

REQUEST FOR PROPOSAL

North Dakota Public Employees Retirement System

Uniform Group Insurance Request for Proposal for Consulting Services for Dental, Life and Vision Insurance

April 2022

Prepared by:

**North Dakota Public Employees Retirement System
1600 E Century Ave, Suite 2
P.O. Box 1657
Bismarck, ND 58502-1657**

Request for Proposal Table of Contents

Section 1 – Introduction	3
Section 2 – Background	5
Section 3 – Scope of Services	6
Section 4 – Information Requests.....	8
Section 5 – Cost Proposal – Fees/Hours	11
Section 6 – Submission of Proposal	13
Section 7 – Review Process	14
Section 8 – Offer	15
Section 9 – Business Associate Agreement	22
Section 10 – Data Agreement	28

SECTION 1 – INTRODUCTION

This Request for Proposal (RFP) is issued for RFP consulting assistance for the period July, 2022 through December, 2024.

The following is a sequence of activities for this RFP:

April 1, 2022	RFP issued.
April 15, 2022	Deadline for RFP Questions
April 22, 2022	Answers to RFP Questions posted to NDPERS Website
May 2, 2022	RFPs Due 5:00 pm CDT
June 14, 2022	NDPERS Board Reviews Bids
July 1, 2022	Contractor begins work effort

The Board is seeking fixed fee bids for the following anticipated efforts:

1. Development and issuance of an RFP for the life plan, and a review of the subsequent proposals. (effective 7/1/2023)
2. Development and issuance of an RFP for a vision plan, and a review of the subsequent proposals. (effective 1/1/2024)
3. Development and issuance of an RFP for a dental plan, and a review of the subsequent proposals (effective 1/1/2025)

Based on its review, the successful bidder must also be prepared to make a recommendation to the NDPERS Board for each of the above efforts.

Following is a sequence of major activities.

August, 2022	Begin work on life RFP. The consultant and PERS will meet to discuss the upcoming work schedule.
October, 2022	Submit life RFP to PERS Board for approval. Begin work on vision RFP.
November, 2022	Issue life RFP.
January, 2023	Submit vision RFP to PERS Board for approval. Receive & begin evaluation of life RFP proposals.
February, 2023	Issue vision RFP. Submit life evaluation to NDPERS Board. The consultant should plan to attend this NDPERS meeting via conference call.
March, 2023	Interview and select life vendor. The consultant should plan to attend this NDPERS meeting virtually or in-person.

April, 2023	Receive and begin evaluation of vision RFP proposals.
May/June, 2023	Submit vision evaluation to NDPERS Board. The consultant should plan to attend this NDPERS meeting via conference call.
June/July, 2023	Interview and select vision vendor. The consultant should plan to attend this NDPERS meeting virtually or in-person.
October, 2023	Begin work on dental RFP.
January, 2024	Submit dental RFP to PERS Board for approval. Consultant should be available either by teleconference or video conference to review and answer questions for the Board.
February, 2024	Issue dental RFP.
April, 2024	Receive and begin evaluation of dental RFP proposals.
May/June, 2024	Submit dental evaluation to NDPERS Board. The consultant should plan to attend this NDPERS meeting via conference call.
June/July, 2024	Interview and select dental vendor. The consultant should plan to attend this NDPERS meeting virtually or in-person.

SECTION 2 - BACKGROUND

A. The Agency:

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. This proposal is for assistance in the life, vision, and dental areas.

PERS is managed by a Board comprised of nine members:

- 1-Chairman appointed by the Governor
- 1-Member appointed by the Attorney General
- 1-Member elected by retirees
- 3-Members elected by active employees
- 1-State Health Officer or designee
- 2-Members appointed by Legislative Management

PERS 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.

B. Group , Life, Dental, and Vision Insurance:

1. Group Life:

The Uniform Group Life Insurance Plan is a fully insured plan underwritten by Voya. All state employees are covered under the plan, including the professional staff at colleges and universities. Political subdivisions may participate in the life plan at their option. Premiums collected for the past fiscal year totaled approximately \$4,000,000.

The Uniform Group Insurance programs are under chapter 54-52.1 of the North Dakota Century Code (NDCC).

2. Dental:

The Uniform Group Dental Plan is fully insured by Delta Dental. As of January 2022 there were 8,900 active contracts and 4,000 retired contracts. All premiums are paid by the employee. Premiums collected for the past fiscal year were approximately \$11,000,000.

3. Vision:

The Uniform Group Vision Plan is fully insured by Superior Vision. As of January 2022 there were 9,300 active contracts and 3,800 retired contracts. All premiums are paid by the employee. Premiums collected for the past fiscal year were approximately \$1,900,000.

SECTION 3 - SCOPE OF SERVICES

This Section outlines the scope of services.

A. Bid Solicitation and Evaluation for the, Life, Dental, and Vision Programs

The consultant will be expected to take a lead role in developing and issuing RFPs, and analyzing any proposals for the group dental, vision, and life insurance plans. Three anticipated fixed fee bids are requested (note that it is possible one or more of these efforts may be delayed or not given approval by the NDPERS Board):

1. The first fixed fee bid is for RFP development, solicitation and evaluation for the life insurance plan.
2. The second fixed fee bid is for RFP development, solicitation and evaluation for the vision insurance plan.
3. The third fixed fee bid is for the RFP development, solicitation and evaluation for the dental insurance plan.

These are major and significant tasks for PERS as the proper placement of these programs is critical. The consultant must provide the following service for all of the above efforts:

1. Sections 54-52.1-04 and 54-52.1-04.2 NDCC requires that the PERS Board solicit bids for the insurance programs. The consultant must prepare draft requests for proposals pursuant to the schedule outlined. The consultant will be also responsible for developing a list of firms to be solicited. This list will be supplemented by requests PERS has received and those additional requests that come in as a result of a notice appearing in local newspapers in North Dakota.
2. The Board and staff will review draft RFPs pursuant to the schedule outlined.
3. The consultant shall review all bids within the timeframes outlined. The analysis shall include the following:
 - a) Confirm that all bidders meet the minimum requirements and eliminate any non-qualified bidders.
 - b) Evaluate the financial implications of each bid (quantitative factors). Section 54-52.1-04 of NDCC requires the Board to give consideration to the following:
 - (1) The economy to be effected
 - (2) The ease of administration
 - (3) The adequacy of the coverage
 - (4) The financial position of the carrier, with special emphasis as to its solvency
 - (5) The reputation of the carrier and such other information as is available tending to show past experience with the carrier in matters of claim settlement, underwriting and services.

4. Review the technical aspects of each proposal (qualitative factors).
5. Present findings to the Board pursuant to the schedule previously outlined.
6. The consultant shall assist in developing contracts with the successful bidder.

B. Consultant Services for the, Life, Dental, and Vision Programs

NDPERS may need expertise consulting services for the group dental, vision, and life insurance plans. Federal and State mandates along with proposals and studies may require NDPERS to seek analysis and recommendations from the consultant. These special work efforts would be performed as needed on an hourly basis.

SECTION 4 - INFORMATION REQUESTS

The proposal must comply with the format as set forth below and contain your organization's response to the requested information. The request must be restated followed by your response.

Part I - Executive Summary

Discuss your view of the entire project as requested in this RFP and provide a flow chart depicting your understanding of the major work efforts and timeframes for beginning and completing tasks.

Part II - Minimum Requirements

The successful vendor must have a multidisciplinary staff including an insurance actuary with experience in the work requirements outlined herein. The firm must also have demonstrated experience in doing the work outlined herein. In this section you will summarize your staffing and experience. The individuals/firm shall also summarize any potential conflicts of interest here as well.

Part III – Proposal

1) Technical Approach.

- a) Fixed Fee Work efforts
 - 1. Life Insurance Plan
 - (a) Generally discuss your understanding of the work requested
 - (b) Timeline – discuss your understanding of the timeline for this effort
 - (c) Approach- discuss your project plan for this effort, identify major steps, timeframes and products
 - (d) Exceptions- identify any exceptions or variations in your proposal from the work
 - (e) Outline the product PERS will receive from you
 - 2. Vision Plan
 - (a) Generally discuss your understanding of the work requested
 - (b) Timeline – discuss your understanding of the timeline for this effort
 - (c) Approach- discuss your project plan for this effort, identify major steps, timeframes and products
 - (d) Exceptions- identify any exceptions or variations in your proposal from the work effort identified in this RFP
 - (e) Outline the product PERS will receive from you
 - 3. Dental Plan
 - (a) Generally discuss your understanding of the work requested.
 - (b) Timeline – discuss your understanding of the timeline for this effort
 - (c) Approach- discuss your project plan for this effort, identify major steps, timeframes and products
 - (d) Exceptions- identify any exceptions or variations in your proposal from the work effort identified in this RFP
 - (e) Outline the product PERS will receive from you

2) Experience.

- a) General firm experience - a brief description of the size, structure and services provided by your organization.
- b) Describe your organization's approach to actuarial/benefit consulting for life, vision and dental insurance programs.
- c) For the fixed efforts:
 - 1. Detail your experience preparing, issuing and analyzing RFPs for each of the efforts in the fixed fee area (dental, vision, life)
 - 2. Discuss what you find are the primary considerations for doing these efforts and special considerations of doing it in the public sector
 - 3. Based upon your experience, detail the expected level of analysis your firm will conduct for each of the fixed efforts, what distinguishes your firm's approach from others, and any special insights your experience will bring to the proposed efforts
 - 4. Provide a summary of public and private sector clients for whom your organization provides group vision, life and dental insurance program consulting and actuarial services. Provide 3-5 references identifying the appropriate contact person(s), addresses and telephone numbers.
 - 5. Discuss your firm's responsibilities in similar projects with other public or private clients. Discuss your understanding of the difference between a public bid process versus a private bid process

3) Staffing.

- a) This Section should include individual resumes for the personnel who are to be assigned to the project and should indicate the proposed project role or assignment of each individual. The project team should include staff with experience in developing RFPs of the type requested herein, evaluating responses, doing the required actuarial analysis and assisting with implementation.
- b) The offeror shall provide a schedule at the beginning of this Section that shows the number of hours that each person is assigned to each of the fixed fee projects.
- c) Resume information should identify not only educational and work history but also specific information on what clients the individual has worked for and in what role. Please note we may use this information to contact past clients to gather information on the individual.

Please note that it is critical that the information presented in this section is specific enough for us to understand who is being assigned to each major effort proposed in the RFP and that their role, responsibility and experience demonstrates their ability to successfully complete the required tasks.

4) Additional Information.

- a) This section is optional and can include any additional information the offeror deems relevant to this procurement and the satisfaction of the Board's objectives.

5) Conflicts of interest.

- a) In this Section the offeror shall identify and discuss any potential conflicts of interest. The contractor cannot receive any other compensation relating to this work effort except as provided in the cost proposal. Any other arrangements/relationships/contracts the offeror may have with vendors that could be a part of this solicitation must be identified herein and may serve as cause to disqualify the offeror.

6) Company Literature (if applicable).

- a) If company literature or other material is intended to respond to any RFP requirement, it must be included in this section. The offeror's responses in previous sections of the proposal must include reference to the document by name and page citation.

SECTION 5 – COST PROPOSAL - FEES/HOURS

THE COST PROPOSAL MUST BE UNDER SEPARATE COVER AND NOT PART OF THE RESPONSES TO THE OTHER INFORMATION REQUESTS.

Your proposal for fees for the consulting and actuarial services requested must be made as identified below. All services discussed in Section 3 are to be provided on a fixed fee.

Vision Plan

Fixed Fee \$ _____

Staff Assigned	Estimated Hours

Dental Plan

Fixed Fee \$ _____

Staff Assigned	Estimated Hours

Life Plan

Fixed Fee

\$ _____

Staff Assigned	Estimated Hours

Please identify hourly rates for services requested that are not part of the fixed fee (note all such services must have the prior approval of the NDPERS Executive Director):

Fees:

SECTION 6 - SUBMISSION OF PROPOSAL

1. Proposals should be prepared in a straightforward manner to satisfy the requirements of this RFP. Emphasis should be on completeness and clarity of content. Costs for developing proposals are entirely the responsibility of the proposer and shall not be chargeable to PERS.
2. Section 8 – Offer, should be signed by a partner or principal of the firm and included with your proposal. If changes are proposed they should be added and then a signed offer included. Each modification shall be identified along with the reason why.

Address or deliver the RFP to: Mr. Bryan Reinhardt

North Dakota Public Employees Retirement System
1600 E Century Ave, Suite 2
PO Box 1657
Bismarck, ND 58502

Questions concerning the RFP shall be directed, in writing, to the above individual or email to breinhar@nd.gov, by 5:00 p.m. CST on June 13, 2022. Responses will be posted on the PERS website (www.nd.gov/ndpers) by June 17, 2022 under “Request for Proposals”.

3. Seven (7) copies and one (1) electronic copy of the proposal must be received at the above listed location by **5:00 p.m. CST on June 24, 2022**. The package the proposal is delivered in must be plainly marked **“PROPOSAL TO PROVIDE CONSULTING SERVICES”**. Include an electronic version of your entire proposal.

A proposal shall be considered late and will be rejected if received at any time after the exact time specified for return of proposals.

- A. The policy of the PERS Board is to solicit proposals with a bona fide intent to award a contract. This policy will not affect the right of the PERS Board to reject any or all proposals.
- B. The PERS Board may request that representatives of your organization appear before them for interviewing purposes. Travel expenses and related costs will be the responsibility of the organization being interviewed.
- C. In evaluating the proposals, price will not be the sole factor.
- D. The failure to meet all procurement policy requirements shall not automatically invalidate a proposal or procurement. The final decision rests with the Board.

SECTION 7 – REVIEW PROCESS

Proposals will be evaluated in a three-step approach. The first step will be done by a review team composed of PERS staff and will be an initial screening of each proposal to determine if it is sufficiently responsive to the RFP to permit a valid comparison and meets the minimum qualifications of having completed past projects similar to the efforts requested herein. The qualifying factor will be on a Yes/No basis. The proposal will be dropped from consideration if a majority of reviewers respond “No”.

The proposals that pass the initial screening will then be reviewed by the same review team. Each individual will review the proposal for all areas but price. For the fixed fee efforts each proposal will be awarded points for specified areas by the reviewers. Points for price are awarded automatically. Following is the weighting factor for each area:

- | | |
|---------------------------------|-----------|
| • Project Summary (4.1.0) | 10 Points |
| • Technical Approach (4.3.1) | 30 Points |
| • Prior Experience (4.3.2) | 15 points |
| • Staffing/Organization (4.3.3) | 15 Points |
| • Pricing (5.0) | 30 points |

Please note the Board may award the entire bid to one bidder or may award the fee for service efforts separate from the fixed fee efforts. The Board may also consider awarding the fixed fee efforts separately if the responses warrant such consideration. Please note in the cost proposal any conditions that would limit such consideration by the PERS Board.

The final step will be a review by the PERS Board. The PERS Board will use any and all information in making its determination and will use the staff’s review as a guide but is not bound by that review. The NDPERS Board may also request an interview/presentation from the bidder to better understand the services they are offering.

SECTION 8 – OFFER

AGREEMENT FOR SERVICES BETWEEN (Name of Contractor) AND NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM

VENDOR (hereinafter CONTRACTOR) has offered to provide services to the State of North Dakota acting through its Public Employees Retirement System (hereinafter NDPERS). The terms of this Contract shall constitute the services agreement ("Agreement").

CONTRACTOR and NDPERS agree to the following:

- 1) **SCOPE OF SERVICES:** CONTRACTOR agrees to provide the service(s) as specified in the 2022 bid document and VENDOR proposal (attached hereto and incorporated by reference Exhibit A).
- 2) **TERM:** The term of this contract shall commence **July 1, 2022**.
- 3) **FEES:** NDPERS shall only pay pursuant to the terms in Exhibit A.
- 4) **BILLINGS:** NDPERS will pay for the services provided by CONTRACTOR under this contract pursuant to Exhibit A.
- 5) **TERMINATION:** Either party may terminate this agreement with thirty (30) days written notice mailed to the other party, or as mutually agreed to by the parties. Upon any termination the CONTRACTOR shall be compensated as described in Exhibit A for services performed up to the date of termination.

In addition, NDPERS by written notice to CONTRACTOR may terminate the whole or any part of this Agreement 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 Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.
- 3) If any license, permit, or certificate required by law or rule, or by the terms of this Agreement, is for any reason denied, revoked, suspended, or not renewed.

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

In addition, NDPERS may terminate this Agreement effective upon thirty (30) days prior written notice to CONTRACTOR, or any later date stated in the notice:

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

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

6) **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 without cause.

CONTRACTOR may enter into 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 NDPERS.

- 7) **ACCESS TO RECORDS AND CONFIDENTIALITY:** The parties agree that all participation by NDPERS members and their dependents in programs administered by NDPERS is confidential under North Dakota law. CONTRACTOR may request and NDPERS shall provide directly to CONTRACTOR upon such request, confidential information necessary for CONTRACTOR to provide the services described in Exhibit A. CONTRACTOR shall keep confidential all NDPERS information obtained in the course of delivering services. Failure of CONTRACTOR to maintain the confidentiality of such information may be considered a material breach of the contract and may constitute the basis for additional civil and criminal penalties under North Dakota law. CONTRACTOR has exclusive control over the direction and guidance of the persons rendering services under this Agreement. Upon termination of this Agreement, for any reason, CONTRACTOR shall return or destroy all confidential information received from NDPERS, or created or received by CONTRACTOR on behalf of NDPERS. This provision applies to confidential information that may be in the possession of subcontractors or agents of CONTRACTOR. CONTRACTOR shall retain no copies of the confidential information. In the event that CONTRACTOR asserts that returning or destroying the confidential information is not feasible, CONTRACTOR 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, CONTRACTOR 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 CONTRACTOR maintains the confidential information. CONTRACTOR shall not use or disclose any information it receives from NDPERS under this Agreement that NDPERS has previously identified as confidential or exempt

from mandatory public disclosure except as necessary to carry out the purposes of this Agreement or as authorized in advance by NDPERS. NDPERS shall not disclose any information it receives from CONTRACTOR that CONTRACTOR has previously identified as confidential and that NDPERS 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 NDPERS and CONTRACTOR to maintain confidentiality of information under this section continues beyond the term of this Agreement.

CONTRACTOR understands that, except for disclosures prohibited in this Agreement, NDPERS must disclose to the public upon request any records it receives from CONTRACTOR. CONTRACTOR further understands that any records that are obtained or generated by CONTRACTOR under this Agreement, except for records that are confidential under this Agreement, may, under certain circumstances, be open to the public upon request under the North Dakota public records law. CONTRACTOR agrees to contact NDPERS immediately upon receiving a request for information under the public records law and to comply with NDPERS's instructions on how to respond to the request.

- 8) **APPLICABLE LAW AND VENUE:** This Agreement 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*.
- 9) **MERGER AND MODIFICATION:** This Agreement, 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 Agreement. This Agreement 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 Agreement, the documents must control in this order of precedence: First – the terms of this Agreement, as may be amended and Second - the state's Request for Proposal (attached in Exhibit A) and Third – CONTRACTOR's Proposal (attached in Exhibit A). No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both parties. Such waiver, consent, modification or change, if made, shall be effective only in the specific instances and for the specific purpose given. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement.
- 10) **INDEMNITY:** 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 Agreement.

11) **INSURANCE**

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

- 1) Commercial general liability, including premises or operations, contractual, and products or completed operations coverages (if applicable), with minimum liability limits of \$1,000,000 per occurrence.
- 2) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of \$250,000 per person and \$1,000,000 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 \$1,000,000 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.

- 12) **SEVERABILITY:** If any term in this Agreement is declared by a court having jurisdiction to be illegal or unenforceable, the validity of the remaining terms must not be affected, and, if possible, the rights and obligations of the parties are to be construed and enforced as if the Agreement did not contain that term.
- 13) **INDEPENDENT ENTITY:** CONTRACTOR is an independent entity under this Agreement 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 Agreement, except to the extent specified in this Agreement.
- 14) **NDPERS RESPONSIBILITIES:** NDPERS shall cooperate with the CONTRACTOR hereunder, including, without limitation, providing the CONTRACTOR with reasonable and timely access to data, information and personnel of NDPERS. NDPERS shall be responsible for the performance of its personnel and agents and for the accuracy and completeness of data and information provided to the CONTRACTOR for purposes of the performance of the Services.
- 15) **FORCE MAJEURE:** Neither party shall be held responsible for delay or default caused by fire, riot, terrorism, acts of God or war if the event is beyond the party's reasonable control and the affected party gives notice to the other party immediately upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default.
- 16) **ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL:** By entering into this

Contract, NDPERS 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.

- 17) **NOTICE:** All notices or other communications required under this contract must be given by registered or certified mail and are complete on the date mailed when addressed to the parties at the following addresses:

NDPERS:

Scott Miller, Executive Director
ND Public Employees Retirement System
1600 East Century Ave, Suite 2
PO Box 1657
Bismarck, ND 58502-1657

CONTRACTOR:

VENDOR

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.

- 18) **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 at all times 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.

- 19) **STATE AUDIT:** 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 all of 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.

- 20) **TAXPAYER ID:** CONTRACTOR'S federal employer ID number is: _____.

21) **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, and certificates will be furnished upon request by the NDPERS.

22) **EFFECTIVENESS OF CONTRACT:** This Agreement is not effective until fully executed by both parties.

IN WITNESS WHEREOF, CONTRACTOR and NDPERS have executed this Agreement as of the date first written above.

**NORTH DAKOTA PUBLIC
EMPLOYEES RETIREMENT SYSTEM**

CONTRACTOR

Executive Director

Signature

ND Public Employees Retirement System

Printed Name

Title

Date

Date

SECTION 9 – BUSINESS ASSOCIATE AGREEMENT

Business Associate Agreement

This Business Associate Agreement, which is an addendum to the underlying contract, is entered into by and between, the North Dakota Public Employees Retirement System (“NDPERS”) and the **ENTER BUSINESS ASSOCIATE NAME, ADDRESS OF ASSOCIATE.**

1. Definitions

- a. Terms used, but not otherwise defined, in this Agreement have the same meaning as those terms in the HIPAA Privacy Rule, 45 C.F.R. Part 160 and Part 164, Subparts A and E, and the HIPAA Security rule, 45 C.F.R., pt. 164, subpart C.
- b. Business Associate. “Business Associate” means the **ENTER BUSINESS ASSOCIATE NAME.**
- c. Covered Entity. “Covered Entity” means the **North Dakota Public Employees Retirement System Health Plans.**
- d. PHI and ePHI. “PHI” means Protected Health Information; “ePHI” means Electronic Protected Health Information.

2. Obligations of Business Associate.

2.1. The Business Associate agrees:

- a. To use or disclose PHI and ePHI only as permitted or required by this Agreement or as Required by Law.
- b. To use appropriate safeguards and security measures to prevent use or disclosure of the PHI and ePHI other than as provided for by this Agreement, and to comply with all security requirements of the HIPAA Security rule.
- c. 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 Security rule.
- d. To mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI or ePHI by Business Associate in violation of the requirements of this Agreement.
- e. To report to Covered Entity (1) any use or disclosure of the PHI not provided for by this Agreement, and (2) any “security incident” as defined in 45 C.F.R. § 164.304 involving ePHI, of which it becomes aware without unreasonable delay and in any case within thirty (30) days from the date after discovery and provide the Covered Entity with a written notification that complies with 45 C.F.R. § 164.410 which shall include the following information:
 - i. to the extent possible, the identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by the

- Business Associate to have been, accessed, acquired or disclosed during the breach;
 - ii. a brief description of what happened;
 - iii. the date of discovery of the breach and date of the breach;
 - iv. the nature of the Protected Health Information that was involved;
 - v. identify of any person who received the non-permitted Protected Health Information;
 - vi. any steps individuals should take to protect themselves from potential harm resulting from the breach;
 - vii. a brief description of what the Business Associate is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and
 - viii. any other available information that the Covered Entity is required to include in notification to an individual under 45 C.F.R. § 164.404(c) at the time of the notification to the State required by this subsection or promptly thereafter as information becomes available.
- f. With respect to any use or disclosure of Unsecured Protected Health Information not permitted by the Privacy Rule that is caused by the Business Associate's failure to comply with one or more of its obligations under this Agreement, the Business Associate agrees to pay its reasonable share of cost-based fees associated with activities the Covered Entity must undertake to meet its notification obligations under the HIPAA Rules and any other security breach notification laws;
 - g. Ensure that any agent or subcontractor that creates, receives, maintains, or transmits electronic PHI on behalf of the Business Associate agree to comply with the same restrictions and conditions that apply through this Agreement to the Business Associate.
 - h. To make available to the Secretary of Health and Human Services 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 Privacy Rule, subject to any applicable legal privileges.
 - i. To document the disclosure of PHI related to any disclosure of PHI as would be required for 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.
 - j. To provide to Covered Entity within 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.
 - k. To provide, within 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, in the event that PHI in the Business Associate's possession constitutes a Designated Record Set.
 - l. Make amendments(s) to PHI in a designated record set as directed or agreed by the Covered Entity pursuant to 45 C.F.R. § 164.526 or take other measures as necessary to satisfy the covered entity's obligations under that section of law.

3. Permitted Uses and Disclosures by Business Associate

3.1. General Use and Disclosure Provisions

Except as otherwise limited in this Agreement, Business Associate may Use or Disclose PHI and ePHI to perform functions, activities, or services for, or on behalf of, Covered Entity, specifically, insurance membership data to conduct RFP vendor searches – provided that such use or disclosure would not violate the Privacy Rule or the Security Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

3.2. Specific Use and Disclosure Provisions

Except as otherwise limited in this Agreement, Business Associate may use PHI and ePHI:

- a. For the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- b. To provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B), but Business Associate may not disclose the PHI or ePHI of the Covered Entity to any other client of the Business Associate without the written authorization of the covered entity Covered Entity.
- c. To report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. §§ 164.304 and 164.502(j)(1).

4. Obligations of Covered Entity

4.1. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

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.
- c. 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.

4.2. Additional Obligations of Covered Entity. Covered Entity agrees that it:

- a. Has included, and will include, in the Covered Entity's Notice of Privacy Practices required by the Privacy Rule that the Covered Entity may disclose PHI for Health Care Operations purposes.
- b. Has obtained, and will obtain, from Individuals any consents, authorizations and other permissions necessary or required by laws applicable to the Covered Entity for Business Associate and the Covered Entity to fulfill their obligations under the Underlying Agreement and this Agreement.
- c. Will promptly notify Business Associate in writing of any restrictions on the Use and Disclosure of PHI about Individuals that the Covered Entity has agreed to that may affect Business Associate's ability to perform its obligations under the Underlying Agreement or this Agreement.
- d. 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.

4.2. Permissible Requests by Covered Entity

Covered Entity may not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule or the Security Rule if done by Covered Entity, except that the Business Associate may use or disclose PHI and ePHI for management and administrative activities of Business Associate.

5. Term and Termination

- a. Term. The Term of this Agreement shall be effective as of 08/01/2022, 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 Underlying Agreement.
- c. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 - 1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement and the Underlying Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
 - 2. Immediately terminate this Agreement and the Underlying Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 - 3. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

d. Effect of Termination.

1. Except as provided in paragraph (2) of this subsection, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI and ePHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI or ePHI.
2. In the event that Business Associate determines that returning or destroying the PHI or ePHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon explicit written agreement of Covered Entity that return or destruction of PHI or ePHI is not feasible, Business Associate shall extend the protections of this Agreement to that PHI and ePHI and limit further uses and disclosures of any such PHI and ePHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains that PHI or ePHI.

6. Miscellaneous

- a. Regulatory References. A reference in this Agreement to a section in the HIPAA Privacy or Security Rule 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 Privacy Rule, the Security Rule, and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- c. Survival. The respective rights and obligations of Business Associate under Section 5.c, 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 to comply with the Privacy and Security Rules.
- e. 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.
- f. 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 District Court of Burleigh County, North Dakota.
- g. 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.

7. Entire Agreement

This 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** [CE] and **ENTER BUSINESS ASSOCIATE NAME** [BA] 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:

Scott Miller, Executive Director
ND Public Employees Retirement System

Date

For Business Associate:

Signature

Printed Name

Title

Date

SECTION 10 – DATA AGREEMENT

MEMORANDUM OF UNDERSTANDING BETWEEN THE NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM AND **VENDOR RELATING TO MAINTAINING CONFIDENTIAL INFORMATION**

This Memorandum of Understanding is between the State of North Dakota acting through its North Dakota Public Employees Retirement System (NDPERS) and **VENDOR** relating to maintenance and destruction of NDPERS Confidential Information held by **VENDOR** and its subsidiaries.

WHEREAS, NDPERS has previously entered into contracts with **VENDOR** to provide services related to administration of the NDPERS **RFP** (Contracts).

WHEREAS, the services provided by **VENDOR** under these Contracts required the exchange of information between the parties that is confidential under North Dakota Century Code §§ **54-52-26 and 54-52.1-11, 54-52.1-12** (Confidential Information).

WHEREAS, the parties acknowledge that these Contracts, including the Business Associate Agreements between the parties, required **VENDOR** to return or destroy Confidential Information subsequent to the termination of the applicable Contract, or if return or destruction of this information was infeasible to maintain its confidentiality.

WHEREAS, these Contracts have terminated and **VENDOR** has asserted and NDPERS agrees that member service, applicable audit, record keeping, and other required functions make the return or destruction of all Confidential Information infeasible at this time.

WHEREAS, **VENDOR** has provided and NDPERS has reviewed the **VENDOR** records retention policy (Policy) applicable to the Confidential Information and **VENDOR** has affirmed that it will maintain the confidentiality of NDPERS information pursuant to this Policy until such time as the information is destroyed in a manner designated by this Policy.

NOW THEREFORE, in consideration of the foregoing premises and in furtherance of the aforementioned contractual obligations, the parties agree as follows:

1. **VENDOR** shall continue to maintain the confidentiality of Confidential Information which it still possesses, in accordance with its Policy in a manner that is at least as secure and diligent as was done during the term of the applicable Contract, until such time as the Confidential Information is destroyed or returned.
2. Upon the request of NDPERS, **VENDOR** shall confirm the destruction of Confidential Information under its Policy.
3. Upon the request of NDPERS, **VENDOR** shall provide NDPERS a copy of any change to the Policy provided NDPERS on **DATE**.
4. NDPERS agrees these actions are consistent with **VENDOR** obligations under these Contracts.

5. This Memorandum of Understanding will terminate upon notice to NDPERS by **VENDOR** that all Confidential Information has either been returned to NDPERS or destroyed, or earlier, upon thirty (30) days' notice by NDPERS to **VENDOR** if NDPERS determines that the Policy has been modified in a manner that is inconsistent with state or federal law.
6. This Memorandum of Understanding shall be governed by, and construed in accordance with, the laws of the State of North Dakota.

NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM

BY: _____

Executive Director

Date: _____

VENDOR

BY: _____

Its: _____

Date: _____

Attach Contractor Records Retention Policy