

REQUEST FOR PROPOSAL

FOR

**North Dakota
Public Employees Retirement System**

Uniform Group Insurance Consultant

May 2023

**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 (January 1, 2024, through December 31, 2025). 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.

RFP Proposed Timetable

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

Date	Activity
July 3, 2023	RFP is issued.
July 21, 2023	Written questions regarding proposals must be received by NDPERS no later than 5:00 p.m. (CDT).
August 11, 2023	NDPERS posts responses to all questions received.
August 29, 2023	Proposals must be received by NDPERS no later than 5:00 p.m. (CDT).
October 2023	NDPERS Board review of proposals.
October/November 2023	Finalist interview, if deemed necessary by the NDPERS Board
November 2023	Best and Final Offers due, if deemed necessary by the NDPERS Board
December 2023	Selection and award of contract by NDPERS.

The Board is seeking three areas of fixed fee bids from each firm responding to this RFP. The first area of the fixed fee bid relates to the health insurance plan. At least every six years, NDPERS issues a Request for Proposal soliciting responses to provide services on a fully-insured basis and self-insured basis from interested vendors, including bundled with pharmacy benefits and unbundled with pharmacy benefits (separate carve-out PBM RFP). The next NDPERS Health Plan RFP is scheduled to be issued summer of 2026; however, the Health Plan RFP process may be initiated at any point during a contract period. The Board is seeking a fixed fee bid to conduct a bid process and is asking for the fixed fee for this area to be divided into three tasks. The first is to prepare an RFP for the required services for the Board's consideration. The second is to conduct the bid process if so directed by the Board. The third is to review the Health RFP every two years in the event the Board elects to go out to bid on this plan.

The second fixed fee bid relates to the Medicare Part D plan which is also bid every six years subject to one-year renewals. Similar to the above, the current vendor will have an opportunity to renew. However, if the Board decides to go out to bid on this plan, this task would most likely start in July with completion by September of 2024. We ask that this area's fixed fee be divided into three tasks. The first is to prepare an RFP and develop a list of potential firms to solicit by the end of June 2024. The second is to conduct the RFP process and analyze the responses in August/September of 2024 if necessary. The third fixed fee is to review the Medicare Part D plan RFP on an annual basis.

The third fixed fee area is for the Consultant to prepare an actuarial estimate of the needed health insurance premiums for any additional renewals of the NDPERS Health Plan. Section 54-52.1-05(2) NDCC outlines this effort:

The initial term or the renewal term of a uniform group insurance contract through a contract for insurance, health maintenance organization, or self-insurance health plan for hospital benefits coverage, medical benefits coverage, or prescription drug benefits coverage may not exceed two years.

a. The board may renew a contract subject to this subsection without soliciting a bid under section 54-52.1-04 if the board determines the carrier's performance under the existing contract meets the board's expectations, the proposed premium renewal amount does not exceed the board's expectations, and renewal best serves the interests of the state and the state's eligible employees.

b. In making a determination under this subsection, the board shall: (1) Use the services of a consultant to concurrently and independently prepare a renewal estimate the board shall consider in determining the reasonableness of the proposed premium renewal amount. (2) Review the carrier's performance measures, including payment accuracy, claim processing time, member service center metrics, wellness or other special program participation levels, and any other measures the board determines relevant to making the determination and shall consider these measures in determining the board's satisfaction with the carrier's performance. (3) Consider any additional information the board determines relevant to making the determination.

c. The board may determine the carrier's performance under the existing contract does not meet the board's expectations, the proposed premium renewal amount exceeds the board's expectations, or renewal does not best serve the interests of the state or the state's eligible employees and the board therefore may decide to solicit a bid under section 54-52.1-04.

The Board is also seeking assistance for the following services on a fee-for-service basis: 1) general technical and consulting services relating to operations of the uniform group insurance program (health, Medicare Part D, dental, vision, life, and Employee Assistance Program (EAP)); 2) technical and actuarial evaluations of proposed legislation and benefit changes; 3) assist with special legislative studies; and 4) review of the proposed premium renewals, with the exception of the fee-for-service efforts identified above, for each program when conducted.

Following is a sequence of major activities for the Medicare Part D Plan RFP:

Date	Activity
January 1, 2024	Consultant is available for general program consulting.
January-May 2024	Review Part D draft request for proposals, suggest modifications for NDPERS staff consideration.
June 2024	Submit Medicare Part D RFP to NDPERS Board for approval if Board opts to not renew.
June/July 2024	Issue Medicare Part D RFP if so determined by the NDPERS Board.
August/September 2024	Review analysis of Part D bids if necessary and provide recommendations to the NDPERS Board.
September/October 2024	Assist in contracting with vendor as needed.

Following is a sequence of major activities for the Health Plan RFP:

Date	Activity
January 1, 2024	Consultant is available for general program consulting.
January-May 2024	Submit recommended changes to draft Health RFP to NDPERS staff for consideration. Work with staff to develop a final version.
June 2024	Health RFP reviewed and approved by NDPERS Board.
June/July 2024	Issue Health RFP if so determined by the NDPERS Board.
August 2024	Review analysis of health bids if necessary and provide recommendations to the NDPERS Board.
August/September 2024	NDPERS Board selects health carrier if necessary.
2024 - 2025	Assist with contracting as requested.

Following is a sequence of major activities for the 2025 North Dakota Legislative Session:

Date	Activity
April 2024	Proposed legislation relating to the insurance plan(s) is referred to Consultant to do a technical and actuarial review with a report prepared for the Legislative Employee Benefits Committee by July 2024.
June/July 2024	Submit technical and actuarial analysis for consideration for bills impacting insurance plans(s) to the Legislative Employee Benefits Programs Committee.

July-December 2024	Review any additional bills related to insurance plan(s) that Legislative Employee Benefits Programs Committee takes jurisdiction over.
January-May 2025	North Dakota Legislative session begins. Additional bills submitted during Session will be sent to Consultant for technical and actuarial analysis.

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, deferred compensation, flex comp, retiree health insurance credit, and EAP programs. This RFP is for general consulting assistance in the health, Medicare Part D, life, dental, vision, and EAP program areas.

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.

Group Health, Life, Dental, and Vision Insurance:

1. Health:

The Uniform Group Health Insurance Plan is currently a fully insured plan with Sanford Health Plan. The existing plan offered by NDPERS for active members is a PPO Grandfathered Plan and a non-grandfathered HDHP/HSA. A PPO Non-grandfathered plan and an HDHP (without HSA) is available for political subdivisions of the state. The successful vendor will also need to provide an HSA vendor. The retiree plan is the equivalent of a Medicare Supplement Plan F. Pharmacy benefits are bundled with the medical plan. All state employees are eligible to be covered under the plan, including the professional staff at colleges and universities. Political subdivisions may participate in the health plan at their option. Estimated premiums for this biennium (2021-2023) will be approximately \$661,000,000 for about 25,000 contracts.

2. Life:

The Uniform Group Life Insurance Plan is a fully insured term life 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 \$3,900,000.

The Uniform Group Insurance Program is covered under chapter 54-52.1 of the North Dakota Century Code (NDCC).

3. Dental:

The Uniform Group Dental Plan is fully insured by Delta Dental. As of January 2023, there were 9,350 active contracts and 4,200 retired contracts. All premiums are paid by the employee. Premiums collected for the past fiscal year were approximately \$11,733,000.

4. Vision:

The Uniform Group Vision Plan is fully insured by Superior Vision. As of January 2023, there were 9,600 active contracts and 4,000 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 to be provided to NDPERS.

A. Consulting Services:

The Consultant will be required to assist in the following areas relating to consulting services on a fee-for-service basis. Prior to initiating any efforts in this area, work must be authorized by NDPERS. Any work efforts the Consultant completes or initiates that have not been authorized will not be reimbursed.

1. General 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 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.

The Consultant must be able to provide the following:

- The actuarial and administrative implications of particular interpretations of the group health, Medicare Part D Plan, life, vision, dental, and EAP insurance statutes and administrative rules.
- The effect of existing and proposed state and federal laws that affect, or may affect the group health, Medicare Part D Plan, life, vision, dental, and EAP insurance programs at NDPERS.
- General assistance to NDPERS, as requested, regarding the ongoing administration of the group health, Medicare Part D Plan, life, vision, dental, and EAP plans including the review of premiums and the development of procedures and forms.
- Technical assistance relating to COBRA administration.
- Technical assistance relating to plan design, Pharmacy Benefit Managers (PBM), disease management programs, wellness programs, provider negotiations, and plan documents.
- Assistance with ACA compliance
- Assistance with HIPAA compliance
- Assistance with Federal and State compliance
- Other necessary compliance assistance

2. Bid Solicitation and Evaluation for the Health Programs (if necessary):

If necessary and as discussed earlier, the Board is seeking assistance for the health plan and the Medicare Part D plan RFPs. The Consultant will be expected to take a lead role in developing and issuing the RFPs and analyzing any proposals received. This includes the development and analysis of carved-out pharmacy benefits. The Board is not requesting RFP preparation for Life, Dental, Vision, or EAP plans as part of this bid.

Bid Process – Health Plan

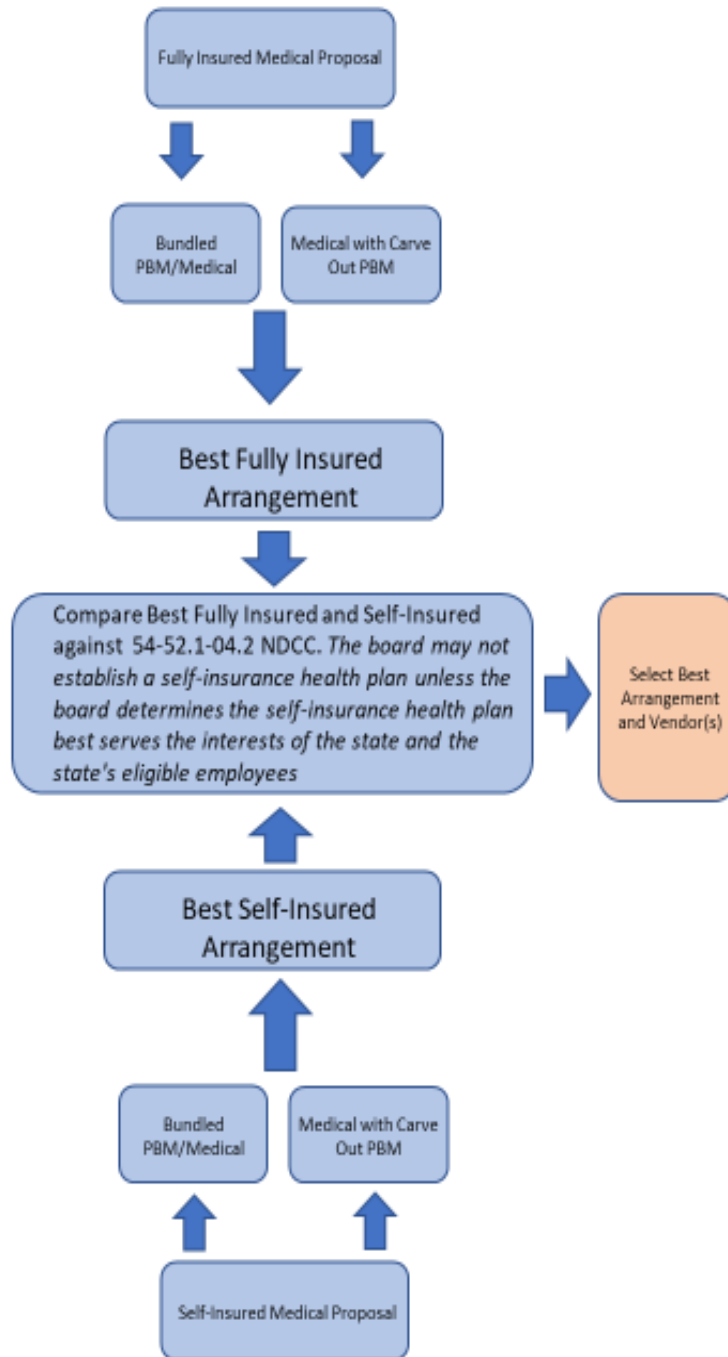
The North Dakota Century code directs in NDCC 54-52.1-04:

54-52.1-04. Board to contract for insurance.

- 1. The board shall receive bids for the providing of hospital benefits coverage, medical benefits coverage, life insurance benefits coverage for a specified term, and employee assistance program services; may receive bids separately for all or part of the prescription drug benefits coverage component of medical benefits coverage; and shall accept one or more bids of and contract with the carriers the board determines best serve the interests of the state and the state's eligible employees. Solicitations must be made not later than ninety days before the expiration of an existing uniform group insurance contract. Bids must be solicited by advertisement in a manner selected by the board which will provide reasonable notice to prospective bidders. In preparing bid proposals and evaluating bids, the board may utilize the services of Page No. 7 consultants on a contract basis in order that the bids received may be uniformly compared and properly evaluated. In determining which bid, if any, will best serve the interests of eligible employees and the state, the board shall give adequate consideration to the following factors:
 - a. The economy to be effected [sic].*
 - b. The ease of administration.*
 - c. The adequacy of the coverages.*
 - d. The financial position of the carrier, with special emphasis on the solvency of the carrier.*
 - e. The reputation of the carrier and any other information available tending to show past experience with the carrier in matters of claim settlement, underwriting, and services.**
- 2. The board may reject any or all bids received under this section. If the board rejects all bids received, the board shall again solicit bids as provided in this section.*
- 3. Under sections 54-52.1-04.1 and 54-52.1-04.2 the board may contract for health benefits coverage through a health maintenance organization or establish a self-insurance health plan.*

Pursuant to this direction we are asking for one RFP to be developed for both a fully insured and self-insured plan. As outlined, the first step in the process is to review the fully insured proposals. As directed in North Dakota statute, these proposals will be reviewed to determine if any of the proposals best serves the interests of the state and the state's eligible employees. The findings will be reported to the NDPERS Board and the fully insured proposal that is most responsive to the review criteria will be selected by the Board.

For both the fully insured and self-insured proposals, each should be bid as a “bundled product” with the medical and Rx service combined and awarded to one vendor, and then as an “unbundled product” with the medical and Rx service awarded separately. The following chart is an outline of the process.



Bid Preparation and Evaluation for the Group Health Insurance Bids

The Consultant will be expected to take a lead role in developing and issuing RFPs, and analyzing any proposals for the group health plan.

Information on the existing plan is available at: <https://ndpers.nd.gov/active-members/insurance-plans/group-health-plan/ppobasic-grandfathered/>.

Information on the retiree plan can be found at: <https://www.ndpers.nd.gov/retired-members/insurance-plans-retired-members>. Information on the retiree PDP can be found at: <https://www.ndpers.nd.gov/retired-members/insurance-plans-retired-members/health-insurance-plans-retired-members/medicare>. You will note the existing plan offered by NDPERS for active members is a PPO Grandfathered Plan and a non-grandfathered HDHP/HSA. A PPO Non-grandfathered PPO plan and an HDHP (without HSA) are available for political subdivisions of the state. The successful vendor will also need to provide an HSA vendor. The retiree plan is the equivalent of a Medicare Supplement Plan F.

Pursuant to NDCC 54-52.1-14 the group insurance program has a wellness program. Information on that program can be found at:

<https://ndpers.nd.gov/employers/employer-resources/employer-based-wellness/>

The proper placement of this plan is a major and significant task for NDPERS. The Consultant must provide the following service for all of the above efforts:

1. Section 54-52.1-04 NDCC requires that the NDPERS Board solicit bids for the insurance programs. The Consultant must prepare all necessary RFP documents to replicate the existing plans pursuant to the schedule outlined in Section 1. The Consultant will also be responsible for developing a list of providers to be contacted. This list will be supplemented by requests NDPERS 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 in Section 1.
3. The Consultant shall review all bids within the timeframes outlined in Section 1. 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 adequate consideration to the following factors:
 - (1) The economy to be effected [sic].
 - (2) The ease of administration.

- (3) The adequacy of the coverages.
 - (4) The financial position of the carrier, with special emphasis on the solvency of the carrier
 - (5) The reputation of the carrier and any other information available tending to show past experience with the carrier in matters of claim settlement, underwriting, and services.
- c) Review the technical aspects of each proposal (qualitative factors).
 - d) Review the group insurance proposals when received for fully insured offers. The Consultant shall prepare a recommendation to the Board as to the merits of each fully insured offer and provide a recommendation.
 - e) The Board may not establish a self-insurance health plan unless the Board determines the self-insurance health plan best serves the interests of the state and the state's eligible employees. Except for prescription drug coverage under subdivision c of subsection 1, if the Board determines it is in the best interest of the plan, individual stop-loss coverage insured by a carrier authorized to do business in this state may be made part of a self-insurance health plan.
 - f) If so the proposals will be reviewed pursuant to 3.B.
 - g) Complete all other analyses that will be required based on the outcome of the review of the bidding methodology
- 4. Present findings to the Board pursuant to the schedule outlined in Section 1.
 - 5. The Consultant shall assist in developing contracts with the successful bidder and with the implementation of the plan.

Bid Process, Solicitation Evaluation of Part D Plan (if necessary)

Section 54-52.1-04 NDCC requires that the NDPERS Board solicit bids for the insurance programs. The Consultant must prepare draft bid proposals to replicate the existing plans pursuant to the schedule outlined in Section 1. The Consultant will also be responsible for developing a list of firms to be solicited. This list will be supplemented by requests NDPERS has received and those additional requests that come in as a result of a notice appearing in local newspapers in North Dakota.

- 1. The Board and staff will review draft RFPs pursuant to the schedule outlined in Section 1.

2. The Consultant shall review all bids within the timeframes outlined in Section 1. 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 adequate consideration to the following factors:
 - (1) The economy to be effected [sic].
 - (2) The ease of administration.
 - (3) The adequacy of the coverages.
 - (4) The financial position of the carrier, with special emphasis on the solvency of the carrier.
 - (5) The reputation of the carrier and any other information available tending to show past experience with the carrier in matters of claim settlement, underwriting, and services.
 - c) Review the technical aspects of each proposal (qualitative factors).

Premium Calculation for 2024-25

The Consultant will be required to estimate the required premiums for the group health insurance program for a twenty-four (24) month period beginning January 1, 2024, and ending December 31, 2025. The Consultant and NDPERS will discuss the timeline that will need to be followed to prepare the estimate. The purpose of this effort is to provide the Board with an estimate to be used in analyzing the merits of renewing with the existing carrier.

In addition, the Consultant will be asked to verify that the premium being proposed by the Medicare Part D vendor for the upcoming plan year is reasonable based on plan design, the CMS subsidy for the upcoming calendar year, and trends impacting Part D plans.

B. 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, work must be authorized by the Executive Director on a not-to-exceed basis. Any work efforts the Consultant completes or initiates that have not been authorized will not be reimbursed. The efforts under this task area include:

- Provide consultation on, and perform certain work in, pricing proposed legislation or plan benefit modifications.
- Assist in the preparation and review of proposed changes to the governing laws.
- Pricing or general review work on legislation or plan benefit modifications 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, and actuarial implications on the total program, cost, and alternatives, if appropriate.

SECTION 4 - INFORMATION REQUESTS

The proposal must contain in a separate section your organization's response to the following requested information. Please respond by restating the information request, with the response following.

1. Provide a brief description of the size, structure, and services provided by your organization.
2. Provide your understanding of the services NDPERS is requesting and discuss how you would approach the work for the following:
 - a. Requirements outlined in 3.A.1.
 - b. Outline your organization's depth of experience in each of the following areas:
 - ◀ Benefit Design (health, life, dental, vision, and EAP)
 - ◀ Retiree Health Insurance
 - ◀ Preparation of Plan Documents
 - ◀ Preparation of Member Booklets
 - ◀ Provider Contract Negotiations
 - ◀ Value-Based Care Arrangements
 - ◀ PPO Formulation and Development
 - ◀ Actuarial Analysis and Reporting
 - ◀ Preparation of Contracts, Bid Specifications, and RFPs
 - ◀ COBRA Administration and Interpretation
 - ◀ Legal Issues
 - ◀ Disease Management Programs
 - ◀ Wellness Programs
 - ◀ RX Carve out Programs
 - ◀ Legal Assistance
 - ◀ ACA Compliance
 - c. Requirements outlined in 3.A.2., including the method used by your firm to project expected claims. Also, provide specific details of how your firm decides the appropriate medical trend; what factors are considered; (i.e., historical claims trends, cost shifting, leveraging, intensity, etc.), and how these factors are weighted or allocated in the final decision. Please discuss how this relates to the NDPERS renewal.
 - d. Requirements outlined in 3.B. In addition, describe your organization's experience and availability regarding legislative hearings and testimony
3. Describe your organization's approach to actuarial consulting for group health, life, dental, vision, and EAP insurance programs.

4. Detail your understanding of the renewal work effort and the timeframes for its accomplishment.
5. Provide a listing of public and private large-sector clients for whom your organization provides group health, life, dental, vision, and EAP insurance program consulting and actuarial services. References should identify the appropriate contact person(s), addresses, and telephone numbers. Specifically, discuss your 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.
6. To what extent does your organization provide timely information and insight into current or pending federal legislation, and other national events or trends?
7. Explain how your organization develops premium rates for health insurance plans.
8. Describe your data security policies and procedures.
9. What new cost containment programs does your organization foresee being implemented in the next 2-3 years?
10. Provide the resumes of key personnel in your firm who will be providing the services. Also specifically identify their assignment as it relates to the efforts requested in the RFP.
11. Provide a flow chart depicting major work efforts and timeframes for beginning and completing tasks.

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. Expenses for travel, lodging, meals, and other out-of-pocket expenses will be paid on an incurred basis if the Executive Director of NDPERS has given prior approval for each individual to incur such expenses. NDPERS is under no obligation to reimburse the Consultant if no approval was given.

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.

FIXED FEE #1: \$ _____
Health and PBM RFP
Preparation and Evaluation of the Bids

FIXED FEE #2: \$ _____
Medicare Part D RFP
Preparation and Evaluation of the Bids

FIXED FEE #3: \$ _____
Health Premium Estimates
Part D Premium – verification that offered premium is reasonable

All other work will be at an hourly rate.

HOURLY RATE for general consulting: \$ _____

HOURLY RATE legislative consulting: \$ _____

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 July 21, 2023, 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 Katheryne Korom of NDPERS, using the contact information found below. 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 August 11, 2023, 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 sent via email to:

<p style="text-align: center;">Katheryne Korom, Research & Project Manager NDPERS Email: katherynekorom@nd.gov</p>

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 9). 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 flash drive labeled "REDACTED", and one (1) electronic, editable, PDF original copy of the proposal on a separate 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), August 29, 2023. 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 flash drive, and one (1) copy of the “ORIGINAL” proposal on a 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 a public 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 Public 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 public 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 January 1, 2024, through December 31, 2025. 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 UNIFORM GROUP INSURANCE CONSULTING SERVICE”.
- 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. 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 January 1, 2024, through December 31, 2025. 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.

8. Non-Responsive Proposals

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

9. References

Each Offeror must provide references from other clients as requested in this RFP. 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.

10. Compliance with HIPAA

As a business associate of NDPERS, the Contractor must comply with the privacy, transactions and code set, and security requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as if it were a covered entity, as that term is defined by HIPAA, and the federal regulations implementing HIPAA. The Contractor will be required to execute a business associate agreement, which will be an attachment to the Agreement, and abide by the terms of the business associate agreement throughout any contract term. The Contractor will also be required to comply with the security requirements of HIPAA.

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 9 – 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 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. 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:

GENERAL	POINTS
Consultant followed required format in Section 4	6 points
Technical Understanding	44 points
Qualifications, Experience, and Staffing	20 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 proposals relate to the offeror's understanding in order to be rated. A statement that the offeror 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 determining which firm is 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 _____ (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 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 _____, 2023.

_____ (Signature)

SECTION 9 - 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 2023 bid document and VENDOR proposal (attached hereto and incorporated by reference Exhibit A).
- 2) **TERM:** The term of this contract shall commence January 1, 2024.
- 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:

Scott Miller, Executive Director
ND Public Employees Retirement System
1600 East Century Avenue, 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
ND Public Employees Retirement System

Signature

Printed Name

Title

Date

Date

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

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. identity 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.
- m. To participate in The Third Party Risk Management (TPRM) program in order to identify and reduce risks associated with third party security breaches and protect North Dakota state citizen data, unless Business Associate is able to provide FedRAMP, StateRAMP, or HiTrust certifications. Business Associate will be reassessed at least every one to two years based on the risk associated with their service or the data they handle.

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.

4.3. 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 07/01/2023, 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:

For Business Associate:

Scott Miller, Executive Director
ND Public Employees Retirement System

Signature

Printed Name

Title

Date

Date

**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