REQUEST FOR PROPOSAL

CONSULTANT SERVICES FOR NDPERS
457(B) DEFERRED COMPENSATION PLAN
AND
401(A) DEFINED CONTRIBUTION PLAN

Prepared by:
North Dakota Public Employees Retirement System
P.O. Box 1657
Bismarck, ND  58502-1657
Request for Proposal
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SECTION 1- PROCEDURES FOR SUBMITTAL

1.1 Overview
This Request for Proposal is to provide consultant services the NDPERS 457 plan and 401(a) defined contribution plan.

This Request for Proposal (RFP) is divided into three sections. Section 1 gives general information and requirements. Section 2 specifically describes the services requested. Section 3 details the specific information that bidders are required to submit in response to this RFP.

1.2 Governing Authority
PERS is managed by a Board comprised of nine members:

(1) Chairman – appointed by the Governor
(1) Member – appointed by the Attorney General
(1) Member – elected by the retirees
(3) Members – elected by active employees
(2) Legislators – appointed by Legislative Management Chair
(1) State Health Officer or their designee

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

The NDPERS Investment Subcommittee meets quarterly (February, May, August, November) to review plan performance, fund performance, and conduct other business delegated by the NDPERS Board.

1.3 Defined Contribution Programs Administered by PERS

PERS IRC Section 457 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 offer the state plan.

Presently 13,000 employees have accounts with thirteen investment providers. Presently there are nine active providers. Assets are over $300 million. The NDPERS 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 North Dakota Century Code (NDCC).
State administrative code allows any provider company to participate in the program that has 50 or more eligible members willing to sign up for their product. NDPERS does not select or monitor the investment products offered by these vendors, and does not act as a trustee for their products.

In 1998 the NDPERS Board decided that an additional product should be added that would be: 1) selected by the Board based upon a competitive RFP process, 2) that the Board would act as the trustee for, 3) that the Board would select and monitor the investment products, and 4) the investment products would be mutual funds. This product is called the NDPERS Companion Plan. The Board developed a Statement of Investment Policies for this plan. This policy may be viewed on our website at: [https://ndpers.nd.gov/image/cache/investment-policy-companion-plan.pdf](https://ndpers.nd.gov/image/cache/investment-policy-companion-plan.pdf)

The Board also monitors the investment products for this plan. This report can also be found on the NDPERS web site at: [https://ndpers.nd.gov/image/cache/companion-plan-q4-2019.pdf](https://ndpers.nd.gov/image/cache/companion-plan-q4-2019.pdf)

The Companion Plan has over $138.0 million in assets with over $1,000,000 in monthly contributions from over 8,000 member accounts. TIAA is the present provider for these services.

**PERS 401(a) Defined Contribution Plan:**
The state of North Dakota approved the establishment of a defined contribution plan for certain state employees, effective January 1, 2000. This program is offered as an option to the state’s defined benefit plan. Eligible employees are those who are not classified by Human Resource Management Services; however, this does not include employees of the University System or the Supreme Court. Approximately 258 employees selected the DC plan. In 2015 the legislature approved an option to allow members of this plan to forfeit their participation in the DC plan and rejoin the DB plan. One hundred and seventy elected to transfer back to the DB plan. In so doing, $23.5 million of assets were transferred from the DC plan to DB plan. The estimated value of assets in this plan is approximately $15,000,000 for approximately 100 members. Monthly contributions in the amount of 14.12% of salary (approximately $95,000) are added to the plan for each month. Effective January 1, 2020 contributions for any new hires enrolled into this plan equals 15.26% of salary. Similar to the Deferred Compensation plan, the 401(a) Statement of Investment Policy is on the NDPERS web site at: [https://ndpers.nd.gov/image/cache/investment-policy-defined-contribution-plan.pdf](https://ndpers.nd.gov/image/cache/investment-policy-defined-contribution-plan.pdf) The 401(a) Quarterly Report is on the NDPERS web site at: [https://ndpers.nd.gov/image/cache/defined-contribution-plan-q4-2019.pdf](https://ndpers.nd.gov/image/cache/defined-contribution-plan-q4-2019.pdf)

TIAA is the present provider for these services.
1.4 Proposal Schedule

- **RFP Issued:** July 1, 2020
- **Vendor Questions Due:** 5:00 p.m., CDT, July 23, 2020
- **Responses to Questions Issued:** August 6, 2020
- **Proposals Due:** 5:00 p.m., CDT, August 31, 2020
- **PERS Board Review:** October 27, 2020
- **Vendor Interviews:** November 10, 2020 (if necessary)
- **Vendor Selection:** No later than November 2020

1.5 Vendor Questions About The RFP

Questions concerning the specifications contained herein are to be submitted by email to breinhar@nd.gov, no later than 5:00 p.m., CST, on July 23, 2020

Bryan Reinhardt  
North Dakota Public Employees Retirement System  
P O Box 1657  
Bismarck, ND 58502-1657

Responses will be posted on the NDPERS website [https://ndpers.nd.gov/](https://ndpers.nd.gov/) by August 6, 2020 under “Request for Proposals”.

1.6 Proposals

To be considered, each bidder must submit a COMPLETE response to this RFP in writing along with an electronic version.

1.7 Oral Presentation

Bidders who submit proposals will be required to make oral presentations of their proposals to NDPERS if a decision is not clear based upon the written material submitted. The date for oral presentations is expected to be in October of 2020. We encourage all respondents to prepare a clear, comprehensive and responsive proposal and not anticipate or plan on the opportunity to clarify/elaborate on their offering during an oral presentation.

1.8 Acceptance Of Proposal Interpretations

The contents of this RFP and the proposal will become contractual obligations. Please note NDPERS has provided a proposed contract. Please return a signed version or a redline version clearly identifying any proposed language changes. Failure of the successful bidder to accept these obligations may result in cancellation of the award.

NDPERS further reserves the right to interview the key personnel assigned by the successful bidder to this project and to recommend reassignment of personnel deemed appropriate by NDPERS.
1.9 Proposal Interpretations And Addenda
Any change or substantive interpretation of this RFP will be sent by NDPERS to each firm to whom an RFP has been sent or to those who responded, and any such changes or interpretations shall become a part of the RFP for incorporation into any contract awarded pursuant to this RFP. If you desire that such information should be directed to someone’s attention other than to whom the proposal was sent, please advise Bryan Reinhardt at 701-328-3919.

1.10 Economy Of Preparation
Each proposal should be prepared simply and economically, providing a straightforward, concise description of the bidder’s ability to meet the requirements of the RFP.

1.11 Cost Liability
PERS assumes no responsibility or liability for costs incurred by the contractor prior to the signing of any contract resulting from this Request. Total liability of NDPERS is limited to the terms and conditions of this RFP and any resulting contract.

1.12 Minimum Qualifications
Offeror of services sought will have substantial experience in performing said services in the public and private environment for large pension plans, preferably contributory plans. Substantial experience will be defined and evaluated with regards to the type of plan [457, 401(k), 401(a) and 403(b)], size of the plan [assets and number of participants in the plan] and public or private plan experience. Offerors are required to provide a listing of such engagements over the past five years which includes data on plan type, size, number of participants covered and other pertinent data such as number of investment options, number of participants on payout, and frequency of asset transfers permitted. The offeror shall also offer a multi-disciplinary team with experience in development of RFPs, analysis of offers and review investment products. Offerors shall not have any conflicts of interests.

The minimum mandatory experience required of offerors shall consist of comparable assignments with at least two plans of the types indicated above.

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1.13 **Selection Criteria** (also see section 4)
Responses to this RFP will be evaluated based upon the following factors as presented in the bidder’s response to this RFP:

- The ability of the organization to meet the terms of the RFP and the technical approach.
- Qualifications of the staff assigned to the NDPERS account. NDPERS may require that the appropriate individuals be interviewed.
- Ability to meet the minimum qualifications.
- Fees and other compensation.

Fees and compensation will be an important factor in the evaluation process. PERS, however, is not required to select the lowest cost bidder.

1.14 **Bid Receipt**
Proposals must be received on or before:

5:00 p.m., Central Time August 31, 2020

Ten copies of your proposal and one electronic copy must be sent to:

Bryan Reinhardt  
North Dakota Public Employees Retirement System  
P O Box 1657  
400 East Broadway Avenue, Suite 505  
Bismarck, ND  58502-1657  
breinhar@nd.gov

Bidders are responsible for timely receipt of their proposal. **PROPOSALS RECEIVED AFTER THE SPECIFIED DUE DATE AND TIME WILL NOT BE CONSIDERED**, unless otherwise determined by the NDPERS Board.

1.15 **Right Of Rejection Or Acceptance**
Notwithstanding any other provisions of this RFP, NDPERS reserves the right to reject any or all proposals, to waive any irregularity or informality in a proposal, and to accept or reject any item or a combination of items. It is further within the right of NDPERS to reject proposals that do not contain all elements and information requested in this document. The failure to meet all procurement policy requirements shall not automatically invalidate a proposal or procurement. The final decision rests with the NDPERS Board.

1.16 **Additional Information**
PERS reserves the right to request additional information from any or all proposers to assist it in its evaluation process.
1.17 **Conflict Of Interest**

The vendor and its agents are prohibited from directly soliciting employees of the state, or using any information obtained under its contract for services, to directly solicit employees with respect to any product or service of the company that is not part of the services contracted. The offeror shall also disclose any potential conflicts of interest they may have in reviewing proposals from any vendor. In addition, the offeror shall disclose if it has any agreements, contracts or any other arrangements with any vendor/investment products that could be solicited or be a part of the consideration relating to this process. Such arrangements could be viewed as a conflict of interest.

1.18 **Contract Term**

The services sought in Section 2 will be provided beginning January 1, 2021 through December 31, 2022. The NDPERS Board at its discretion may extend the contract for up to two additional two (2) year option periods.

1.19 **Accounting Records**

The vendor will be required to maintain all pertinent financial and accounting records and evidence pertaining to the contract in accordance with generally accepted principles of accounting. Financial and accounting records, including individual account balance records and information concerning the State’s plan, shall be made available, upon request, to PERS, its designees, or the State Auditor at any time during the contract period and any extension thereof, and for three (3) years from expiration date and final payment on the contract or extension thereof.

1.20 **Confidentiality**

The contractor shall instruct its employees, and the employees of any subcontractor, to keep as confidential all information concerning the State’s employees as well as any other information which may be specifically classified as confidential by the State. Please refer to NDPERS statutes under chapter 54-52 and please note that violations of this statute are a felony under North Dakota law.

All copies of information developed by the contractor in connection with the contract are the property of the State. The contractor will not reveal or disclose either information or findings concerning this contract with anyone who does not have a substantial need-to-know and who has not been expressly authorized in writing by the State to receive the information/findings. Contractors must ensure that all safeguards and proper procedures are implemented to protect confidential information.

1.21 **Cancellation**

Cancellation of the contract by NDPERS may be for any reason upon written notice to the contractor. The contract may also be canceled due to default by the contractor. Default is defined as the failure of the contractor to fulfill the obligations of this contract. In case of cancellation due to default by the contractor, the State may procure the articles or services from other sources and hold the contractor responsible for any excess costs occasioned thereby.
1.22 Delegation And/Or Assignment
The contractor shall not delegate any duties under this contract to a subcontractor other than a subcontractor named in the bid unless NDPERS has given written consent to the delegation. The primary contractor may not assign the right to receive money due under the contract without the prior written consent of PERS.
SECTION 2 - BACKGROUND AND SCOPE OF SERVICES

2.1 Background

The North Dakota Public Employees Retirement System is seeking technical assistance relating to its two defined contribution plans discussed in Section 1 of the proposal. The Board is seeking technical assistance in three areas:

1. **Quarterly analysis of NDPERS core investment funds.**

2.1.1 Quarterly Fund Analysis

PERS is seeking technical assistance to quarterly analyze its core investment funds for its 457 Companion Plan and 401(a) defined contribution plan. Funds should be compared to benchmarks, peer funds, and reviewed for other factors such as management changes, fee changes, distributions, style change, etc. in a quarterly report. Prepare report for NDPERS web site for two DC plans no later than 6 weeks after quarter end. View examples of current reports at:


Attend quarterly NDPERS Investment Subcommittee meeting to review analysis. Consultant should plan to attend one meeting per year in-person.

2. **Guidance of investment fund offerings and investment policies.**

2.2.1 Recommend Fund Changes & Review Investment Policies

NDPERS is seeking technical assistance to place funds on formal fund review, close funds and find replacements (providing documentation of all investment decisions necessary to fulfill fiduciary responsibilities). Annually perform ‘gap’ analysis of core investment options and advise on investment actions. At least annually review investment policies for its 457 Companion Plan and 401(a) Defined Contribution Plan and advise on policy changes.

3. **As needed, development of an RFP to solicit interest of vendors in providing recordkeeping and investment management services.** NDPERS is interested in having a bundled provider. Review of the proposals submitted. Assistance with implementation. NDPERS is expected to issue an RFP for the two DC plans in 2022.

2.3.1 Develop Request for Proposal

PERS is seeking technical assistance to prepare a request for proposal for recordkeeping/investment services for its 457 Companion Plan and 401(a) defined contribution plan. It is the Board’s intent that the award will be for a two-year period with two possible two-year renewals. The consultant is expected:

- To draft the RFP for the staff and Board’s review in October/November.
- To develop and suggest a proposed list of vendors to solicit directly. The goal would be to issue the RFP in early December with responses due by January.
• All requests for proposals will be distributed by the consultant.
• The consultant will be listed as the point of contact for questions.
• The consultant will prepare a list of all questions asked and the answers and distribute it to all firms getting a copy of the RFP.

The consultant is asked to bid this portion of the work effort on a fixed fee basis. No on-site meetings with staff or Board are anticipated during this phase.

2.3.2 Analysis of Proposals
PERS is seeking a consultant to analyze the proposals received in response to the RFP. This analysis will be in two phases. The first phase will be to do a general assessment of all proposals received and recommend to the Board three responses that would be reviewed in detail. The consultant should be prepared to make this recommendation at an NDPERS Board meeting. The second phase would be to conduct a detailed review of the three proposals selected by the Board and to provide a recommendation to the Board on which proposal to accept. The detailed evaluation should be presented to the Board. If necessary, the Board may elect to interview one or more of the three. Such an interview would be conducted at a special meeting. The consultant is asked to bid this portion of the work effort on a fixed fee basis. The consultant should include in the fixed fee one on-site meeting with the NDPERS Board to review the results. If the Board elects to do vendor interviews or conduct any on-site meetings, the consultant will be reimbursed for that time on a fee for service basis. Please note that travel costs will not be a part of the fixed fee and will be paid based upon expenses incurred and will be subject to prior approval by the NDPERS Executive Director.

2.3.3 Implementation Assistance
The NDPERS Board is seeking assistance with implementation of the vendor contracts. This will include assistance with reviewing the proposed contract(s) help with changing vendors if that is what is decided by the Board, and any other implementation issues. Since efforts relating to implementation will be defined later (or not needed), the consultant will be reimbursed for efforts relating to this phase on a fee for service basis.

4. Additional Consulting Services
Additional Consulting Services on an hourly basis may be requested including, but not limited to:

- Comprehensive glide path studies
- Active vs. passive studies
- Member investment education and financial wellness services and support
- Technical assistance for legislative proposals and plan design changes
SECTION 3 – PROPOSAL

3.1 Technical Proposal – This Shall be Labeled “Technical Proposal”

The proposal shall be formatted as identified in this section and contain specific responses to the information requested.

1. Management Summary. This section should include a brief synopsis of the offeror’s understanding of the Board’s needs and services. It should also describe the resources that will be used to fulfill the requirements of this RFP and how it is projected that those resources will be consistently available to the Board.

2. Technical Approach - Proposed Services. This Section should present a detailed description of the offeror’s services. The sequence should follow the order described in Section 2. This Section must clearly indicate whether the offeror’s proposal satisfies each specification of the RFP. The offeror’s refusal or inability to accept all the terms and conditions of this RFP and meet each requirement must be clearly noted and explained. Offerors are advised, however, that any such exception may result in its proposal being deemed unacceptable.

The offeror shall identify in this Section each task that will be performed in response to this RFP and a timeline for each. The detailing of the scope of work by the offeror is critical in demonstrating an understanding of the effort.

3. Prior Experience/References. This Section should describe up to five selected engagements involving services similar to those required that were successfully performed for other clients. These clients must be identified by name, address, telephone number, and contract reference. Each engagement should be described with the rationale presented indicating its relevance to the services required in this RFP. NDPERS may contact any one or more of these references and, in addition, may contact any other reference of their choosing.

4. Copy of previous similar work. In this Section the offeror shall provide a copy of a similar project that NDPERS can view to determine the type of report it will receive pursuant to the RFP.

5. Personnel. This Section should include individual resumes for the personnel who are to be assigned to the project if the offeror is awarded the contract, and should indicate the proposed project role or assignment of each individual. The offeror shall provide a table at the beginning of this Section that shows the number of hours they are assigned to the project. The project team should include staff with experience in developing RFPs of the type requested herein, evaluating responses and assisting with implementation. The team should also include investment professionals that can evaluate the proposed products being offered.
6. **Organization.** This Section must document the overall structure of the offeror’s organization, including any parent companies, affiliates and subsidiaries. Description and reported resolution of any potential/apparent conflict of interest must be presented here.

7. **Additional Information.** This Section, which is optional, should include any additional information the offeror deems relevant to this procurement and the satisfaction of the Board’s objectives.

8. **Conflicts of interest.** In this Section the offeror shall discuss any potential conflicts of interest as discussed in the RFP or that the contractor believes may exist. The contractor cannot receive any other compensation relating to this work effort except that in the cost proposal. Any other arrangements/relationships/contracts the offeror may have with vendors that could be a part of this solicitation must be identified herein and may disqualify the offeror.

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

3.2 **Financial Proposal – This Shall Be Labeled “Price Proposal” and bound separately from the Technical Proposal.**

It must contain the Pricing Proposal of the work efforts identified under Section 2.
3.2.1 Pricing
This Section shall contain information on the pricing for the work efforts in Section 2. The bid shall be on a not to exceed basis with actual hours charged to the project as incurred, up to the maximum of the fixed fee. Pricing should include all expenses including any travel. The consultant shall use the following format for presenting pricing information.

**Quarterly Fund Analysis (2.1)**

Fixed Fee: $______________________________

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**Guidance of investment fund offerings and investment policies (2.2)**

Investment fund replacement search per episode Variable Fee:

$_____________________________________

Fixed Fee: $______________________________

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**Development of RFP & Evaluation of Responses (2.3)**

Fixed Fee $______________________________

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**Total Package Pricing (2.1, 2.2, and 2.3):** $______________________________
Additional Work/Implementation (2.4) (the consultant shall identify the fee for service hourly rates that will be used for services pursuant to this Section and any supplemental work needed associated with this contract)

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NOTE: Travel expenses will be paid on an incurred basis and are part of the above not to exceed fixed fee. However, the NDPERS Executive Director shall give prior approval for all travel and fee for service costs for each person pursuant to this contract. NDPERS is under no obligation to reimburse the consultant if no prior approval was given.

Agreement

The consultant is asked to sign the attached agreement (Section 5) and send it as part of the proposal. If NDPERS accepts your offer, we will sign the agreement and return a copy to you. If the consultant wishes to propose changes or amendments, they must be offered in a redlined response so that NDPERS can determine if they can be accepted.
SECTION 4 - PROPOSAL REVIEW

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

- Technical Approach 25 Point
- Prior Experience 10 points
- Staffing 15 Points
- Sample product 15 points
- Organization 5 points
- Pricing 30 points

The final step will be a review by the NDPERS Board. The NDPERS Board will use any and all information in making its determination and will use the staff’s review as a guide but is not bound by that review.
SECTION 5 - AGREEMENT FOR SERVICES

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

(Name of Contractor) (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 consulting 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 2020 RFP and proposal (attached hereto and incorporated by reference Exhibit A). It is understood and agreed that CONTRACTOR’s services (the “Services”) may include advice and recommendations, but all decisions in connection with the implementation of such advice and recommendations shall be the responsibility of, and made by, NDPERS.

2) **TERM:** The term of this contract shall commence January 1, 2021, and end December 31, 2022.

3) **FEES:** NDPERS shall only pay pursuant to the terms in Exhibit A.

4) **BILLINGS:** The CONTRACTOR shall receive payment from NDPERS upon the completion of the services identified in the respective invoice. The CONTRACTOR shall bill NDPERS monthly in arrears for Services rendered and expenses incurred in accordance with the terms hereof.

5) **TERMINATION:** Either party may terminate this agreement with thirty (30) days written notice mailed to the other party, or as mutually agreed to by the parties. Upon any termination the CONTRACTOR shall be compensated as described in Exhibit A for services performed up to the date of termination.

In addition, NDPERS by written notice to CONTRACTOR, may terminate the whole or any part of this Agreement under any of the following conditions:

1) If funding from federal, state, or other sources is not obtained and continued at levels sufficient to allow for purchase of the services or supplies in the indicated quantities or term.

2) If federal or state laws or rules are modified or interpreted in a way that the services are no longer allowable or appropriate for purchase under this Agreement or are no longer eligible for the funding proposed for payments authorized by this Agreement.

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

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

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

1) If CONTRACTOR fails to provide services required by this Agreement within the time specified or any extension agreed to by NDPERS; or

2) If CONTRACTOR fails to perform any of the other provisions of this Agreement, or so fails to pursue the work as to endanger performance of this Agreement in accordance with its terms.

The rights and remedies of NDPERS provided in this subsection are not exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.
ASSIGNMENT AND SUBCONTRACTS: CONTRACTOR may not assign or otherwise transfer or delegate any right or duty without STATE'S express written consent. However, the State expressly consents to CONTRACTOR entering into (i) subcontracts with its affiliates located in the United States, and (ii) third-party subcontracts provided that any such third-party 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 to the same extent as if such performance were done by CONTRACTOR. CONTRACTOR does not have authority to contract for or incur obligations on behalf of NDPERS.

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 contract, 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 contract, except for records that are confidential under this contract, 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.

APPLICABLE LAW AND VENUE: This agreement shall be 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.

MERGER AND MODIFICATION: This Agreement shall constitute the entire agreement between the parties. 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 misunderstandings, 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, from insurance companies, government self-insurance pools or government self-retention funds, 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 $250,000 per person and $1,000,000 per occurrence.

2) Professional errors and omissions with minimum liability limits of $1,000,000 per occurrence 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.

3) Automobile liability, including Owned (if any), Hired, and Non-Owned automobiles, with minimum liability limits of $250,000 per person and $1,000,000 per occurrence.

4) Workers compensation coverage meeting all statutory requirements.

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

1) Any deductible or self-insured retention amount or other similar obligation under the policies shall be the sole responsibility of the CONTRACTOR.

2) This insurance may be in policy or policies of insurance, primary and excess, including the so-called umbrella or catastrophe form and must be placed with insurers rated "A-" or better by A.M. Best Company, Inc., provided any excess policy follows form for coverage. Less than an "A-" rating must be approved by the State.

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 CONTRACTOR.

5) The insurance required in this Agreement, through a policy or endorsement, shall include:

   a) "Waiver of Subrogation" waiving any right to recovery the insurance company may have against the State;

   b) a provision that CONTRACTOR's insurance coverage shall be primary (i.e. pay first) as respects any insurance, self-insurance or self-retention maintained by the State and that any insurance, self-insurance or self-retention maintained by the State shall be in excess of the CONTRACTOR's insurance and shall not contribute with it;

   c) cross liability/severability of interest for all policies and endorsements;

   d) The legal defense provided to the State under the policy and any endorsements must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary;
e) The insolvency or bankruptcy of the insured CONTRACTOR shall not release the insurer from payment under the policy, even when such insolvency or bankruptcy prevents the insured CONTRACTOR from meeting the retention limit under the policy.

5) CONTRACTOR shall furnish a certificate of insurance to the undersigned State representative prior to commencement of this Agreement.

6) Failure to provide insurance as required in this Agreement is a material breach of contract entitling State to terminate this Agreement immediately.

7) CONTRACTOR shall provide at least 30 day notice of any cancellation or material change to the policies or endorsements.

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 facilities 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. NDPERS acknowledges and agrees that the CONTRACTOR’S performance is dependent upon the timely and effective satisfaction of NDPERS’s responsibilities hereunder and timely decisions and approvals of NDPERS in connection with the Services. The CONTRACTOR shall be entitled to rely on all decisions and approvals of NDPERS. NDPERS shall be solely responsible for, among other things: (i) making all management decisions and performing all management functions; (ii) designating a competent management member to oversee the Services; (iii) evaluating the adequacy and results of the Services; and (iv) establishing and maintaining internal controls, including, without limitation, monitoring ongoing activities.

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:** NDPERS does not agree to any form of binding arbitration, mediation, or other forms of mandatory alternative dispute resolution. The parties have the right to enforce their rights and remedies in judicial proceedings. NDPERS 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
400 East Broadway, Suite 505
PO Box 1657
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 laws, rules, and policies, including those relating to nondiscrimination, accessibility and civil rights, as are applicable to CONTRACTOR. CONTRACTOR agrees to timely file all legally required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including 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.

19) **State Audit:** All records, regardless of physical form, and the accounting practices and procedures of CONTRACTOR relevant to this Agreement are subject to examination by the North Dakota State Auditor, the Auditor's designee, or Federal auditors. CONTRACTOR shall maintain all of these records for at least three (3) years following completion of this Agreement and be able to provide them at any reasonable time. State, State Auditor, or Auditor's designee shall provide reasonable notice.

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

**NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM**

______________________________
Scott Miller, Executive Director
ND Public Employees Retirement System

______________________________
Signature

______________________________
Printed Name

______________________________
Title

______________________________
Date

**CONTRACTOR**

______________________________
Signature

______________________________
Printed Name

______________________________
Title

______________________________
Date