders must maintain compliance with all CMS requirements applicable to the Medicare Part D Prescription Drug Plan and EGWP+Wrap benefit.	
4	Bidder must support NDPERS with all legislative reporting requirements as a result of the Consolidated Appropriations Act (CAA) and any future transparency requirements.	
5	Proposals should match the existing plan design and member cost share.	
6	Premium and Administrative Fee Rates: Preliminary estimates for Medicare Part D EGWP+Wrap premiums (fully-insured proposals), administrative fees (self-insured proposals), CMS subsidies, and funding estimates (both fully-insured and self-insured) must be submitted to NDPERS no later than April 30 of the year preceding the contract renewal date	
7	Final renewals must be submitted to NDPERS no later than August 15 of the year preceding the contract renewal date	

#	Minimum Requirements	Response (Will Meet / Will Not Meet)
8	Bidders agree to comply with all provisions of the Health Insurance Portability Act of 1996 including, but not limited to providing certificates of creditable coverage. Bidders must also be in compliance with all HIPAA Privacy and HIPAA EDI requirements and be able to conduct all applicable employer/plan sponsor and provider transactions consistent with those requirements. Bidders will be expected to meet HIPAA security requirements when applicable to NDPERS. Bidders will also be expected to be in compliance with all ACA requirements.	
9	Bidder must be able to take current 834 electronic enrollment file (containing member eligibility) at no cost.	
10	Bidders agree, should they be selected, they will proactively manage the transition of coverage from the current carrier including the costs of managing the transition.	
11	Bidder must meet all requirements in the North Dakota Century Code including 54-52; 54-52.1 and all requirements in the North Dakota Administrative Code and other applicable State Laws. Bidder must also comply with all applicable statutes of the North Dakota Insurance Commissioner.	
12	Bidder must provide subject matter experts and other appropriate personnel to attend board meetings, legislative hearings, etc. as needed.	
13	Bidder must report insights and trends of plan back to NDPERS annually in form of an annual review meeting.	
14	Bidders have completed the requested information in Appendix H if they have asserted that any information is proprietary.	

3. Affidavit of Non-collusion

I swear (or affirm) under the penalty of perjury:

1. That I am the Responder (if the Responder is an individual), a partner in the company (if the Responder is a partnership), or an officer or employee of the responding corporation having authority to sign on its behalf (if the Responder is a corporation);
2. That the attached proposal submitted in response to the Medicare Part D EGWP+Wrap Request for Proposals has been arrived at by the Responder independently and has been submitted without collusion with and without any agreement, understanding or planned common course of action with, any other Responder of materials, supplies, equipment, or services described in the Request for Proposal, designed to limit fair and open competition;
3. That the contents of the proposal have not been communicated by the Responder or its employees or agents to any person not an employee or agent of the Responder and will not be communicated to any such persons prior to the official opening of the proposals; and
4. That I am fully informed regarding the accuracy of the statements made in this affidavit.

Responder's Firm Name: _____

Authorized Signature: _____

Date: _____

Subscribed and sworn to me this _____ day of _____

Notary Public: _____

My commission expires: _____

4. Conflicts of interest list

Bidders must provide a list of all entities with which it has relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this request for proposals. The list should indicate the name of the entity, the relationship, and a discussion of the conflict.

5. Compliance with Federal and State Laws Form

NDPERS — Federal and State Law Compliance Certification

1. The company shown below is or will be in compliance with Federal and State laws and does not knowingly violate North Dakota or United States Laws. The company shown below will obtain this certification from all subcontractors who will participate in the performance of this contract; and

I certify that the company shown below is in compliance with items 1 above and that I am authorized to sign on its behalf.

Name of Company: _____ Date: _____

Authorized Signature: _____ Telephone Number: _____

Printed Name: _____ Title: _____

6. Location of Service Disclosure and Certification

STATE OF NORTH DAKOTA

LOCATION OF SERVICE DISCLOSURE AND CERTIFICATION

LOCATION OF SERVICE DISCLOSURE
<p>Check all that apply:</p> <ul style="list-style-type: none"><input type="checkbox"/> The services to be performed under the anticipated contract as specified in our proposal will be performed ENTIRELY within the State of North Dakota.<input type="checkbox"/> The services to be performed under the anticipated contract as specified in our proposal entail work ENTIRELY within another state within the United States.<input type="checkbox"/> The services to be performed under the anticipated contract as specified in our proposal will be performed in part within North Dakota and in part within another state within the United States.<input type="checkbox"/> The services to be performed under the anticipated contract as specified in our proposal DO involve work outside the United States. Below (or attached) is a description of<ul style="list-style-type: none">(1) the identity of the company (identify if subcontractor) performing services outside the United States;(2) the location where services under the contract will be performed; and(3) the percentage of work (in dollars) as compared to the whole that will be conducted in each identified foreign location.

CERTIFICATION

By signing this statement, I certify that the information provided above is accurate and that the location where services have been indicated to be performed will not change during the course of the contract without prior, written approval from the State of North Dakota.

Name of Company: _____

Authorized Signature: _____

Printed Name: _____

Title: _____

Date: _____ Telephone Number: _____

Appendix B Medicare Part D EGWP+Wrap Questionnaire

To be considered and accepted, your organization must provide answers to the questions presented in this section. Each question must be answered specifically and in detail. An electronic copy of this questionnaire has been provided to facilitate your response. If you choose not to respond directly in this document and instead will submit a formatted response document, you must include both the question and the answer in your proposal response and the question order must be maintained.

Question responses should not include references to prior questions. Bidders may include additional information that you consider relevant or useful to NDPERS. If you elect to provide additional information on services in response to a question, please specifically indicate that it is not included in the covered services offered in your proposal.

If this proposal results in your company being awarded a contract and if, in the preparation of that contract, there are inconsistencies between what was proposed and accepted versus the contract language that has been generated and executed, any such discrepancy will be resolved in favor of the language contained in the proposal or correspondence relating to your proposal. Bidders are reminded that **any and all deviations must be clearly identified and described in the RFP and the deviations worksheet provided in Appendix I.**

The questionnaire is broken down into the following categories:

1. Organizational Information
2. EGWP Operations
3. Clinical Management
4. Pharmacy Network
5. Account Management
6. Member Services
7. Implementation

1. Organizational Information

- 1.1 Please provide the legal name of the company that will be providing the pharmacy benefit management services in this contract.
- 1.2 Provide a brief description of your organization, including the length of time you have been in business, corporate structure, services provided, number of employees, and location of headquarters.
- 1.3 Please provide your year-end Part D membership for 2023 and 2024. Please provide your membership for "Group" and "Individual" separately. Please explain significant changes to membership.
- 1.4 How many prescription drug plan clients (plan sponsors) do you provide EGWP services to?
- 1.5 How many prescription drug plan clients (plan sponsors) that you provide EGWP services to are via an MAPD plan and how many are stand-alone PDPs?
- 1.6 How many EGWP clients do you serve with 9,000 or more Part D members?
- 1.7 Do you provide EGWP services to any State clients? If so, please name them.
- 1.8 How many government/public sector clients engage you to provide EGWP services?
- 1.9 Please provide the number of fully-insured and self-insured EGWP clients.
- 1.10 What percentage of your self-insured EGWP clients have "pass-through" financial contracts and how many have "spread/traditional" contracts?
- 1.11 Are the EGWP services proposed in this contract owned or subcontracted? If subcontracted, please identify the subcontractor, how long you have subcontracted services, and the expiration date of the current agreement.
- 1.12 If you are proposing a fully-insured EGWP option, please name the risk-bearing entity responsible for the EGWP.
- 1.13 In addition to EGWP services, please identify any other services that are currently outsourced or subcontracted and the name of the vendor/partner.
- 1.14 Describe any acquisitions, mergers, or partnerships your organization has entered into in the last three (3) years or is planning to enter into during the term of this agreement.

- 1.15 Describe any intent to either move exclusively into Medicare or terminate your Medicare business within the next two (2) years.
- 1.16 You must be able to substantiate your financial stability. Provide a copy of your audited financial statement or other financial information. Include, at a minimum, a Balance Sheet and a Profit and Loss Statement, together with the name and address of the bank(s) with which you conduct business and the public accounting firm(s) that audit your financial statements. Other sufficient information may include a written statement from a financial institution confirming the creditworthiness and financial stability of the organization.
- 1.17 Please provide the most recent ratings from the following agencies, if applicable.

Rating Organization	Rating	Date of Last Accreditation / Rating
A.M. Best		
Standard & Poor's		
Moody's		

- 1.18 Please describe the accreditations you maintain (URAC, JCAHO, NCQA).
- 1.19 Please provide information regarding your latest internal controls and security audit, including a SOC 1, Type II and/or SOC 2, Type II report resulting from your most recent Statement on Standards for Attestation Engagements No. 22 (SSAE 23) audit.
- 1.20 Describe your privacy protection and data security standards as they relate to HIPAA and HITECH.
- 1.21 How do you maintain data security across your various worksites? How do you manage access and data security for employees that work offsite/virtually?
- 1.22 Describe your organization's usage of Generative AI and the controls in place when using this technology.
- 1.23 Do you maintain controls so that no single employee can use, change, or access protected data without authorization?
- 1.24 Describe certifications and other external audits. Describe the test criteria used

- to ensure the standards are met. Have you completed external ethical hacking tests, etc.?
- 1.25 Have you had any security breaches involving electronically protected health information or personal financial information? If so, what was the scope of the breach? Were disclosures made to affected individuals? What changes in operations, if any, were implemented after the breach? Describe your capabilities to support the management of PHI data.
- 1.26 Do you have insurance to cover a breach or loss?
- 1.27 Are any of the services you are proposing to provide to NDPERS contracted outside the United States? If so, please describe any business services performed outside the United States and the financial impact, if any, of requiring those services to be provided within the United States.
- 1.28 Are there any major system enhancements or conversions planned or being considered within the next 24 months (specifically of interest are adjudication platform migrations or other services that may impact member or provider service or CMS adherence)?
- 1.29 Describe your business continuity and disaster recovery plans. Please be sure to address data security and file backup, claims processing, customer service centers, mail service, and specialty fulfillment operations.
- 1.30 The NDPERS Part D plan product is “bundled” with its medical supplement plan. The Board may consider unbundling the product and offering the Part D plan and the supplement independently. Please discuss your perspective on this including but not limited to:
- 1.30.1 Do you think this would increase the possibility of adverse selection in the future?
- 1.30.2 If fully insured, would it affect your underwriting for future premium renewals?
- 1.30.3 Do you have any direct experience with clients that have addressed this issue, and, if so, what was the outcome of those discussions?
- 1.31 Provide the following information on a maximum of three (3) of your EGWP clients for whom you provide services similar to those proposed in this proposal. References of similar size and scope to NDPERS are preferred. Also provide the following for two former governmental clients similar to NDPERS or larger, if possible.

- 1.31.1 Name of employer sponsoring plan and location
- 1.31.2 Type of services provided to plan sponsor
- 1.31.3 Plan inception date
- 1.31.4 Length of time as a client
- 1.31.5 Number of contracts and members participating in the plan
- 1.31.6 Contact information (name, title, phone number, email address)
- 1.32 Include a description of your organization's short-term strategic initiatives and your long-term strategic business plan as it relates to retiree pharmacy benefits.
- 1.33 Describe how your organization differentiates itself from your competitors.
- 1.34 What makes your organization the best partner for NDPERS retirees? Do you have strategic advantages in North Dakota that make you a better choice for NDPERS than others?

2. EGWP Operations

- 2.1 What was the CMS star rating for your PDP for 2021, 2022, 2023, 2024, and 2025?
- 2.2 Have you been sanctioned by CMS in the past 5 years? If yes, please explain.
- 2.3 Please describe the Part D enrollment process under your PDP.
- 2.4 How do you manage missing or incorrect information during enrollment? Do you provide a process by which a member can correct missing or incorrect information in an expedited way? Is there a time limit for corrections?
- 2.5 If a member's information does not match CMS records and you contact the member for updated information, please discuss if there is a process to share the updated information back to NDPERS for correction in the NDPERS system.
- 2.6 Please describe your Part D disenrollment process for both voluntary and involuntary disenrollments. What is the timing for enrollments/disenrollments to go into effect?
- 2.7 Can NDPERS choose not to effectuate the optional involuntary disenrollments (e.g., failed to pay a premium on a timely basis, disruptive behavior, etc.)?
- 2.8 Please confirm that you will manage member communications related to terminations required by CMS.

- 2.9 Please confirm that you will manage all CMS required pre-enrollment, post-enrollment, and renewal member communications.
- 2.10 Please confirm that Evidence of Coverage (EOC) and the Annual Notice of Change (ANOC) will be available to members prior to open enrollment.
- 2.11 Describe your handling of members who are eligible for the low-income subsidy program available under Medicare Part D, specifically:
 - 2.11.1 How are the members identified, and how are they informed of their enhanced benefits?
 - 2.11.2 Please describe if the low-income subsidies will be paid directly to members.
 - 2.11.3 Will you process low-income subsidy program refunds to members, and low-income cost-sharing refund requests at no additional cost?
- 2.12 Describe your recommended billing and premium payment cycle.
- 2.13 Describe your handling of members who are subject to the late enrollment penalty under Medicare Part D, specifically:
 - 2.13.1 How are the members identified, and how are they informed of their penalty?
 - 2.13.2 Please describe how the late enrollment penalty will be invoiced/collected directly from members.
 - 2.13.3 Will you process the collections at no additional cost?
 - 2.13.4 Outline your process for delinquent payments of the late enrollment penalty. Please describe your process for notifying the plan sponsor of members who are delinquent.
 - 2.13.5 How do you administer any reconsideration requests for members who are subject to the late enrollment penalty?
- 2.14 Please describe your ability to support NDPERS related to Income-Related Adjustment Amount (IRMAA) tracking and notifications (e.g., terminations, reinstatements)
- 2.15 Please describe how you work with CMS related to member risk scores.
 - 2.15.1 Describe the data reported to CMS.

- 2.15.2 How do you track member risk scores?
- 2.15.3 Do you reconcile member risk scores with CMS?
- 2.16 Describe your straddle claim process.
- 2.17 Describe your process and adherence to Prescription Drug Event (PDE) requirements with CMS.
- 2.18 What was your book-of-business PDE error rate in 2023 and 2024?
- 2.19 Describe your procedures to detect and prevent Fraud, Waste, and Abuse (FWA) and ensure claims are paid accurately. Please outline such procedures and how you implement and monitor FWA in the plan operation.
- 2.20 Please confirm that you will manage all CMS required reporting requirements related to FWA compliance.
- 2.21 Please confirm that you will manage all CMS required reporting requirements related to medication therapy management (MTM).
- 2.22 Please confirm that you will manage all initial internal and external appeals compliant with CMS requirements.
- 2.23 Please confirm you will manage all grievances compliant with CMS requirements.
- 2.24 Please describe your process of reporting rebates consistent with CMS requirements.
- 2.25 Describe audit rights for EGWP plans. What types of audits will NDPERS be entitled to perform (e.g., financial guarantees, plan design, PDE reconciliation, subsidy payments, etc.)?
- 2.26 How is CMS compliance monitored on an ongoing basis? Please describe your remediation process associated with areas of non-compliance.
- 2.27 Describe the support that you give clients during CMS audits.

3. Clinical Management

- 3.1 Describe your ability to provide and maintain a CMS compliant formulary program for NDPERS.
- 3.2 What is the name of the formulary proposed for NDPERS?
- 3.3 Does the tier structure of your proposed formulary align with the current tier

- structure of the NDPERS plan? If not, please describe.
- 3.4 Please provide a copy of your proposed Formulary including NDC, drug name, and formulary tier in Excel format.
 - 3.5 How frequently is your proposed formulary updated?
 - 3.6 Does NDPERS have the ability to customize their formulary within the CMS limits?
 - 3.7 Does the proposed formulary require compliance with formulary utilization management controls (prior authorization and/or step therapy and/or quantity limits) or are all formulary and clinical utilization management programs an "add-on" after the formulary is selected?
 - 3.8 Does your formulary include all generics in the lowest cost tier and all brands in the preferred or non-preferred tiers or does your proposed formulary tier brand and generic products according to different criteria?
 - 3.9 Please confirm you will provide a copy of the MAC list, including NDC and drug prices, upon request.
 - 3.10 If desired, could you grandfather existing members for a select period of time (1-3 fills, 1 year, indefinitely)?
 - 3.11 How are Part B drugs treated on your proposed formulary?
 - 3.12 How do you manage claims with overlapping coverage between Part D and Part B?
 - 3.13 Is Part B claims management included in your proposal?
 - 3.14 How are lifestyle drugs treated on your proposed formulary? Does NDPERS have the flexibility to include or exclude this category of drugs?
 - 3.15 Does your EGWP formulary account for AGS Beers Criteria® for Potentially Inappropriate Medication Use in Older Adults? If so, please explain if drugs are excluded or if there are other clinical controls.
 - 3.16 Please provide a list of your clinical programs, with a short description of each, and the associated cost for each program available to EGWP plans. This may be provided as a separate exhibit or included in this questionnaire. At a minimum, please include your Medication Therapy Management (MTM) program, prior authorization, step therapy, quantity limits, drug utilization review, opioid

management, diabetes management, compound management, and any distinct specialty drug management programs.

- 3.17 How do you target and enroll members in your MTM program?
- 3.18 Do you use any automated technology or predictive analytics to target members for MTM programs?
- 3.19 Please describe the outcomes reporting available for the MTM program.
- 3.20 Describe your quality assurance measures for your prior authorization process. What reports and tools do you provide for clients to assess if state/federal/NCQA quality measures (e.g., timeliness, overturn rates, accreditation) are met?
- 3.21 Explain your process around instances when your prior authorization team cannot immediately contact the provider (i.e., how often do you attempt to contact the provider, what methods do you use to contact the provider, what do you do when you get no response).
- 3.22 Please describe how members are notified of denials and the expiration of prior authorizations. How does the appeals process for prior authorization denials work?
- 3.23 Please discuss your strategies/programs related to the following:
 - 3.23.1 High-Risk Medications in the Elderly
 - 3.23.2 Statin Use in Persons with Diabetes
 - 3.23.3 Medication Adherence for Diabetes Agents
 - 3.23.4 Medication Adherence for Hypertension
 - 3.23.5 Medication Adherence for Hypercholesterolemia
- 3.24 Please discuss how you measure adherence; do you track medication possession ratio (MPR) and/or proportion of days covered (PDC)? Are there other factors you evaluate for certain therapeutic classes?
- 3.25 Do you align your performance measurement with national quality measures (e.g., HEDIS)?
- 3.26 Describe your clinical programs for managing high-cost, high-risk populations including but not limited to Cystic Fibrosis, Cholesterol, Diabetes, Growth Deficiency, Hemophilia, Hepatitis, HIV, Inflammatory conditions (e.g., Rheumatoid arthritis), Medical reconciliation post-discharge, Multiple Scleroses, Oncology, Pulmonary Conditions.

- 3.27 Do you have a vaccine administration program? If so, please describe the specifics of the program including if there are fixed prices for vaccine administration.
- 3.28 Please describe your approach to specialty pharmacy. Focus on the aspects that differentiate your services in the market.
- 3.29 Are members contacted before each specialty fill? If so, is the outbound call made by a representative or an automated call?
- 3.30 What is the average length of time spent with a member prior to the first fill of their specialty medication?
- 3.31 Please describe any specialty patient assistance programs that are offered. Describe how you can maximize the value of these programs for the member and the plan.
- 3.32 If you are bidding on self-insured business, do you have any stop loss measures to protect specifically against specialty drug costs?

4. Pharmacy Network

- 4.1 What is the name of your proposed pharmacy network?
- 4.2 How many retail pharmacies are in your EGWP network nationally?
- 4.3 How many retail pharmacies are in your EGWP network in North Dakota?
- 4.4 How often is your pharmacy network vetted for quality? Which quality metrics are used in the vetting process?
- 4.5 Does your proposed pharmacy network have sufficient pharmacy participation across North Dakota to service the NDPERS membership considering there are no national chains in the State?
- 4.6 Please confirm your network offering meets CMS requirements, including convenient access to long-term care (LTC) pharmacies, adequate access to home infusion pharmacies, and convenient access to I/T/U pharmacies for American Indian enrollees.
- 4.7 Please confirm you are compliant with CMS requirements to offer standard LTC pharmacy network contracts to any pharmacy willing to participate in the LTC network so long as the pharmacy is capable of meeting the performance and service criteria defined by CMS.

- 4.8 If necessary, please describe any modifications to your network in North Dakota that will need to be made to meet requirements.
- 4.9 Describe your 90-day retail network in North Dakota (i.e., number and percent of pharmacies that participate in 90-day fills in the State).
- 4.10 Is the mail service pharmacy owned or subcontracted?
- 4.11 Where are the centers located that will service NDPERS?
- 4.12 What are the operating hours of the mail centers?
- 4.13 What is protocol if the mail center does not have a drug in stock? Do you have a program at the mail facility to align and bundle shipment for members with more than one prescription?
- 4.14 Does your mail service pharmacy perform any interventions that are not performed in retail or are the interventions the same?
- 4.15 Confirm you offer expedited delivery of mail order prescriptions and who is responsible for paying for the expedited service (the plan or the member).
- 4.16 Please provide the name of your primary expedited shipping vendor.
- 4.17 How many specialty pharmacies do you operate?
- 4.18 Are the specialty pharmacies owned or subcontracted?
- 4.19 Where are the specialty pharmacies located? Which specialty pharmacy would primarily service the NDPERS account?
- 4.20 North Dakota law restricts prescriptions from being required to be filled at a specialty pharmacy and must be permitted by plans to be filled at retail pharmacies within the State. Please confirm your proposal will be in compliance.
- 4.21 Please confirm your proposal includes an “open” specialty pharmacy network. If your proposed EGWP network is not an “open” specialty network, please describe how your specialty network does not limit access to Part D in such a manner that it contravenes convenient access protections.
- 4.22 Please confirm that specialty products shipped in error, damaged in shipment, lost in transit, left by courier without confirmation of receipt, or rendered unusable by NDPERS due to negligence or error in the delivery process will not be the financial responsibility of NDPERS. How are these types of shipment errors reported to NDPERS?

- 4.23 What percentage of Limited Distribution Drugs commercially available do you have access to?
- 4.24 What is the process for procuring any limited distribution drugs that you currently do not have access to?
- 4.25 Do you have infusion services? Can you arrange for nurses or other assistance on behalf of the member?
- 4.26 Please provide a copy of your proposed specialty drug list including national drug code (NDC), drug name, and formulary tier in Excel format. Please include on the specialty drug list, or provide as a separate list, indicators for limited distribution drugs and include a separate indicator if you are an authorized distributor for that product.

5. Account Management

- 5.1 Provide an overview of how the NDPERS relationship will be managed, both strategically and on a day-to-day basis. Include an organizational chart. Please provide the names, titles, locations, telephone numbers, and email addresses of the representatives listed below. For the account service individuals listed, provide brief biographical information, such as years of service with your company, experience as it relates to this proposal, and the number of clients for which they perform similar services:
 - 5.1.1 The individual representing your company during the proposal process;
 - 5.1.2 The individuals on your proposed implementation team;
 - 5.1.3 The individual assigned to overall contract management;
 - 5.1.4 The individual or team members responsible for day-to-day account management and service;
 - 5.1.5 The individual or team members responsible for Part D compliance;
 - 5.1.6 The individual or team members responsible for clinical oversight;
 - 5.1.7 Executive sponsor assigned to NDPERS (as applicable)
- 5.2 Will you agree to let NDPERS switch account team members if NDPERS is dissatisfied with service or fit?
- 5.3 If desired, can NDPERS update and maintain eligibility and check employee claim status online? Are there charges for access to and use of these tools?
- 5.4 Confirm your ability to accept a weekly enrollment file from NDPERS. Please see Exhibit 6 for a sample of the file layout.

- 5.5 Do you have any restrictions to the eligibility file layouts that you can support?
- 5.6 What is the timeframe that the file will be processed and loaded?
- 5.7 What happens if a record on file is rejected via the load process? What is the process to reconcile a file load? How quickly is the report/reconciliation regarding the file load returned to the Plan?
- 5.8 Please describe how you handle manual eligibility updates and the turn-around/timing of such updates.
- 5.9 Please provide samples of standard utilization management reports that can be accessed by NDPERS via your portal.
- 5.10 Please describe the frequency of the reporting and the flexibility NDPERS will have in determining when they receive reports.
- 5.11 Please confirm that you will provide a monthly prescription drug file feed, at no cost, to an NDPERS specified vendor to integrate with medical claims and laboratory data.
- 5.12 If requested, please confirm you will provide complete pharmacy claims data to other authorized third parties at no cost.
- 5.13 Please provide a sample of a quarterly/semi-annual review.
- 5.14 Please provide a sample of your rebate reconciliation report.
- 5.15 Please confirm that you will support NDPERS in the development of machine-readable files and RxDC reporting pursuant to Transparency in Coverage regulations. Provide a sample of both report formats.

6. Member Services

- 6.1 Where are the primary and secondary customer service centers located that would provide services to the NDPERS membership?
- 6.2 Describe your use of Interactive Voice Response (IVR).
- 6.3 Will you have a dedicated phone number for NDPERS?
- 6.4 Is your pharmacy call center available to members 24/7/365?
- 6.5 What is the protocol for reaching a customer service representative?

- 6.6 What is the average wait time to speak with a live person? Please provide a response for peak and non-peak hours.
- 6.7 How are the telephone calls serviced/routed for after-hours customer service calls (after normal business hours)?
- 6.8 Can a pharmacist be reached 24/7/365?
- 6.9 Is it a standard procedure to provide direct contact to NDPERS for referring member issues for resolution?
- 6.10 How would your call center assist requests for members or potential members who are comparing the NDPERS EGWP and need specific information on drug coverage prior to the new plan year starting or being enrolled in the plan?
- 6.11 Are multi-lingual services available? If so, which languages?
- 6.12 Please explain if training is provided to customer service representatives to accommodate individuals who have age-related deficiencies in perception and sensory limitations.
- 6.13 Does your customer service inquiry system allow representatives to record comments so other customer service representatives can view previous notes to assist members?
- 6.14 What is your first call resolution rate in the pharmacy call center?
- 6.15 How do you monitor customer service representatives for compliance and behavior? Do you record 100% of the calls?
- 6.16 Can a designated NDPERS representative listen to call recordings and receive call transcripts if requested?
- 6.17 Please describe the process associated with members who want to file a complaint about the behavior of a customer service representative. Please include how the complaint is made, resolved, and reported to NDPERS.
- 6.18 Do you provide single sign-on access to a link to third parties?
- 6.19 Please describe your member website and member portal that the NDPERS EGWP members would have access to.
 - 6.19.1 Can your website provide NDPERS-specific plan information?
 - 6.19.2 Does your website offer a pharmacy locator? Does the site offer information on retail stores that are open 24 hours/day?

- 6.19.3 Can members see their prescription drug claim history on the website?
- 6.19.4 Describe the web-enabled pricing comparison tools available to your members. Will the pricing tool account for NDPERS plan design?
- 6.19.5 Does your web-enabled pricing comparison tool provide pricing detail by pharmacy?
- 6.20 Do you have a smart phone mobile application or a mobile-optimized website?
- 6.21 Does your mobile app and/or mobile enabled website include the following:
 - 6.21.1 Formulary information
 - 6.21.2 Network pharmacy lookup
 - 6.21.3 Plan design information
 - 6.21.4 Member ID card
 - 6.21.5 Claims history
 - 6.21.6 Family claims history
 - 6.21.7 Drug price lookup by pharmacy
- 6.22 Are ID cards the sole means of determining member eligibility? If not, please describe.
- 6.23 Describe your Coordination of Benefits (COB) process for secondary claims processing/payment.
- 6.24 Please provide a sample member welcome packet.

7. Implementation

- 7.1 Please confirm you can provide a CMS-compliant transition for NDPERS given the expected contract start date of January 1, 2026.
- 7.2 Please provide a Gantt chart of the implementation process to ensure a January 1, 2026 start date. Please outline in detail the specific activities and tasks necessary to implement the NDPERS program, as well as indicate any CMS requirements of a carrier transition. Be specific with regard to the following:
 - 7.2.1 Amount of total time needed to effectively implement the program, including benefit testing, etc.
 - 7.2.2 Activities/tasks and corresponding timing
 - 7.2.3 Responsible parties and amount of time dedicated to implementation,

- broken out by vendor, current vendor, and NDPERS staff
- 7.2.4 Any transition activities required with incumbent carriers, including data transfers, and providing members adequate notice regarding current care or treatment plans at least 60 days prior to a change
- 7.2.5 Length of time implementation team lead and members will be available to NDPERS
- 7.2.6 Provide the data layouts that your organization would need for the various inputs during installation.
- 7.3 What files would you require from the legacy EGWP provider in order to transition the plan to your organization? If you are provided with prior pharmacy claims history, will you load open prior authorization files, specialty pharmacy claims histories, open mail order refills, and accumulator files to avoid member disruption? If yes, explain the recommended process to follow and data specifications for transfer of data.
- 7.4 Please describe how you will transition members that will be subject to formulary disruption (e.g., non-preferred/not covered drugs, prior authorization, step therapy, quantity limits).
- 7.5 Please confirm the customer service call center can be set up to go live on or before November 1, 2025, to be able to take calls and answer questions from NDPERS members related to benefits, formulary changes, enrollment, etc.
- 7.6 How much lead time is necessary for you to guarantee that ID cards will be received by members prior to the plan year effective date of January 1, 2026?
- 7.7 What is your member communication plan that you use for accounts? Provide a sample of similar communications used when transitioning an EGWP client from another carrier.
- 7.8 Can you provide training to NDPERS staff on EGWP administration and compliance?
- 7.9 Please confirm that you are in compliance with all relevant provisions of the Inflation Reduction Act for 2023, 2024, and 2025 including:
- 7.9.1 Prescription Drug Inflation Rebates (effective 2023)
- 7.9.2 Beneficiary cost sharing for a monthly supply of insulin capped at \$35 (effective 2023)
- 7.9.3 Part D vaccines have a \$0 copay (effective 2023)

- 7.9.4 Part D beneficiary premium growth capped at 6% annually (effective 2024)
- 7.9.5 Low-Income Subsidy extended to enrollees up to 150% of Federal Poverty Level (FPL) (effective 2024)
- 7.9.6 No beneficiary cost sharing in Catastrophic Phase. Liability shifted to plan (effective 2024)
- 7.9.7 Out-of-pocket spending capped at \$2,000 (effective 2025)
- 7.9.8 Replacement of the coverage gap discount program with the Manufacturer Discount Program (effective 2025)

Appendix C

North Dakota Public Employees Retirement System

Request for Proposals

Medicare Part D EGWP+Wrap

Please complete the tabs applicable to your cost proposal(s). The exhibits must be submitted in the prescribed format. Bidders may provide supplemental information but may not deviate from utilizing the provided Excel worksheets.

Fully-Insured Cost Proposals must complete the following exhibits:

1. Fully-Insured EGWP Premium
3. Specialty Drug List
5. Pricing Questionnaire

Self-Insured Cost Proposals must complete the following exhibits:

2. Self-Insured EGWP Pricing
3. Specialty Drug List
4. Self-Insured EGWP Cost Estimate
5. Pricing Questionnaire

North Dakota Public Employees Retirement System

Request for Proposals

Medicare Part D EGWP+Wrap

Fully-Insured Proposal

YOUR COMPANY NAME: _____

- Premium estimate to be based on current enrollment and plan design
- Product should be CMS-endorsed, insured PDP product with fully-insured wrap-around coverage that covers any gaps between what is covered by the PDP product and the existing plan benefits available to qualifying members
- Bidders are required to populate the underwriting template below illustrating rate development.

Line	Premium Component	Response	Comments
1	Estimated Incurred Allowed Claims		
2	Member Months		
3	Experience Period Allowed Claims PMPM [(1) / (2)]		
4	Trend (Drug Cost & Utilization)		
5	Benefit Adjustment Factor (Plan design, clinical mgmt, etc.) *		
6	Rating Period Allowed Claims PMPM [(3) x (4) x (5)]		
7	Member Cost Share PMPM		
8	Manufacturer Discount PMPM		
9	CMS Federal Reinsurance Payment		
10	Rating Period Plan Paid PMPM [(6) - (7) - (8) - (9)]		
11	Rebate PMPM		
12	Plan Payments PMPM [(10) - (11)]		
13	Administration		
14	Fees and Taxes		
15	Risk Charges		
16	Profit		
17	Gross Premium [(12) + (13) + (14) + (15) + (16)]		
18	CMS Direct Subsidy (Risk Adjusted)		
19	Calculated Member Premium [(17) - (18)]		

* Clearly explain what is incorporated into any adjustment factor (if applicable)

List all clinical management programs assumed to be included (e.g. step therapy, prior authorization, etc.)

Comments/Assumptions/Caveats

List all pricing assumptions associated with mandated and/or legislative changes in 2026

I. Guaranteed Ingredient Discounts	2026	Renewal 1	Renewal 2	Renewal 3	Renewal 4	Renewal 5
30 Day Retail						
Brand (AWP - %) _____						
Generic (MAC & Non MAC - %) _____						
90 Day Retail						
Brand (AWP - %) _____						
Generic (MAC & Non MAC - %) _____						
Mail Order						
Brand (AWP - %) _____						
Generic (MAC & Non MAC - %) _____						
Specialty (Retail & Mail)						
Guaranteed Overall Effective Discount _____						
II. Guaranteed Dispensing Fees (Per Paid Script)	2026	Renewal 1	Renewal 2	Renewal 3	Renewal 4	Renewal 5
30 Day Retail						
Brand _____						
Generic _____						
90 Day Retail						
Brand _____						
Generic _____						
Mail Order						
Brand _____						
Generic _____						
Specialty (Retail & Mail)						
Guaranteed Overall Effective Discount _____						
III. Administrative Fees	2026	Renewal 1	Renewal 2	Renewal 3	Renewal 4	Renewal 5
EGWP Administration Fee (PMPM)						
IV. Guaranteed Minimum Manufacturer Derived Revenue	2026	Renewal 1	Renewal 2	Renewal 3	Renewal 4	Renewal 5
30 Day Retail						
Per Brand Script _____						
Estimated Annual Manufacturer Revenue Earned (Total) _____						
90 Day Retail						
Per Brand Script _____						
Estimated Annual Manufacturer Revenue Earned (Total) _____						
Mail Order						
Per Brand Script _____						
Estimated Annual Manufacturer Revenue Earned (Total) _____						
Specialty (Retail & Mail)						
Per Brand Script _____						
Estimated Annual Manufacturer Revenue Earned (Total) _____						
V. Other Fees	2026	Renewal 1	Renewal 2	Renewal 3	Renewal 4	Renewal 5
Enrollment Management (including eligibility submissions, initial enrollment, age-in members)						
All required reporting to CMS						
Medicare required member communications						
Coordination of benefits between Part D and the 'Wrap plan						
CMS required Medication Therapy Management						
File feed transmission to 3rd party (consultant, data warehouse, wellness or disease management, accumulators, stop loss) (per feed per transmission basis)						
Prior claim history, prior authorization, specialty claims histories, open mail order refills, accumulator file intake fees (to accept from incumbent during implementation)						
Electronic prescribing (per claim basis)						
Administrative Prior Authorization (per PA basis)						
Clinical Prior Authorization (per PA basis)						
Custom Reporting Programming (per hour basis)						
Other (please list) _____						
VI. Add-On solutions	2026	Renewal 1	Renewal 2	Renewal 3	Renewal 4	Renewal 5
List out all potential clinical solutions available to NDCERS along with their fees and a description of the program						

Fully-Insured & Self-Insured Proposals

Please provide your proposed specialty drug list with pricing and LDD indicators

[illegible]

North Dakota Public Employees Retirement System

Request for Proposals

Medicare Part D EGWP+Wrap

Self-Insured Proposal

YOUR COMPANY NAME: _____

Plan cost estimate for 2026

Please assume the parameters set forth in the RFP (your network, your financial proposal, your proposed formulary, your clinical programs)

Include, as appropriate, drug interchanges as well as utilization changes based on formulary or utilization management controls

2026	Prescription Count	AWP	Ingredient Cost	Dispensing Fees	Rebates	Administration Fees	Estimated CMS Payments*	Total Cost
30 Day Retail								
Brand								
Generic								
Total	0	\$ -	\$ -	\$ -				
90 Day Retail								
Brand								
Generic								
Total	0	\$ -	\$ -	\$ -				
Mail								
Brand								
Generic								
Total	0	\$ -	\$ -	\$ -				
Specialty								
Total	0	\$ -	\$ -	\$ -				
Limited Distribution Drugs								
Total	0	\$ -	\$ -	\$ -				
Excluded Claims								
Total	0	\$ -	\$ -	\$ -				
Total	0	\$ -	\$ -	\$ -	\$ -	\$ -		\$ -

*Includes Direct Subsidy, Coverage Gap Discount Payments, Federal Reinsurance

North Dakota Public Employees Retirement System

Request for Proposals

Medicare Part D EGWP+Wrap

Fully-Insured & Self-Insured Proposals

YOUR COMPANY NAME: _____

#	Question	Required Response (Confirmed / Not)	Details / Explanation
1	Please confirm your proposal is based on the plan design included with this RFP and the proposal parameters.		
2	Please confirm your proposal does not require any plan design changes to qualify for the terms in your offer (e.g., specific differential between preferred and non-preferred brands to qualify for rebates).		
3	Please confirm your self-insured proposal pricing is based on a 1-year contract with 5 renewal options.		
4	Please confirm you will use Medi-Span as the sole source of AWP (excepting a change in the industry that would require a change).		
5	Please confirm Usual and Customary (U&C) will be defined as: the retail price at a retail pharmacy on the date the drug is dispensed based on the NDC-11 dispensed.		
6	Please confirm that Average Wholesale Price (AWP) will be defined as Medi-Span's unit price for the 11-digit national drug code (NDC) of the product dispensed on the date-of-service for the quantity dispensed.		
7	Please confirm "Generic Drug" will be defined according to Medi-Span classification (Medi-Span Multisource Code field is a "Y" indicator).		
8	Please confirm "Brand Drug" will be defined according to Medi-Span classification (Medi-Span Multisource Code field is a "M", "N", or "O" indicator).		
9	Please confirm that once a drug product is defined as "Generic" or "Brand" at adjudication, it will remain classified as such for purposes of all financial measurements including AWP discounts, manufacturer revenue reporting and payment, management reporting, and guarantee reconciliation.		
10	Please confirm that rebates will be defined as all revenue received from pharmaceutical manufacturers, whether from the manufacturer directly, rebate aggregator, or other third party and will include all monies received as a result of the formulary utilization which includes but is not limited to rebates, manufacturer administration fees, inflation or price protection payments, and pro rata share of monies received for services provided to manufacturers that depends on the inclusion of NDPERS' claim utilization or data.		
11	Please confirm postage increases will not be passed on to NDPERS.		
12	Please confirm you have indicated on the specialty drug list which drugs have exclusive or Limited Distribution classification.		

13	Please confirm you have included limited distribution drugs in the specialty drug guarantees OR have provided separate discount and rebate guarantees for exclusive or limited distribution drugs.		
14	Please confirm 100% of revenue earned from manufacturers will be passed through to NDPERS, which includes but is not limited to rebates, manufacturer administration fees, inflation or price protection payments, and pro rata share of monies received for services provided to manufacturers that depends on the inclusion of NDPERS's claim utilization or data.		
15	Please confirm that all revenue resulting from price protection / inflation protection contracts will be included in the 100% pass-through requested for NDPERS.		
16	Please confirm that manufacturer revenue collected as a result of utilization from biosimilars or limited distribution drugs will be paid to NDPERS.		
17	Please confirm that your rebate guarantees are not conditioned on utilization of Hepatitis C products.		
18	Please confirm that your rebate guarantees account for known patent expirations and the proposed guarantees will not be modified on the basis of patent expirations that can be reasonably known at the time of this proposal.		
19	Please confirm that Over-The-Counter (OTC) exclusions (to the extent applicable) are not applicable to insulin or diabetic supplies (such as test strips) for purposes of rebate guarantees.		
20	Please confirm that if changes are made to the safe harbor provision governing rebates is eliminated, or if other regulatory changes are implemented that impact the payment of manufacturer revenue to the plan sponsor, the contract resulting from this RFP may be re-opened.		
21	Please confirm that for purposes of discount and rebate guarantees, all HIV medications will be included as "specialty."		
22	Please confirm that for purposes of discount and rebate guarantees, all transplant medications will be included as "specialty."		
23	Please confirm that rebate guarantees are not subject to aggregate day supply minimums and will be reconciled according to distribution channel.		
24	Please confirm rebate guarantees will not include any funds collected through patient assistance programs.		
25	Please describe any requirements, terms, exclusions, or other caveats related to your rebate guarantee.		
26	What percentage of all generics are included on your MAC list?		
27	Please confirm generic discount guarantees are inclusive of MAC and Non-MAC discounts.		
28	Please confirm that the MAC list for mail order will be equivalent or lower price than the MAC list for retail claims.		
29	Please confirm that dispensing fees are assessed on paid claims only and not reversed or rejected claims.		
30	Please confirm member cost share will always be the lowest of the U&C, MAC, AWP discount, or member cost share.		

31	Please confirm that any coupons used by members will be excluded from ingredient cost calculation.		
32	Please confirm guarantees will include "Zero Balance Due" (100% member paid) claims at the ingredient cost prior to application of the member cost share and shall not be counted as AWP-100%.		
33	Please confirm that guarantees will exclude all claims that adjudicate at U&C.		
34	Please confirm there is no dispensing fee assessed for U&C claims.		
35	In your extended supply retail networks (90-day network) are there different pricing provisions based on pharmacy (e.g. a subset of the pharmacies in the 90-day network receive "mail equivalent" pricing)? Please describe any differences that would be applicable to your pricing proposal.		
36	Please confirm that discount guarantees are not subject to aggregate day supply minimums and will be reconciled according to distribution channel.		
37	Please confirm your proposal includes either a specialty drug list with drug level discounts or an overall effective specialty discount guarantee.		
38	How will newly introduced specialty drugs be included in the specialty drug discount guarantee? Will new specialty products automatically default to a minimum discount in the therapeutic class?		
39	Please describe how a claim with a DAW codes (0 through 9) are reconciled in your Brand/Generic discount guarantees.		
40	Please confirm the proposed discounts, dispensing fees, and rebates are guaranteed by distinct component within the retail, mail, and specialty distribution channels such that a guarantee surplus in one guarantee component is not offset by a shortfall in another guarantee component.		
41	Please confirm that any shortfall determined during guarantee reconciliation will be paid to NDPERS on a dollar-for-dollar basis with no maximum limit of liability.		
42	Describe your reconciliation process and timing (in terms of reconciling a manufacturer revenue guarantee against actual payments)		
43	Please confirm that pricing guarantee reconciliation will take place within 90 days of the close of the contract year (including discounts, dispensing fees, admin fees (as applicable), as well as a preliminary analysis of manufacturer revenue paid compared to guarantees with a full reconciliation of manufacturer revenue after all manufacturer revenue has been collected and remitted from the manufacturers (no later than 270 days after the end of the contract year)).		
44	Do you collect point-of-sale (POS) price concessions from pharmacies or pay incentives to pharmacies connected to performance criteria? If so, please describe the performance measures tied to payments.		

45	Do you collect retroactive DIR fees or assess copay clawbacks from pharmacies in your network? If so, please describe the situations where these fees or clawbacks are assessed.		
46	If you collect Direct or Indirect Revenue (DIR) from pharmacies in the network, is that DIR passed through to NDPERS in a self-insured contract?		

Appendix D

North Dakota Public Employees Retirement System

Request for Proposals

Medicare Part D EGWP+Wrap

Please complete each of the tabs in this workbook. The exhibits must be submitted in the prescribed format. Bidders may provide supplemental information but may not deviate from utilizing the provided Excel worksheets.

The Network & Formulary Match consists of the following components and related exhibits:

1. EGWP Network Match
2. EGWP Network Access
3. EGWP Formulary Match

North Dakota Public Employees Retirement System

Request for Proposals

Medicare Part D EGWP+Wrap

YOUR COMPANY NAME: _____

Using the pharmacy ID number, please insert the pharmacy name and answer if the pharmacy is in your proposed broad national network (Y) or if it is out of network (N)

Unique ID #	Pharmacy NABP	Pharmacy NPI	Pharmacy Name	Pharmacy City	Pharmacy State	Pharmacy Zip	In Network (Y/N)	Notes (Closed, Not Found, etc.)
-------------	---------------	--------------	---------------	---------------	----------------	--------------	------------------	---------------------------------

North Dakota Public Employees Retirement System
Request for Proposals
Medicare Part D EGWP+Wrap

YOUR COMPANY NAME: _____

Please provide the GeoAccess summaries in the table below as well as back-up detail (back-up detail in electronic submission only, no hard copies) for employees who fall both within and outside the access standards. Your match should include all valid zip codes in each of the counties in North Dakota that your network serves and in which participants reside.

Please summarize the results of your analysis in the table below.

Retail Pharmacy Access	Participating Retail Pharmacy Network Standard	NDPERS Members Categorized as "Urban", "Suburban", "Rural"		NDPERS Members that <u>Meet</u> the Convenient Access Standard		NDPERS Members that <u>Do Not Meet</u> the Convenient Access Standard	
		Number of Members (#)	Percent of Members (%)	Number of Members (#)	Percent of Members (%)	Number of Members (#)	Percent of Members (%)
Urban	90% of members within 2 miles	0	#DIV/0!	0	#DIV/0!	0	#DIV/0!
Suburban	90% of members within 5 miles	0	#DIV/0!	0	#DIV/0!	0	#DIV/0!
Rural	70% of members within 15 miles	0	#DIV/0!	0	#DIV/0!	0	#DIV/0!
Total		0	#DIV/0!	0	#DIV/0!	0	#DIV/0!

North Dakota Public Employees Retirement System
Request for Proposals
Medicare Part D EGWP+Wrap

YOUR COMPANY NAME: _____

Indicate the tier on your proposed open formulary for each NDC.

You must include a "key" or your responses will not be considered (e.g. 1 = Tier 1 (Generic), 2 = Tier 2 (Preferred Brand), 3 = Tier 3 (Non-Preferred Brand), 4 = Not Covered)

Unique ID #	NDC	Drug Product Label Name	Tier on Proposed Formulary (Tier as most recent update)	Comments
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Appendix E
PRESCRIPTION BENEFIT MANAGEMENT SERVICES AGREEMENT

THIS PRESCRIPTION BENEFIT MANAGEMENT SERVICES AGREEMENT (hereinafter referred to as the "Agreement") is entered into this _____ day of _____ 20____, between _____ (hereinafter referred to as "PBM"), with principal offices at _____, and the State of North Dakota acting through its Public Employees Retirement System (NDPERS) ("the Plan Sponsor"), and North Dakota Public Employees Retirement System (NDPERS) ("the Plan Administrator"), with principal offices at 1600 East Century Avenue, Suite 2, Bismarck, North Dakota 58502-1657 (hereinafter referred to as "NDPERS"). [PBM to complete all "blanks" in paragraph, other than date]

WHEREAS, NDPERS wants to offer cost-effective prescription benefit services and cost-effective dispensing of prescription drugs and other covered products to its eligible employees and their eligible beneficiaries and dependents; and

WHEREAS, PBM has contracted with retail [mail order and specialty] pharmacies [and operates its own mail order and specialty drug pharmacy subsidiaries] for the purpose of providing prescription benefit services to its clients, including NDPERS; [PBM to select correct text and delete incorrect text, here, and in all other similar provisions in contract where orange font provides alternatives] and

WHEREAS, NDPERS desires to engage PBM to perform pharmacy benefit management services relating to (i) prescription claims processing; (ii) eligibility verification; (iii) negotiation and execution of contracts with retail [mail and specialty] pharmacies [and operation of its own mail order and specialty drug pharmacy subsidiaries]; (iv) negotiation and execution of contracts with pharmaceutical manufacturers, wholesalers, distributors, and other third parties to obtain favorable Financial Benefits for its clients, including NDPERS [or negotiation and execution of a contract with a third-party rebate aggregator to obtain favorable Financial Benefits for its clients, including NDPERS]; (v) creation of cost-effective and safe formularies for its clients, including NDPERS; (vi) management and administration of other prescription drug programs to benefit its clients, including NDPERS; and (vii) performance of other pharmaceutical benefit management services identified herein; and

WHEREAS, PBM agrees to perform all such services on a fully transparent basis in accordance with the terms of this Agreement, enabling NDPERS (and its agents) to have complete and full access to all information necessary to determine and verify that PBM has met all terms of this Agreement, and satisfied all Pass-Through Pricing requirements set forth herein; and

WHEREAS, PBM and NDPERS agree to satisfy all terms set forth in this Agreement subject to the terms and conditions hereof:

NOW THEREFORE, in consideration of the mutual promises and agreements contained herein, PBM and NDPERS hereby agree as follows:

ARTICLE 1 - DEFINITIONS

Additional Fee(s) – The term “Additional Fee(s)” shall have the meaning set forth in Section 4.3 of the Agreement.

Administrative Fee(s) - The term “Administrative Fee(s)” shall have the meaning set forth in Section 4.2 of the Agreement.

ANOC (Annual Notice of Change) – The term “ANOC” shall mean the Annual Notice of Change that is required by CMS and will be provided by PBM to the then-current Members enrolled in a Medicare Part D Plan through NDPERS. The ANOC will be timely provided, as required by federal regulations and guidelines, and will provide the Member with all required change notifications that will be made in benefits and costs, including without limitation, cost shares, if any. The ANOC will also include a new, and if necessary, revised EOC, LIS Rider, Formulary and Wrap Certificate of Coverage, if any, for the new Medicare Part D Contract Year.

Audit(s) - The term “Audit(s)” shall mean (1) NDPERS’s assessment of PBM’s satisfaction of all terms under this Agreement; and (2) PBM’s verification that all third parties referenced in this Agreement (including but not limited to Participating Pharmacies, the Mail Order Pharmacy, the Specialty Drug Pharmacy and Pharmaceutical Manufacturers) have satisfied their obligations under this Agreement.

Average Annual Guarantee(s) - The term “Average Annual Guarantee(s)” shall have the meaning set forth in Exhibit A of the Agreement.

Average Wholesale Price or AWP - The term “Average Wholesale Price” or “AWP” shall mean the average wholesale price of a prescription drug or medication dispensed, on the date the prescription or medication is dispensed, as set forth in the most recent edition of the Medi-Span pricing guide or supplement as of that date. The applicable AWP for all prescriptions dispensed at retail pharmacies, the Mail Order Pharmacy and the Specialty Drug Pharmacy shall be based on (i) the Unit AWP using the NDC from which the medication was dispensed (not the package size of the prescription dispensed); and (ii) the actual manufacturer’s AWP (repackager AWP’s shall not be substituted for manufacturer AWP’s); and (iii) the actual Unit prescribed (and an alternative Unit measure shall not be substituted, such as capsules for tablets, or tablets for capsules.). PBM shall not process any repackagers’ AWP’s in connection with any Claims.

In the event there is a change in the marketplace in connection with AWP reporting or any methodology impacting pricing and/or guarantees (including but not limited to a change in Medi-Span’s information fields related to brand drug and generic drug classification), the Parties will be obligated to meet and agree upon changes in the pricing terms and guarantees contained in the Agreement so as to enable PBM and NDPERS to maintain the same financial relationship and obligations as set forth in the Agreement. PBM may not make any changes in pricing terms or guarantees in the Agreement unless NDPERS agrees to such changes in writing, and the changes are memorialized as a written amendment to the Agreement.

Benefit Change Form or BCF - The term “Benefit Change Form” or “BCF” shall mean the agreed upon form to make modifications to NDPERS’s Benefit Plan Design. NDPERS’s Benefit Change Form must be executed by NDPERS. PBM and NDPERS will each maintain a file of all Benefit Change Forms, but PBM will provide NDPERS with said BCFs upon request for Audits.

Benefit Effective Date or Medicare Part D Benefit Effective Date – The term “Benefit Effective Date” or Medicare Part D Benefit Effective Date shall mean January 1, 2026, which is the date when NDPERS will begin receiving services for its Medicare Part D Members from PBM’s Medicare Part D Insurance Company.

Benefit Plan Design(s) or Plan Design(s) - The term “Benefit Plan Design(s)” or “Plan Design(s)” shall mean all matters described in Exhibit D to the Agreement and/or in a Benefit Specification Form or Benefit Change Form.

Benefit Specification Form or BSF - The term “Benefit Specification Form” or “BSF” shall mean the form that is completed by NDPERS that specifies the terms and provisions of NDPERS's Benefit Plan Design(s) and the configuration of system edits, including but not limited to which prescription and OTC medications are covered by NDPERS (and/or are not covered); Copayments and Coinsurance requirements; the Medicare Part D Formulary selected; the Benefit Plan Design tier structure; any limitations on coverage such as deductibles; and any Programs selected for any Plan, together with the relevant protocols and services that must be rendered in connection with each Program.

Each Benefit Specification Form must be executed by PBM and NDPERS. PBM and NDPERS will each retain a copy of all Benefit Specification Forms, but PBM will provide NDPERS with said Forms upon request for Audits.

Biosimilar – The term “Biosimilar” shall mean a type of biological product that is licensed by the FDA because it is similar to an already FDA approved biological product, the reference product, and has been shown to have the same clinical outcomes as the reference product. Biosimilar products will be included as Specialty Drug(s) in this Agreement.

Bona Fide Service Fees – Bona fide service fees means fees paid by a manufacturer to an entity, that represent fair market value for a bona fide, itemized service actually performed on behalf of the manufacturer that the manufacturer would otherwise perform (or contract for) in the absence of the service arrangement, and that are not passed on in whole or in part to a client or customer of an entity, whether or not the entity takes title to the drug. The fee includes, but is not limited to, distribution service fees, inventory management fees, product stocking allowances, and fees associated with administrative service agreements and patient care programs (such as medication compliance programs and patient education programs).

Brand Drug(s) - The term “Brand Drug(s)” shall mean the following: The Multisource Code field in Medi-Span contains a “M” (co-branded product), “O” (originator brand) (except where the Claim is submitted with a DAW Code of “3,” “5” or “6”, in which case it shall be considered a Generic Drug), or a “N” (single source brand). The Parties agree that when a drug is identified as a Brand Drug, it shall be considered a Brand Drug for all purposes by PBM, including but not limited to adjudicating the Claim, reimbursing the relevant pharmacy, invoicing NDPERS, determining the Copayment or Coinsurance to be paid by the Member, calculating the satisfaction of Average Annual Guarantees as further described in Exhibit A of the Agreement, calculating the satisfaction of Financial Benefit Guarantees as further described in Exhibit A of the Agreement, and calculating the satisfaction of generic fill rates (if any).

Claim(s) - The term “Claim(s)” shall mean all claims transmitted or sent to PBM by any pharmacies or by Members as a result of dispensing Covered Items to Members, including reversed and rejected Claims.

Claim Adjudication System – The term “Claims Adjudication System” means PBM’s claims processing system.

Claim Processor Fee(s) or Click Fee(s) - The term “Claim Processor Fee(s)” or “Click Fee(s)” shall mean a payment made by retail pharmacies to PBM, or a fee withheld by PBM from retail pharmacy reimbursement when PBM processes an aggregated payment to a retail pharmacy. Claim Processor Fees shall be considered Financial Benefits or DIR and shall not be factored into Average Annual Guarantees for either Ingredient Costs or Dispensing Fees.

CMS (Centers for Medicare & Medicaid Services) – The term “CMS” references the federal agency within the United States Department of Health and Human Services that is responsible, among other matters, for administering various Medicare Plans.

Compound Drug(s) - The term “Compound Drug(s)” shall mean a drug that needs to be made by a pharmacist because it is not commercially available in the required form and strength. A Compound Drug must consist of two or more solid, semi-solid or liquid ingredients, at least one of which is a Covered Item. PBM is obligated to provide Pass-Through Pricing for every Compound Drug. PBM’s invoiced Ingredient

Cost to NDPERS for each Compound Drug shall be the same as PBM's reimbursed Ingredient Cost to the retail pharmacy (and both shall be net of any Copayments, Coinsurance, and deductible, and if relevant, any LICS or Medicare Part D coverage gap rebate) PBM may also invoice NDPERS for the precise professional or compounding fee that PBM has paid to the dispensing pharmacy, if any. However, PBM shall not be allowed to make any profit spread on any Compound Drugs and shall pass through to NDPERS the exact Ingredient Cost and professional or compounding fee that PBM pays the dispensing pharmacy. Compound Drugs are excluded from the calculation of all Average Annual Guarantees, Minimum Guaranteed Discounts, the Default Discount Guarantee, Maximum Guaranteed Prices, and Financial Benefit Guarantees.

In submitting a Benefit Specification Form or a Benefit Change Form, NDPERS may state that if any pharmacy transmits a Claim for a Compound Drug where the total Ingredient Cost is above a dollar amount specified in the Form (e.g., \$100), PBM will be required to (a) conduct a Prior Authorization evaluation to evaluate and verify that the cost of the Compound Drug is appropriate, and/or (b) block the dispensing of the Compound Drug.

Contract Year – The term “Contract Year” shall mean for NDPERS the period from January 1st to December 31st in any year.

Cost Share – The term “Cost Share” shall mean the amount of money that a Member must pay to the pharmacy to obtain a Covered Item in accordance with the terms of the Benefit Plan Design of NDPERS.

Copayment(s) or Coinsurance - The term “Copayment(s)” or “Coinsurance” shall mean those amounts collected from Members by the relevant pharmacy pursuant to NDPERS's Benefit Plan Design as specified in its Benefit Specification Form, and if relevant, as amended in a Benefit Change Form. “Copayment” shall mean any flat amount that a Member is required to pay. “Coinsurance” shall mean any percentage amount that a Member is required to pay.

Covered Item(s) - The term “Covered Item(s)” shall mean the covered drugs, supplies and small durable medical equipment (“DME”) items listed in NDPERS's Benefit Plan Design, as specified in its Benefit Specification Form, and if relevant, as amended in a Benefit Change Form. PBM understands and agrees that it shall not be entitled to invoice or collect reimbursement from NDPERS for any Covered Item that is not included in, or that is excluded from, NDPERS's list of Covered Items.

Default Discount Guarantee - The term “Default Discount Guarantee” shall mean the automatic discount that must be provided by PBM on any and all new-to-market Specialty Drugs, as further described in Exhibit A of this Agreement.

Direct and Indirect Remuneration or DIR - The term “Direct and Indirect Remuneration” or “DIR” is defined to mean any and all rebates, subsidies, or other price concessions from any source (including manufacturers, pharmacies, enrollees, or any other person) that serve to decrease the costs incurred by NDPERS (whether directly or indirectly) for Medicare Part D Covered Items, including without limitation: discounts, chargebacks, rebates, cash discounts, free goods contingent on a purchase agreement, up-front payments, coupons, goods in kind, free or reduced-price services, grants, legal judgment amounts, settlement amounts from lawsuits or other legal action, and other price concessions or similar benefits. DIR shall always have the same definition as the definition identified by CMS.

Dispensed Claim(s) - The term “Dispensed Claim(s)” shall mean each Claim that is actually dispensed to a Member. With respect to any Claim, if the Claim is not dispensed, but is instead denied, rejected or reversed, the Claim shall not constitute a Dispensed Claim. If the Claim is adjusted in any way, the original Claim and the adjusted Claim(s) shall together constitute only one Dispensed Claim. If a Claim is partially filled, and subsequently the remainder of the Claim is filled, the fills will together constitute only one Dispensed Claim. PBM may only invoice NDPERS for Dispensed Claims, may not invoice NDPERS for denied, rejected or reversed Claims, and may invoice only once for adjusted or partially filled Claims.

Dispensing Fee(s) - The term “Dispensing Fee(s)” shall mean the per prescription dispensing fee paid by the PBM to the dispensing pharmacy. Dispensing Fees shall only be invoiced to NDPERS for Dispensed Claims and shall be based on Pass-Through Pricing for retail pharmacy and Mail Order Pharmacy dispensed drugs, with said Pass-Through Pricing satisfying the Average Annual Guarantees for Dispensing Fees identified in Exhibit A of the Agreement. Dispensing Fees for Specialty Drugs dispensed from the Specialty Drug Pharmacy shall be based on the stated Dispensing Fee identified in Exhibit A of the Agreement. For every Dispensed Claim that PBM reimburses to the retail pharmacy based on U&C, PBM shall allocate the entire U&C charge to the Ingredient Cost and shall not allocate any of the U&C charge to the Dispensing Fee.

Effective Date - The term “Effective Date” shall mean the date upon which this Agreement becomes effective, namely the date upon which it has been executed by all Parties.

EGWP Plan – The term “EGWP Plan” shall mean an Employer Group Waiver Plan under Medicare Part D that is provided by PBM’s Medicare Part D Insurance Company via a Medicare Employer Group Policy (“EGWP Policy”), for a fully-insured plan, or a Medicare Employer Group Agreement (ASO) for a self-insured EGWP plan.

Eligibility Change(s) - The term “Eligibility Change(s)” shall mean a change in Member eligibility as reported to PBM by NDPERS whether in paper or electronic format.

Eligibility File – The term “Eligibility File” shall mean the file created by NDPERS and transmitted to PBM listing the names and other pertinent information necessary for PBM to enroll Members, terminate enrollment, or to make changes to existing Member records.

EOC (Evidence of Coverage and Disclosure Information) – The “EOC” is a document based on the CMS provided standardized model, supplied by PBM, approved by NDPERS, and thereafter issued by PBM to enrolled EGWP or EGWP + Wrap Members. The EOC discloses and sets forth the prescription drug benefits and terms and conditions of coverage to which NDPERS’s Members are entitled.

Exhibit(s) - The term “Exhibit(s)” shall mean an Exhibit to the Agreement, and all written amendments to any such Exhibits. Any Agreement Exhibit must be mutually agreed upon in writing by PBM and NDPERS.

Extended AWP - The term “Extended AWP” shall mean the product of the Unit AWP for a Dispensed Claim multiplied by the quantity of Units dispensed by the pharmacy for that Dispensed Claim.

Financial Benefits - The term “Financial Benefits” shall mean NDPERS’s Pro Rata Share (as Pro Rata Share is defined herein) of all financial benefits received by PBM (as PBM is defined herein) from all Pharmaceutical Manufacturers (as Pharmaceutical Manufacturers is defined herein), including without limitation NDPERS’s Pro Rata Share of all: rebates, discounts, administrative or other fees, chargebacks, grants, all other monies of any kind whatsoever paid by Pharmaceutical Manufacturers, all discounts or credits or reimbursements of any kind provided by Pharmaceutical Manufacturers, all financial benefits paid by Pharmaceutical Manufacturers to PBM for Covered Items dispensed on NDPERS’s behalf from retail pharmacies, the Mail Order Pharmacy, and the Specialty Drug Pharmacies, and all goods (or in kind services) provided by Pharmaceutical Manufacturers.

Financial Benefit Guarantee(s) - The term “Financial Benefit Guarantee(s)” shall mean the minimum amount that PBM has guaranteed will be passed through as Financial Benefits to NDPERS, as further described in Exhibit A of the Agreement.

Financial Guarantee(s) – The term “Financial Guarantee(s)” shall mean every financial guarantee in the Agreement (as opposed to Performance Guarantee identified in Exhibit C), including without limitation: every Average Annual Guarantee, every Specialty Drug Minimum Guaranteed Discount, the Specialty Drug Default Discount Guarantee and every Financial Benefit Guarantee.

Formulary - The terms “Formulary” shall have the meaning set forth in Article 5 of the Agreement.

Generic Drug(s) – The term “Generic Drug(s)” shall mean the following: The Multisource Code field in Medi-Span contains a “Y” (generic). Claims submitted with a Multisource Code field in Medi-Span containing the value of “O” and also submitted with a DAW Code of “3”, “5”, or “6” shall also be considered a Generic Drug. PBM agrees that when a drug is identified as a Generic Drug, it shall be considered a Generic Drug for all purposes, including but not limited to adjudicating the Claim, reimbursing the relevant pharmacy, invoicing NDPERS, determining the Copayment or Coinsurance to be paid by the Member, calculating the satisfaction of Average Annual Guarantees as further described in Exhibit A of the Agreement, calculating the satisfaction of Financial Benefit Guarantees as further described in Exhibit A of the Agreement, and calculating the satisfaction of generic fill rates (if any).

Identification Card(s) or ID Card(s) - The term “Identification Card(s)” or “ID Card(s)” shall mean the printed plastic identification cards, and digital identification cards accessible online or via a mobile application, that contain specific information about the prescription drug benefits to which Members are entitled.

Ingredient Cost(s) - The term “Ingredient Cost(s)” shall mean the amount charged for each Dispensed Claim – prior to the deduction of any Copayment or Coinsurance or deductible (if any) – not including Dispensing Fees or any sales or use taxes – and without factoring in any Financial Benefits. For every Dispensed Claim that PBM reimburses to a retail pharmacy based on U&C (as defined herein), PBM shall allocate the entire U&C charge to the Ingredient Cost, and shall not allocate any of the U&C charge to the Dispensing Fee.

Limited Distribution Drug – The term “Limited Distribution Drug” shall mean Specialty Drug(s) that Pharmaceutical Manufacturer(s) distribute through a limited number of pharmacies and wholesalers selected by the Pharmaceutical Manufacturer(s).

Mail Order Pharmacy - The term “Mail Order Pharmacy” shall mean _____, [PBM to fill in the name of the pharmacy] which shall be the mail order pharmacy that PBM uses to service NDPERS.

MAC - The term “MAC” shall mean the maximum allowable cost of a Brand Drug or Generic Drug, as established by PBM for certain drugs in connection with reimbursing Participating Pharmacies. PBM's inclusion (or exclusion) of a drug on its MAC list(s) shall not in any way impact any of PBM's obligations in the Agreement, including without limitation its Pass-Through Pricing obligations, Average Annual Guarantees for Brand Drugs and Generic Drugs, since all such Guarantees and obligations are to be applied as specified in the Agreement.

Manufacturer Discount Program – The term ‘Manufacturer Discount Program’ is a term for the replacement program for the Coverage Gap Discount Program that sunset effective January 1, 2025. It is a program intended to lower consumer costs by providing discounts directly to them from manufacturers rather than through a PBM.

Medicare Part D Formulary - The term “Medicare Part D Formulary” shall mean the list of CMS approved drugs and other items covered under an EGWP Plan.

Medicare Part D Insurance Company – The term “Medicare Part D Insurance Company” or “_____” [PBM to identify actual name of its Med D insurance company provider] shall mean PBM's affiliated insurance entity that will provide self-insured or fully-insured Medicare Part D EGWP coverage to NDPERS. Although the Medicare Part D Insurance Company will be providing said EGWP coverage, when requested, and the Medicare Part D Insurance Company will be contractually responsible for all such EGWP coverage, for simplicity of reference the term “PBM” has also been used throughout this Agreement to reference services that will be provided by, and obligations that must be satisfied by, the Medicare Part D Insurance Company for Medicare Part D matters.

Member(s) – The term “Member(s)” shall be defined as any retired Member eligible for and receiving Medicare Part D services. More specifically, a Member shall be defined as: a Medicare-eligible individual who has been enrolled in an EGWP by NDPERS and accepted for membership by CMS. The following individuals are NOT eligible to be a Member in an EGWP (or supplemental Wrap):

- (i) Non-Medicare Eligible spouses and dependents of Eligible Individuals; or
- (ii) Current employees of NDPERS Employer Group (i.e., active employees) or their eligible spouses and dependents, even if eligible for Medicare Part D.

To be a Member, i.e., a Medicare-eligible individual in an EGWP (and Wrap), the individual must also be eligible for Medicare Part A and/or Medicare Part B and must have a place of permanent residence inside the fifty United States or Washington, D.C. or any territories where PBM is authorized to do business. Individuals who are incarcerated and identified as such by CMS, or by NDPERS, cannot be Members and are not eligible for an EGWP (or Wrap), and may be retroactively disenrolled if PBM receives confirmation that the date incarceration began was prior to the Member’s Benefit Effective Date.

Each individual who satisfies all of above standards shall, for purposes of an EGWP or Wrap Plan, be defined as an “Eligible Individual” and a “Member,” regardless of whether that individual is a spouse or dependent of another Medicare eligible retiree.

Member List(s) - The term “Member List(s)” shall mean the initial Eligibility File provided by NDPERS for Medicare-eligible Members enrolling in NDPERS’s EGWP, if any, and supplemental Wrap, if any.

Minimum Guaranteed Discount(s) - The term “Minimum Guaranteed Discount(s)” shall mean the minimum discount that PBM has guaranteed will be provided for each Specialty Drug when it is dispensed from the Specialty Drug Pharmacy, as further described in Exhibit A of the Agreement.

NCPDP - The term “NCPDP” shall mean National Council for Prescription Drug Programs.

New Eligibility Implementation Date(s) - The term “New Eligibility Implementation Date(s)” shall mean the date on which PBM services for new eligible Members are to begin, or end. PBM shall be obligated as of the New Eligibility Implementation Date to begin providing Covered Items for NDPERS’s new Members, and, upon ineligibility of NDPERS’s Members, to no longer provide Covered Items.

Over-the-Counter Drug(s) or OTC Drug(s) - The term “Over-the-Counter Drug(s)” or “OTC Drug(s)” shall mean a drug covered under NDPERS’s Benefit Plan that is not required by law to be dispensed pursuant to a prescription and which is generally recognized as safe and effective because it meets each of the conditions contained in 21 C.F.R. Part 330 and each of the conditions contained in any applicable monograph.

Participating Pharmacy(ies) and Pharmacy Network - The term “Participating Pharmacy(ies)” shall mean those retail pharmacies that have contracted with PBM to create a “Pharmacy Network,” together with the specified Mail Order Pharmacy and Specialty Drug Pharmacy. In the event that NDPERS limits in a Benefit Specification Form or Benefit Change Form the retail pharmacies that can dispense Covered Items to NDPERS’s Members, the Participating Pharmacies and Pharmacy Network for NDPERS will be only those pharmacies allowed by NDPERS.

Party(ies) - The term “Party” shall refer either to NDPERS or PBM. The term “Parties” shall refer to both NDPERS and PBM.

Pass-Through Pricing - The term “Pass-Through Pricing” shall mean PBM’s agreement that it shall not derive any profits whatsoever from the difference between amounts invoiced to NDPERS by PBM and amounts incurred by PBM for any Covered Item dispensed from any retail pharmacy, mail order pharmacy or specialty drug pharmacy (including the Mail Order Pharmacy and Specialty Drug Pharmacy). For purposes of clarification: For each pharmacy, PBM agrees to invoice for every Dispensed Claim - both for the Ingredient Cost and for the Dispensing Fee - the actual cost incurred by PBM. Said agreement includes

those Covered Items included within Average Annual Guarantees, and those Covered Items excluded from Average Annual Guarantees. Pass-Through Pricing shall also mean PBM's agreement to invoice for every Coordination of Benefit Claim based on PBM's exact amount paid for the Covered Item. Pass-Through Pricing shall also mean PBM's agreement that it shall invoice NDPERS for every vaccine, LTC dispensed, and home infusion therapy Covered Item based on PBM's exact amount reimbursed for that Covered Item. Pass-Through Pricing shall also mean that PBM shall invoice NDPERS for every Compound Drug based on PBM's exact reimbursement to the retail pharmacy for the Compound Drug, including PBM's exact reimbursement for the compounding fee.

For any EGWP Plan, Pass-Through Pricing shall mean (i) PBM's agreement that if NDPERS selects a self-insured EGWP Plan PBM shall pass through NDPERS's Pro Rata Share of all DIR, and if NDPERS selects a fully-insured EGWP Plan PBM shall pass through to CMS the legally required DIR allocable to that EGWP Plan; (ii) PBM shall properly allocate and retain only Bona Fide Service Fees; and (iii) PBM shall file accurate DIR and Bona Fide Service Fee reports with CMS. For any Wrap Plan, Pass-Through Pricing shall mean that to the extent that PBM receives any Financial Benefits, PBM agrees to pass through to NDPERS its Pro Rata Share of all such Financial Benefits.

Pass-Through Pricing shall also mean that PBM's only profits shall be those that may be embedded in (i) Administrative Fees; and (ii) Additional Fees.

Pharmacy Network – See Definition of “Participating Pharmacies.”

PBM - The term “PBM” shall mean _____ *[PBM to identify its name]*, and all subsidiaries and affiliates providing PBM Services to NDPERS.

PBM Services - The term “PBM Services” shall mean claims processing, eligibility verification, all contracting and management and administration of contracts with Participating Pharmacies and/or Pharmaceutical Manufacturers, Formulary and clinical support, and all other services described in or performed by PBM as a result of the Agreement.

PBM/Participating Pharmacy Contract(s) - The term “PBM/Participating Pharmacy Contract(s)” shall mean all contracts, amendments or addendums thereto, letter agreements, or other written or oral agreements in any form, setting forth any terms between PBM and any retail, mail order pharmacy or specialty drug pharmacy, whether independent, or owned by or affiliated with PBM.

PBM/Pharmaceutical Manufacturer Contract(s) - The term “PBM/Pharmaceutical Manufacturer Contract(s)” shall mean all contracts, amendments or addendums thereto, letter agreements, or other agreements, providing that any Financial Benefits shall be paid or provided by any Pharmaceutical Manufacturer to PBM. PBM/Pharmaceutical Manufacturer Contracts shall include, but not be limited to, all: rebate agreements, administrative fee agreements, inflation protection payments, indication and/or outcomes-based pricing arrangements, other fee agreements, service agreements, health or disease management agreements, data sales agreements, discount agreements, prompt payment agreements, bulk purchase agreements, pricing sheets/term sheets/or discount sheets providing pricing terms, etc.

Pharmaceutical Manufacturer(s) - The term “Pharmaceutical Manufacturer(s)” shall mean any pharmaceutical manufacturer or company, any drug wholesaler or distributor, or any other third party, that provides Financial Benefits.

Plan(s) – NDPERS may provide prescription coverage to one Plan or several different Plans. NDPERS shall have the right to add or eliminate a Plan or Plans during the period when this Agreement is in effect.

Prescriber – The term “Prescriber” means a licensed Doctor of Medicine (M.D.), Doctor of Osteopathy (D.O.), Doctor of Podiatry (D.P.M.), Doctor of Dentistry (D.D.S.), or other licensed health practitioner with independent prescribing authority in the state in which the dispensing pharmacy is located.

Program(s) - The term “Program(s)” shall mean any pharmacy benefit management program that NDPERS chooses to implement, in writing, via this Agreement, a Benefit Specification Form and/or Benefit Change Form, based on specified written protocols provided to the PBM.

Pro Rata Share - The term “Pro Rata Share” shall mean the proportion of total Financial Benefits that PBM collects from third parties that PBM is required to pass through to NDPERS, as further described in Exhibit A of the Agreement.

Protected Health Information or PHI – The term “Protected Health Information” or “PHI” shall mean individually identifiable health information, including summary and statistical information, collected from or on behalf of a Member that is transmitted by or maintained in electronic media, or transmitted or maintained in any other form or medium and that:

1. is created by or received from a Prescriber, health care employer, or health care clearinghouse;
2. relates to a Member’s past, present or future physical or mental health or condition;
3. relates to the provision of health care to a Member;
4. relates to the past, present, or future payment for health care to or on behalf of a Member; or
5. identifies a Member or could reasonably be used to identify a Member.

Specialty Drug(s) - The term “Specialty Drug(s)” shall mean each drug identified on Exhibit B of the Agreement. The term “Specialty Drug” shall also include any new-to-market specialty drug that NDPERS allows to be dispensed. NDPERS shall have the right to select which Specialty Drugs on Exhibit B shall (or shall not) be dispensed to its Members. NDPERS shall also have the right to determine whether (i) to allow a new-to-market specialty drug to be dispensed automatically from the Specialty Drug Pharmacy at the Default Discount Rate prior to the specialty drug being added to Exhibit B; or (ii) to prohibit and block the dispensing of a new-to-market specialty drug until it has been added to Exhibit B, or NDPERS has specified in writing that it wants the drug added.

Specialty Drug Pharmacy - The term “Specialty Drug Pharmacy” shall mean _____, *[Each PBM to fill in the name of its proposed Specialty Drug Pharmacy]* which shall be the only specialty drug pharmacy that PBM uses to service NDPERS.

State – The “State” means the State of North Dakota.

Successful Security Incidents - The term “Successful Security Incidents” shall mean security incidents that result in unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations.

Supplemental Formulary – The term “Supplemental Formulary” shall mean the Covered Items that NDPERS is providing to its Members as supplemental benefits (i.e., as Bonus Drugs and a Wrap), as specified in its Supplemental Benefit Plan.

U&C or Usual and Customary - The term “U&C” or “Usual and Customary” shall mean the walk-in price charged by a retail pharmacy to customers who are without prescription drug coverage. NDPERS shall never be charged for more than the U&C for a transaction. For every Dispensed Claim that PBM reimburses to the retail pharmacy based on U&C, PBM shall allocate the entire U&C charge to the Ingredient Cost and shall not allocate any of the U&C charge to the Dispensing Fee. PBM represents and warrants that each of its contracts with retail pharmacies requires each retail pharmacy to include as its transmitted U&C price to the PBM any and all U&C discounted prices that the pharmacy provides to non-insured customers.

Unit(s) - The term “Unit(s)” shall mean the unit of measure dispensed, such as tablet, capsule, ml of liquid, gm of cream, or other unit measure.

Unit AWP - The term “Unit AWP” shall mean the Unit of measure price, as defined by the NCPDP, with the Unit of measure being per tablet, or per capsule, or per ml of liquid, or per gm of cream, or per other Unit, dispensed.

Unsuccessful Security Incidents – The term “Unsuccessful Security Incidents” shall mean security incidents that do not result in unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations.

Wrap Plan – The term “Wrap Plan” shall mean the self-insured supplemental benefit plan that NDPERS may arrange for Medicare-eligible Members by executing a Coordination of Benefits Agreement.

ARTICLE 2 – GENERAL DUTIES TO BE PERFORMED BY NDPERS

2.1 NDPERS's Duty to Provide Member List. At least forty-five (45) days before NDPERS's Benefit Effective Date, NDPERS shall provide to PBM electronic files reflecting all Members as of that date (the "Member List"). NDPERS shall be solely and exclusively responsible for ensuring the accuracy of its Member List.

2.2 NDPERS's Duty to Provide Eligibility Changes in the Member List. NDPERS shall be solely and exclusively responsible for creating and providing Eligibility Files to PBM to update its Member List to reflect all additions and terminations ("Eligibility Changes"). For all eligible Members, NDPERS has determined that it wishes to update its Member List: once a week.

NDPERS's additions or deletions to a previously existing Eligibility File will be input and made operable by PBM within at least one (1) business day.

2.3 Information Required on Initial Member List, and For Eligibility Changes. NDPERS's Member List and Eligibility Changes shall contain the following minimum "information fields," each of which shall be incorporated into PBM's information system, and each of which shall be available to NDPERS via PBM's internet portal:

- a. Each Member's identification number and social security number when available
- b. Each Member's full name (last, first, and middle initial)
- c. Each Member's date of birth
- d. Each Member's address
- e. The date the Member became eligible for coverage (Member's Effective Date)
- f. The date the Member's eligibility for coverage under the Benefit Plan is terminated
- g. The Benefit Plan Design identification number
- h. Each Member's gender
- i. Each Member's Person Code(s)
- j. Each Member's Relationship Code(s)
- k. A coordination of benefits Code or Indicator (as primary or secondary) for each Member
- l. A Medicare Part D identifier (if relevant)
- m. An active/retiree identifier (if relevant)

This data shall be provided to PBM in the industry standard, HIPAA-mandated 834 file format. PBM also agrees to provide additional "information fields" as required in writing by NDPERS.

NDPERS shall be responsible for the resolution of any errors identified by PBM in any error report that PBM transmits to NDPERS. Any Claims processed due to incorrect eligibility information transmitted by NDPERS to PBM will be the responsibility of NDPERS.

2.4 Benefit Plan Design Information and Changes. NDPERS's Benefit Plan Design(s) shall be provided to PBM and attached as Exhibit D hereto. NDPERS shall have the right to implement any Benefit Plan Design(s) of its choosing. NDPERS must provide its initial Benefit Plan Design(s) to PBM in writing at least sixty (60) days before NDPERS's Benefit Effective Date.

After NDPERS's Benefit Effective Date, NDPERS must provide all Benefit Plan Design changes to PBM at least forty-five (45) days prior to the date when such changes shall be made effective. PBM shall be obligated to input and perform a test run on any benefit changes identified by NDPERS as requiring said test run prior to the date of required implementation, notifying NDPERS in writing of the results of its test run, and making all Benefit Plan Design changes operative within thirty (30) days of having received NDPERS's Benefit Plan Design changes. NDPERS and PBM may mutually agree, in writing, on different time frames for the implementation of Benefit Plan Design changes.

The specifics of how NDPERS directs PBM to configure the processing of benefits shall be provided to PBM using PBM's Benefit Specification Form (BSF), and any changes to the configuration using

PBM's Benefit Change Form (BCF). PBM shall rely on the terms and provisions provided by NDPERS in the written and executed Benefit Specification Form and written and executed Benefit Change Forms. The most recent executed Benefit Specification Form or Benefit Change Form shall supersede any prior dated executed form to the extent the content of any prior form has been altered.

- 2.5 Cooperation. NDPERS and PBM shall promptly provide to each other all information that is reasonably requested and that is reasonably necessary for each to complete its obligations hereunder, and for NDPERS to provide the PBM Services it decides to provide.
- 2.6 Good Faith Negotiation Obligation. PBM and NDPERS agree that all conferences, meetings, and negotiations will take place in good faith by balancing (i) PBM's obligation to provide low-cost pricing to NDPERS, with (ii) PBM's right not to expose itself to financial liability by promising to provide Covered Items and services on terms that PBM cannot satisfy.

Should PBM believe any NDPERS changes in a Formulary or Program require that any financial guarantee(s) be adjusted, PBM shall have the obligation to (i) provide evidence of the need for the change, and (ii) demonstrate through the evidence the extent of the adjustment that is needed as a result of the change, and the Parties thereafter shall negotiate in good faith and make any adjustment that PBM has demonstrated is needed. Similarly, if unforeseeable marketplace events or changes in government laws or regulations require an adjustment in any financial guarantee(s), PBM shall have the same obligations, and the Parties thereafter shall in good faith make any adjustment that PBM has demonstrated is needed. NDPERS may also request adjustments in financial guarantees and ask for documents or data related to its request. In connection with any change in any financial guarantee requested by either Party, PBM agrees that given that PBM retains most information related to the need for, or appropriateness of, any change, PBM shall be obligated to share the requisite information with NDPERS.

In connection with all of the above-described changes, each Party shall be required to consider in good faith the other Party's request, including all supporting PBM evidence that PBM must provide. NDPERS shall also be entitled to consult with outside experts to evaluate: the need for changes, PBM's supporting evidence, and other mitigating circumstances.

If the Parties cannot mutually agree on a requested adjustment within thirty (30) days of either Party's request for an adjustment then NDPERS may terminate this Agreement pursuant to the termination procedures set forth in Article 8.

ARTICLE 3 – GENERAL DUTIES TO BE PERFORMED BY PBM

- 3.1 Compliance with Laws, etc. PBM agrees to comply with all laws, rules, and policies, including those relating to nondiscrimination, accessibility, and civil rights. PBM agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes and unemployment compensation and workers' compensation premiums. PBM shall have and keep current at all times during the term of this Agreement all licenses and permits required by law.
- PBM is prohibited from boycotting Israel for the duration of this Contract. (See N.D.C.C § 54-44.4-15.) PBM represents that it does not and will not engage in a boycotting Israel during the term of this Contract. If STATE receives evidence that PBM 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 PBM has fewer than ten full-time employees.
- 3.2 Standards of Performance. PBM shall perform its obligations under this Agreement with care, skill, prudence, and diligence, and in accordance with the standards of conduct applicable to a fiduciary. PBM shall also disclose to NDPERS any activity, policy, or practice of which PBM is aware that presents a conflict of interest with the performance of its obligations hereunder. PBM represents and agrees that NDPERS is relying on PBM's expertise to ensure all PBM Services are rendered in accordance with applicable statutes and regulations.
- 3.3 Disaster Recovery Program. PBM shall establish and maintain a disaster recovery program consistent with industry practice and provide a copy of its disaster recovery program policies and procedures, if requested, to any party executing this Agreement and/or any government entity.
- 3.4 Provision of Basic Documents. PBM shall provide its latest SAS 70 report and any publicly available information on an annual basis, upon reasonable request by any party executing this Agreement and/or any government entity.
- 3.5 Indemnification. PBM 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. The legal defense provided by PBM 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. PBM also agrees to reimburse the State for all costs, expenses, and attorneys' fees incurred if the State prevails in an action against PBM in establishing and litigating the indemnification coverage provided herein. This obligation shall continue after the termination of this agreement.
- 3.6 Insurance. PBM shall 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 coverage:
- a. 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.
 - b. Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$500,000 per person and \$2,000,000 per occurrence.
 - c. Workers compensation coverage meeting all statutory requirements. The policy shall provide coverage for all states of operation that apply to the performance of this contract.

- d. Employer's liability or "stop gap" insurance of not less than \$2,000,000 as an endorsement on the workers compensation or commercial general liability insurance.
- e. Professional errors and omissions with minimum limits of \$1,000,000 per claim and in the aggregate, PBM shall continuously maintain such coverage during the contract period and for three years thereafter. In the event of a change or cancellation of coverage, PBM 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:

- a. Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of PBM.
- b. 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.
- c. The duty to defend, indemnify, and hold harmless the State under this agreement shall not be limited by the insurance required in this agreement.
- d. 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 PBM.
- e. A "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State.
- f. PBM shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this agreement. All endorsements shall be provided as soon as practicable.
- g. Failure to provide insurance as required in this agreement is a material breach of contract entitling the State to terminate this agreement immediately.
- h. PBM shall provide at least thirty (30) day notice of any cancellation or material change to the policies or endorsements. PBM shall provide on an ongoing basis, current certificates of insurance during the term of the contract. A renewal certificate will be provided ten (10) days prior to coverage expiration. An updated, current certificate of insurance shall be provided in the event of any change to a policy.

3.7 PBM Provision of Services to NDPERS.

- a. General Terms. PBM shall provide to NDPERS the Prescription Benefit Services detailed in this Agreement. All such services shall be provided at the agreed upon Administrative Fees and Additional Fees specified in this Agreement.
- b. Pass-Through Pricing, Subject to Guarantees. PBM represents and agrees that all PBM Services will be performed using Pass-Through Pricing for every Covered Item dispensed, which Pass-Through Pricing shall be subject to all of the financial guarantees referenced in this Agreement, including (i) the Average Annual Guarantees (ii) Minimum Guaranteed Discounts and Default Discount Guarantees for Specialty Drugs, and (iii) rebate guarantees (referenced as Financial Benefit Guarantees).

- c. Claims Processing, Retail Pharmacy Contracting, and Other Basic Services. PBM shall be solely responsible for all PBM Services detailed in this Agreement including the following:

1. Adjudicating all Claims accurately, including by correcting all pharmacy errors, including but not limited to pharmacy quantity errors
2. Contracting with and administering a national and local retail Pharmacy Network
3. Providing for the coordination of benefits
4. Being solely responsible for the timely accepting, inputting, and processing of all Eligibility Files that are transmitted in the appropriate format; Also, reporting back to NDPERS any errors or omissions in any Eligibility File that prevent timely inputting by the PBM
5. Accurately inputting the beginning and ending date of eligibility for each Member ("New Eligibility Implementation Date"), as provided by NDPERS
6. Timely processing all new eligibility information provided by NDPERS as further described in this Agreement
7. Providing the standard and customized reports
8. Providing additional ad hoc reports (if requested by NDPERS, at the Additional Fees identified if IT Programming time is required)
9. Performing concurrent and retrospective DUR
10. Performing all identified rebate/Financial Benefit activities
11. Providing EOBs (if requested by NDPERS)
12. Providing specified Website services for NDPERS and all Members
13. Providing E-Prescribing (as requested by NDPERS)
14. Operating a Customer Call Service Center with a toll-free number, 24/7/365 other than when the Center is unavailable for routine maintenance, for NDPERS, Members, Prescribers and Participating Pharmacies
15. Providing a service team that includes at minimum: an executive sponsor, an account manager, and a clinical account manager
16. Providing a complete set of Claims data to NDPERS with each Invoice Statement
17. As requested, conferring and/or meeting monthly, quarterly, semi-annually, and annually with NDPERS to enable NDPERS to monitor, update and improve the Prescription Drug Services provided to NDPERS, and to enable PBM to educate NDPERS about new developments so as to assist NDPERS in making core choices, including about its Benefit Plan Design.

- d. Retail, Mail Order Pharmacy and Specialty Drug Pharmacy. PBM represents and agrees that PBM currently includes ____ retail pharmacies in its national Pharmacy Network. PBM also represents that having reviewed NDPERS's Claims data, PBM currently includes ____ retail pharmacies in PBM's Pharmacy Network in NDPERS's region (defined as the State of North Dakota), and PBM binds itself to maintain ____ retail pharmacies in said Network throughout the duration of this Agreement. *[PBM to fill in all "blanks" above and below]*

PBM agrees to use _____ as the Mail Order Pharmacy for NDPERS, as further described in the definition of Mail Order Pharmacy. PBM also agrees to use _____ as the Specialty Drug Pharmacy for NDPERS, as further described in the definition of Specialty Drug Pharmacy.

- e. Programs. Subject to Medicare Part D requirements for the EGWP Program, if NDPERS selects any Program for implementation, PBM will implement said Program based on the protocols agreed to by NDPERS in writing. In connection with any and every Program that PBM implements, the following general terms shall control:

1. Program Protocols and Program Changes. NDPERS may determine which Programs it wants to implement and identify specific protocols for each Program. All such protocols will be memorialized in writing.

2. Changes in Programs or Program Protocols. During the term of this Agreement, NDPERS may request Program or Program protocol changes on no more than a quarterly basis. PBM agrees to confer with NDPERS concerning all such requests, to provide whatever information is necessary to evaluate each request, and to make suggestions concerning Programs and Program protocols within thirty (30) days of NDPERS's initial request. All agreed upon Program and Program protocol changes will be implemented by PBM within no more than thirty (30) days, unless the Parties mutually agree on a greater delay.
3. PBM Suggestions for Program Changes. If at any time PBM believes NDPERS should expand or eliminate or alter any Program or Program protocol, PBM may inform NDPERS of all recommended changes to the Program or Program protocol. PBM will thereafter evaluate and discuss said recommendations with NDPERS. However, PBM may not implement any PBM recommendation unless NDPERS has approved the changes in writing.
4. Adherence to Protocols. PBM shall be obligated to implement each Program as specified by NDPERS's standard written requirements as set forth in NDPERS's Benefit Specification Form or Benefit Change Form. If all information necessary for PBM to implement a Program is not provided to PBM, PBM shall notify NDPERS of a need for additional written protocols and obtain said protocols from NDPERS in writing. PBM shall not implement its own protocols for any Program, unless PBM has obtained written approval from NDPERS to do so.
5. Program Implementation and Program Changes. The Parties agree that on or before thirty (30) days prior to NDPERS' Benefit Effective Date, NDPERS may choose which Programs to implement, and in connection with which Covered Items. The Parties also agree that at any time during the period when a Program is in effect, NDPERS may terminate any Program, in whole or in part, on thirty (30) calendar days' notice. The Parties also agree that NDPERS's Program choices will be memorialized in NDPERS's Benefit Specification Form and/or Benefit Change Forms.
6. PBM's Obligation to Provide Requested Information. At any time during the term of this Agreement, at NDPERS's request (but no more often than quarterly), in connection with any implemented Program, PBM shall provide information to NDPERS concerning the relative "net costs" of specified drugs, factoring in the Financial Benefits to be passed through on those drugs, to enable NDPERS to assess the savings that might be realized from including (or not including) certain specified drugs in a Program. If requested, PBM will also provide a disruption analysis to NDPERS to enable NDPERS to assess the disruption to Members if certain specified drugs are added to or deleted from a Program. If requested, PBM shall also provide a financial analysis to NDPERS to enable it to assess the savings that might result if certain specified drugs are added to or deleted from a Program.
7. Potential Program Impact on Guarantees. Should NDPERS choose to implement a Program or make changes to the protocols related to a Program, and PBM believe that any of the above could impact any guarantees stated in this Agreement, the Parties agree that changes may be made in the impacted guarantees, but only based on the procedures set forth in Section 2.6 of this Agreement.
8. Timing of Compensation Payment. In the event that NDPERS (or its auditor) determines that PBM has improperly implemented any Program, and its improper implementation results in a financial loss to NDPERS, and PBM is obligated to

compensate NDPERS as more fully described in Exhibit D, PBM's payment shall be made within thirty (30) days of the Parties' resolution of the issue.

3.8 General Responsibilities In Connection With Medicare Part D Plans. PBM's Medicare Part D Insurance Company will be contractually responsible for satisfying all matters related to NDPERS EGWP Plan. NDPERS acknowledges that this Agreement summarizes the services offered by PBM's Medicare Part D Insurance Company and that the provision of EGWP services will be governed by the agreements entered into between NDPERS and said Medicare Part D Insurance Company. The Parties represent and agree that PBM will be contractually responsible for coordinating all matters related to NDPERS supplemental Wrap Plan.

- a. Initial Enrollment. NDPERS will provide a Member List to PBM containing all eligible Members.
- b. Member Eligibility. Each Member's Benefit Effective Date will always fall on the first day of a month. The Parties agree that CMS regulations require that new enrollment information received by a Plan Sponsor on or before the last calendar day of the month must be processed with an effective date of the first day of the following month. For purposes of ensuring that a Member's enrollment is processed and materials are sent in advance of the Member's Benefit Effective Date (including the Member's ID Card), PBM recommends that enrollment information be submitted by NDPERS by the fifteenth (15th) of the month prior to the desired Member Benefit Effective Date. If PBM receives enrollment information after the fifteenth (15th) of the month, but before the end of the month, while enrollment will still be effective on the first day of the following month, PBM will not be obligated to ensure that the newly enrolled Member receives enrollment materials before enrollment begins, but rather will be required to provide such materials within fifteen (15) business days of its receipt of enrollment notification.
- c. Involuntary Disenrollment of Individual Members by NDPERS. In the event a Plan Beneficiary no longer meets NDPERS's eligibility requirements. PBM shall assist NDPERS in dis-enrolling the Member in conformance with Medicare Laws and Regulations. In the event NDPERS manages the disenrollment, NDPERS shall notify PBM in writing or electronically of the date upon which the disenrollment is requested to be effective. NDPERS must notify PBM by the twenty-fifth (25th) day of the month in order for disenrollment to be effective as of the last day of that month. If PBM does not receive a disenrollment request by the twenty-fifth (25th) of the month, disenrollment may not be effective until the last day of the month that follows. The disenrollment process of individual Members must include notification to each Member as follows:
 - i. Every Member who is to be disenrolled must be notified; and
 - ii. The notice must be provided not less than twenty-one (21) calendar days prior to the effective date of the Member's disenrollment; and
 - iii. The information provided must include an explanation on how to contact Medicare for information on other Part D options that might be available to the Member.
- d. Voluntary Disenrollment by Member. Members may only dis-enroll from NDPERS's Medicare Part D Plan during an AEP (Annual Enrollment Period) or SEP (Special Enrollment Period). Members may voluntarily dis-enroll in any of the following three (3) ways:
 - i. Enrolling in another plan (during a valid enrollment period);
 - ii. Providing written notice to PBM or NDPERS;
 - iii. Calling 1-800 MEDICARE.
- e. Disenrollment Due to Member's Death or Loss of Medicare Eligibility. Pursuant to Medicare Laws and Regulations, CMS will disenroll a Member upon his/her death or due to loss of Medicare eligibility, and CMS will provide notification that the Member has died or lost eligibility. Upon receipt of notice of a Member's death or loss of eligibility from CMS, PBM will notify the NDPERS via a monthly enrollment/disenrollment transmitted report. Disenrollment will take place as of the date of death.

- f. NDPERS's Group Disenrollment. Pursuant to Medicare Laws and Regulations, NDPERS may disenroll an entire group of Members from coverage through a group disenrollment process. The group disenrollment process must comply with CMS requirements.
- g. PBM's Monthly Enrollment Reporting Obligation. PBM shall provide to NDPERS a monthly report to capture enrollment, which shall include but not be limited to: new enrollment, new disenrollment, CMS's rejections of enrollment and the reasons for those rejections, retroactive enrollment and disenrollment, and causes for disenrollment (including voluntary, involuntary, and disenrollment due to death/loss of eligibility).
- h. LIP and LIC Subsidies. PBM will reimburse Members eligible for LIP and/or LIC Subsidies in accordance with the processes set forth in the applicable fully-insured EGWP Policy or self-insured EGWP Agreement.
- i. DIR. PBM agrees to invoice for, and to attempt to collect, all DIR from all third parties, and to pass through to each self-insured Medicare Part D EGWP Plan its Pro Rata Share of all collected DIR. PBM further agrees to retain for its own account only Bona Fide Service Fees, as said Fees are defined by CMS and as is required by law. PBM also agrees to timely and accurately file all reports related to DIR (and Bona Fide Service Fees) to CMS on NDPERS's behalf, and in connection with self-insured EGWPs to provide all such reports (without redacting any NDPERS-related information) to NDPERS, if requested. If PBM contracts with and relies on a third party in connection with any DIR-related matters, PBM agrees that it will be fully liable for the above-described matters, and PBM further agrees that it will contractually bind the third party to comply with the above-described matters.
- j. Monitoring and Pass-Through Of CMS and Other Revenues. PBM agrees to: (i) collect from CMS in connection with each NDPERS EGWP Plan all CMS and third party monies (including, without limitation, all CMS direct subsidies, LIPs, LICs, and Catastrophic Coverage reinsurance, and all Manufacturer Discounts and DIR); and (ii) monitor and analyze the accuracy of the amounts paid and received. PBM also agrees to timely and fully pass-through to NDPERS all such revenues as are required to be passed through no later than one month after receiving such revenues, except for LIPs which shall be passed through to those Members entitled to receive them within forty-five (45) days after receiving said revenues.
- k. PBM's Obligation to Provide All Relevant Data and Reports. PBM agrees to provide on a monthly basis to NDPERS the following data/reports for EGWP Plans (redacted for NDPERS-related information only): PDE, MMR, and MOR data/reports. Upon request, PBM also agrees to provide to NDPERS all other data/reports that NDPERS (or its advisors) reasonably believes to be necessary to monitor and evaluate NDPERS EGWP Plan.
- l. PBM's Obligation To Periodically Review and Provide Analytical Cost Analyses. PBM agrees to provide to NDPERS a cost analysis (as described below) for each Medicare Part D Contract Year of coverage, containing cost information broken down on a monthly basis, for each of the following line items of information:
 - i. Revenue
 - 1. NDPERS's Drug or Premium Payments
 - 2. CMS Direct Subsidy
 - 3. Total Revenue
 - ii. Claims
 - 1. Allowed Claims
 - 2. Member Copay
 - 3. NDPERS Plan Liability (or underlying fully-insured Premium costs)
 - iii. Claim Offsets

1. DIR
 2. Coverage Gap Manufacturer Discounts
 3. Catastrophic CMS Reinsurance
 4. LIPs
 5. LICs
- iv. Net Claims Costs (or underlying fully-insured Premium net costs)
 - v. Administrative Fees (for self-insured EGWP)
 - vi. Profit Margin
 - vii. Plan Beneficiaries (per month)
- m. NDPERS may request that each of the above line items will be provided (i) based on the total dollar cost; and/or (ii) based on the PMPM cost.
 - n. NDPERS may also request that cost information be subdivided between (i) the Covered Items provided under the EGWP Plan that was covered by CMS under Medicare Part D; and (ii) the Bonus Drugs covered by NDPERS under its supplemental WRAP Plan.
 - o. The Parties understand and agree that NDPERS may rely on the cost analysis to:
 - i. understand NDPERS's costs;
 - ii. to make modifications to its Medicare Part D Plan;
 - iii. to determine a reasonable Premium for a fully-insured EGWP for the following Medicare Part D Contract Year and/or
 - iv. to audit PBM's compliance with its pass-through obligations and all other terms of this Agreement and the agreements executed in connection with its Medicare Part D Plan. Accordingly, PBM represents and agrees that it will provide accurate cost analysis information, and all projections will be provided in good faith.

3.9 Implementation Services. PBM shall provide the following implementation services for NDPERS, without limitation:

- a. As soon as is feasible for PBM and NDPERS, PBM and NDPERS shall meet or confer to finalize an agreed-upon transition plan and implementation schedule.
- b. Perform all tasks necessary to upload eligibility data, and timely "test" the upload as required by the agreed-upon implementation schedule.
- c. Perform all tasks necessary to upload NDPERS's Benefit Plan Design, and timely "test" the upload as required by the agreed-upon implementation schedule.
- d. Review PBM's Formulary, Medicare Part D Formulary, and Supplemental Formulary.
- e. Review with NDPERS its proposed Programs; assist NDPERS in determining to what extent it wishes to implement its existing Programs or add new Programs; memorialize in writing all protocols for all Programs; and timely "test" the Program upload as stated in the agreed-upon implementation schedule.

- f. Develop comprehensive reporting capability on Prior Authorization activities to include the following:
 1. Turn-around-time
 2. Number of total approvals
 3. Number of total denials
 4. Number of requests pending to NDPERS
 5. Number of requests cancelled by PBM
 6. Number of Prior Authorization requests by drug, drug class, or therapeutic category
- g. Perform all tasks necessary to provide online access for Members.
- h. Prepare to provide quarterly EOB Statements, automatically, to Members in a form to be reviewed by NDPERS.
- i. Perform all tasks necessary to enable NDPERS to generate reports using its online access, with access to all Claim data elements.
- j. Perform all tasks necessary to generate any customized reports identified in this Agreement.
- k. Prepare and finalize the online and mobile access to be used by NDPERS, as well as the on-line and mobile Formularies that Members can access and ensure that all matters on the website accurately reflect all matters relevant to NDPERS.
- l. Provide training for PBM's online portal usage to NDPERS.
- m. Provide Member ID cards for approval by NDPERS, and timely print and distribute all ID cards, as required by the agreed-upon implementation schedule.
- n. Train and ready a sufficient number of Customer Call Service Center representatives to ensure they are knowledgeable about all matters related to NDPERS, as required by the agreed-upon implementation schedule.
- o. Load detailed Member Claim history in all instances where data is available from the incumbent vendor, including without limitation, Member history related to: Step Therapy, Prior Authorization, quantity limits, and drug utilization review.
- p. Ensure that all Members then undergoing drug treatment for any therapeutic condition be transitioned without disruption in drug therapy or Program involvement, provided the data identified in subparagraph "o" has been made available to PBM.

3.10 NDPERS's Access to and Use of PBM's Computer Systems through an online portal. NDPERS will have access to PBM's computer systems via an online portal, in accordance with PBM's policies and procedures to maintain the confidentiality of such systems, for the following purposes: (a) adding, updating, or terminating eligibility; (b) generating overrides, as further detailed in this Agreement or as agreed upon by the Parties; (c) generating Standard Reports, as further detailed in this Agreement or as agreed upon by the Parties. The on-site "screen" information provided by PBM to NDPERS shall be identical to the "screen" information and access available to PBM and shall include at least the following: an eligibility screen, Prior Authorization screen, claims view screen, pricing screens, and such other screens that are needed and identified by NDPERS. PBM shall provide assistance and training to NDPERS concerning use of its online access as needed. NDPERS acknowledges that PBM's computer systems are proprietary and agrees to maintain the systems in complete confidentiality and to access said systems with appropriate security in place.

3.11 Claims Data

- a. PBM agrees that it is obligated to transmit to NDPERS a complete electronic Claims file, in the then-current NCPDP standard claims billing format monthly or upon request. All Claims shall be included on the file. Claims data shall be produced in one of the following formats: Access, fixed-length flat file or delimited flat file. Any data submitted in flat file format must either have a data layout attached, or the first line of the file must contain field names. File formats must remain constant from submission to submission, unless additional fields need to be added.
- b. PBM shall provide at least the following information fields on the electronic Claims file. In providing such claims data, where “Brand Drug” and “Generic Drug” definitions are relevant, PBM will use the definitions contained in the Agreement.
 1. Claim Number
 2. Patient Date of Birth (DOB)
 3. Patient Gender
 4. Service Provider Qualifier
 5. Service Provider Number Prescriber Identifier Qualifier
 6. Prescriber Identifier
 7. DAW
 8. Fill #
 9. Dispensing Status
 10. Drug Coverage Status Code (Partial or Completion or blank)
 11. Catastrophic Coverage Code - Attachment Point met on this event, Above Attachment Point, or attachment point not met
 12. GDCB – Gross Drug Cost Below OOP Threshold
 13. GDCA – Gross Drug Cost Above OOP Threshold
 14. TrOOP Amt – True Out of Pocket Amount
 15. Other TrOOP Amt - Other payments by TrOOP eligible payers
 16. LIC Status – Low Income
 17. LIC Amt – Low Income Cost Sharing Subsidy Amount
 18. CPP – Covered Plan Paid
 19. NPP – Non Covered Plan Paid
 20. Received Date of Original Claim
 21. Claim Adjudication Began Timestamp/Date
 22. Brand/Generic Code (based on the definitions contained in this Agreement)
 23. Beginning Benefit Phase
 24. Ending Benefit Phase
 25. Reported Gap Discount
 26. Tier
 27. Mail/retail/specialty indicator
 28. Unique claims identifier
 29. Unique claims identifier cross-reference (for reversals)
 30. Claim status
 31. Client subaccounts (carrier, group)
 32. Date submitted
 33. Date filled
 34. Cycle Date
 35. Rx#
 36. Refill #
 37. Compound Code
 38. Member Submitted Identifier
 39. NDC#
 40. Drug Description
 41. Metric Decimal Quantity

42. Days' Supply
43. DAW Code
44. Pharmacy Number (NABP or NPI)
45. Pharmacy Name
46. Unit AWP Used
47. Usual and Customary
48. Pharmacy Ingredient Cost
49. Pharmacy Dispensing Fee
50. Pharmacy Sales Tax
51. Pharmacy Patient Pay
52. Pharmacy Amount Due
53. Pharmacy Basis of Adjudication
54. Client Basis of Adjudication
55. Client Ingredient Cost Paid
56. Client Dispensing Fee Paid
57. Client Sales tax
58. Client Patient Pay
59. Client Amount Due
60. COB Indicator
61. COB Amount
62. PA#

3.12 Standard Reports.

- a. General Terms. PBM shall provide the standard reports identified through PBM's online portal. The Parties agree that the specific layout for these reports will be mutually agreed to during implementation. PBM agrees to provide to NDPERS any standard reports that it provides to other clients and that NDPERS may view as useful or necessary to monitor its prescription drug benefit. All standard reports will be provided at no extra Additional Fee.
- b. Ability of NDPERS to Obtain and Prepare Reports Via Online Portal. PBM represents and agrees that its online portal will enable NDPERS to have access to self-service reporting software and all Claim data fields. Said access will enable NDPERS to analyze Claims data in a [near] real-time environment, with Claims data available for analysis [PBM to state when Claims data becomes available, e.g.: immediately after Claim has been adjudicated, the day following any Claims processing by PBM, etc.] In addition to the standard reports, PBM represents and agrees that the above-referenced access will enable NDPERS to generate reports concerning numerous matters without consultation with PBM, including but not limited to the following:
 1. **Enrollment, Termination and Disenrollment Report:** A report sortable by Member, Plan, etc.
 2. **Prior Authorization Report:** A report related to Prior Authorizations, sortable by Prior Authorizations, or by Covered Item, or by Member
 3. **Utilization Report:** A report related to the utilization of Covered Items, sortable by Covered Item, therapeutic class, cost, Member
 4. **Member Claims Report:** A report related to Member Claims history, sortable by Covered Item, prescriber, pharmacy, and therapeutic class
- c. Timing of Online Portal Access to Standard Reports. PBM agrees that standard reports shall be available on the online portal based on the specified time frame (monthly, quarterly, or annually), and also capable of being run on demand by NDPERS at any time thereafter for an alternative time period. In the event NDPERS requests that standard reports be posted to

a secure FTP website, said reports will be provided no later than ten (10) business days after the end of each month for monthly reports and fifteen (15) business days after the close of the identified period for quarterly or annual reports.

- d. Ad Hoc Reports. At NDPERS's request, PBM will assist NDPERS with generating ad hoc reports within seven (7) days of a request. All such reports will be provided at no cost, unless IT programming time is required, in which case the reports will be considered Customized Reports.
- 3.13 Customized Reports: PBM shall prepare and deliver to NDPERS Customized Reports. Certain of these Customized Reports may require PBM to provide IT Programming Time, which will result in the IT Programming Fee identified in Exhibit A of this Agreement.
- 3.14 Eligibility Changes and Benefit Plan Changes.
- a. Eligibility Changes. PBM shall load and make operable all Eligibility Changes electronically submitted by NDPERS in appropriate format no later than one (1) business day from receipt of such data. Eligibility information will be loaded in the order received. In the event PBM receives electronic Eligibility Changes that it cannot process for any reason, PBM will be responsible for notifying NDPERS within one (1) business day that the information that was transmitted cannot be processed. PBM shall also identify with specificity the deficiency in the eligibility information that prevents processing.
 - b. Benefit Plan Changes. PBM shall electronically load all Benefit Plan Changes submitted by NDPERS into PBM's systems no later than ten (10) business days after receiving said information, unless a different time period is mutually agreed upon in writing by the Parties. The electronic loading of all Benefit Plan Changes shall enable NDPERS to view the changes online through the portal. In the event PBM receives electronic submitted Benefit Plan changes that it cannot process for any reason, PBM will be responsible for notifying within twenty-four (24) hours of PBM's receipt of the data that the Benefit Plan information transmitted cannot be processed. PBM shall also identify with specificity the deficiency in the Benefit Plan information that prevents processing.
- 3.15 Standardized Edits. PBM shall be responsible for maintaining standardized "edits" to enable the necessary dispensing of Covered Items on behalf of NDPERS.
- a. Standardized "edits" shall include the following: Vacation overrides, lost/stolen/spilled overrides, emergency overrides, and school supply and facility overrides, in accordance with NDPERS's directions.
- 3.16 Clinical Services. The following Clinical services will be provided by PBM:
- a. Concurrent and Retrospective Drug Utilization Reviews. PBM shall provide concurrent and retrospective drug utilization evaluation on all Claims based on an agreed-upon PBM/NDPERS policy.
 - b. Evaluation of Recalls. For prescription and non-lot-specific OTC Drugs, where the FDA or manufacturer has issued a drug recall, PBM shall perform and complete an evaluation to communicate a "hard edit" recommendation to NDPERS within five (5) business days of a recall. If NDPERS elects to accept the "hard edit" recommendation, PBM shall implement such edit within seventy-two (72) hours of NDPERS's decision. Additionally, PBM shall draft Member and prescriber communication regarding the specific recall, and upon approval and authorization by NDPERS, PBM will coordinate the mailing of the communication to the affected Members and/or their prescribing physicians and other qualified prescribing professionals.

- 3.17 Medi-Span Data. PBM agrees to rely on current (updated weekly by PBM), electronic data provided by Medi-Span to calculate all pricing related to this Agreement, including without limitation, all: invoices to NDPERS, reimbursements to Participating Pharmacies and non-network pharmacies, and the calculation of PBM's satisfaction of all Financial Guarantees in this Agreement. PBM further agrees that all such calculations shall be based on Medi-Span data (that has been timely loaded weekly into the system by PBM) as of the date each prescription is dispensed to Members. For all Covered Items (whether retail pharmacy, Mail Order Pharmacy or Specialty Drug Pharmacy dispensed Covered Items), the dispensing date shall be the date the pharmacy filled the prescription for the Member (the fill date), not the date the transaction is submitted to the PBM (the adjudication or submittal date).
- 3.18 Regular Conferences and Meetings between the Parties. PBM shall confer and/or meet with NDPERS on a monthly, quarterly, semi-annually, or annual basis, as requested by NDPERS.
- 3.19 Customer Service Center for Pharmacies, Providers and Members. PBM shall be responsible for responding to inquiries from Participating Pharmacies, providers and Members through a PBM toll-free phone line that will be accessible 24/7/365, except for scheduled maintenance. The Customer Service Center shall meet the following standards:
- a. The Customer Service Center shall be responsible for answering questions on the following services, as applicable, without limitation: Member eligibility, Benefit Plan guidelines, deductibles, Copayments/Coinsurance, outstanding Copayments/Coinsurance that may be owed, maximum benefit status, instructions on completing a direct member reimbursement claim form, status of direct member reimbursement claims, Claims processing, Claims submission, Claims payment, benefit coverage, and all Programs.
 - b. PBM shall make interpretation services available free of charge in Spanish. PBM shall maintain the availability of services, such as TTY services or comparable services for the deaf or hard of hearing.
- 3.20 Survey. PBM shall work with NDPERS to develop an Annual Customer Satisfaction Survey that shall be transmitted by PBM to a sample of NDPERS Members. PBM agrees that, if requested by NDPERS, PBM will tally the responses of the Survey and report the results to NDPERS.
- 3.21 Performance Guarantees. PBM shall provide PBM Services in accordance with the Performance Guarantees stated in Exhibit C of this Agreement.

ARTICLE 4 – PBM’s INVOICE REQUIREMENTS AND NDPERS’s PAYMENT OBLIGATIONS

- 4.1 Invoice Statements. The Parties agree that PBM’s invoicing procedures for (a) the costs of Covered Items, and (b) Administrative Fees and Additional Fees, in connection with Members are set forth in this Article 4.

All Invoice Statements shall be transmitted to NDPERS within three (3) days of the period specified below. PBM will submit invoices to NDPERS at the following address: PO Box 1657, Bismarck, North Dakota 58502-1657.

- a. **PBM’s Invoicing Procedure For The Cost of Covered Items For NDPERS’s Retiree Medicare Part D Self-Insured EGWP Plan.** PBM shall provide a monthly Invoice Statement, accurately reflecting the costs for all Covered Items (Ingredient Costs and Dispensing Fees) that were dispensed by PBM to NDPERS’s Members.
- b. **PBM’s Invoicing Procedure for Its Administrative Fees and Additional Fees.** PBM shall provide a monthly invoice to NDPERS for the Administrative Fees as well as for all Additional Fees owed for services performed during the previous month.
- c. **NDPERS’s Obligation In Connection with All Payments.** NDPERS shall pay each PBM Invoice Statement no later than thirty (30) business days from receipt of said Invoice Statement (inclusive of the day of invoicing) via wire transfer to PBM. Invoice Statements shall be deemed received by NDPERS upon the earliest delivery of the invoice by electronic copy or mail.
- d. **PBM’s Obligation to Provide Specified Summary Information with Each Invoice Statement.** Each Invoice Statement shall contain the following line item summary information, to the extent applicable for that Statement:
 1. The amount owed for the costs of Covered Items during the period
 2. The Administrative Fees
 3. The Additional Fees
 4. The total amounts owed, adding items 1) through 3) above.
- e. **PBM’s Obligation to Pass through Financial Benefits and DIR.** PBM agrees to pass through Financial Benefits and DIR disclose such pass-through on Invoice Statements, at least quarterly. PBM will provide NDPERS with a report within thirty (30) days after the end of each calendar quarter that will indicate the DIR that PBM’s Medicare Part D insurance company expects to receive for the previous quarter for NDPERS self-insured EGWP Plan Claims identified on Invoice Statements during that previous quarter. In addition, based on the actual DIR collected by PBM’s Medicare Part D insurance company by the end of each month, PBM will provide a credit to NDPERS during the following month, and identify said credit on the Invoice Statement of that following month.
- f. PBM will separately invoice for the LICs amounts that are paid by PBM to pharmacies and that PBM anticipates collecting from CMS. PBM shall also separately invoice other monies that PBM’s Medicare Part D Insurance Company anticipates collecting from CMS and that PBM’s Medicare Part D Insurance Company is required to pass through to NDPERS based on its monthly processed Prescription Drug Event records (e.g., CMS direct subsidy payments, CMS catastrophic reinsurance and coverage gap manufacturer discounts). PBM agrees to provide a final true-up of all monies paid by CMS, which NDPERS will be entitled to audit.

4.2 Administrative Fees.

- a. Amounts Owed. Commencing on NDPERS's Benefit Effective Date, NDPERS shall pay PBM an Administrative Fee as described in Exhibit A of this Agreement.
- b. Calculation of Number of "Members" for Each Month's Payment. For purposes of determining the number of NDPERS's Members, the Parties agree that they will rely on the number of eligible Members for NDPERS as of the Monday following the fifteenth (15th) day of each month.
- c. NDPERS's Annual Right to Renegotiate Administrative Fees. As long as this Agreement remains in effect, NDPERS shall have the right, at least annually, to renegotiate PBM's Administrative Fees. Should NDPERS choose to exercise said right, NDPERS's newly negotiated Administrative Fees shall be at least as favorable as the Administrative Fees stated above, unless forces outside the control of PBM preclude PBM from providing such Administrative Fees. Should PBM claim that its Administrative Fees must be increased, PBM shall have the obligation to demonstrate the need for the increase. The newly negotiated Administrative Fees shall be memorialized in writing by the Parties as an amendment to this Agreement.

4.3 Additional Fees.

- a. Amount of Additional Fees. Commencing at the end of the first month after NDPERS's Benefit Effective Date, and to be paid at the end of each month thereafter, NDPERS shall pay to PBM any Additional Fees incurred during the previous month as described in Exhibit A.
- b. Limit on Additional Fees. PBM represents and agrees that the Additional Fees listed in Exhibit A constitute the only Additional Fees that PBM shall seek during the initial two years of this Agreement. PBM further represents and agrees that PBM's agreed-upon Administrative Fees and profits constitute sufficient compensation to PBM for its administrative overhead and profits during this period, and no further Additional Fees shall be requested.

4.4 NDPERS's Payment Obligations in Connection with Disputed Amounts. The Parties agree that NDPERS shall be entitled to review Claims data and question any invoiced amounts – or Financial Benefit credits provided – in any Invoice Statement.

4.5 Failure to Question Invoices Does Not Constitute Waiver. Notwithstanding the provisions of Section 4.4, NDPERS shall not be obligated to raise any questions concerning any Invoice Statement, and NDPERS shall not waive its future right to do so, should NDPERS fail to transmit questions to PBM after receipt of an Invoice Statement.

ARTICLE 5 – FORMULARY OBLIGATIONS AND RIGHTS

- 5.1 Selection of Formulary. NDPERS may use PBM's standard formulary or customize its own formulary subject to Medicare Part D requirements. NDPERS understands and agrees that if NDPERS chooses to use PBM's standard formulary, NDPERS may not change said formulary. However, if NDPERS customizes its formulary, NDPERS shall have sole discretion how to do so, subject to PBM's right to request and obtain changes to Financial Guarantees.

If NDPERS wishes to consider customization of its Formulary for its Members, or implements a customized Formulary, PBM agrees to provide the following information to NDPERS: (a) the safety and efficacy of any identified Covered Items; (b) the net drug cost of any identified Covered Items, factoring in potential Financial Benefits that might be passed through; and (c) a disruption analysis for NDPERS to assess the likely impact of using PBM's standard formulary or customizing PBM's standard formulary, or implementing changes to its customized Formulary.

- 5.2 Change in Formulary. Unless otherwise agreed between PBM and NDPERS, NDPERS shall have the right each Contract Year to alter its selection of its Formulary. If NDPERS creates its own customized Formulary, NDPERS may alter its customized Formulary monthly. PBM agrees to provide requested information to NDPERS to enable NDPERS to change its customized Formulary, as requested by NDPERS.

ARTICLE 6 – AUDIT OBLIGATIONS AND RIGHTS

- 6.1 Audits shall be conducted pursuant to N.D.C.C. §§ 54-52.1-04.15 and 54-52.1-04.16
- 6.2 Audits on Behalf of NDPERS. NDPERS and PBM agree that NDPERS shall have the right to conduct audits via its own internal auditor or a third-party auditor.
- a. NDPERS will be entitled to conduct an audit to ascertain whether PBM has complied with the terms of this Agreement, including those provisions concerning:
1. Set-Up Audit. NDPERS will be entitled to conduct a Set-Up Audit for purposes of verifying that NDPERS's Benefit Plan Designs were properly input as of each date by PBM. NDPERS (or its auditor) may conduct a set-up Audit to verify, among other matters, that its Benefit Plan Design, and every Program and Program protocol, has been accurately loaded into PBM's computer systems. In the event subsequent changes by PBM are necessary to NDPERS's Benefit Plan Design or Program set-up, NDPERS (or its auditor) will be entitled to conduct an additional set-up Audit on reasonable notice after PBM makes requested necessary changes. Notwithstanding NDPERS's right to conduct a set-up Audit, should PBM later be discovered to have improperly input NDPERS's Benefit Plan Design or Programs, PBM shall be liable for any costs resulting from PBM's error, as further described in this Agreement.
 2. Pass-Through Pricing Audit. If requested to conduct a Pass-Through Pricing Audit, NDPERS (or its auditor) shall be permitted to make a selection of retail pharmacy, Mail Order Pharmacy and Specialty Pharmacy Dispensed Claim transactions, as determined in NDPERS's discretion. In the event that any discrepancies are found, NDPERS (or its auditor) shall work with PBM to develop a plan to extend the selection. In the event that the parties are not able to agree on such a process, or the parties agree to such an extension and additional discrepancies are found, the parties agree that NDPERS (and its auditor) shall have the right to extrapolate from the results of the initial sample or the extended sample to determine the estimated total error and the amount owed to NDPERS as a result of the findings .

In connection with NDPERS's Pass-Through Pricing Audit of Mail-Order Dispensed Claims – and NDPERS's Pass-Through Pricing Audit of Specialty Drug Pharmacy Dispensed Claims: The Parties agree that the Parties will calculate and determine whether PBM satisfied its Pass-Through Pricing requirements by measuring the Mail Order Pharmacy's and Specialty Drug Pharmacy's contractual agreements with the PBM and comparing costs to PBM's invoiced costs for each Dispensed Claim from the relevant Pharmacy.

3. Financial Benefits Audit. As requested for an Audit(s) related to Pass-Through Pricing and Guarantee requirements for Financial Benefits PBM shall provide information to NDPERS (or its auditor) sufficient to allow NDPERS to assess whether PBM (i) has passed through the appropriate Pro Rata Share of Financial Benefits to NDPERS; (ii) has satisfied its Financial Benefit Guarantee obligations; (iii) has performed PBM's Annual Reconciliations of all of the above matters accurately. Upon request, PBM shall break out each of the components of Financial Benefits by the type of Financial Benefit (e.g., Pharmaceutical Manufacturer rebates, health management fees, data sales fees, etc.) and by the manufacturer. PBM shall transmit all such electronic and other data to NDPERS, or to NDPERS's auditor, as directed by NDPERS. NDPERS's auditor may also request for review – and PBM shall be obligated to provide – copies of (i) PBM/Pharmaceutical Manufacturer Contracts, and/or (ii) PBM's invoices to

Pharmaceutical Manufacturers, and/or (iii) Pharmaceutical Manufacturers' payments or credits or discounts (or other Financial Benefits) made to PBM, including remittance statements. All such documents shall be produced by PBM solely at PBM's offices. NDPERS (or its auditor) may make notes of the contents of all referenced documents, however, neither NDPERS nor its auditor will be permitted to make a copy of any such documents.

4. Eligibility Audit. NDPERS (or its auditor) will be entitled to conduct an Audit of PBM's enrollment, eligibility and invoicing for eligible Members. PBM will produce its roster of all Members, together with identifying pertinent information about the demographics, including but not limited to, Member number, date of enrollment, and date of disenrollment, if any. In the event of any discrepancies between PBM's enrollment data and NDPERS's, PBM will produce relevant Claims data for those Members for whom there is a discrepancy, as permitted under HIPAA. The Parties agree that NDPERS has executed the necessary attestation indicating its compliance with HIPAA thereby enabling NDPERS or its auditor to conduct an Audit of PBM's enrollment, eligibility and invoicing, subject to HIPAA privacy requirements for providing minimum necessary data.
 5. Low Income Subsidies (LIPs and LICs). NDPERS will be entitled to audit (i) Member LIS status, and (ii) PBM's provision of accurate LIPs and LICs payments to Members to verify PBM is passing through to NDPERS (or Member) all appropriate monies, as required under this Agreement and under Medicare Laws and Regulations. PBM will produce its roster of all Members, including LIS indicator for all LIS Members, and its Claims data, with all fields necessary to enable NDPERS (or its auditor)) to conduct the above Audit.
 6. TrOOP Calculations. NDPERS will be entitled to audit PBM's TrOOP calculations. PBM will produce its Claims data, with all fields necessary to enable NDPERS (or its auditor) to conduct said Audit.
 7. Audit of Additional Medicare Part D and EGWP Plan Terms. NDPERS will be entitled to audit PBM's compliance with all other Medicare Part D requirements, including those related to EGWP Plans, such as PBM's provision to each self-insured Medicare Part D plan of the accurate amount of (i) CMS direct subsidies; (ii) Manufacturers' Coverage Gap discounts; (iii) CMS's Catastrophic Coverage reinsurance; and (iv) Manufacturers' payment of rebates/DIR to PBM, and PBM's receipt of Bona Fide Service Fees. PBM will provide PDE, MMR and MOR files/data, as requested, to enable the above Audit.
 8. Fraud, Waste, and Abuse Program. NDPERS will be entitled to audit PBM's Fraud, Waste, and Abuse Program. PBM will produce its audit report to enable NDPERS to verify that PBM has an adequate Fraud, Waste, and Abuse program of prevention, detection and correction.
 9. Performance Guarantee Audit: NDPERS may conduct Audits of a Performance Guarantee(s). If it appears necessary for NDPERS to audit several Performance Guarantees, NDPERS will work with PBM to combine its Performance Guarantee Audits. Performance Guarantee Audits may be performed at any time within the contract period
- b. NDPERS may determine which of the above areas to audit at the end of each Contract Year, or thereafter, but may decide to delay auditing certain areas in its own discretion until several months or years have passed. When any area is audited for any Contract Year, NDPERS may not re-audit that particular area for that Contract Year in a subsequent audit.

6.3 General Terms Related To Who May Audit and How Audits Will Be Conducted. The following individuals and/or entities may conduct Audits related to this Agreement, based on the following general guidelines:

- a. NDPERS shall have the right to use its own auditor or select any audit firm, as long as NDPERS's auditor shall not be an individual or entity that is: a competitor of PBM, a Pharmaceutical Manufacturer representative, or any retail, mail, or specialty drug pharmacy representative or vendor.
- b. All Audits conducted by NDPERS (or any auditors retained by NDPERS) shall be made during normal business hours. All Audits shall be conducted without undue interference to the audited Party's business activity, and in accordance with reasonable audit practices.
- c. NDPERS (or its auditors) shall be entitled to commence an Audit within thirty (30) days after NDPERS has provided written notice to PBM of its intention to conduct an Audit. PBM shall be obligated to provide all electronic data identified in Article 6 to NDPERS (or its auditor) within thirty (30) days of PBM's receipt of said notice. PBM shall be obligated to provide – or make available at its offices – as specified herein, all other documents and data identified in Article 6 no later than forty-five (45) days after PBM's receipt of said notice.
- d. With respect to all data and documents produced by PBM to NDPERS or to its agents or auditors, PBM's production shall be made without redacting or altering any information from the data and documents produced. When electronic data is produced by PBM, all fields created or maintained or used by PBM shall be produced, and none shall be withheld, redacted or deleted. In addition, appropriate manuals and/or guides identifying the meaning of each field shall be produced.
- e. As requested for an Audit, PBM shall provide to NDPERS (or its auditor) an electronic data file reflecting all Claims transactions for NDPERS for the specified Audit period. Said electronic file shall include (i) PBM's invoiced costs for NDPERS for each item dispensed from a retail pharmacy and the Mail Order Pharmacy and the Specialty Drug Pharmacy, and (ii) PBM's reimbursement costs to each pharmacy for each such item. Claims data shall be produced in one of the following formats: Access, fixed-length flat file or delimited flat file. Any data submitted in flat file format must either have a data layout attached, or the first line of the file must contain field names. File formats must remain constant from submission to submission, unless additional fields need to be added. PBM shall transmit all such electronic data to NDPERS or to its auditor, or to both, as directed by NDPERS.
- f. In the event any questions are raised, or any additional requests for information or documents or data are requested, by NDPERS (or its auditor) during any Audit, PBM shall be obligated to respond to all such questions, and produce all additional information, documents and/or data within seven (7) business days of receipt of such questions or requests. If PBM cannot respond in said time period, PBM shall provide a written statement as to when PBM will respond, but in any event, PBM's response must be no later than twenty (20) days after receiving NDPERS's (or its auditor's) written request.
- g. In the event that an Audit concludes that PBM has violated its obligations or the terms of this Agreement, and PBM disputes said Audit findings, PBM must set forth the basis for its dispute, with all supporting documentation, within thirty (30) days of PBM's receipt of the disputed Audit findings. PBM shall provide sufficient documentation to permit adequate review of the disputed issues and shall have the burden of demonstrating that NDPERS's (or its auditor's) conclusions are incorrect. To the extent PBM fails to provide documentation substantiating any part of its position, or fails to meet its burden of proof, PBM shall waive its right to further dispute that matter. After receiving PBM's documentation, NDPERS (or its auditor) shall review said documentation and advise PBM whether NDPERS has changed its Audit findings or conclusions. If the Parties do not resolve a dispute over Audit findings

within sixty (60) days of PBM's receipt of the disputed Audit findings, NDPERS may terminate the Agreement as set forth in the Agreement.

- h. In the event that PBM disputes NDPERS's (or its auditor's) Audit findings, and PBM's basis for dispute is that NDPERS required or authorized certain activity, procedures, mechanisms or calculations to occur that are the subject of the dispute, PBM shall have the burden of providing written documentary evidence demonstrating its allegations. If PBM is unable to provide such evidence, PBM shall waive its right to assert such allegations, and the Audit findings shall be final.

6.4 PBM's Agreement to Pay Interest on Amounts Owed As A Result Of A Final Audit Finding

- a. PBM acknowledges that should NDPERS (or its auditor) determine in an Audit that PBM has failed to satisfy certain obligations in this Agreement, PBM's subsequent payment to NDPERS will not make NDPERS whole, given the time lag between PBM's violation of terms in this Agreement, and its payment to NDPERS.
- b. PBM agrees that should NDPERS (and its auditor) conclude in an Audit finalized under section 6.3(h) that PBM has failed to satisfy any of the contract provisions included in Exhibit A, PBM will be required to pay interest on all amounts that are found due and owing, from the date that PBM's failure occurred (as more fully described below), until the date that PBM reimburses NDPERS for the damages caused. Interest shall be calculated at three percent (3%) per annum over the 10 Year Treasury Rate as of January 1st of the year that the Audit leading to the reimbursement concluded.
- c. Timely Payment of Amounts Owed. Should NDPERS (or its auditor) conclude in a finalized Audit that PBM has failed to meet any of the terms identified in this Agreement, PBM shall be obligated to reimburse NDPERS for the appropriate amount of interest within thirty (30) days after the Audit has been finalized. After NDPERS (or the auditor) provides PBM with Audit findings, should PBM dispute any finding, the Parties will first attempt to resolve the dispute through discussion with the business managers of the respective Parties. If the business managers cannot successfully resolve the dispute, then NDPERS may terminate the Agreement under the terms of the Agreement.

ARTICLE 7 - CONFIDENTIALITY

- 7.1 **Confidentiality of Information.** PBM and NDPERS shall maintain the confidentiality of all Claims data and eligibility information to the full extent required by applicable law, including without limitation the provisions of the Health Insurance Portability and Accountability Act of 1996 (hereinafter, "HIPAA"), and may not use or disclose the information in any way prohibited by this Agreement or the law.
- 7.2 **Treatment of Confidential Information** NDPERS and PBM agree that all participation by NDPERS Members and their dependents in programs administered by NDPERS is confidential under North Dakota law. PBM may request and NDPERS shall provide directly to PBM upon such request, confidential information necessary for PBM to provide the services described in Article 3. PBM shall keep confidential all NDPERS information obtained in the course of delivering services. Failure of PBM to maintain the confidentiality of such information may be considered a material breach of the Agreement and may constitute the basis for additional civil and criminal penalties under North Dakota law. PBM shall not disclose any individual employee or dependent information without the prior written consent of the employee or family member. PBM has exclusive control over the direction and guidance of the persons rendering services under this Agreement.
- PBM understands that, except for disclosures prohibited in this Agreement, NDPERS must disclose to the public upon request any records it receives from PBM. PBM further understands that any records that are obtained or generated by PBM under this contract, except for records that are confidential under this Agreement, may, under certain circumstances, be open to the public upon request under the North Dakota open records law. PBM agrees to contact NDPERS immediately upon receiving a request for information under the open records law and to comply with NDPERS's instructions on how to respond to the request.
- 7.3 **Protected Health Information.** NDPERS and PBM will have access to Protected Health Information (PHI) (as defined by HIPAA). Each party agrees, for itself and all of its officers, directors, management, employees, and any third parties it employs or with which it consults, that PHI shall not be used for any impermissible purpose, including, without limitation, the use of PHI for disciplinary or discriminatory purposes, and any user names and passwords assigned to designated individuals shall not be shared with non-designated individuals. Each Party, for itself and all of the above-identified agents, authorizes the other Party to use and share PHI as necessary to carry out its obligations in this Agreement, subject to each Party's obligation to fulfill all confidentiality requirements of HIPAA and all other applicable law.
- 7.4 **HIPAA Compliance.** NDPERS and PBM will comply with HIPAA and all applicable regulations published pursuant to HIPAA, as of the effective enforcement date of each standard. In addition, without limiting any other provision of this Agreement:
- a. All services provided by PBM under this Agreement will be provided in such a manner as to enable every other Party to remain at all times in compliance with all HIPAA regulations applicable to the other Party to the extent that the other Party's compliance depends upon the manner in which such services are performed by PBM; and
 - b. All software, application programs and other products licensed or supplied by PBM under this Agreement will contain such characteristics and functionality (including as applicable, but not limited to, the ability to accept and securely transmit data using the standard HIPAA transaction sets) as necessary to ensure that each Party's use of such software, application programs and other products and associate documentation from PBM, when utilized by any Party in the manner directed by PBM, will fully comply with the HIPAA regulations.
- 7.5 **Ownership of Information.** All Claims data and other data arising from implementation of this Agreement shall solely be the property of NDPERS pursuant to N.D.C.C. § 54-52.1-12. PBM shall not be allowed to sell such data in any form, to any third party. Upon termination of this Agreement,

for any reason, PBM shall return or destroy all confidential information received from NDPERS, or created or received by PBM on behalf of NDPERS. This provision applies to confidential information that may be in the possession of subcontractors or agents of PBM. PBM shall retain no copies of the confidential information. In the event that PBM asserts that returning or destroying the confidential information is not feasible, PBM shall provide to NDPERS notification of the conditions that make return or destruction infeasible. Upon explicit written agreement of NDPERS that return or destruction of confidential information is not feasible, PBM shall extend the protections of this Agreement to that confidential information and limit further uses and disclosures of any such confidential information to those purposes that make the return or destruction infeasible, for so long as PBM maintains the confidential information.

ARTICLE 8 – TERM AND TERMINATION

- 8.1 Term of this Agreement. This Agreement shall become effective as of the execution of the Agreement by PBM and NDPERS. This Agreement shall remain in effect for a term of one Contract Year from the Benefit Effective Date of January 1, 2026, unless terminated by the Parties as described herein. NDPERS may terminate this Agreement, with or without cause, with written notice at least ninety (90) days prior to the termination date.
- 8.2 Termination of this Agreement due to NDPERS's Non-Payment. In the event NDPERS fails to timely pay PBM the full amounts owed as set forth in Article 4, PBM may issue a written Notification of Non-Payment informing NDPERS that (i) it is in material breach of the terms of this Agreement; and (ii) NDPERS will have thirty (30) days to cure its breach. Should NDPERS fail to comply with the above requirement, PBM shall be entitled to cease all PBM Services thirty (30) days after NDPERS receives PBM's Notification of Non-Payment. During the above-referenced period when NDPERS is in breach of its obligations to pay non-disputed amounts, PBM agrees to continue to provide PBM Services to NDPERS and its Members. However, PBM may set off any amounts owed for Financial Benefit Guarantees or to compensate PBM during that period for those undisputed amounts that have not been paid. In the event that NDPERS makes payment on or before the referenced thirty (30) day period, to be entitled to continue to receive PBM Services NDPERS must make payment for all amounts owed, less any amounts that PBM has previously set off. In the event that NDPERS fails to make full payment of all amounts owed as of the end of the thirty (30) day period, PBM shall be allowed to cut off all PBM Services to NDPERS, and PBM shall provide NDPERS with a Notice identifying the full amounts owed, less any amounts that PBM has previously set off. PBM shall also be entitled to continue to collect and retain all Financial Benefits until PBM has collected the amounts still owed, after which any additional Financial Benefits that PBM collects that represent NDPERS's Pro Rata Share of Financial Benefits must be passed through by PBM to NDPERS.
- 8.3 Termination by Mutual Agreement or with Notice. This Contract may be terminated at any time by mutual consent of both parties executed in writing, or by either party with ninety (90) days' notice.
- 8.4 Termination for Lack of Funding or Authority. NDPERS by written notice to PBM, 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 and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term. 2) If federal or state laws or rules are modified or interpreted in a way that the services 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 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.
- 8.5 Effect of Termination. Termination shall have no effect upon the rights and obligations of the Parties arising out of any transactions occurring prior to the effective date of such termination. Upon termination: (i) all further obligations of the Parties under this Agreement shall terminate as of the termination date (except as provided in this Agreement); (ii) all Confidential Information provided by any Party (except for Confidential Information required by any law, or by a contractual relationship to be retained by a Party) shall be immediately returned to a requesting Party, or the Party from whom information is requested shall certify to the requesting Party that all requested materials have been destroyed; (iii) no Party shall be relieved of any obligation or liability arising from any prior breach by such Party of any provision of this Agreement; and (iv) the Parties shall, in all events, remain bound by and continue to be subject to the provisions set forth in this Agreement, to the extent necessary to satisfy this Agreement's terms.
- 8.6 PBM's Agreements Concerning Documents, Data and Information, Should This Agreement Be Terminated. PBM hereby agrees to provide, without delay, but in any event no later than thirty days

prior to the expiration of the Agreement between NDPERS and PBM, and at no cost, in electronic or other standard PBM formats requested by NDPERS, all reasonably requested documents, data and information that are necessary to enable transition of the services being performed hereunder to any replacement PBM selected by NDPERS. PBM acknowledges that time is of the essence for providing the necessary documents, data and information described herein to effectuate a transition to any replacement PBM. At a minimum, such information shall **include**: (i) All Member enrollment information, including demographic information; (ii) Electronic claims prescription records from NDPERS's Benefit Effective Date(s) onwards; (iii) Hard copy claim transaction records as requested by NDPERS; and (iv) Information on Prior Authorization and Step Therapy and any other "accumulator benefit," for example, Member deductibles and maximum benefit amounts and refill information, all in electronic format.

ARTICLE 9 – RIGHT TO IMPLEMENT PLAN MANAGEMENT PROGRAMS

- 9.1 NDPERS's Right to Develop Programs, and PBM's Obligation to Assist NDPERS in the Development of Programs. Notwithstanding PBM's right to serve as NDPERS's prescription benefit provider, PBM acknowledges that NDPERS may implement new programs to improve drug coverage benefits, improve the health of Members, and/or reduce costs, provided said programs are in accordance with any CMS, federal or state statutes and/or regulations or rules

Should NDPERS request PBM's assistance with any of the matters identified above, PBM agrees to provide said assistance.

The Parties acknowledge that any of the above-described initiatives by NDPERS may impact PBM's ability to satisfy guarantees contained in this Agreement. Accordingly, NDPERS shall discuss all such initiatives with PBM prior to their implementation, and PBM shall thereafter provide a formal written notification to NDPERS of the extent to which any such initiative might impact guarantees in this Agreement. PBM represents and agrees that its notification will reflect the actual impact of NDPERS's initiatives on PBM's ability to satisfy any identified guarantees. Should an adjustment to a guarantee be necessitated due to NDPERS's initiative, PBM shall bear the burden of demonstrating the need for, and amount of, said adjustment.

ARTICLE 10 – MISCELLANEOUS ADDITIONAL PROVISIONS

- 10.1 Choice of Law and Venue. This agreement shall be construed, interpreted, and governed according to the laws of the State of North Dakota without regard to its conflict of laws and rules. Any action commenced to enforce this Contract must be brought in the District Court of Burleigh County, North Dakota.
- 10.2 Attorneys Fees. In the event a lawsuit is initiated by NDPERS to obtain performance due under this contract, and NDPERS is the prevailing party, PBM shall, except when prohibited by N.D.C.C. § 28-26-04, pay NDPERS's reasonable attorney fees and costs in connection with the lawsuit.
- 10.3 Use of the Name and all Symbols, Trademarks, and Service Marks. Each Party reserves the right to control the use of each of its own names and all symbols, trademarks, and service marks presently existing or subsequently established. Each Party further agrees that it will not use any other Party's name, symbols, trademarks, or service marks in advertising or promotional materials or otherwise without the other Party's prior written consent and will cease any and all usage immediately upon another Party's request or upon termination of this Agreement.
- 10.4 Force Majeure. A Party's performance obligations under this Agreement shall be suspended to the extent that all or part of this Agreement cannot be performed due to causes that are outside the control of the Party. Without limiting the generality of the foregoing, such causes include acts of God, acts of a public enemy, acts of any person engaged in a subversive or terrorist activity or sabotage, wars, fires, floods, earthquakes, explosions, strikes, slow-downs, freight embargoes, and comparable causes. The foregoing shall not be considered to be a waiver of any continuing obligations under this Agreement, and as soon as said conditions abate sufficiently to allow the resumption of operations, the Party affected thereby shall fulfill its obligations as set forth under this Agreement.
- 10.5 Consent to Amend. This Agreement may be amended at any time during the term of this Agreement, but only by mutual written consent of duly authorized representatives of each or the signatory Parties required to amend this Agreement.
- 10.6 Severability. In the event that any provision of any executed Agreement shall be determined to be invalid, unlawful, void, or unenforceable to any extent, the remainder of said Agreement, and the application of such provision other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.
- 10.7 Successors and Assigns. No rights or benefits under this Agreement are assignable by any Party to any third party unless approved, in writing, by the other Parties executing this Agreement. Any assignment by any Party without the express prior written consent of all other executing Parties shall be void and shall not relieve the assigning Party of any of its obligations or liabilities arising from the attached Agreement. Notwithstanding the foregoing, PBM may assign any functions to be performed under this Agreement to its respective wholly-owned subsidiaries, provided all other provisions in the attached Agreement are honored.

PBM may not assign or otherwise transfer or delegate any right or duty without the express written consent of NDPERS. However, PBM may enter into subcontracts provided that any subcontract acknowledges the binding nature of this Agreement and incorporates this Agreement, including any attachments. PBM is solely responsible for the performance of any subcontractor. PBM does not have authority to contract for or incur obligations on behalf of NDPERS.

- 10.8 Prior Agreements Invalid. As of the execution date of this Agreement, this Agreement replaces and supersedes all other prior Agreements between the parties executing this Agreement, as well as any other prior written or oral understandings, negotiations, discussions, or arrangements between those parties, related to matters covered by this Agreement or the documents incorporated herein.

- 10.9 Entire Agreement. PBM agrees to provide the service(s) as specified in the 2026 RFP and proposal (attached hereto and incorporated by reference Exhibit A). The provisions of this Agreement, including all the Exhibits attached hereto, shall bind and inure to the benefit of the identified Parties executing this Agreement, and to their heirs, legal representatives, permitted successors and permitted assignees. Notwithstanding anything herein to the contrary, in the event of any inconsistency or conflict among the documents making up this Agreement, the documents must control in this order of precedence:
- a. The terms of this Agreement.
 - b. Bidder's written responses provided as part of the Request for Proposal;
 - c. Bidder's Proposal for 2026
- 10.10 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same Agreement and shall become effective when one or more counterparts have been signed by each of the necessary Parties and delivered to the other necessary signing Parties, it being understood that each Party need not sign the same counterpart. The failure to deliver the original signature copy and/or the non-receipt of the original signature copy shall have no effect upon the binding and enforceable nature of this Agreement.
- 10.11 Representations. Each Party signing this Agreement represents and warrants that he or she (i) has read this Agreement and fully understands and agrees to the content herein; (ii) has entered into this Agreement voluntarily; (iii) has not transferred or assigned or otherwise conveyed in any manner or form any of the rights, obligations or claims which are the subject matter of this Agreement; and (iv) has the full power and authority to execute this Agreement. This Agreement is not binding unless executed by all signatories identified in this Agreement.

Signature Page

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed under seal effective as of the date set forth in the opening paragraph of this Agreement.

PBM: _____

By:

Date:

Name and Title: _____

North Dakota Public Employees Retirement System (Plan Sponsor):

By:

Date:

Name and Title: _____

EXHIBIT A

PRESCRIPTION DRUG PRICING AND GUARANTEES

1. PBM's General Representations and Agreements. PBM agrees to provide to NDPERS, in full compliance with CMS and North Dakota law which contains certain restrictions related to pharmacies: (a) a Retail Pharmacy Network, and the ability for Members to process paper claims from retail pharmacies that may not be part of its Retail Pharmacy Network; (b) ongoing dispensing from its Mail Order Pharmacy; (c) ongoing dispensing from its Specialty Drug Pharmacy; (d) ongoing negotiations by PBM with its Retail Pharmacy Network and with Pharmaceutical Manufacturers to attempt to improve its pricing continuously; (e) Pass-Through Pricing for every Covered Item from each of the above pharmacies; and (f) PBM's agreement that to the extent it negotiates multiple contracts with the same pharmacy with different pricing, PBM will provide its "best pricing available" for NDPERS as its Pass-Through Pricing to NDPERS. The Parties agree that said "best pricing available" shall mean PBM will pass through to NDPERS the terms most favorable for (and least expensive to) NDPERS, unless PBM's multiple contracts or alternative financial terms were negotiated by PBM for purposes of providing terms to PBM clients that use limited pharmacy networks or have particular business terms acceptable to a pharmacy for one-off pricing, or that are "dissimilar" to NDPERS, such as Workers Compensation providers, 340(b) providers, a Staff Model Pharmacy, a long term care pharmacy provider or the pricing is for Medicaid or Dual Eligible clients.

2. In connection with any Medicare Part D Plan, PBM agrees to comply, and to contractually require all Related Entities and Downstream Entities (as those terms are defined by CMS) to comply, with all CMS Requirements, which require that PBM (and all Related Entities and Downstream Entities)
 - i. pass through in connection with each self-insured EGWP Plan one hundred percent (100%) of all DIR, and
 - ii. retain only those financial benefits that satisfy CMS Requirements concerning Bona Fide Service Fees,
 - iii. properly allocate DIR as set forth in CMS requirements; and
 - iv. properly report to CMS concerning all of the above. In connection with any fully-insured EGWP Plan, PBM agrees to adhere to the same standards as described above and to accurately account for all DIR and Bona Fide Service Fees to CMS.

3. Compliance with North Dakota Century Code. PBM agrees to comply with all provisions of North Dakota Century Code Chapter 54-52.1

4. Average Annual Guarantees:

I. Average Annual AWP Discounts – Minimum Guarantees		1/1/2026
30 Day Retail		
Brand (AWP - __%)		
Generic (MAC & Non MAC - __%)		
90 Day Retail		
Brand (AWP - __%)		
Generic (MAC & Non MAC - __%)		
Mail Order		
Brand (AWP - __%)		
Generic (MAC & Non MAC - __%)		

Specialty	
Guaranteed Overall Effective Discount	
Limited Distribution Drugs	
Guaranteed Overall Effective Discount	
II. Average Annual Dispensing Fees – Maximum Guarantees	1/1/2026
30 Day Retail	
Brand	
Generic	
90 Day Retail	
Brand	
Generic	
Mail Order	
Brand	
Generic	
Specialty	
Brand	
Generic	
Limited Distribution Drugs	
Brand	
Generic	
III. Fixed Monthly Administrative Fees	1/1/2026
EGWP Administrative Fee <i>(insert basis here e.g. PEPM, PMPM, Per Rx)</i>	
IV. Financial Benefits – Minimum Per Brand Claim Guarantees	1/1/2026
Per Brand Prescription - 30 Day Retail	
Per Brand Prescription - 90 Day Retail	
Per Brand Prescription - Mail	
Per Brand Prescription - Specialty Excluding Limited Distribution Drugs	
Per Brand Prescription - Specialty Limited Distribution Drugs	
V. Other Fees	1/1/2026
Intake and load claim history files, prior authorization files, open mail order refill files, accumulator files during implementation	
Ongoing file feed transmission to 3rd party (consultant, data warehouse, wellness and/or disease management, accumulators, stop loss)	
Paper Claim Processing (per claim basis)	
Electronic prescribing (per claim basis)	
Administrative Prior Authorization (per authorization basis)	
Clinical Prior Authorization (per authorization basis)	
Nursing Charges (per visit (if applicable))	
Online Reporting Platform Access (per user basis)	
Custom Reporting Programming (per hour basis)	
Replacement of ID Card	
Other <i>(insert rows and list additional fees)</i>	

VI. Optional Clinical Programs	1/1/2026
(insert program name)	

5. The Measurement and Calculation of the Satisfaction of All Average Annual Guarantees. In measuring and calculating whether PBM satisfied every Average Annual Guarantee, all of the following parameters shall be used:
- In calculating each Average Annual Guarantee for Ingredient Costs: PBM shall categorize “Brand Drugs” and “Generic Drugs” based on the definitions contained in this Agreement, and shall include all Dispensed Claims for Covered Items, including, if they are Covered Items, all insulin supplies, all test strips and insulin products, but excluding all (i) coded and uncoded Compound Drugs; (ii) drugs dispensed at the Specialty Drug Pharmacy; (iii) Claims that are from LTC pharmacies or government owned or operated pharmacies (e.g. Veterans Administration); (iv) Claims paid at government required amounts (e.g. Medicaid); (v) 340B Claims; (vi) vaccines; and (vii) Claims processed and paid through another insurer as a result of the coordination of benefits. PBM shall include all of the Dispensed Claims described as being “included” in this paragraph, regardless of whether PBM reimbursed a pharmacy using an AWP discount price, a MAC price or a non-MAC price or U&C; In instances where PBM used U&C to reimburse the retail pharmacy, PBM will allocate its entire cost to the Ingredient Cost, as described in the Definition for Ingredient Cost.
 - In calculating each Average Annual Guarantee for Dispensing Fees: PBM shall categorize “Brand Drugs” and “Generic Drugs” based on the definitions contained in this Agreement, and shall include all Dispensed Claims for Covered Items, including, if they are Covered Items, all insulin supplies, all test strips and insulin products, but excluding all (i) coded and uncoded Compound Drugs; (ii) drugs dispensed at the Specialty Drug Pharmacy; (iii) Claims from LTC pharmacies or government owned or operated pharmacies (e.g. Veterans Administration); (iv) Claims paid at government required amounts (e.g. Medicaid); (v) 340B Claims; (vi) vaccines; and (vii) Claims paid through another insurer as a result of the coordination of benefits. PBM shall include all Dispensed Claims described as being “included” in this paragraph, regardless of whether PBM reimbursed a pharmacy using an AWP discount price, a MAC price or a non-MAC price or U&C; In instances where PBM used U&C to reimburse the retail pharmacy, PBM will be entitled to credit itself with a \$0 Dispensing Fee, as described in the Definition for Dispensing Fee.
 - Treatment of Financial Benefits: In calculating each Average Annual Guarantee, PBM shall also not include any Financial Benefits.
 - Exclusion of Program Savings: In calculating each Average Annual Guarantee, PBM shall also not include any savings brought about by any Program implemented by and for NDPERS. The AWP discount for the Brand Drug dispensed shall be factored into the applicable Brand Drug Average Annual Guarantee, and PBM shall not also include NDPERS’s savings resulting from the differential between the cost of the Generic Drug and Brand Drug. Similarly, in connection with Programs such as a Prior Authorization and Step Therapy, the invoiced cost to NDPERS of the drug dispensed shall be the only figure used to determine PBM’s satisfaction of Average Annual Guarantees, and any savings resulting from the Program shall not also be factored into calculating satisfaction of Average Annual Guarantees.

- e. PBM's Payment for Failure to Satisfy Any Average Annual Guarantee. In addition to the parameters set forth herein, the Parties agree that the following methods shall be used by PBM, NDPERS and/or NDPERS's auditor to determine whether PBM has satisfied each of the Average Annual Guarantees for NDPERS:

1. For each of the Ingredient Cost Guarantees (one (1) brand, and two (2) generic, in each of three (3) drug categories – retail, Retail 90 and mail): The total sum of the Extended AWP's shall be calculated for all Dispensed Claims based on the parameters set forth herein and shall be called "Total AWP's." The total Ingredient Costs invoiced to NDPERS for the same Dispensed Claims shall be calculated and shall be called "Total Invoiced Costs." The following formula shall thereafter be applied:

$$1 - (\text{Total Invoiced Costs} / \text{Total AWP's}) = \text{Actual Average Annual Rate}$$

If the Actual Average Annual Rate is less than the Guaranteed Average Rate stated for any Guarantee, then the overcharge that the PBM must reimburse to NDPERS shall be:

$$(\text{Guaranteed Average Rate} - \text{Actual Average Annual Rate}) \times (\text{Total AWP's})$$

2. For each of the Dispensing Fee Guarantees (retail brand, retail generic, Retail 90 brand, Retail 90 generic, mail brand, and mail generic): The total number of Dispensed Claims shall be calculated based on the parameters set forth herein, and the total Dispensing Fees associated with those Dispensed Claims shall be calculated, and the latter shall be divided by the former to determine the actual average Dispensing Fee for that Guarantee.

If the actual Average Annual Dispensing Fee is greater than the Guaranteed Average Dispensing Fee stated, then the overcharge that PBM must reimburse to NDPERS shall be:

$$(\text{Actual Average Annual Dispensing Fee} - \text{Guaranteed Average Dispensing Fee}) \times (\text{total numbers of Dispensed Claims})$$

- f. Non-Offsetting Guarantees. Should PBM be found by NDPERS (or NDPERS's auditor) to have failed to satisfy any of the Average Annual Guarantees (or any renegotiations of said Guarantees), PBM shall pay NDPERS the amounts reflected by the formulas stated in this Exhibit. PBM shall not be allowed to offset any failure to satisfy any Financial Guarantee against PBM's excess satisfaction of any Financial Guarantee. In the event that PBM fails to satisfy any Average Annual Guarantee, PBM shall be fully liable for its failure to satisfy that Guarantee, regardless of PBM's success in exceeding any other Financial Guarantee in this Agreement.
6. PBM's Agreement to Provide Annual Reconciliations. PBM agrees to provide to NDPERS (and its auditors) Annual Reconciliations of PBM's Actual Average Rates as compared to its Guaranteed Average Rates. Should PBM's Actual Average Rates be weaker than its Guaranteed Average Rates, PBM further agrees to pay the difference to NDPERS at the time of its Annual Reconciliation.
 7. On or about the beginning of the tenth (10th) month of each Medicare Part D Contract Year - beginning in the second year after the Effective Date of this Agreement and continuing until the year after termination of this Agreement, PBM agrees to perform an Annual Reconciliation calculating the difference between (i) the Financial Benefits or DIR that were passed through up until that date for the previous relevant Contract Year in connection with Invoice Statements, and the (ii) actual Financial Benefits or DIR collected by PBM from Pharmaceutical Manufacturers and due and owing to NDPERS as NDPERS's Pro Rata Share of Financial Benefits or DIR for the previous relevant Contract Year. Should the amounts passed through in item (i) above be less than the amounts calculated in item (ii) above, PBM shall pay NDPERS the difference, at the time PBM transmits its Annual Pass-Through

Reconciliation. Should the amounts passed through in item (i) above be more than the total amounts calculated in item (ii) above, NDPERS will not owe PBM the differential, but said amount shall be used as an offset against PBM's pass-through obligations in the future. Notwithstanding PBM's obligation to provide Annual Pass-Through Reconciliations, NDPERS shall have the right to conduct its own Audit to determine whether PBM has satisfied its Financial Benefit and DIR Pass-Through obligations under this Agreement.

8. Specialty Drugs.

- a. Management and Administration. Subject to the requirements of any regulatory authority, PBM is required to (i) ensure that Specialty Drugs are dispensed using the pricing and guarantees described in this Agreement; (ii) apply any agreed upon protocols established by PBM and NDPERS including but not limited to protocols concerning quantity limits and refill/renewal practices.
- b. Specialty Drug Minimum Guaranteed Discounts for Specialty Drugs Dispensed from the Specialty Drug Pharmacy. The Parties agree that the Minimum Guaranteed Discounts identified on Exhibit B shall constitute "Minimum Guaranteed Discounts" for each Specialty Drug, when it is dispensed from the Specialty Drug Pharmacy. For every Claim, PBM agrees to invoice for each Specialty Drug that is on Exhibit B and that is dispensed from the Specialty Drug Pharmacy using Pass-Through Pricing, with such Pass-Through Pricing being as favorable as, or more favorable than, the Minimum Guaranteed Discounts identified on Exhibit B. *[Each PBM Contestant must provide a Specialty Drug Pricing Schedule and thus identify its drug-by-drug Minimum Guaranteed Discount for each Specialty Drug when said Specialty Drug is dispensed from the Specialty Pharmacy.]*
- c. Default Discount Guarantee for New-to-Market Specialty Drugs Dispensed from the Specialty Drug Pharmacy. PBM agrees to provide a Default Discount Guarantee of AWP-____% for all new-to-market Specialty Drugs dispensed from the Specialty Drug Pharmacy. *[Each PBM to fill in blank with proposed Default Discount Guarantee]*
- d. Protocol for Dispensing New-to-Market Specialty Drugs. In connection with dispensing new-to-market Specialty Drugs (that are not yet listed on Exhibit B), NDPERS has decided that: NDPERS will allow PBM to dispense new-to-market Specialty Drugs from retail pharmacies or the Specialty Drug Pharmacy without the NDPERS's prior approval. For all such dispensed drugs, PBM will be obligated to invoice using Pass-Through Pricing whether the Drugs are dispensed from retail Pharmacies or the Specialty Drug Pharmacy. If the new-to-market Specialty Drug is dispensed from the Specialty Drug Pharmacy, PBM will also be obligated to ensure said pricing is at least as favorable as the Default Discount Guarantee.
- e. PBM's Payment for Failure to Satisfy Any Specialty Drug Minimum Guaranteed Discount, or Default Discount Guarantee. The Parties agree that the following method shall be used by PBM, NDPERS, or NDPERS's auditor to determine whether PBM has satisfied each of the Specialty Drug Minimum Guaranteed Discounts stated on Exhibit B, or when applicable, PBM's Default Discount Guarantee: For each Specialty Drug dispensed from the Specialty Drug Pharmacy each Dispensed Claim shall be re-priced according to the Minimum Guaranteed Discounts identified on Exhibit B (or an amendment thereto) or if the Specialty Drug was dispensed from the Specialty Drug Pharmacy but was a new-to-market Specialty Drug not yet listed on Exhibit B with an agreed upon Minimum Guaranteed Discount, based on application of the Default Discount Guarantee. Should the amount calculated be less than the amount invoiced to NDPERS, PBM shall pay the difference to NDPERS.
- f. PBM shall not be allowed to offset its failure to satisfy any Specialty Drug Minimum Guaranteed Discount or Default Discount Guarantee against PBM's excess satisfaction of any other Specialty Drug Minimum Guaranteed Discount or the Default Discount Guarantee (or any other Financial Guarantee in this Agreement).

9. PBM's Pass-Through of Financial Benefits. PBM agrees to pass-through one hundred percent (100%) of NDPERS's Pro Rata Share of all Financial Benefits that PBM receives from all third parties. PBM agrees to pay its Financial Benefit Guarantees at the end of each quarter, beginning at the end of the second quarter after NDPERS's Benefit Effective Date and continuing until after NDPERS's termination date when all Financial Benefits are paid according to this contract.
- a. PBM's Agreement To Pass Through - and Report - To NDPERS Its Pro Rata Share of Financial Benefits. PBM agrees to pass through to NDPERS one hundred percent (100%) of NDPERS's Pro Rata Share of all Financial Benefits that PBM receives from all Pharmaceutical Manufacturers, and as are reflected in all PBM/Pharmaceutical Manufacturer Contracts.
 - b. Definition of Pro Rata Share of Financial Benefits. NDPERS's Pro Rata Share of Financial Benefits shall be defined to include, but not be limited to, the following:
 - 1. In connection with any PBM/Pharmaceutical Manufacturer Contract that calls for the payment of a flat amount per prescription (or per Dispensed Claim), PBM shall pass through to NDPERS that amount times the number of prescriptions (or Dispensed Claims) dispensed to NDPERS's Members.
 - 2. In connection with any PBM/Pharmaceutical Manufacturer Contract that calls for the payment of a percentage amount (of the total AWP, or total WAC, or total ASP, etc.) dispensed, PBM shall pass through to NDPERS the percentage amount times the total AWP, or total WAC, or total ASP (or other identified amount) dispensed to NDPERS's Members.
 - 3. In connection with any PBM/Pharmaceutical Manufacturer Contract that calls for the payment of tiered additional payments based on any factor (such as the added market share, or added number of prescriptions dispensed, etc.), PBM shall multiply the total amount paid as a tiered additional payment, by the "Percentage of PBM's Aggregate Book Of Business" that NDPERS represents (as described below in subparagraph v).
 - 4. In connection with any PBM/Pharmaceutical Manufacturer Contract that calls for a flat payment of money related – or unrelated - to any drugs dispensed (e.g., the payment by a Pharmaceutical Manufacturer of a health management fee, or data sales fee, or educational grant, etc.), PBM shall calculate NDPERS's Pro Rata Share of said payment by multiplying the amount of the payment, by the "Percentage of PBM's Aggregate Book Of Business" that NDPERS represents (as described below in subparagraph v).
 - 5. The "Percentage of PBM's Aggregate Book Of Business" that NDPERS represents shall be measured by the total amount paid to Participating Pharmacies (Ingredient Costs plus Dispensing Fees) by PBM on behalf of NDPERS, divided by the total amount paid to Participating Pharmacies (Ingredient Costs plus Dispensing Fees) by PBM on behalf of all PBM's clients including NDPERS. The time frame for the calculations identified herein shall be the same time frame used by the Pharmaceutical Manufacturer to pay the PBM.
 - c. PBM's Obligation To Pass Through To NDPERS Its Pro Rata Share of All Financial Benefits. In connection with any Financial Benefits that may be collected by PBM from Pharmaceutical Manufacturers, PBM agrees that it is obligated to pass through to NDPERS the appropriate amount of Rebates, including if said Rebates are collected after any Annual Reconciliation or after the termination of this Agreement.
 - d. The Parties agree that in calculating PBM's satisfaction of any Financial Benefit Guarantees, the Parties will determine what constitutes a Brand Drug based on the Definitions in this Agreement, and the Parties will not include: member submitted paper Claims, or Claims submitted to and paid by another provider based on coordination of benefits programs, or

Compound Drugs or VA Claims or 340b Claims. However, the Parties will include: OTC Claims and insulin and test strips. The Parties further agree that in calculating PBM's satisfaction of any Financial Benefit Guarantees, the Parties will not include any Dispensed Claims representing drugs dispensed in connection with government programs that receive rebates, discounts or other forms of price reduction and that therefore preclude PBM from payment of Financial Benefits to NDPERS.

- e. Annual Reconciliation of Financial Benefit Guarantees and NDPERS's Right to Audit All Such Guarantees. Within ninety (90) days after the end of each Contract Year, PBM agrees to perform – and transmit to NDPERS – an annual Reconciliation calculating the difference between the amount of payments that were owed during the previous Contract Year based on the Financial Benefit Guarantees stated in this Agreement, and the total amount that was actually passed through during the previous Contract Year. Should the total amounts passed through in connection with Invoice Statements be less than the guaranteed amounts, PBM will pay NDPERS the differential at the time that the Reconciliation is transmitted. Should the total amounts passed through in connection with Invoice Statements be more than the guaranteed amounts, no exchange of funds will take place as a result of this Annual Guarantee Reconciliation, since the guaranteed amounts are in fact guaranteed.

EXHIBIT B

LIST OF SPECIALTY DRUGS, AND MINIMUM GUARANTEED DISCOUNTS FOR SPECIALTY DRUGS

The Parties agree that the drugs identified on this Exhibit shall be categorized as Specialty Drugs during the term of the Agreement. The Parties also agree that the drugs identified on this Exhibit can be modified by mutual, written agreement of the Parties on a quarterly basis, as described in Exhibit A of the Agreement.

The Parties further agree that the discounts specified below shall constitute Specialty Drug Minimum Guaranteed Discounts, as described in Exhibit A of the Agreement. The specified Minimum Guaranteed Discounts are exclusive of any Financial Benefits that are passed through by PBM to NDPERS, exclusive of Dispensing Fees or sales taxes or use taxes, but inclusive of any Copayment or Coinsurance to be paid by the Member.

The Parties also agree that assuming that a Specialty Drug identified on this Exhibit is a Covered Item for NDPERS, and allowed by NDPERS to be dispensed from the Specialty Drug Pharmacy, when said Specialty Drug is dispensed by PBM's Specialty Drug Pharmacy PBM shall invoice NDPERS for each such Specialty Drug using Pass-Through Pricing, with said invoiced cost being no more than the cost resulting from application of the Specialty Drug Minimum Guaranteed Discount identified below (or in mutually agreed upon written amendments hereto), less the appropriate Copayment or Coinsurance. In referencing drugs "dispensed from PBM's Specialty Drug Pharmacy" in this paragraph, the Parties agree that said reference includes certain Specialty Drugs that may be dispensed from an alternative specialty drug pharmacy if said pharmacy is the exclusive provider of said drugs.

The Parties also agree that in the event the PBM receives a prescription for a new-to-market Specialty Drug that has not yet been added to this Exhibit, PBM will adhere to NDPERS's protocols, by **delaying the dispensing of said new-to-market Specialty Drug until such time as NDPERS has granted approval in writing for the Specialty Drug to be dispensed, at which time PBM will dispense and invoice for the Drug using the agreed-upon Minimum Guaranteed Discount.**

If a Specialty Drug with a different NDC or J Code, but the same "Label Name" as identified below is a Dispensed Claim, and the Specialty Drug is dispensed by PBM's Specialty Drug Pharmacy, PBM guarantees that NDPERS shall be invoiced using the above-described protocols, but relying on the AWP discount identified below for that Specialty Drug with that Label Name.

Specialty Drug List to be attached here. *List must include NDC, Label Name, and Minimum Guaranteed Discount. The PBM's Specialty Drug Spreadsheet will represent a binding contractual commitment, and will be included and incorporated into this contract prior to NDPERS's execution of the contract.*

EXHIBIT C

PERFORMANCE GUARANTEES

PBM acknowledges its understanding that NDPERS values outstanding and timely performance and services to NDPERS and to all Members. Accordingly, PBM provides the following Performance Guarantees *[Appendix G – Performance Guarantees to be inserted below]*

EXHIBIT D
NDPERS BENEFIT PLAN DESIGN

[Plan Design to be inserted here by NDPERS]

EXHIBIT E

Business Associate Agreement

This Business Associate Agreement is entered into by and between, the North Dakota Public Employees Retirement System (“NDPERS”) and the [ENTER PBM NAME, ADDRESS OF PBM], each individually a “Party” and collectively the “Parties.” This Agreement is hereby incorporated into the underlying Contract, AGREEMENT FOR SERVICES BETWEEN [Insert Name of PBM] AND NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM, between the parties dated [Insert date of contract] (hereinafter both the Agreement and underlying Contract shall collectively be referred to as the “Agreement”).

DEFINITIONS

Terms used, but not otherwise defined, in this Agreement have the same meaning as those terms in the HIPAA Rules.

Catch-all definitions:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

- a. Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR § 160.103, and in reference to the party to this Agreement, shall mean [Insert Name of PBM].
- b. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR § 160.103, and in reference to the party to this Agreement, shall mean NDPERS.
- c. Electronic Protected Health Information. “Electronic Protected Health Information” (ePHI) shall generally have the same meaning as the term “electronic protected health information” at 45 CFR § 160.103.
- d. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- e. Protected Health Information. “Protected Health Information” (PHI) shall generally have the same meaning as the term “protected health information” at 45 CFR § 160.103 that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity.

OBLIGATIONS OF BUSINESS ASSOCIATE

The Business Associate agrees to:

- a. Not use or disclose PHI other than as permitted or required by this Agreement or as required by law, or as otherwise authorized in writing by Covered Entity;

- b. Use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to ePHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;
- c. Not request, use, or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. § 164 if done by Covered Entity, except that Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate.
- d. Not request, use, or disclose more than the minimum amount of PHI necessary to accomplish the purpose of the use, disclosure, or request in accordance with 45 C.F.R. § 164.502(b).
- e. Not share, use, or disclose PHI in any form via any medium with any individual beyond the boundaries and jurisdiction of the United States of America without express written authorization from Covered Entity.
- f. Ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such PHI, in accordance with 45 CFR § 164.502(e)(1) and § 164.308(b).
- g. Within twenty (20) business days of receiving written notice from Covered Entity, make any amendments to PHI in a Designated Record Set, as directed or agreed to by Covered Entity pursuant to 45 CFR § 164.526, or take other measures as necessary to satisfy the Covered Entity's obligations under 45 CFR § 164.526.
- h. PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate.
- i. Report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 C.F.R. § 164.410, and any security incident of which it becomes aware;
- j. To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that it creates, receives, maintains or transmits on behalf of the Covered Entity as required by the HIPAA Rules.
- k. To make available to the Secretary the Business Associate's internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI and ePHI received from, or created or received by Business Associate on behalf of Covered Entity, for the purpose of determining the Covered Entity's compliance with the HIPAA Rules, subject to any applicable legal privileges.
- l. Provide to Covered Entity within fifteen (15) days of a written notice from Covered Entity, information necessary to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- m. To provide, within ten (10) days of receiving a written request, information necessary for the Covered Entity to respond to an Individual's request for access to PHI about himself or herself under 45 C.F.R. § 164.524, in the event that PHI in the Business Associate's possession constitutes a Designated Record Set.

REPORTING OF A VIOLATION TO COVERED ENTITY BY BUSINESS ASSOCIATE

Business Associate shall report to Covered Entity's Breach Investigation Team (BIT) via email at ndpers-info@nd.gov any use or disclosure of PHI or ePHI not provided for by this Agreement, of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR § 164.410, and any Security Incident of which it becomes aware, immediately, and in no case later than ten (10) business days after the use or disclosure.

- a. Security Incident. "Security Incident" means (as defined by 45 CFR § 164.304), the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. For purposes of clarification of this Section, Security Incident includes use, disclosure, modification, or destruction of PHI by an employee or otherwise authorized user of its system of which Business Associate becomes aware. Business Associate shall track all Security Incidents and shall report such Security Incidents in summary fashion as may be requested by the Covered Entity.
 - i. Unsuccessful Security Incidents. Business Associate and Covered Entity agree that this Agreement constitutes notice from Business Associate of such Unsuccessful Security Incidents. By way of example, Covered Entity and Business Associate consider the following to be illustrative of Unsuccessful Security Incidents when they do not result in unauthorized access, use, disclosure, modification, or destruction of PHI or interference with an information system:
 1. Pings on Business Associate's firewall;
 2. Port Scans, which are attempts to log on to a system or enter a database with an invalid password or username;
 3. Denial-of-service attacks that do not result in a server being taken off-line; and
 4. Malware (e.g., worms, viruses)
- b. Discovery of a Violation. If the use or disclosure amounts to a breach of Unsecured PHI or ePHI, Business Associate shall ensure its report is made to Covered Entity's Breach Investigation Team (BIT) via email at ndpers-info@nd.gov immediately upon becoming aware of the Breach, and in no case later than ten (10) business days after discovery. The Violation shall be treated as "discovered" on the first day which the Violation is known to the Business Associate or, by exercising reasonable diligence would have been known to the Business Associate. For purposes of clarification of this Section, Business Associate must notify Covered Entity of an incident involving the acquisition, access, use, or disclosure of PHI or ePHI in a manner not permitted under 45 C.F.R. Part E within ten (10) business days after an incident even if Business Associate has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA Rules.
- c. Investigation of Breach. Business Associate shall immediately investigate the Violation and report in writing within ten (10) business days to Covered Entity with the following information:
 - i. Each Individual whose PHI has been or is reasonably believed to have been accessed, acquired, or disclosed during the Incident;
 - ii. A description of the types of PHI that were involved in the Violation (such as full name, social security number, date of birth, home address, account number);

- iii. A description of unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data;
 - iv. A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized;
 - v. A description of probable causes of the improper use or disclosure;
 - vi. A brief description of what Business Associate is doing to investigate the Incident, to mitigate losses, and to protect against further Violations;
 - vii. The actions Business Associate has undertaken or will undertake to mitigate any harmful effect of the occurrence; and
 - viii. A Corrective Action Plan that includes the steps Business Associate has taken or shall take to prevent future similar Violations.
- d. Breach Notification.
- i. Business Associate shall cooperate and coordinate with Covered Entity in the preparation of any reports or notices to the Individual, required to be made under the HIPAA Rules or any other Federal or State laws, rules or regulations, provided that any such reports or notices shall be subject to the prior written approval of Covered Entity.
 - ii. Covered Entity shall make the final determination whether the Breach requires notices to affected Individuals and whether the notices shall be made by Covered Entity or Business Associate.
 - iii. For any notice regarding a Breach of Unsecured PHI caused by Business Associate that Covered Entity is required to provide pursuant to 45 C.F.R. §§ 164.404 – 164.408, Business Associate shall reimburse Covered Entity for all costs associated with Covered Entity's obligation of notifying affected Individuals, the Secretary, and the media.
- e. Mitigation. Business Associate shall mitigate to the extent practicable, and at its sole expense, any harmful effects known to the Business Associate of a use, disclosure, or loss of PHI by Business Associate in violation of the requirements of this Agreement, including, without limitation, any Security Incident or Breach of Unsecured PHI. Business Associate shall reasonably cooperate with the Covered Entity's efforts to seek appropriate injunctive relief or otherwise prevent or curtail such threatened or actual Breach, or to recover its PHI, including complying with a reasonable Corrective Action Plan.

Permitted Uses and Disclosures by Business Associate

- a. General Use and Disclosure Provisions. Business Associate may only use or disclose the minimum PHI and ePHI to perform functions, activities, or services for, or on behalf of, Covered Entity, specifically, as necessary to perform the services set forth in the Agreement. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth in subsection b below.
- b. Specific Use and Disclosure Provisions. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI and ePHI:

- i. As required by law.
- ii. To make uses, disclosures, and requests for PHI consistent with Covered Entity's minimum necessary policies and procedures.
- iii. For the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- iv. To report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. §§ 164.304 and 164.502(j)(1).

Obligations of Covered Entity

- a. Covered Entity shall notify Business Associate of:
 - i. Any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 C.F.R. § 164.520, to the extent that any such limitation may affect Business Associate's use or disclosure of PHI.
 - ii. Any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that any such changes may affect Business Associate's use or disclosure of PHI. Any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that any such restriction may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity agrees that it:
 - i. Has included, and will include, in Covered Entity's Notice of Privacy Practices required by the Privacy Rule that Covered Entity may disclose PHI for Health Care Operations purposes.
 - ii. Has obtained, and will obtain, from Individuals any consents, authorizations and other permissions necessary or required by laws applicable to Covered Entity for Business Associate and Covered Entity to fulfill their obligations under the underlying Agreement and this Agreement.
 - iii. Will promptly notify Business Associate in writing of any restrictions on the use and disclosure of PHI about Individuals that Covered Entity has agreed to that may affect Business Associate's ability to perform its obligations under the underlying Agreement or this Agreement.
 - iv. Will promptly notify Business Associate in writing of any change in, or revocation of, permission by an Individual to use or disclose PHI, if the change or revocation may affect Business Associate's ability to perform its obligations under the underlying Agreement or this Agreement.

Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Subpart E of 45 CFR Part 164 if done by Covered Entity, except that the Business Associate may use or disclose PHI and ePHI for management and administration and legal responsibilities of Business Associate.

Term and Termination

- a. Term. The Term of this Agreement shall be effective as of January 1, 2026, and shall terminate when all of the PHI and ePHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI and ePHI, protections are extended to any such information, in accordance with the termination provisions in this Section.
- b. Automatic Termination. This Agreement will automatically terminate upon the termination or expiration of the Agreement or expiration of the services provided.
- c. Termination for Cause. Business Associate agrees that if in good faith Covered Entity determines that Business Associate has materially breached any of its obligations under this Agreement, Covered Entity may:
 - i. Exercise any of its rights to reports, access, and inspection under this Agreement;
 - ii. Require the Business Associate to cure the breach or end the violation within the time specified by Covered Entity;
 - iii. Terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity
 - iv. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 - v. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
 - vi. Before exercising either (c)(2) or (c)(3), Covered Entity shall provide written notice of preliminary determination to Business Associate describing the violation and the action Covered Entity intends to take.
- d. Effect of Termination
 - i. Upon termination, cancellation, expiration, or other conclusion of this Agreement, Business Associate shall:
 - 1) Return to Covered Entity or, if return is not feasible, destroy all PHI, ePHI, and any compilation of PHI in any media or form. Business Associate agrees to ensure that this provision also applies to PHI and ePHI in possession of subcontractors and agents of Business Associate. Business Associate agrees that any original record or copy of PHI and ePHI in any media is included in and covered by this provision, as well as all originals or copies of PHI or ePHI provided to subcontractors or agents of Business Associate. Business Associate agrees to complete the return or destruction as promptly as possible, but not more than thirty (30) business days after the conclusion of this Agreement. Business Associate will provide written documentation evidencing that return or destruction of all PHI and ePHI has been completed.
 - 2) If Business Associate destroys PHI and ePHI, it shall be done with the use of technology or methodology that renders the PHI or ePHI unusable, unreadable, or undecipherable to unauthorized individuals as specified by the Secretary. Acceptable methods for destroying PHI or ePHI include:

- a) For paper, film, or other hard copy media: shredding or destroying in order that PHI cannot be read or reconstructed; and
- b) For electronic media: clearing, purging, or destroying consistent with the standards of the National Institute of Standards and Technology (NIST).

Redaction is specifically excluded as a method of destruction of PHI and ePHI.

- 3) If Business Associate believes that the return or destruction of PHI or ePHI is not feasible, Business Associate shall provide written notification of the conditions that make return or destruction not feasible. If Business Associate determines that return or destruction of PHI or ePHI is not feasible, Business Associate shall extend the protections of this Agreement to the PHI or ePHI and prohibit further uses or disclosures of the PHI and ePHI without the express written authorization of Covered Entity. Subsequent use or disclosure of any PHI and ePHI subject to this provision will be limited to the use or disclosure that makes return or destruction not feasible.

Miscellaneous

- a. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA Rules and any other applicable laws or regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended.
- c. Survival. The respective rights and obligations of Business Associate under Section 7(d), related to "Effect of Termination," of this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity and Business Associate to comply with the HIPAA Rules.
- e. Headings. Paragraph Headings used in this Agreement are for the convenience of the Parties and shall have no legal meaning in the interpretation of this Agreement.
- f. Severability. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.
- g. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything this Agreement confer, upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- h. Applicable Law and Venue. This Business Associate Agreement is governed by and construed in accordance with the laws of the State of North Dakota. Any action commenced to enforce this Contract must be brought in the state District Court of Burleigh County, North Dakota.
- i. Contact Persons. Business Associate shall identify "key contact persons" in Attachment A for all matters relating to this Agreement and shall notify Covered Entity of any change in these key

contacts during the term of this Agreement in writing within ten (10) business days.

- j. Business Associate agrees to comply with all the requirements imposed on a business associate under Title XIII of the American Recovery and Reinvestment Act of 2009, the Health Information Technology for Economic and Clinical Health (HI-TECH) Act, and, at the request of NDPERS, to agree to any reasonable modification of this Agreement required to conform the Agreement to any Model Business Associate Agreement published by the Department of Health and Human Services.

Entire Agreement

This Agreement and the underlying Agreement contains all of the agreements and understandings between the parties with respect to the subject matter of this Agreement. No agreement or other understanding in any way modifying the terms of this Agreement will be binding unless made in writing as a modification or amendment to this Agreement and executed by both parties.

IN WITNESS OF THIS, **NDPERS** ["Covered Entity"] and **ENTER PBM** ["Business Associate"] agree to and intend to be legally bound by all terms and conditions set forth above and hereby execute this Agreement as of the effective date set forth above.

For Covered Entity:

For Business Associate:

Mike Seminary, Board Chairman
ND Public Employees Retirement System

Signature

Printed Name

Title

Date

Date

ATTACHMENT “A”
BUSINESS ASSOCIATE KEY CONTACT PERSONS

When applicable, Business Associate shall notify Covered Entity of any change in key contacts during the term of this Agreement in writing within ten business days.

Website URL (if applicable):	
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FIRST POINT OF CONTACT	
Name:	
Title:	
Address:	
Phone Number:	
Fax Number:	
Email Address:	

SECOND POINT OF CONTACT	
Name:	
Title:	
Address:	
Phone Number:	
Fax Number:	
Email Address:	

Business Associate

(Signature): _____

(Print Name): _____

(Title): _____

(Date): _____

Appendix F – This section identifies NDPERS’ EGWP plan requirements. Please indicate if you can match these benefits/services and if so with what resources and, if not, what specifically you would not be able to provide.

Current Contract Benefits	Discuss and Identify comparable service offerings.
<p><u>PDP Plan</u></p> <ul style="list-style-type: none"> Maintain a Medicare Part D Prescription Drug Plan with EGWP+Wrap, compliant with CMS requirements and will incorporate all required updates for 2026 	
<p><u>Pharmacy Benefit Manager Programs</u></p> <ul style="list-style-type: none"> Perform the following services: <ul style="list-style-type: none"> Perform claims adjudication Maintain retail pharmacy network (compliant with CMS requirements) Maintain specialty pharmacy program Maintain mail-order pharmacy program Administer clinical programs (compliant with CMS requirements) Maintain Formulary (compliant with CMS requirements) Drug utilization reviews <ul style="list-style-type: none"> Retrospective DUR Concurrent DUR Prospective DUR Provide Medication Therapy Management Program (compliant with CMS requirements) Administer Coordination of Benefits 	

Current Contract Benefits	Discuss and Identify comparable service offerings.
<ul style="list-style-type: none"> • Allow NDPERS to conduct periodic performance audits 	
<p><u>Enrollment Services</u></p> <ul style="list-style-type: none"> • Provide enrollment specialists to be available 24 hours a day 7 days a week to answer questions from members wishing to enroll in a plan or get further information on their enrollment • Provide weekly member enrollment/disenrollment report that includes: <ul style="list-style-type: none"> - Out-of-country address - Not entitled to Medicare A or B - Disenroll due to incarceration - Member denied due to no response - Cancel enrollment/disenrollment - Deaths - HICN discrepancies - Enrollment in another PDP • Complete enrollment verification of entries by NDPERS staff and sent through NDPERS electronic file • Notify NDPERS if there are problems with processing the electronic file • Conduct ongoing communication with NPERS including on problems with processing electronic files • Rush enrollments with immediate updates • Provide ongoing administrative enrollment process support such as: <ul style="list-style-type: none"> - Send notice to members who report address changes 	

Current Contract Benefits	Discuss and Identify comparable service offerings.
<ul style="list-style-type: none"> - Generate and mail ID cards - Mail benefit books • Administer late enrollment penalties (LEP) and low-income subsidies (LIS) directly to members on behalf of NDPERS • Provide ongoing reporting of members approved for the low-income subsidy and the effective date • Provide ongoing reporting of members with late enrollment penalties (LEP) including listing of delinquent participants • Notifications and tracking of Income-related monthly adjustment amount (IRMAA) • Notify PERS of Annual Adjustment to Part D rates based on the Federal subsidy and the Low-Income Subsidy (LIS) • Designate a point of contact for questions on enrollments/discrepancies 	
<p><u>Plan Communication Services</u></p> <ul style="list-style-type: none"> • Help Desk: Provide toll-free access to Participating Pharmacies to obtain assistance with eligibility, claims processing, DUR, and other troubleshooting • Provide communications to members including: <ul style="list-style-type: none"> - All CMS required notices - Benefit Overview - Formulary List - Formulary updates or changes - Previous coverage attestation notice to members - IRMAA required notices 	

Current Contract Benefits	Discuss and Identify comparable service offerings.
<p><u>Member Services</u></p> <ul style="list-style-type: none"> • Provide a toll-free telephone number for members, and individuals interested in enrolling, to speak to a licensed pharmacist or other appropriate representative • Provide a toll-free telephone number for members 24 hours a day, 7 days a week, answering questions regarding eligibility, claims, prior authorization status, drug coverage, enrollment status, and other PBM related services • Manage member appeals • Administer communication and educational materials to members about plan details • Set up and maintain a member portal to allow users to look up drugs, pharmacies, and formularies, and mail order and claim information • Provide reporting on customer service metrics including online and telephonic call types and volume 	
<p><u>Billing</u></p> <ul style="list-style-type: none"> • Carrier provides monthly billing to NDPERS to include: <ul style="list-style-type: none"> • Detailed listing of each participant (in Excel format) • LEP detail • PERS assigned member ID • Retro billing amount and coverage period • Carrier provides monthly LIS report and corresponding rebate to NDPERS 	

Current Contract Benefits	Discuss and Identify comparable service offerings.
<ul style="list-style-type: none"> Designate point of contact for questions on billing 	
<p><u>Information Technologies</u></p> <ul style="list-style-type: none"> Maintain secure data protection protocols Maintain a secure file transfer system Facilitate NDPERS specific enrollment file Update and maintain NDPERS specific benefit matrix and claims processing logic Provide access for NDPERS staff to online plan sponsor portal 	
<p><u>Legislative and Legal Services</u></p> <ul style="list-style-type: none"> Actively monitor State and Federal legislation for changes affecting NDPERS, with corresponding analysis of potential impact of legislation on the plan (costs, design requirements, etc.) Adhere to CMS compliance requirement related to Medicare Part D and EGWP+Wrap benefits Perform internal audit functions Monitor prescriber and provider trends to maintain compliance with CMS standards Update NDPERS on pharmacy class action lawsuits or settlements that may be applicable to the NDPERS benefit 	
<p><u>Account Management Staff</u></p> <ul style="list-style-type: none"> Designate individuals for each of the following positions: 	

Current Contract Benefits	Discuss and Identify comparable service offerings.
<ul style="list-style-type: none"> • NDPERS Implementation Manager • NDPERS Enrollment Specialists • NDPERS Account Executive with EGWP expertise • NDPERS Account Manager (day-to-day) • NDPERS Clinical Account Manager • NDPERS Executive Sponsor <ul style="list-style-type: none"> • Provide access to all subject matter experts and other appropriate personnel and make them available for attending board meetings, legislative, hearings, etc., as needed • Attend NDPERS Board meetings upon request (remotely or onsite) • Attend monthly team meetings to pinpoint any pain points, discuss future plan design and other ongoing items. 	
<p><u>Reporting</u></p> <ul style="list-style-type: none"> • Provide an Annual Review Report • Provide monthly data files through secure file transfer system • As requested by NDPERS, perform ad-hoc reporting including cost, utilization, and risk analysis • Provide reporting on member utilization across all phases of the Part D Standard Benefit to identify the benefits provided by the PDP and the benefits provided by the EGWP+Wrap • Report and disclose all Direct and Indirect Remuneration (DIR) including manufacturer rebate payments, CMS subsidies, and any other price concessions • Reconcile and report on all Performance Guarantees at least annually 	

Current Contract Benefits	Discuss and Identify comparable service offerings.
<p><u>Actuarial Services</u></p> <ul style="list-style-type: none"> • Complete actuarial services to determine the performance of the plan annually • Communicate prescription drug cost and utilization trends used for analysis, estimates, and underwriting • If requested by NDPERS, provide plan design options with impacts to cost (either self-insured claims or fully-insured premium) • Conduct actuarial services to determine improvements to plan design or program savings • For a fully-insured EGWP, provide a preliminary renewal premium projection for a potential renewal (typically provided by the end of April for the upcoming year). Premium projection must include the underwriting elements used to establish the premium (claims, plan design adjustments, risk adjustments, other adjustments (as necessary), trend factors, rebate estimates, subsidy estimates, administration fees, etc.) • For a fully-insured EGWP, provide a final premium calculation for the renewal no later than August 15 prior to the upcoming plan year. Premium projection must include the underwriting elements used to establish the premium (claims, plan design adjustments, risk adjustments, other adjustments (as necessary), trend factors, rebate estimates, subsidy estimates, administration fees, etc.) • Other services as requested 	

Appendix G – Performance Standards and Guarantees

This section identifies the NDPERS performance standards and guarantees requested. Please confirm compliance with each guarantee. Some performance guarantees may not be applicable based on the services proposed. If the performance guarantee is not applicable, please note "N/A".

#	Performance Guarantee	Requirement	Measurement	Performance guarantee reporting period (Monthly, Quarterly, Semi-annually, Annually) & dollars at risk	Bidder Response: (Agree, Does Not Agree, N/A)	Requested Modification
1.	Implementation Team	Vendor will provide NDPERS with an implementation team no later than fourteen (14) days after award of contract to be responsible for accurate installation of all administrative, clinical, and financial parameters	Fourteen (14) days after award of contract by NDPERS board	\$1,000 per day from day fifteen (15) forward for which a team has not been appointed		
2.	Project Plan	Vendor will provide an implementation project plan no later than twenty (20) days after contract award to be responsible for accurate installation of all administrative, clinical, and financial parameters	Twenty (20) days after award of contract by NDPERS board	\$1,000 per day from day twenty (20) forward for which a team has not been appointed.		

#	Performance Guarantee	Requirement	Measurement	Performance guarantee reporting period (Monthly, Quarterly, Semi-annually, Annually) & dollars at risk	Bidder Response: (Agree, Does Not Agree, N/A)	Requested Modification
3.	Customer service call center will “go-live” on or before November 1, 2025	Vendor’s customer service call center will be fully-operational to respond to member inquiries prior to the effective date to assist members with questions related to the new service and transition	Compliance to be monitored and assessed by NDPERS	\$1,000 for each calendar day after November 1, 2025		
4.	All services will “go-live” and be fully-operational on January 1, 2026	All services will be fully operational and the implementation plan complete on or before January 1, 2026	Compliance to be monitored and assessed by NDPERS	\$25,000 if not operational on January 1, 2026, and \$1,000 for each calendar day after January 1, 2026		
5.	Systems Training for NDPERS Staff	Vendor will provide training on the utilization of systems and reporting tools sixty (60) days prior to implementation	Compliance to be monitored and assessed by NDPERS	\$1,000 for each day less than sixty (60) days prior to implementation		
6.	Plan Performance Review	Within ten (10) calendar days following delivery of performance reviews	Measurement methodology	Semi- annually		

#	Performance Guarantee	Requirement	Measurement	Performance guarantee reporting period (Monthly, Quarterly, Semi-annually, Annually) & dollars at risk	Bidder Response: (Agree, Does Not Agree, N/A)	Requested Modification
		to NDPERS, vendor shall develop and submit a corrective action plan (CAP) of issues identified for approval by NDPERS, and implement such plan within the time prescribed in the approved CAP.	shall be measured from date of delivery of the plan performance review in calendar days	\$1,000 per calendar day beyond the due date		
7.	Identification Cards	For the initial implementation, accurate identification cards will be mailed	At least ten (10) days before the effective date	\$5,000 for each day less than ten (10) days before the effective date		
8.	Customer Satisfaction Surveys	Member satisfaction surveys will be designed by the vendor and approved by NDPERS. Vendor will invite a random sample of members to participate in the survey to collect a statistically significant number of completed surveys.	Vendor will provide annual survey results to confirm compliance with performance standard	Annually \$25,000 per year		

North Dakota Public Employees Retirement System

Medicare Part D EGWP+Wrap RFP

#	Performance Guarantee	Requirement	Measurement	Performance guarantee reporting period (Monthly, Quarterly, Semi-annually, Annually) & dollars at risk	Bidder Response: (Agree, Does Not Agree, N/A)	Requested Modification
		<p>Member satisfaction rate will meet 90% or higher using a 1-5 scale of Completely Satisfied, Very Satisfied, Satisfied, Dissatisfied, Very Dissatisfied.</p> <p>Final survey questions and methodology will be agreed upon by vendor and NDPERS.</p>				
9.	Team Meetings	NDPERS requires monthly team meetings to address all planning / implementation, business, financial, clinical / formulary (including new drug review) and operational needs	Compliance to be monitored and assessed by NDPERS	<p>Monthly</p> <p>\$5,000 for each meeting missed</p>		

#	Performance Guarantee	Requirement	Measurement	Performance guarantee reporting period (Monthly, Quarterly, Semi-annually, Annually) & dollars at risk	Bidder Response: (Agree, Does Not Agree, N/A)	Requested Modification
10.	NDPERS Board meetings	Vendor will participate in quarterly performance reviews to examine operational and financial performance	Compliance to be monitored and assessed by NDPERS	Quarterly \$5,000 for each quarter missed		
11.	Electronic Eligibility	Eligibility files will be installed in an electronic medium, logged within eight (8) hours and status will be effective within vendor's system within eighteen (18) hours from date of receipt, seven (7) days per week.	Vendor will provide quarterly reports to confirm compliance with performance standard	Quarterly \$500 for each missed file deadline		
12.	Manual Eligibility	Manual eligibility will be loaded within eight (8) hours upon receipt or notification and must be applied and active in the vendor's system within one (1) business day.	Vendor will provide quarterly reports to confirm compliance with performance standard	Quarterly \$500 for each missed file deadline		
13.	Error Reports	An error report on all eligibility file updates will be	Vendor will provide quarterly reports to confirm	Quarterly		

North Dakota Public Employees Retirement System

Medicare Part D EGWP+Wrap RFP

#	Performance Guarantee	Requirement	Measurement	Performance guarantee reporting period (Monthly, Quarterly, Semi-annually, Annually) & dollars at risk	Bidder Response: (Agree, Does Not Agree, N/A)	Requested Modification
		produced within eighteen (18) hours from the update.	compliance with performance standard	\$500 for each missed file deadline		
14.	LEP Report	A report on all LEP individuals identifying any that are delinquent in paying their LEP by the 10 th of the month, or prior business day.	Vendor will provide quarterly reports to confirm compliance with this standard.	Quarterly \$500 for each missed file deadline		
15.	Data Files	Monthly data files (membership, medical, pharmacy) will be available by the 15 th of the following month.	Will be available to NDPERS on request	Monthly \$1,000 for each month not met		
16.	Claims Financial Accuracy	Claims Financial Accuracy will be 99% or greater, each year of the biennium. Measured as the absolute value of financial errors divided by the total paid value of audited dollars paid based on quarterly internal audit of statistically valid sample.	Vendor will provide annual reports to confirm compliance with performance standard	Annually \$12,500 per year		

North Dakota Public Employees Retirement System

Medicare Part D EGWP+Wrap RFP

#	Performance Guarantee	Requirement	Measurement	Performance guarantee reporting period (Monthly, Quarterly, Semi-annually, Annually) & dollars at risk	Bidder Response: (Agree, Does Not Agree, N/A)	Requested Modification
17.	Claims Payment Accuracy	Claims Payment incidence Accuracy will be 98% or greater, each year of the biennium. Measured as the percent of Claims processed without financial payment error.	Vendor will provide annual reports to confirm compliance with performance standard	Annually \$12,500 per year		
18.	Claims Processing Accuracy	Claims Procedural Accuracy will be 95% or greater, each year of the biennium. Measured as the percent of Claims processed without non-financial error.	Vendor will provide annual reports to confirm compliance with performance standard	Annually \$12,500 per year		
19.	Claim Timeliness	Clean claims processing within fourteen (14) calendar days will be 95% or greater, each year of the biennium. Measured from the date the claim is received to the date claim is processed	Vendor will provide annual reports to confirm compliance with performance standard	Annually \$12,500 per year		

#	Performance Guarantee	Requirement	Measurement	Performance guarantee reporting period (Monthly, Quarterly, Semi-annually, Annually) & dollars at risk	Bidder Response: (Agree, Does Not Agree, N/A)	Requested Modification
20.	Average Speed of Answer	Average Speed of Answer will be thirty (30) seconds or less, each year of the biennium. Vendor will have an established measurement process that shall be reviewed with NDPERS	Vendor will provide semi-annual reports to confirm compliance with performance standard	Semi-annually \$10,000 per year		
21.	Call Abandonment	Call Abandonment rate will be five percent (5%) or less, each year of the biennium	Vendor will provide annual reports to confirm compliance with performance standard	Annually \$10,000 per year		
22.	Accuracy and Timelines/First Call Resolution Written Inquiry Response Time	a.) Ninety-five percent (95%) of callers receive accurate information. Calls requiring additional research is excluded from the computation of this metric. b.) Ninety-five percent (95%) of inquiries must be resolved	Vendor must evaluate a statistically valid sample of inquiries with reports provided.	Annually \$12,500 per year		

#	Performance Guarantee	Requirement	Measurement	Performance guarantee reporting period (Monthly, Quarterly, Semi-annually, Annually) & dollars at risk	Bidder Response: (Agree, Does Not Agree, N/A)	Requested Modification
		<p>during the initial call (excluding appeals, billing, errors and escalations).</p> <p>c.) Ninety percent (90%) of written inquiries receive a response within thirty (30) Calendar Days.</p>				
23.	Overpayment Recovery	<p>One hundred percent (100%) of all confirmed overpayments identified shall be recovered and returned to the Department within ninety (90) Calendar Days.</p> <p>Measured as the number (count) of overpayments identified by monthly Overpaid Claims Report and paid to the State (not an offset of Claims) within ninety (90) Calendar Days.</p>	Vendor will provide annual reports to confirm compliance with performance standard	<p>Annually</p> <p>\$12,500 per year</p>		

North Dakota Public Employees Retirement System

Medicare Part D EGWP+Wrap RFP

#	Performance Guarantee	Requirement	Measurement	Performance guarantee reporting period (Monthly, Quarterly, Semi-annually, Annually) & dollars at risk	Bidder Response: (Agree, Does Not Agree, N/A)	Requested Modification
24.	Prescription drug turnaround time – clean prescriptions	Ninety-eight percent (98%) within two (2) business days if no intervention required	Vendor will provide quarterly reports to confirm compliance with performance standard	Quarterly \$1,000 for each point below standard-		
25.	Prescription drug mail dispensing accuracy	Ninety-nine point nine percent (99.9%) mail service dispensing accuracy rate. Fields measured include member name, drug strength, directions, quantity, and prescriber name	Vendor will provide annual reports to confirm compliance with performance standard	Annually \$12,500 per year		
26.	Prescription drug home delivery member notifications	Vendor is required to notify a member when a mail service prescription is changed or there is any expected shipping delay and provide reporting details to NDPERS capturing all occurrences by member/DOS/Issue	Vendor will provide annual reports to confirm compliance with performance standard	Annually \$12,500 per year		

North Dakota Public Employees Retirement System

Medicare Part D EGWP+Wrap RFP

#	Performance Guarantee	Requirement	Measurement	Performance guarantee reporting period (Monthly, Quarterly, Semi-annually, Annually) & dollars at risk	Bidder Response: (Agree, Does Not Agree, N/A)	Requested Modification
27.	Prescription drug specialty pharmacy delivery	Ninety-eight percent (98%) of prescription will be delivered and received by patients on the specified date of delivery	Vendor will provide annual reports to confirm compliance with performance standard	Annually \$12,500 per year		
28.	Network Pharmacy Access	Pharmacy network composition will not be reduced by more than five percent (5%) in North Dakota compared to the network submitted in the RFP	Vendor will provide annual reports to confirm compliance with performance standard	Annually \$12,500 per year		
29.	Data Systems Availability and Adjudication	Guarantees an annual average ninety-nine percent (99%) system availability of the point-of-sale adjudication system on a book-of-business basis. This standard excludes downtime attributed to regularly scheduled systems maintenance or systems downtime	Book of business level	Annually \$12,500 per year		

Appendix I – Proposed Deviations

Please complete the following worksheet for all deviations and exceptions to the RFP requirements. Suggested alternatives or solutions must be included. Vendors should add additional pages as needed. This document should not include deviations to the sample contract included as Appendix E. A redlined version of Appendix E should be submitted separately.

NDPERS RFP ALL OTHER DEVIATIONS AND EXCEPTIONS	
Specific Deviation	Proposed Alternative/Solution

Appendix H
Confidential/Proprietary Information
Request for Redaction Chart

The Responder submitting a proposal to the attached RFP is required to complete the following. Any provisions of the company's proposal that are desired to be confidential must be identified specifically on each page of the proposal and in a table format as provided below. Information not identified in the table will be considered an open record by NDPERS, regardless of whether the information is marked confidential in the body of the proposal.

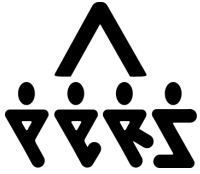
In response to the Request for Proposals entitled _____ (please check one):

- ___ Offeror asserts that the information noted in the table below constitutes proprietary, trade secret, commercial, or financial information as defined by North Dakota Century Code section 44-04-18.4, and desires that the information noted in the table below not be disclosed if requested pursuant to the North Dakota Open Records law. **Offeror has submitted a redacted copy of the proposal on a USB flash drive labeled "REDACTED" that accurately and completely redacts the information noted in the table below.**
- ___ Offeror makes NO assertion that any information in its Proposal, in whole or in part, should be protected from disclosure under the North Dakota Open Records law.

Technical Proposal:				
Specific wording that Responder desires to protect	Page Number, Section Number	Specific reason Responder believes the language should not be disclosed	North Dakota Century Code provision that allows NDPERS to withhold the information if requested	Has this information ever been publicly disclosed? (Yes/No)
<i>Insert rows above as necessary</i>				
Cost Proposal:				
Specific wording that Responder desires to protect	Page Number, Section Number	Specific reason Responder believes the language should not be disclosed	North Dakota Century Code provision that allows NDPERS to withhold the information if requested	Has this information ever been publicly disclosed? (Yes/No)
<i>Insert rows above as necessary</i>				

The above information has been reviewed by Responder's legal counsel and is attested to by _____ (insert name of Responder representative who is authorized to contractually bind Responder), on this ____ day of _____, 2025.

_____ (Signature) _____ (Vendor Name)



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Memorandum

TO: NDPERS Board

FROM: Rebecca

DATE: May 13, 2025

SUBJECT: Sanford Health Plan Specialty Medication Dispensing Limit

Representatives from Sanford Health Plan (SHP) will be at the meeting to discuss a request they have regarding a change in the specialty medication dispensing limit from allowing a 100 day supply to a 30 day supply effective July 1, 2025 as part of the new biennium. Attached is a memorandum that outlines their request, including details on why they are making this request.

Board Action Requested:

Approve or deny the request of Sanford Health Plan to reduce the dispensing limit on specialty medications from a 100 day supply to a 30 day supply effective July 1, 2025.

Memo

To: Rebecca Fricke

From: Kim Haug

Date: April 8, 2025

Re: Specialty Medication COI change for consideration by NDPERS Board of Directors

As part of the ongoing management of pharmacy trend, Sanford Health Plan (SHP) is recommending NDPERS update coverage for specialty medications to limit fills to a 30-day supply to align with industry norms. NDPERS is the only line of business SHP administers that allows a greater than 30-day supply at a time for a specialty medication. Currently, NDPERS allows up to 100 days to be filled at a time. Humana validated that NDPERS Medicare Retirees are limited to a 30-day supply of specialty medications. The recommended change would reduce the risk of waste when a member fills > 30 days of a high cost specialty medication that may become ineffective requiring another medication to be prescribed to treat their condition.

A specialty medication is designated with **SP** on the formulary. Specialty medications are typically used to treat complex medical conditions. These medications may require frequent dosing adjustments, close monitoring, special training, or compliance assistance. Specialty medications may also need special handling and/or administration, and may have limited or exclusive product availability and distribution.

NDPERS Specialty Medication Utilization in 2024:

- 1.3% of the prescriptions filled were for specialty medications
- 60% of the total pharmacy spend was for specialty medications
- SHP paid an average of \$7,035 for each 30-day supply
 - SHP paid **\$8.4M** for 497 scripts of specialty medications filled for >60 days

The following wording is included in the Certificate of Insurance for all Sanford Health Plan commercial plans. SHP would like NDPERS to add similar verbiage effective 7/1/2025 to NDPERS COI.

- Specialty medications can be filled up to a thirty (30) day supply per copay (or less, if prescribed) at one time (unless otherwise approved by the Plan)

The current benefit plan design by NDPERS Grandfathered & Non-Grandfathered PPO Plans would need to be updated to reflect the change. The current design has 2-\$50 copays for up to 100 day supply. This would not be available on specialty medications that have a 30-day supply limit. Members would need to pay a \$50 copay for each 30-day prescription. In 2024, 173 members would have paid an additional **\$24,850** (\$50 x 497) if each 30 days had a copay. However, some scripts will be allowed to have > 30 days based on drug dosage so those members will not be impacted by this change.

VI. GROUP INSURANCE / FLEXCOMP

D. Final Health Plan Premiums and Plan Design – Rebecca (Board Action)

Material for this agenda item will be provided at a later date.



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Memorandum

TO: NDPERS Board

FROM: Michaela

DATE: May 13, 2025

SUBJECT: Retiree Health Insurance Credit (RHIC) Combined Records

NDPERS became aware of a combined Retiree Health Insurance Credit (RHIC) record that was not eligible to be combined. This led to a query of all accounts, with the discovery of five accounts total (10 members), that had their RHIC combined in error. Upon identifying these accounts, a correction to separate each RHIC record to reinstate each individual RHIC record was completed before the April 1, 2025, RHIC payments were issued.

In order to be eligible for combined RHIC, the members must be married, both receiving their pension and RHIC benefits, and enrolled in the NDPERS family health plan. In the accounts discovered, two had been on the NDPERS family health plan in the past but are no longer enrolled, and three were never on the NDPERS family health plan.

When RHIC is combined, the “receiving” member account gets updated with both members’ RHIC amounts, leaving the “donor” member account without an RHIC amount awarded to them. The “donor” member does not get an account established with ASIFlex, but the “receiving” member’s account at ASIFlex is funded with both amounts. When the “receiving” member files a claim at ASIFlex, the full combined amount is paid out to the “receiving” member only.

The statute of limitations for collecting on overpayments is only six years, but there is no limit on underpayments. Four of the five affected accounts go back farther than six years so this means that if NDPERS can substantiate the underpayment and repay the donor member’s account in full for all years of underpayment, we could only recover up to six years of overpayment from the receiving member’s account. Therefore, due to the shift in RHIC benefits to the receiving member, there will continue to be risk of an overpayment on the “receiving” account still existing.

In reviewing this overpayment scenario with the Attorney General's office, it was recommended that the RHIC accounts should only be corrected prospectively, as the following factors were considered:

1. All five couples affected are still married.
2. There is no taxation of the RHIC benefit, so neither party has been adversely or unfairly taxed.
3. It could create a significant hardship to request the members validate their insurance premium information back to the date the overpayment/underpayment initially occurred.
4. The RHIC fund is currently whole based upon funds issued, but if the overpayment is collected for six years and underpayments fully paid back to the initiating event, an overpayment will exist with any duplication of the payment to the donor member outside of the statute of limitations for overpayments.
5. Three of the five member RHIC accounts did not file claims within each individual plan year claim windows, so allowing this window to be reopened would allow for them to have an extension for claim filing that was not previously utilized.
6. There would be added complexity for ASIFlex to validate each individual RHIC claim, which can date back to the 2016 plan fiscal year.

The Attorney General's office also recommended that correcting the accounts prospectively would be equitable, since NDPERS is not intending to audit all former RHIC records with ASIFlex and remedy the overpayment/underpayment concerns on all former accounts.

Board Action Requested:

Approve NDPERS staff correcting all five RHIC accounts only prospectively effective 4/1/2025, as of the date of the correction on the NDPERS system, and write off any prior improperly combined RHIC accounts due to inequity, litigation risk, and the administrative issues enumerated by staff.



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Memorandum

TO: NDPERS Board

FROM: Rebecca Fricke and Derrick Hohbein

DATE: May 13, 2025

SUBJECT: Legislation Update

The following provides an update on the various bills we were tracking this Session. All bills can be found at [69th Legislative Assembly - Bills & Resolutions Index | North Dakota Legislative Branch](#).

Bill #	Bill Status	Summary/Description of Bill
HB 1023	Filed with Secretary of State	NDPERS Appropriations/Budget
HB 1031	Filed with Secretary of State	Section 10 cleans up 54-42 reference (same as PERS technical correction cleanup)
HB 1077	Filed with Secretary of State	Clarify definition of Security Officer for National Guard
HB 1112	Filed with Secretary of State	Public Safety – revises definition of firefighter to include state
HB 1113	Filed with Secretary of State	457 Administrative Fees
HB 1114	Filed with Secretary of State	Insulin & Diabetic Supplies (SB 2140 Pilot Program)
HB 1146	Filed with Secretary of State	House Bill 1040 Cleanup (allow political subs not in NDPERS to join DC Plan, lump sum cash infusion permitted in lieu of ADEC if same or higher than ADEC, define state employer/governmental unit for ADEC & special election

		window/incentive, require both in-plan/out-of-plan annuity options)
HB 1177	Filed with Secretary of State	Public Safety – revises definition of correctional officer (not completed course)
HB 1216	Filed with Secretary of State	Out-of-pocket maximums – Prescription Drugs
HB 1234	Filed with Secretary of State	Transfer from SIIF to PERS Trust (amended from \$135M to \$25M)
HB 1248	Filed with Secretary of State	Revises process for NDPERS insurance pilot programs/repeals insurance mandates
HB 1274	Filed with Secretary of State	Public Safety – expands participation to include correctional officers of governmental unit (state correctional officers)
HB 1282	Failed House	Fertility Treatment
HB 1283	Passed House & Failed Senate	Coverage for Diagnostic or Supplemental Breast Exams
HB 1284	Failed House	Fertility Preservation Services
HB 1371	Filed with Secretary of State	Amended to a shall consider study to allow retired peace officers with 20 years or more of employment to join non-Medicare retiree plan, and retiree cannot be charged any portion of premium
HB 1419	Filed with Secretary of State	Public Safety – revises correctional officer definition and expands eligibility to include dispatchers and medical services personnel
HB 1452	Failed House	Anti-obesity medication coverage
HB 1471	Filed with Secretary of State	Dental benefit plan method of payment options
HB 1481	Filed with Secretary of State	Dental insurer rate filing requirements
HB 1543	Filed with Secretary of State	Prescription drug pricing study (shall consider)
HB 1602	Filed with Secretary of State	Participating political subdivision withdrawal from DC/Stay in DB
SB 2119	Filed with Secretary of State	Disability Benefit Application
SB 2120	Filed with Secretary of State	Highway Patrol Cash Infusion (amended from \$35.7M to \$15M)
SB 2121	Filed with Secretary of State	Technical Corrections

SB 2160	Vetoed by Governor	PERS Health – ACA large employer group mandated coverage for state employee and pre-Medicare groups, amended for 1/1/2027 effective date (was 1/1/2026), state funding authority for general and special/federal fund agencies, and use of reserves
SB 2180	Filed with Secretary of State	Public comments at public meetings (Board meetings)
SB 2182	Failed Senate	Agency can't submit bills without legislative management/committee approval
SB 2227	Filed with Secretary of State	Amended - RTW retiree returning to same employer, appointed non-classified by elected state official, ineligible to participate in retirement, continue retiree payments
SB 2248	Failed Senate	Step Therapy for Metastatic Cancer
SB 2249	Filed with Secretary of State	Step Therapy Protocols – amended to shall consider a study of historical insurance mandates
SB 2280	Filed with Secretary of State	PERS insurance exempt from bill provisions other than an amendment for a shall consider study of prior authorizations within NDPERS insurance plans (health & dental)
SB 2370	Passed Senate & House with amendment (hoghoused)	Insulin & Diabetic Supplies – amended to just apply to PERS active health insurance plans
SB 2375	Filed with Secretary of State	Joint negotiations of dental providers with dental insurers
SB 2377	Filed with Secretary of State	Preferred provider arrangements and restrictions on dental services

Blue highlights are those bills we did not provide testimony for but are monitoring.

Staff have begun planning sessions for implementation of those bills that passed and will provide additional updates at future Board meetings.

However, there are two bills that staff would like to discuss with the Board to seek input regarding implementation. There will be additional items staff will bring forward in future meetings due to legislation, but at this time, we'd like to discuss HB 1113 and HB 1602.

HB 1113

HB 1113 gives PERS the authority to fund the administrative expenses of the 457 Deferred Compensation Plan our office encounters directly from participant accounts. This language and authority mirror the language that exists in the 401(a) Defined Contribution Plan.

This Legislation was brought forward because the Main Defined Benefit Plan is a secondary funding source for the FICA savings shortfall. Staff will need direction on two observations with this Legislation, including how much to pull from participant accounts and which participants we should pull funds from.

The primary funding mechanism in the 457 Deferred Compensation program is the excess revenue collected from the FICA savings employers would typically recognize from their employee's medical and dependent care FlexComp elections. A long-term strategic goal of the Board was to analyze how feasible it would be to bring Higher Education's FlexComp reporting in house, and have NDPERS administer the FlexComp program on behalf of all State employers. Whether this is a viable solution to lower costs to the State is still unknown, but in order for this arrangement to be a possibility the FICA savings from the FlexComp program would need to no longer be directed to the 457 plan, either now or in the future. Below is a ten-year history of the administrative expenses of the 457 plan, and the funding source for each year:

	Admin Expenses	Transfers from Flex	Transfers from Retirement	Transfers from Insurance
FY2024	\$ 1,105,954	\$ 350,000	\$ 360,000	\$ 360,000
FY2023	810,853	215,000	280,000	280,000
FY2022	812,126	550,000	162,500	162,500
FY2021	775,462	540,000	87,500	87,500
FY2020	677,951	525,000	112,500	112,500
FY2019	720,616	75,000	325,000	325,000
FY2018	756,705	525,000	137,500	137,500
FY2017	821,297	525,000	137,500	137,500
FY2016	790,021	325,000	325,000	325,000
FY2015	678,144	-	350,000	350,000
FY2014	633,935	-	315,000	315,000
FY2013	603,831	200,000	212,500	212,500
FY2012	554,868	200,911	224,000	224,000

The first question Staff will need answered is how incremental does the Board want to be with pulling fees from participant accounts. We can either start funding the entire shortfall from participants, or we can simply fund the shortfall that is currently coming from retirement and insurance. Because we do not know if administering the FlexComp program on behalf of Higher Education is a viable option or not (and because we currently don't have any other authority for all the excess revenues from the FICA savings), staff would recommend that we start by funding the shortfall from Retirement and Insurance, and strictly use this new authority as the primary secondary funding source.

There are a variety of methods PERS can use to assess these fees against participant accounts. This may include:

- 1) Assessing a basis point percentage against accounts (this is the approach used on the 401(a) NDPERS' administrative fees).
- 2) Assessing a flat fee against participant accounts (this is the approach used on the Empower administrative fees).

In addition, historically the Board has not been interested in charging fees against newer participants, and has chosen a direction to not charge fees on participant accounts that are under \$1,000. The Board should have discussion and conversation around if you would like to continue that approach, and what threshold is appropriate to begin charging a fee against our member's accounts.

HB 1602

HB 1602 allows participating political subdivisions to opt out of the new Defined Contribution 2025 for their new hires, while allowing them to continue participation for their employees enrolled in the Defined Benefit plan prior to the plan closure of January 1, 2025.

Staff will promulgate rules specific to this for your review as part of our rule-making process, but given the bill is effective August 1, 2025, staff need to communicate the provisions of HB 1602 and notify them of what action is needed if they wish to discontinue participation. Staff would like to request that if a group wishes to disenroll from the Defined Contribution 2025 plan effective August 1, 2025, they must send a written resolution no later than June 30, 2025. For any request to discontinue with a date later than August 1, 2025, NDPERS will require the written resolution at least 60 days prior to the effective date of discontinuation, which must always be the first working day of a month. For the other plans that NDPERS administers, 60 day notice to discontinue a plan is required, so this would allow consistency among the plans. This timeframe allows the necessary updates to the employer and impacted members records, and also would allow appropriate notice to be provided to Empower.

If the Board approves this approach, staff will send notice to the participating political subdivisions to provide details on the provisions of the HB 1602 and what is necessary if a group wishes to discontinue participation.

Board Action Requested:

Approve or deny the following regarding legislation implementation:

- 1) Select the preferred method of assessing fees against the 457 Deferred Compensation account balances due to the passing of HB 1113.
- 2) The process and timeframe for a political subdivision to follow if they wish to discontinue participation in the Defined Contribution Plan under the terms of HB 1602. If not approved, provide guidance regarding the process and timeframe the Board wishes staff to follow.



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Memorandum

TO: NDPERS Board

FROM: Rebecca

DATE: May 13, 2025

SUBJECT: Contracts under \$10,000

Attached is a document that shows the contracts under \$10,000 that have been signed since the last update. Please let me know if you have any questions on any of these contracts.

This topic is informational only.

Attachment

All Contracts Signed During 2025:

Vendor	Amount	Notes
Empower	\$ -	457 Plan Catch-up Opt Out Forms
Inter Office	\$ 1,176.16	Office Chair
Rolette County Soil Conservation D	\$ -	Joined Deferred Compensation Plan 1/1/25
UHY	\$ -	GASB 68 & 74 Management Rep. Letters
Great Plains Housing Authority	\$ -	Joined Deferred Compensation Plan 7/1/25
Richland School District	\$ -	Joined Deferred Compensation Plan 2/1/25
Ellendale Public School	\$ -	Joined Deferred Compensation Plan 1/1/25
Inter Office	\$ 824.76	Rising Desk
Rolette Public School	\$ -	Joined Deferred Compensation Plan 3/1/25
Inter Office	\$ 1,171.66	Office Chair
Souris Valley Special Education	\$ -	Joined Deferred Compensation Plan 5/1/25
Inter Office	\$ 824.76	Rising Desk
City of Cavalier	\$ -	Joined Deferred Compensation Plan 6/1/25

Contracts Signed Since Last Reported:

McHenry County	\$ -	Joined Public Safety Plan 5/1/2025
Inter Office	\$ 840.17	Risking Desk



**North Dakota
Public Employees Retirement System**
1600 East Century Avenue, Suite 2 • PO Box 1657
Bismarck, North Dakota 58502-1657

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Memorandum

TO: NDPERS Board

FROM: Rebecca

DATE: May 13, 2025

SUBJECT: Board Strategic Planning Meeting

Each biennium, the Board holds a meeting dedicated to strategic planning. Typically the meeting is held in odd-numbered years as the November Board meeting. The last planning meeting had the following agenda:

I. CONFLICT OF INTEREST DISCLOSURE CONSIDERATION

II. BOARD PLANNING

- A. Plan, Budget, and Operations Review
- B. SWOT Review
- C. Strategic Planning
- D. Vision Statement
- E. Executive Director Success Profile
- F. Legislative Proposals

At this time, we are seeking direction of the Board if you'd like staff to plan the agenda for the November Board meeting to be dedicated for this strategic planning or if the Board has other thoughts on when they'd like to hold the meeting.

Board Action Requested:

Provide direction to staff regarding planning the biennial strategic planning meeting.



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Memorandum

TO: NDPERS Board

FROM: Derrick Hohbein

DATE: May 13, 2025

SUBJECT: Consultant Fees for the Quarter Ended March 2025

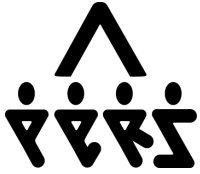
Attached is a quarterly report showing the consulting, investment, and administrative fees paid during the quarter ended March 2025.

This is informational only.

Attachment

**North Dakota Public Employees Retirement System
Consulting/Investment/Administrative Fees
For the Quarter ended March 31, 2025**

	Program/Project	Fee Type	Jan-25	Feb-25	Mar-25	Fees Paid During The Quarter	Fees Paid Calendar Year-To-Date	Last Calendar Year-to-Date
<u>Actuary/Consulting Fees:</u>								
Insurance Plans:								
Deloitte	Insurance Legislative Analysis	Time Charges	6,143	14,726	52,526	73,395 \$	73,395 \$	-
Deloitte	Health & Part D Claims Projections	Time Charges				- \$	- \$	-
Deloitte	Insurance Consulting	Time Charges				- \$	- \$	975
Buck Consulting	Life/Dental/Vision RFP	Fixed Fee				- \$	- \$	15,000
Deferred Compensation/Defined Contribution:								
Callan & Associates	Asset Allocation & Liability Study	Fixed Fee				- \$	- \$	-
Callan & Associates	Investment Consultant Expenses	Fixed Fee	13,208			13,208 \$	13,208 \$	12,824
Defined Benefit:								
Gabriel Roeder Smith & Company	Retirement Actuarial Valuation	Fixed Fee				- \$	- \$	-
Gabriel Roeder Smith & Company	GASB 67/68 (Retirement) Valuation	Fixed Fee				- \$	- \$	19,000
Gabriel Roeder Smith & Company	Experience Study	Fixed Fee		12,000	10,000	22,000 \$	22,000 \$	-
Gabriel Roeder Smith & Company	Retirement Legislation	Time Charges		20,300	3,325	23,625 \$	23,625 \$	16,000
Gabriel Roeder Smith & Company	Retirement Consulting/Actuarial Analysis	Time Charges		7,308	4,995	12,303 \$	12,303 \$	28,215
Mid Dakota Clinic	Retirement Disability Consultant	Time charges				- \$	-	
RHIC:								
Gabriel Roeder Smith & Company	RHIC Actuarial Valuation	Fixed Fee				- \$	- \$	-
Gabriel Roeder Smith & Company	GASB 74/75 (RHIC) Valuation	Fixed Fee				- \$	- \$	6,750
Gabriel Roeder Smith & Company	RHIC	Time Charges				- \$	- \$	-
<u>Audit Fees:</u>								
Clifton Larson Allen	Annual Audit Fee	Fixed Fee				- \$	- \$	24,348
UHY	Annual Audit Fee	Fixed Fee		20,000		20,000 \$	20,000 \$	-
<u>Legal Fees:</u>								
ND Attorney General	Legal Fees on All Plans	Time charges	3,460	2,513	1,644	7,616 \$	7,616 \$	22,095
Ice Miller - Federal Tax Consultant	Legal Fees on All Plans	Time charges	700	4,518	8,273	13,491 \$	13,491 \$	5,625
<u>Investment Fees:</u>								
SIB - Investment Fees	Retirement (DB)	% Allocation	575,027	588,158	599,388	1,762,573 \$	1,762,573 \$	2,066,772
SIB - Investment Fees	Ret Health Credit	% Allocation	3,394	4,824	149,316	157,534 \$	157,534 \$	9,670
SIB - Investment Fees	Insurance	% Allocation	7,643	1,525	11,024	20,192 \$	20,192 \$	18,288
SIB - Investment Fees	Job Service	% Allocation	1,477	2,079	69,147	72,703 \$	72,703 \$	66,979
SIB - Administrative Fees	Retirement (DB)	% Allocation	90,756	116,402	101,682	308,840 \$	308,840 \$	224,724
<u>Administrative Fee:</u>								
Sanford Health Plan	Health Plan	Fixed fee	1,269,327	1,269,974	1,267,586	3,806,887 \$	3,806,887 \$	3,796,154



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Memorandum

TO: NDPERS Board

FROM: Derrick Hohbein

DATE: May 13, 2025

SUBJECT: 2025 – 2027 Budget Overview

Below is a high level summary of our 2025-2027 appropriation.

	2023-2025 Biennium	Adjustments	2025-2027 Biennium
Salaries & Wages	\$ 8,232,492	\$ 2,297,507	\$ 10,529,999
Operating Expenses	2,416,162	858,001	3,274,163
Contingency Funds	250,000	-	250,000
Total Appropriation	10,898,654	3,155,508	14,054,162
FTE	40.50	2.0	42.50

The adjustments to our appropriation authority include the following:

Salaries & Wages:

1. Cost to continue salary increases on July 1, 2024 and the 1% increase to the Main Plan - \$130,600
2. 3% salary increases for staff effective July 1, 2025 and July 1, 2026 - \$612,059
3. Accounting FTE - \$239,015
4. Benefit Enrollment FTE - \$203,647
5. New & vacant FTE pool restoration - \$1,201,247
6. Internship program and Board pay for additional Legislators added to the Board - \$45,000
7. New & Vacant FTE pool - \$(134,061)

Operating Expenses:

1. New FTE operational expenses - \$7,500
2. Project manager with Sagitec - \$539,595
3. Additional developers with Sagitec - \$310,906

Staff is currently aware of at least two anticipated retirements during the 2025–2027 biennium. To help generate budgetary savings, recruitment for a Chief Benefits Officer is planned for November 2025, rather than earlier in the biennium. Additionally, to proactively manage these transitions, staff intends to use these budgetary savings to recruit successors approximately two to three months prior to each scheduled retirement. This approach will support the development of a comprehensive transition plan, ensuring continuity of operations and effective knowledge transfer.

If the Board supports this approach, the planned staffing transition may result in an appropriation deficiency due to the Legislature’s removal of \$134,061 from the agency’s appropriation authority through the Vacant FTE pool. This risk arises if additional vacancies do not occur during the 2025–2027 biennium to help offset the cost. In the event a deficiency occurs, the Board may consider either utilizing contingency funds or directing staff to submit a deficiency appropriation request during the next Legislative Session.

Staff is bringing this discussion forward now because one of the anticipated retirements is scheduled to occur early in the 2025–2027 biennium. If the Board approves this approach, staff plans to pursue the recruitment and transition strategy as early as possible to ensure a smooth transition and maintain operational continuity.

BOARD ACTION REQUESTED:

Consider the transition strategy being proposed by staff.

IX. OPERATIONS / ADMINISTRATIVE

E. Executive Director Review and Salary Recommendation – Representative Jason Dockter, Subcommittee Chair

The Executive Director Performance Review and Compensation Subcommittee is scheduled to meet on Friday afternoon, May 9th. Material for this agenda item will be provided at a later date. Representative Dockter will present the report and subcommittee's recommendation at the May 13th meeting.