



North Dakota Public Employees Retirement System
Request for Proposal

Project Name:
Retirement Plan Services

RFP Issue Date: January 2, 2024

Proposal Due Date: February 14, 2024

Proposed Effective Date: July 1, 2024

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**Request for Proposal
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SECTION 1 - INTRODUCTION

This Request for Proposal (RFP) is issued for actuarial and consulting assistance for a twenty-four month period (July 1, 2024 through June 30, 2026). In addition, the Board intends that the successful bidder will have the opportunity to renew its contract for two subsequent two-year periods if an acceptable agreement can be reached between the contractor and the Board.

Date	Activity
January 2, 2024	RFP is issued.
January 12, 2024	Written questions regarding proposals must be received by NDPERS no later than 5:00 p.m. (CDT).
January 31, 2024	NDPERS posts responses to all questions received.
February 14, 2024	Proposals must be received by NDPERS no later than 5:00 p.m. (CDT).
Feb/March 2024	NDPERS review of proposals.
March 2024	Finalist interviews, if deemed necessary by the NDPERS Board
March/April 2024	Best and Final Offers due, if deemed necessary by the NDPERS Board
March/April 2024	Selection and award of contract by NDPERS.

SECTION 2 - BACKGROUND

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 retirement 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.

The following are the areas of work for which the Board is seeking assistance

A. Defined Benefit Retirement Plans:

The NDPERS system (includes the main system, judges, and public safety plans), the Job Service plan and the Highway Patrol plan are defined benefit plans and provide benefits under two separate chapters of the North Dakota Century Code (NDCC). NDCC Chapter 54-52 provides the benefits under the NDPERS Main, Judges, and Public Safety retirement plans. NDCC Chapter 39-03.1 provides the benefits under the Highway Patrol retirement plan. The Job Service retirement plan benefits are provided pursuant to that systems plan document. A summary of the plan provisions is found on the NDPERS website at: <https://ndpers.nd.gov/>

A copy of the 2023 valuations can be found at the same site under the Financial/Actuarial page: <https://www.ndpers.nd.gov/about/financial-actuarial-reports>

1. Public Employees Retirement System

a. Main System

The North Dakota Public Employees Retirement System (NDPERS) is the 3 tier retirement plan for all state employees (excluding those in the Board of Higher Education eligible for TIAA/CREF), and employees of counties, cities, and school districts (excluding teachers) which have elected to participate. The Main plan will be closed to new entrants on or before January 1, 2025; all new eligible employees will become members of the new Defined Contribution plan. The following is background information on the main system:

Tier 1 New Hires Prior to 1/1/16:

Public Employees Retirement Plan

Chapter 54-52, NDCC

Employer Contribution: 8.12%

Employee Contribution: 7.00%

Total Retirement Contributions: 15.12%

Vesting in Disability Benefit: 180 days

Vesting in Retirement Benefit: 36 months

Normal Retirement: Age 65 or Rule of 85

Retirement Formula: *Final Average Salary x 2% x Years of Credited Service*

Example: \$2000 x 2% x 20 = \$800

Tier 2 (New Hires 1/1/16-12/31/19)

Public Employees Retirement Plan

Chapter 54-52, NDCC

Employer Contribution: 8.12%

Employee Contribution: 7.00%

Total Retirement Contributions: 15.12%

Vesting in Disability Benefit: 180 days

Vesting in Retirement Benefit: 36 months

Normal Retirement: Age 65 or Rule of 90 with minimum age of 60

Retirement Formula: *Final Average Salary x 2% x Years of Credited Service*

Example: \$2000 x 2% x 20 = \$800

Tier 3 (New Hires 1/1/20 and after)

Public Employees Retirement System

Chapter 54-52, NDCC

Employer Contribution: 9.26%

Employee Contribution: 7.00%

Total Retirement Contributions: 16.26%

Vesting in Disability Benefit: 180 days

Vesting in Retirement Benefit: 36 months

Normal Retirement: Age 65 or Rule of 90 with minimum age of 60

Retirement Formula: *Final Average Salary x 1.75% x Years of Credited Service*

Example: \$2000 x 1.75% x 20 = \$700

b. Judges

The Supreme and District Court Judges in North Dakota, although a part of the NDPERS system, have a separate benefit program. The following is background information on the judges system:

Public Employees Retirement Plan – Judge’s

Chapter 54-52, NDCC

Employer Contribution: 17.52%

Employee Contribution: 8.00%

Total Retirement Contributions: 25.52%

Vesting in Disability Benefit: 180 days

Vesting in Retirement Benefit: 60 months

Normal Retirement: Age 65 or Rule of 85

Retirement Formula:

First Ten Years: Final Average Salary x 3.5% x First 10 Years of Credited Service

Second Ten Years: Final Average Salary x 2.8% x Second 10 Years of Credited Service

Remaining Years: Final Average Salary x 1.25% x Remaining Years of Credited Service

Example:

$\$6861 \times 3.5\% \times 10 = \2401.35

$\$6861 \times 2.8\% \times 10 = \1921.08

$\$6861 \times 1.25\% \times 5 = \428.81

\$4751.24

c. Public Safety - with Prior Service Credit & without Prior Service Credit

These are also a part of the NDPERS system but with a separate level of benefits. For actuarial purposes this group is divided into two groups, one with prior service and the other without prior service. As mentioned earlier the National Guard Plan has been combined with the Public Safety Plan with Prior Service starting in 2015. The following is background information on the Public Safety Plans:

Political Sub Public Safety With Prior Service (includes National Guard):

- Employee Contribution – 5.50%
- Current Employer Groups – 11.40%

(Contribution based on Normal Cost and past service credit liability)

Political Sub Public Safety Without Prior Service:

- Employee Contribution – 5.50%
- Current Employer Groups – 9.16%

(Contribution based on Normal Cost and no past service credit liability)

State Public Safety Plan:

- Employee Contribution – 6.00%
- Current Employer Groups – 14.34%

(Contribution based on Normal Cost and past service credit liability)

Only difference from benefit structure in the Main Retirement Plan is these plans provide for an earlier normal retirement date – age 55 or Rule of 85 for all employees. Similar to the Main Retirement Plan, members of this plan hired prior to January 1, 2020 have a 2% multiplier. New hires employed on or after January 1, 2020 have a 1.75% multiplier when calculating their retirement benefits.

d. Bureau of Criminal Investigation Plan

These are also a part of the NDPERS Public Safety Plan system but with a separate level of benefits. The following is background information on the BCI Plan:

Public Employees Retirement Plan – BCI

Chapter 54-52, NDCC

Employer Contribution: 22.26%

Employee Contribution: 7.00%

Total Retirement Contributions: 29.26%

Vesting in Disability Benefit: 180 days

Vesting (new hires before 8/1/2023): 60 months

Vesting (new hires after 8/1/2023): 120 months

Normal Retirement: Age 55 or Rule of 85

Retirement Formula:

First 20 Years: Final Average Salary x 3% x First 20 Years of Credited Service

Remaining Years: Final Average Salary x 1.75% x Remaining Years of Credited Service

Example:

$\$3000 \times 3\% \times 20 = \1800.00

$\$3000 \times 1.75\% \times 5 = \262.50

\$2062.50

2. Highway Patrol

The North Dakota Highway Patrol plan is administered by NDPERS as a separate plan of benefits. The following is background information on the Highway Patrol system:

Chapter 39-03.1, NDCC

Employer Contribution: 21.20% of covered payroll

Employee Contribution: 14.80% of salary

Total Retirement Contribution: 36.00%

Vesting in Disability Benefit: 180 days

Vesting in Retirement Benefit: 120 months

Normal Retirement: Age 55 or Rule of 80

Retirement Formula:

First 25 Years: Final Average Salary x 3.6% x First 25 Years of Credited Service

Remaining Years: Final Average Salary x 1.75% x Remaining Years of Credited Service

Example:

$\$3000 \times 3.6\% \times 25 = \2700.00

$\$3000 \times 1.75\% \times 5 = \$ \underline{262.50}$

$\$2962.50$

3. Job Service Retirement Plan

The Job Service Retirement Plan was transferred to the Public Employees Retirement System to administer on August 1, 2003 and is a closed retirement plan. The following information is from the systems last actuarial report performed by GRS Retirement Consulting:

Employer Contribution: 0% of covered payroll

Employee Contribution: 7% of salary

Total Retirement Contribution: 7%

Vesting in Disability Benefit: 5 years

Vesting in Retirement Benefit: 5 years

Normal Retirement: Age 65

Age 62 with 5 years

Age 60 with 20 years

Age 55 with 30 years

Retirement Formula:

First 5 Years: Final Average Salary x 1.5% x First 25 Years of Credited Service

Next Years: Final Average Salary x 1.75% x Next 5 Years of Credited Service

Remaining Years: Final Average Salary x 2% x Remaining Years of Credited Service

B. NDPERS Section 457 IRC Deferred Compensation Plan and Defined Contribution Plan:

1. Deferred Compensation Plan

The administration of the Deferred Compensation Plan for public employees was given to the Retirement Board on July 1, 1987. All state employees are eligible to participate, as well as political subdivision employees, if the governing authority of the political subdivision elects to have the state plan as their deferred compensation plan.

Presently 16,871 employees have accounts with fifteen investment providers. Assets are approximately \$375 million. The Retirement Board has developed a plan and contracts with investment providers (mainly insurance companies) to invest the contributions of employees.

The Deferred Compensation Plan is found in Chapter 54-52.2 of the NDCC.

2. Defined Contribution Plan

NDPERS 401(a) Defined Contribution Plan:

Current NDPERS Employees

The state approved the establishment of a defined contribution plan for certain state employees, effective January 1, 2000. This program is offered as an alternative to the State's defined benefit plan. Eligible employees are not classified by Human Resource Management Services; however, this does not include employees of the University System or the Supreme Court.

In 2013 the legislature changed the eligibility provision to allow all new state employees the option to elect out of the DB plan and join the DC plan within the first six months of employment. Eligibility has since reverted back to only non-classified employees on July 1, 2017.

As of the date of this RFP release, approximately 114 employees are enrolled in the 401(a) Defined Contribution plan. The estimated value of monthly contributions to this plan is approximately \$120,000. Total assets are approximately \$18.6 million. Monthly contributions in the amount of 15.12% of salary are added to the plan each month for each participant enrolled in the plan prior to 2020. For participants first enrolled after January 1, 2020 through December 31, 2024, the monthly contributions total 16.26% of salary. Similar to the Companion Plan the "Statement of Investment Policy" and "Quarterly Report" are available on the NDPERS website

under Defined Contribution Retirement Plan. TIAA is the present provider for these services.

Effective on or before January 1, 2025, a new Defined Contribution Retirement Plan will be the only plan available for newly eligible employees. The new plan has an option to elect a contribution rate, which will be made to either the 401(a) plan or the 457 plan, depending on when the election is made.

The defined contribution plan is found in Chapter 54-52.6 of the NDCC.

<https://www.ndpers.nd.gov/active-members/retirement-plans-active-members/defined-contribution-active-members>

C. NDPERS Retiree Health Insurance Credit Program:

The Retiree Health Insurance Credit program was implemented on July 1, 1989. This program provides for a partial payment of a retiree's medical insurance premium. Eligible members are the NDPERS, Judges (including judges who retired under 27-17 NDCC), Air Guard, and Highway Patrol retirees who are participating in the Uniform Group Health Insurance program. The plan is closed to new hires in the main and defined contribution plans after December 31, 2019. The Retiree Health Insurance Credit program is found in Chapter 54-52.1 of the NDCC. The following is background information on the retiree health program:

Benefit Formula:

\$5.00 for each year of Credited Service

Example: \$5.00 x 25 = \$125.00

Contribution:

1.14% of payroll

D. Flex Program – Section 125

The NDPERS administers the state's 125 flex comp program. This program offers employees the opportunity to pretax medical, dependent care, health savings account, and certain health care premiums. As part of the RFP, we are seeking technical consulting services relating to the administration of this program to respond to questions relating to program compliance and day-to-day administration. The requested services will be on an as-needed basis and reimbursed on an hourly basis.

SECTION 3 - SCOPE OF SERVICES

This Section outlines the scope of services to be provided to NDPERS.

A. Retirement Plans:

1. Actuarial Valuation

The consultant will be required to prepare a separate actuarial valuation for the various NDPERS systems (Main, Judges, and Public Safety plans), the Highway Patrol retirement program, and the Job Service Retirement Plan at the end of each fiscal year. The retirement plans operate on a July 1 to June 30 fiscal year basis. At a minimum, the actuarial valuation must include and be based on the following:

- a. The applicable provisions of NDCC.
- b. The characteristics of covered active members, inactive non-retired participants, pensioners, and beneficiaries.
- c. The assets of the respective system.
- d. Economic actuarial assumptions regarding future salary increases and investment earnings as established by the Board.
- e. Actuarial assumptions regarding employee termination, retirement, disability, death, etc., as established by the applicable Board.
- f. The actuarial cost methodology to be used.
- g. The effects of state legislation in effect since the last valuation.
- h. The actuarial value of the investment is the market value less deferred appreciation (depreciation). The methodology adopted by the Board shall be utilized.
- i. A summary of investment results, including the effect of unrealized gains and losses for the last ten years, of the Fund.
- j. The actuarially determined employer contribution rate for state employees, as required by NDCC section 54-52-06(1)(a) (effective January 1, 2025).
- k. The report must include all items required by the Government Finance Officers Association (GFOA) for inclusion in the actuarial section and select schedules for the statistical section of the pension

- plan's Annual Comprehensive Financial Report (ACFR).
- l. The report must include the following reporting information and related disclosures for GASB 67: Net Pension Liability, Target Asset Allocation, Sensitivity of the net pension liability to changes in the discount rate, Schedule of changes in net pension liability,
 - m. The report must include the following reporting information and related disclosures for GASB 74: Net OPEN Liability, Target Asset Allocation, Sensitivity of the net OPEB liability to changes in the discount rate, Schedule of changes in net OPEB liability

The actuarial valuations must be completed and submitted to NDPERS within thirty (30) days of receiving the census and financial data, but no later than October 10. As part of the valuation, data on the special prior service pensions for NDPERS is required. This shall include the number, type, and monthly amount for this group as well as demographic information. The consultant will present the report to the NDPERS Board. Therefore, the consultant should plan on attending one meeting each year for this presentation. The consultant will also present the report to the Legislative Employee Benefits Committee and, therefore, should plan on attending one additional meeting each year.

2. GASB 67-68 and 74-75 Calculations

The GASB 67 and 74 calculations and disclosures and GASB 68 and 75 calculations for employers will be in a separate report. In addition to the GASB 67 and 74 information mentioned in item 1(k) above, the report will include the following schedules and related disclosures for employers: Schedule of employer allocation percentage and Schedule of pension amounts by the employer.

3. Product Delivery

NDPERS will provide membership information to the selected firm for the retired and non-retired members. Files are scheduled to be available no later than August 15 following the fiscal year ending June 30. The firm must review the files within five working days of receipt and report in writing to NDPERS any discrepancies or errors discovered. The preliminary financial information consisting of the "Statement of Plan Net Position" and the "Statement of Changes in Plan Net Position" is scheduled to be mailed to the firm no later than September 10 following the fiscal year ending June 30.

All reports (annual valuations and legislative bill reports) are to be delivered to NDPERS no later than October 15. GASB valuations must be completed by December 20. Delivery after that date shall result in a **ten percent (10%) reduction** in the fixed fee. The 10% applies for each year to the total fee. Consequently, if the date was missed for two years the total reduction would be 20%. The Board retains the right to waive the penalty if warranted. In addition, if the time schedule is not met in the first two years of the contract the Board may consider not renewing for the additional two-year period.

The selected firm is required to present the annual actuarial report to the NDPERS Board at their October meeting.

4. Gain/Loss Experience Analysis

An actuarial gain/loss experience analysis shall be performed each year and included in the actuarial report for NDPERS main system. The analysis shall reconcile the difference in the employer contribution requirements from the previous year to the present year. Variables to be included are any plan design changes, assumption changes, contributions, investment return, salary assumption, retirement experience, withdrawal experience, disability experience, mortality experience, administrative expenses, and other factors as determined by NDPERS.

5. Consulting Services

The consultant will be expected to serve on an ongoing basis in an advisory and review capacity to the NDPERS Board, the Executive Director of NDPERS, and the NDPERS staff. In this capacity, the consultant will be expected to attend meetings and present findings and recommendations as required. The NDPERS Board meets on a monthly basis. NDPERS uses video or audio conferencing for these meetings if available to avoid the need for travel.

The consultant must provide the following:

- a. The actuarial and administrative implications of particular interpretations of the statutes and administrative rules governing NDPERS and its retirement plans.
- b. The effect of existing and proposed state and federal laws that affect, or may affect NDPERS.
- c. General assistance to NDPERS, as requested, regarding the

ongoing administration of NDPERS including the calculation of benefits, the development of procedures and forms, and computer systems.

- d. Technical advice on state and federal tax issues facing NDPERS and its members.
- e. Provide advice on service purchase provisions, methods, and tables as necessary.
- f. General assistance in developing rules and policies.
- g. General actuarial and administrative implications of a particular interpretation of retirement statutes or rules.
- h. The consultant shall be available for periodic educational discussions with the NDPERS Board and/or staff members.
- i. Give consultation and advisory services in the policy and administrative problems of implementing new legislation.

6. Federal Compliance

The consultant will be expected to serve, on an ongoing basis, in an advisory and review capacity to the NDPERS Board, the Executive Director, and NDPERS staff relating to major changes in the federal laws and regulations governing defined benefit plans that have occurred in recent years. Therefore, the consultant must be able to provide assistance in the following areas:

- a. Minimum participation rules.
- b. Participation of leased employees.
- c. Modified IRC Section 415 limits.
- d. Maximum compensation levels for benefit accruals.
- e. Minimum distribution requirements
- f. Additional income tax on early withdrawals.
- g. Other federal initiatives and potential initiatives.

Not included, in the above scope of work, are plan amendments, filings with the IRS, or performance testing.

7. Proposed Legislation

The consultant will be required to assist in the following areas relating to proposed legislation on a fee-for-service basis. Prior to initiating any efforts in this area, authorization must be given by the Executive Director of NDPERS. Any work efforts the consultant completes or initiates that are not authorized will not be reimbursed. The efforts under this task area include:

- a. Give consultation on, and perform certain work in, pricing proposed legislation.
- b. Assist in the preparation and review of proposed changes to the governing laws.
- c. Pricing or general review work on legislation shall specifically address each issue and give the basis for each finding. The consultant shall furnish its review in writing and, for pricing efforts, show the assumptions, pricing base, actuarial implications on the total program, cost, and alternatives, if appropriate.
- d. Generally the consultant will be given several weeks to do the necessary pricing, however, during the Legislative Session it may be necessary to complete certain tasks on an overnight basis. What is your ability to provide such services?
- e. Provide analysis of the applicability of IRS or other federal requirements, as well as, identifying any general retirement plan design issues.
- f. Expert testimony, when requested, to the North Dakota Legislative Assembly or any other body relative to NDPERS in general and, in particular, with regard to the retirement systems or benefit modifications.
- g. Appear at selected meetings and hearings for discussion of actuarial standards and/or the principles used in the determination of the funding requirement and in the pricing of legislation.

8. Experience Study

NDPERS will be doing an experience review of the NDPERS and Highway Patrol retirement plans in 2025. The first part is to conduct an experience study on the defined benefit plans administered by NDPERS and the Retiree Health Credit program. NDPERS administers two primary retirement trust funds. One is the North Dakota Public Employees

Retirement System (NDPERS) and the other is the Highway Patrol plan. The NDPERS plan has seven subdivisions/plans which are: Main, Judges, Public Safety with prior service, Public Safety without prior service, Bureau of Criminal Investigations, State Public Safety, and National Guard.

B. Deferred Compensation and Defined Contribution Plan:

1. Consulting Services

The consultant will be expected to serve, on an ongoing basis, in an advisory and review capacity to the NDPERS Board, Executive Director, and the NDPERS staff.

The consultant must provide the following:

- a. The effect of existing and proposed state and federal laws or regulations that affect, or may affect, the deferred compensation program or defined contribution plan.
- b. Advice on proposed program changes.
- c. Technical advice on state and federal tax issues facing the deferred compensation program or defined contribution plan.
- d. Technical advice concerning administrative issues (i.e., hardship applications, distributions, catch-up provision, etc.).
- e. Technical advice concerning day-to-day compliance issues.
- f. General assistance in developing rules, policies, and plan document changes.
- g. General technical advice concerning investments.

2. Fees

The above services will be on a fee-for-service basis (flat rate fee). The consultant shall identify the individual assigned to this effort and their experience.

C. Retiree Health Insurance Credit Program:

1. Actuarial Services

The consultant will be required to prepare an annual actuarial valuation of

the Retiree Health Insurance Credit program. The Retiree Health Insurance Credit program (effective July 1, 1989) currently operates on a fiscal year basis July 1 - June 30. At a minimum, the actuarial valuation must include and be based on the following:

- a. The applicable provisions of the NDCC.
- b. The characteristics of covered participants and eligible non-covered pensioners.
- c. The actuarial value of assets of the Retiree Health Insurance Credit program is the market value less deferred appreciation (depreciation). The methodologies adopted by the Board should be used.
- d. Economic actuarial assumption regarding future investment earnings and future salary increases as established by the Board.
- e. Actuarial assumptions regarding employee terminations, retirement, disability, death, etc., as established by the Board.
- f. A gain/loss experience analysis.
- g. Conclusions and recommendations.
- h. The report must include all items required by the Government Finance Officers Association (GFOA) for inclusion in the actuarial section and select schedules for the statistical section of the pension plan's Annual Comprehensive Financial Report (ACFR).

2. Consulting Services

The consultant will be expected to serve on an ongoing basis, in an advisory and review capacity, to the NDPERS Board, Executive Director, and the NDPERS staff relating to the Retiree Health Credit program. In this capacity, the consultant will be expected to attend meetings to present findings and recommendations as required. NDPERS Board meetings are generally held one time per month unless additional special meetings are needed.

The consultant must provide the following:

- a. The effect of existing and proposed state and federal laws that affect, or may affect, the Retiree Health Insurance Credit program.

- b. General assistance to NDPERS, as requested, regarding the ongoing administration of the Retiree Health Insurance Credit program.
- c. General actuarial and administrative implications of particular interpretations of the Retiree Health Insurance Credit program statutes and administrative rules.
- d. General assistance in developing rules and policies.

3. **Proposed Legislation**

The consultant will be required to assist in the following areas relating to proposed legislation on a fee-for-service basis concerning the Retiree Health Insurance Credit program. Prior to beginning any efforts under this area authorization must be given by the NDPERS Executive Director. Any work efforts the consultant completes or initiates that are not authorized will not be reimbursed. The consultant should anticipate that one of the two on-site meetings under the fixed-fee contract will concern proposed legislation and, therefore, not be eligible for billing under this section. The efforts under this task area include:

- a. Give consultation on, and perform certain work in, pricing proposed legislation.
- b. Assist in the preparation and review of proposed changes to the governing laws.
- c. Pricing or general review work on legislation shall specifically address each issue and give the basis for each finding. The consultant shall furnish its review in writing and, for pricing efforts, show the assumptions, pricing base, actuarial implications on total program, cost, and alternatives, if appropriate.
- d. Generally the consultant will be given several weeks to do the necessary pricing; however, during the Legislative Session, it may be necessary to complete certain tasks on an overnight basis. What is your ability to provide such services?
- e. Expert testimony, upon request, to the North Dakota Legislative Assembly, or any other body, concerning the Retiree Health Insurance Credit program in general and in particular, with regard to proposed modifications.

4. Experience Study

NDPERS will be doing an experience review of the NDPERS and Highway Patrol retirement plans in 2025. The first part is to conduct an experience study on the defined benefit plans administered by NDPERS and the Retiree Health Insurance Credit program. NDPERS administers two primary retirement trust funds. One is the North Dakota Public Employees Retirement System (NDPERS) and the other is the Highway Patrol plan. The NDPERS plan has seven subdivisions/plans which are: Main, Judges, Public Safety with prior service, Public Safety without prior service, State Public Safety, Bureau of Criminal Investigations, and National Guard.

D. Update of Actuarial Tables

After completion of the experience study NDPERS is requesting an update to its actuarial tables. Specifically, the tables to be updated would be for the NDPERS retirement plan and the Highway Patrol retirement plan in the NDPERS business system format (included in the link to [Attachment A - Template](#) and [Attachment B - Example of Existing Factors](#)). These tables include:

1. Main & Public Safety –Normal Form
 - a. Converting Life Annuity to 50% Joint & Survivor
 - b. Converting Life Annuity to 100% Joint & Survivor
 - c. Converting Life Annuity to 10-Year Term Certain
 - d. Converting Life Annuity of 20-Year Term Certain
2. Main & Public Safety – Disability
 - a. Converting Life Annuity to 50% Joint & Survivor
 - b. Converting Life Annuity to 100% Joint & Survivor
 - c. Converting Life Annuity to 10-Year Term Certain
 - d. Converting Life Annuity of 20-Year Term Certain
3. Judges & Highway Patrol
 - a. Converting 50% Joint & Survivor to 100% Joint & Survivor
 - b. Converting Life Annuity to 10-Year Term Certain (same table as Main)
 - c. Converting Life Annuity of 20-Year Term Certain (same table as Main)
4. Judges & Highway Patrol – Disability
 - a. Converting 50% Joint & Survivor to 100% Joint & Survivor
 - b. Converting Life Annuity to 10-Year Term Certain (same table as Main)
 - c. Converting Life Annuity of 20-Year Term Certain (same table as Main)
5. Service Purchase
 - a. Main System – State Employees

- b. Main System – Non-state Employees
 - c. Public Safety Systems
 - d. Judges
 - e. Highway Patrol
 - f. Main & Public Safety RHIC
 - g. Judges & Highway Patrol RHIC
- 6. Present Value of Employee Contribution Tables
 - a. Main System – State Employees
 - b. Main System – Non-state Employees
 - c. Public Safety Systems
 - d. Judges
 - e. Highway Patrol
- 7. Partial Lump Sum Option Factors for Main & Public Safety
- 8. Partial Lump Sum Option Factors for Judges & Highway Patrol
- 9. Deferred Normal Retirement Option for Main & Public Safety
- 10. Deferred Normal Retirement Option for Judges & Highway Patrol
- 11. Graduated Benefit Single Life 1% & 2%
- 12. Graduated Benefit 50% Joint & Survivor 1% & 2% – Main & Law Enforcement
- 13. Graduated Benefit 100% Joint & Survivor 1% & 2% – Main & Law Enforcement
- 14. Graduated Benefit 50% (Normal) Joint & Survivor 1% & 2% – Judges & Highway Patrol
- 15. Graduated Benefit 100% Joint & Survivor 1% & 2% – Judges & Highway Patrol
- 16. Graduated Benefit 20-Year Term Certain 1% & 2%
- 17. Graduated Benefit 10-Year Term Certain 1% & 2%
- 18. Retirement Benefit Repayment – All Plans
 - a. Male Member with Life Annuity
 - b. Female Member with Life Annuity
 - c. Male Member with 100% Joint & Survivor
 - d. Female Member with 100% Joint & Survivor
 - e. Male Member with 50% Joint & Survivor
 - f. Female Member with 50% Joint & Survivor

SECTION 4 - INFORMATION REQUESTS

The proposal must contain in a separate section your organization's response to the following requested information. Respond by restating the request with the response following. This format shall be used in the proposal.

A. General Background:

1. The firm's name, home office address, address of the office providing the services under the contract, and telephone number.
2. General description of the firm, including the size, number of employees, primary business (consulting, pension planning, insurance, etc.), other business or services, type of organization (franchise, corporation, partnership, etc.), and other descriptive material.
3. Provide summary information regarding the professional and experience qualifications of actuaries and other consultants who shall perform work under the contract.
4. Description of the IT equipment and a statement as to the ownership and location of this equipment to be utilized in the performance of the contract. Describe your data security policies and procedures.
5. Statement of the availability and location of staff (including actuaries) and other required resources for performing all services and providing deliverables within indicated time frames. Statement as to whether or not the services outlined in these specifications can be performed using only your present staff.
6. Provide a timeline sequence of activities indicating your understanding of the RFP and what resources will be applied at given sequences.
7. Provide your understanding of the services requested.
8. Identify the specific and unique qualifications of your firm with regard to providing the requested work.
9. Identify the offices from which services to the Fund will be provided.
10. Describe your organization's approach to actuarial consulting.
11. Discuss how your firm will assure that all information provided to you will be confidential and how you secure our information within the organization and from access from outside your organization.

B. General Services:

1. Retirement

- a. Discuss your understanding of the work effort requested in 3, A, 1 and how you would meet the requested work effort.
- b. Discuss your understanding of the work effort requested in 3, A, 2 and how you would meet the requested work effort.
- c. Indicate your ability to meet the requirements of 3, A, 3 and how you would meet the requested work effort. Discuss your understanding of the penalty provision for late delivery of products and whether you agree to abide by this provision.
- d. Discuss your understanding of the 3, A, 4.
- e. Discuss your understanding of 3, A, 5 and the types of general consulting you could provide.
- f. Discuss your expertise and resources for providing the services requested in 3, A, 6.
- g. Discuss your understanding of the work requested in 3, A, 7 and your experience working with legislative committees. Describe your organization's experience and availability regarding legislative hearings and testimony. Also, specifically discuss the experience of the staff assigned. In addition, highlight your firm's ability to perform pricing analysis of proposed legislation.
- h. Describe your organization's approach to actuarial consulting for retirement plans.
- i. Include a copy of an actuarial report. Discuss your ability to alter your format and data displays to respond to NDPERS requests.
- j. Discuss your work experience with public sector retirement boards.
- k. Provide a listing of state public sector clients of similar nature and size for whom your organization provides defined benefit retirement plan consulting and actuarial services. References should identify the appropriate contact person(s), addresses, and telephone numbers.
- l. Does your firm publish a periodic newsletter? If yes, how often?

- m. To what extent does your organization provide timely information and insight into current/pending federal legislation?
- n. Discuss your experience with DB/DC plan discussion and studies.
- o. Identify and provide a resume for each actuary that will be assigned to the project and the estimated number of hours they will work on the project.
- p. Provide a resume for each non-actuary professional assigned to this work effort and the number of hours they are assigned.
- q. Identify any subcontractors to be used.

2. Deferred Compensation and Defined Contribution

- a. Discuss your understanding of the work effort in 3, B, 1 and how you would meet the requested effort. Describe your organization's approach to consulting for public employee deferred compensation programs.
- b. Provide a listing of public sector clients of similar size for whom your firm provided deferred compensation consulting services. References should identify the appropriate contact person(s), addresses, and telephone numbers.
- c. Indicate your organization's depth of experience in each of the following areas:
 - 1) Preparation of plan document.
 - 2) Preparation of member booklets.
 - 3) Investment provider contract negotiation.
 - 4) Financial analysis and reporting.
 - 5) Preparation of contracts, bid specifications, and RFPs for deferred compensation programs that require providers to bid for the opportunity to provide services to employees.
 - 6) Plan qualification.
 - 7) 457 compliance issues.
- d. Provide a list of and resume for each individual assigned to this work effort.

3. Retiree Health Insurance Credit Program:

- a. Describe your organization's understanding and approach to the work effort requested in 3, C, 1.
- b. Describe your organizations understanding and approach to the work effort requested in 3, C, 2.
- c. Describe your organizations understanding and approach to the work effort requested in 3, C, 3.
- d. Provide a listing of public sector clients for whom your organization provides, or has provided, Retiree Health Insurance Credit program consulting and actuarial services. (Indicate the date of the study and the date of implementation). References should identify the appropriate contact person(s), addresses, and telephone numbers.
- e. Provide the curriculum vitae of key personnel in your firm who will be providing the service and the estimated hours each is proposed to be utilizing in this project.
- f. Provide a statement of the firm's ability to perform pricing analysis of proposed legislation complete with an actuarial certificate showing assumptions, pricing base, and actuarial implications on the total program.

4. Update of Actuarial Tables

Discuss your understanding of the work effort requested in 3, D. In addition discuss:

- A. Your experience in preparing the table requested.
- B. Your suggestions on integrating these into the system.
- C. How you verify for accuracy the numbers supplied to ensure their integrity and consistency.

C. Signed Offer (Agreements) from Section 10.

D. Other Information:

In this section you may supply any other information about your firm, approach to the work effort, staff, etc., that you feel appropriate.

SECTION 5 – COST PROPOSAL (FEES/HOURS)

We are requesting that you price this project on a fixed-fee basis for certain efforts and on a fee-for-service basis for other efforts as identified below.

THE COST PROPOSAL SHALL BE UNDER SEPARATE COVER AND NOT PART OF THE RESPONSES TO THE OTHER INFORMATION REQUESTS. PLEASE PROVIDE AN ELECTRONIC COPY OF THE COST PROPOSAL.

Expenses for travel, lodging, meals, and other travel related out-of-pocket will be reimbursed on an incurred basis if the Executive Director of NDPERS has given prior approval for NDPERS-related efforts. NDPERS is under no obligation to reimburse the consultant if no approval was given.

FIXED FEE:

Retirement:

Fixed Fee 2024: \$ _____

(This fixed fee is subject to the 10% reduction) 2025: \$ _____

Retiree Health Insurance Credit:

Fixed Fee 2024: \$ _____

2025: \$ _____

Experience Study

2024: \$ _____

2025: \$ _____

Update of Actuarial Factors with Heat Map:

Fixed Fee 2024: \$ _____

2025: \$ _____

GASB 67-68 and 74-75 Work:

Fixed Fee 2024: \$ _____

2025: \$ _____

FEE FOR SERVICE:

NDPERS is requesting a flat rate fee per hour for work efforts relating to general consulting, Legislative Work, and Defined Contribution/Deferred Comp consulting.

Retirement and Retiree Health General Consulting:

2024: \$ _____

2025: \$ _____

Legislative Work:

2024: \$ _____

2025: \$ _____

Defined Contribution/Deferred Compensation Consulting:

2024: \$ _____

2025: \$ _____

SECTION 6 - SUBMISSION OF PROPOSAL

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 NDPERS.

1. Inquiries Regarding Specifications

Offeror will have until 5:00 p.m. (CDT) on January 12, 2024, to submit questions in writing regarding this RFP. All questions shall cite the specific RFP section and paragraph number(s) to which the question refers. Any questions received by NDPERS prior to the date and time above will be answered in a question-and-answer document issued by NDPERS. Only answers provided in writing by NDPERS will be considered official.

All query submissions must include the identity of the sender, the sender's title, firm name, mailing address, telephone number, and e-mail address.

Questions must be submitted by email to ndpersbids@nd.gov. NDPERS is not responsible for questions received after the submittal deadline.

Answers to questions will be made available on the NDPERS website at <https://www.ndpers.nd.gov/about/bid-opportunities> by January 31, 2024, at 5:00 p.m. C.D.T.

Only information in the materials constituting this RFP, including its attachments, exhibits, and forms, the question and answer document, and any RFP addendum shall be binding on NDPERS.

All inquiries regarding these specifications must be in writing and submitted by email to ndpersbids@nd.gov.

2. Rules and Regulations

Any Offeror submitting a proposal must be able to meet and comply with all applicable state and federal statutes and regulations.

3. Confidentiality of Trade Secret, Proprietary, Commercial, and Financial Information (NDCC Section 44-04-18.4(6))

All materials submitted in response to this RFP will become the property of NDPERS and upon receipt by NDPERS are subject to the North Dakota public records law.

PLEASE NOTE that proposals should follow the Confidential/Proprietary Information instructions in Section 8. Any provisions of the Responder'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 Section 8.

4. Addenda, Amendments, and Clarifications to the RFP

NDPERS may issue any addenda, amendments, and clarifications regarding this RFP that NDPERS determines are necessary. All such addenda, amendments, and clarifications issued by NDPERS become part of the RFP. All addenda, amendments, and clarifications to the RFP will be issued in writing and added to the posting at: <https://www.ndpers.nd.gov/about/bid-opportunities>. It shall be **the responsibility of the Offeror** to recheck the RFP posting at: <https://www.ndpers.nd.gov/about/bid-opportunities> for any possible addenda prior to submitting a proposal. The Offeror must acknowledge all addenda, amendments, or clarifications by either signing and returning such document(s) or indicating receipt on the Signature Page of the proposal. Only written addenda, amendments, and clarifications signed or sent by authorized NDPERS personnel shall be binding. All oral and other interpretations or clarifications have no legal effect.

5. Order of Responses

Responses must be made in the same order as provided in the specifications. Unless a variation from the specifications of the RFP is specifically noted in a response, the Offeror is agreeing to meet all requirements, including the required contract provisions, stated in this RFP (See Section 10). No proposed variation is binding on NDPERS unless and until accepted by NDPERS.

6. Submission of Proposals

To be considered for award, six (6) printed and bound copies, one (1) unbound copy of the Offeror's technical and price proposal, one (1) electronic, PDF redacted copy of the proposal on a separate USB flash drive labeled "REDACTED", and one (1) electronic, editable, PDF original copy of the proposal on a separate USB flash drive labeled "ORIGINAL" (note that the electronic redacted and original copies may not be a picture) must be received by NDPERS on or before 5:00 P.M. (CDT), February 14, 2024. The Request for Redaction chart in Section 8 MUST be completed and submitted with the proposal. The unbound copy shall bear original signatures and shall be marked as the "Master Copy". The unbound Master Copy shall contain no divider sheets or tabs, and shall be printed on one side only of 8-1/2 in. x 11 in. white paper to enable copying if needed. Colors must reproduce in a legible manner on a black-and-white copier. The unbound original, one (1) copy of the "REDACTED" proposal

on a USB flash drive, and one (1) copy of the “ORIGINAL” proposal on a USB flash drive shall be provided in separate sealed envelopes.

Responder acknowledges that NDPERS is subject to the North Dakota Open Records Laws, and the documents submitted pursuant to this RFP may be subject to an open records request. Responder is also 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, but 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 and which NDPERS has determined constitutes confidential or exempt information under the North Dakota open records law will be disclosed as an open record. If, as a result of the position taken by Respondent regarding the confidentiality of the information, NDPERS is assessed any damages or fees, Respondent shall indemnify NDPERS for such damages or fees. If no documents or materials are identified and marked by Respondent as confidential, Respondent will be deemed to have consented to the release of the document or material and to have waived any cause of action against NDPERS resulting from the release of the documents or materials. NDPERS will not consider the prices submitted by the Responder to be confidential.

Copies of the proposal shall be delivered to:

**Katheryne Korom, Research & Project Manager
NDPERS
1600 East Century Avenue, Suite 2
PO Box 1657
Bismarck, ND 58502-1657**

- The base contract will be for a two-year period of July 1, 2024, through June 30, 2026. All rates and fees must be firm, fixed and valid for the duration of the base period. Additionally, NDPERS is seeking two, two-year option periods for a potential total contract period of six years.
- Proposals and any other information submitted by organizations in response to this RFP shall become the property of NDPERS and will not be returned.
- NDPERS will not provide compensation to Offerors for any expenses that they incur as part of the proposal process, including but not limited to expenses incurred for preparing proposals, making demonstrations, responding to

inquiries, and attending meetings and negotiations. Offerors submit proposals at their own risk and expense.

- The materials submitted must be enclosed in a sealed envelope, box, or container; the outside of the package must show clearly the submittal deadline, the organization name, and the return address of the organization. The package the proposal is delivered in must also be plainly marked “PROPOSAL TO PROVIDE RETIREMENT PLAN SERVICES”.
- A proposal shall be considered late if received at any time after the exact time specified for the return of proposals. Late proposals may be returned to the organization unopened at the organization’s expense. Late proposals will not be considered unless the NDPERS Board determines otherwise.
- Proposals submitted via email or fax will not be accepted.
- Any award is contingent upon a contract acceptable to NDPERS being executed.

7. 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 Conflicts of Interest List in Section 9 MUST be completed and submitted with the proposal. This list should indicate the name of the entity, the relationship, and a discussion on the conflict.

8. Acceptance of Proposals

NDPERS retains the right to reject all proposals submitted. NDPERS is not required to select the proposal with the lowest fees but will take into consideration statutory guidelines and any factors it considers relevant. It is the intent of NDPERS at this time to enter into a contract effective upon execution with services beginning July 1, 2024, through June 30, 2026. The Board at its discretion may extend the contract for up to two additional two-year periods. The premium and benefits structure of these extensions will be subject to negotiations prior to renewal. NDPERS has the right to discontinue the program if the legislature discontinues the program or for any other reason. The Offeror whose proposal is selected will be chosen with the goal of developing a long-term relationship.

9. Non-Responsive Proposals

NDPERS is not required to accept for consideration any proposal that does not comply with the criteria set forth herein.

10. References

Each Offeror must provide at least 3 references from other public fund clients of similar size or larger. NDPERS or its designated representative may ask these clients to provide information regarding the Offeror's overall record of service in providing services for their participants. Providing references in its proposal constitutes the Offeror's permission for NDPERS to contact these clients.

11. Waiver

By submitting a proposal, the Offeror submitting the proposal agrees to waive any claim it has or may have against NDPERS, NDPERS employees, NDPERS agents, and NDPERS attorneys, arising out of or in connection with (1) the administration, evaluation, or recommendation of any proposal; (2) waiver of any requirement under this RFP; (3) acceptance or rejection of any proposal; and (4) award of the contract.

12. Additional Information from Responding Organizations

NDPERS reserves the right to request additional documentation from responding organizations, and such information may vary by Offeror.

13. Interview with Responding Organizations

The NDPERS Board may request representatives of your organization to appear for interviewing purposes. Travel expenses and costs related to the interview will be the responsibility of the bidder.

14. Modification

No proposal may be changed after the deadline for submissions of proposals unless language within the proposal is needing clarification at NDPERS's request.

15. Solicitation

The selected Offeror shall not use lists of covered employees and other data for any purpose except to provide services to participants. Neither the selected Offeror nor its employees may disclose such information to any other party unless specifically authorized in writing in advance by NDPERS.

16. News Release

Written approval by NDPERS will be required for any news releases or other communications regarding a contract awarded to an Offeror.

17. Change Required by Statute, Regulations, Court Orders, or Program Appropriations

NDPERS recognizes that there are factors that could cause a change of condition with regard to NDPERS benefits and administration that are beyond the control of NDPERS or the Offeror submitting a proposal. Those factors that may affect the program include, but are not limited to:

- Federal and state statutes, regulations, court decisions, and administrative rulings.
- Funding appropriated by the North Dakota Legislature
- Opinions of the Attorney General of the State of North Dakota

NDPERS expects a good faith effort on the part of the Offeror that is selected to comply with additional responsibilities imposed by federal or state law without requiring mid-year fee increases. NDPERS reserves the right to negotiate with the Offeror as needed to comply with any changes required by statute, regulation, court order, administrative order, or official interpretation.

18. Contract Award

The policy of the NDPERS Board is to solicit proposals with a bona fide intention to award a contract. This policy will not affect the right of the NDPERS Board to reject any, or all, proposals.

In evaluating the proposals, price will not be the sole factor. The Board may consider any factors it deems necessary and proper, including but not limited to: price; quality of service; response to this request; experience; staffing; and, general reputation.

The failure to meet all procurement policy requirements shall not automatically invalidate a proposal or procurement. The final decision rests with the Board.

19. Agreements

Section 10 – Offer (Agreements), must be signed by a partner or principal of the firm and included with your proposal.

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 NDPERS staff. The first step will be an initial screening of each proposal to determine if it is sufficiently responsive to the RFP to permit a valid comparison. The qualifying factor will be on a Yes/No basis. The proposal will be dropped from consideration if a majority of viewers 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. Every 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:

<u>GENERAL</u>	<u>POINTS</u>
Did Consultant follow required format in Section 4?	6 points
<u>RETIREMENT</u>	
Technical Understanding	44 points
Product Delivery	10 points
Qualifications and Staffing	10 points
Price	30 points

The purpose of this review is to assess the consultant's understanding of the work requirements, capabilities, and resources. It is important that your proposals relate to your understanding in order to be rated. A statement that you will comply with the RFP is not sufficient, nor is repeating the RFP requirements. The findings will be reported to the NDPERS Board. This will be the third step of the review. The Board at its discretion may require vendor interviews. The Board retains the option to make the final selection based upon not only the above review but all other factors it deems applicable to deciding what firm should be awarded the contract.

SECTION 8 - 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 Retirement Plan Services (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 _____, 2024.

_____ (Signature) _____ (Vendor)

SECTION 9 - CONFLICTS of INTEREST LIST

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. This list should indicate the name of the entity, the relationship, and a discussion of the conflict.

SECTION 10- OFFER (Agreements)

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 2024 bid document and VENDOR proposal (attached hereto and incorporated by reference Exhibit A).
- 2) **TERM:** The term of this contract shall be for the period of July 1, 2024 – June 30, 2026.
- 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:

- i. 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.
- ii. 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.
- iii. 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 \$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.
- 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:

Rebecca Fricke, Interim Executive Director
ND Public Employees Retirement System
1600 East Century Avenue, Suite 2
PO Box 1657
Bismarck, ND 58502-1657

CONTRACTOR:

VENDOR (Name of Contractor & Address)

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 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.

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**

Interim Executive Director
ND Public Employees Retirement System

Date

CONTRACTOR

Signature

Printed Name

Title

Date