



**NORTH DAKOTA  
PUBLIC EMPLOYEES  
RETIREMENT SYSTEM**

# Board Meeting Agenda

**Location:** WSI Board Room, 1600 East Century Avenue, Bismarck ND  
By phone: 701.328.0950 Conference ID: 618 133 974#  
**Date:** Tuesday, July 11, 2023  
**Time:** 8:30 A.M.

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## **I. MINUTES**

- A. June 13, 2023

## **II. PRESENTATIONS**

- A. Sanford Health Plan – Population Health Update

## **III. DEFERRED COMPENSATION / DEFINED CONTRIBUTION**

- A. Empower Provider Status – Scott (Board Action)
- B. Recordkeeper Request For Proposal – Derrick (Board Action)

## **IV. RETIREMENT**

- A. Highway Patrol Indexing – MaryJo (Board Action)
- B. Retiree Health Insurance Credit (RHIC) Renewal/Request For Proposal (RFP) – Rebecca (Board Action)
- C. House Bill 1040 Implementation – Rebecca and Scott (Board Action)

## **V. GROUP INSURANCE**

- A. Wellness Update – Rebecca (Information)
- B. Employee Assistance Program (EAP) Update – Katheryne (Information)
- C. Uniform Group Insurance Consultant Request for Proposal – Katheryne (Information)
- D. Group Voluntary Vision Benefits Plan Request for Proposal – Katheryne (Board Action)

### **\*EXECUTIVE SESSION**

## **VI. MISCELLANEOUS**

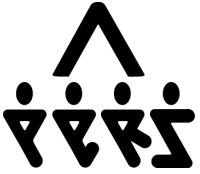
- A. Quarterly Consultant Fees – Derrick (Information)
- B. IT Consultant – Derrick (Board Action)
- C. Board Subcommittee/State Investment Board Assignments – Scott (Board Action)
- D. Contracts Under \$10,000 – Scott (Information)
- E. Litigation Update – Scott (Information)

## **VII. MEMBER \*\*EXECUTIVE SESSION**

- A. Retirement Benefit Appeal Case #820 – MaryJo (Board Action)
- B. Retirement Benefit Appeal Case #821 – MaryJo (Board Action)

\*Executive Session pursuant to N.D.C.C. §44-04-19.1(9) and §44-04-19.2 to discuss negotiating strategy or provide negotiating instructions to its attorney or other negotiator and 44-04-18.4(6)(b) Proposals received by a public entity in response to a request for proposals are exempt records until a notice of intent to award is issued.

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



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# Memorandum

**TO:**                   NDPERS Board

**FROM:**               Rebecca

**DATE:**               July 11, 2023

**SUBJECT:**           Sanford Health Plan Population Health Update

Representatives from Sanford Health Plan will attend the meeting to provide the Board with an update regarding their Population Health efforts.

The presentation is attached for your reference.

This is informational only – no Board action is requested.

# Wellness

**MORE PERSONAL. MORE ACCESSIBLE. MORE INTELLIGENT.**

It's health insurance as it should be.

**Using powerful data-driven insights to identify,  
guide and provide comprehensive,  
high-value care while reducing barriers  
and decreasing costs.**



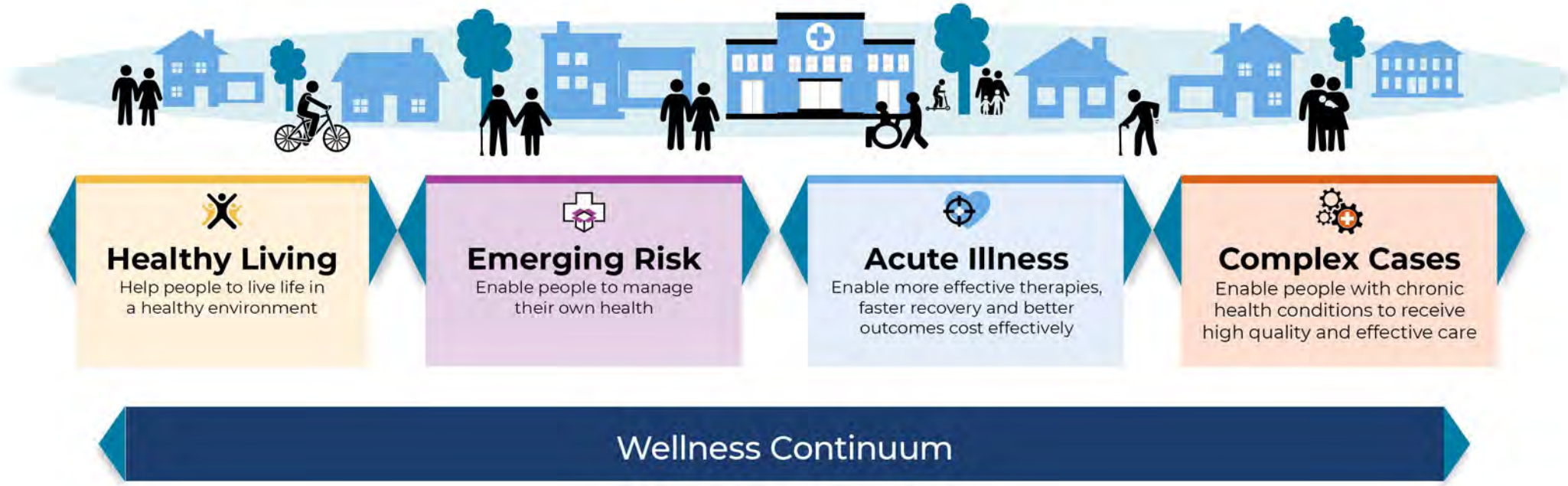
# Agenda

- What is Medical Economics
- Influencing outcomes through understanding:
  - Population Health
  - Social Determinants of Health
- How +Wellness delivers more impact to value and quality



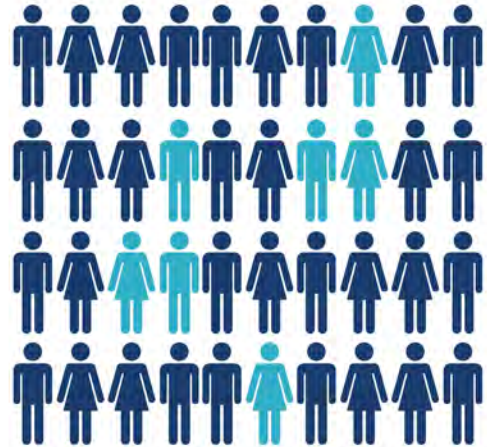
# An integrated approach to health management

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

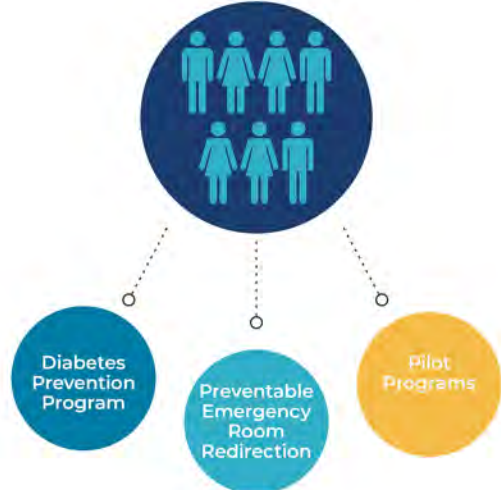


# Medical Economics | Driving Increased Value and Better Health Outcomes

**1 Identify high-risk patient populations**  
Identify high-risk patient populations that are likely to require expensive medical treatment due to chronic conditions or other health problems by analyzing past medical claims data and performing predictive modeling to identify these individuals.



**2 Develop targeted interventions.**  
From this identification, the team develops targeted interventions. Interventions can be developed and prioritized by understanding health care utilization patterns and costs associated with different types of interventions.



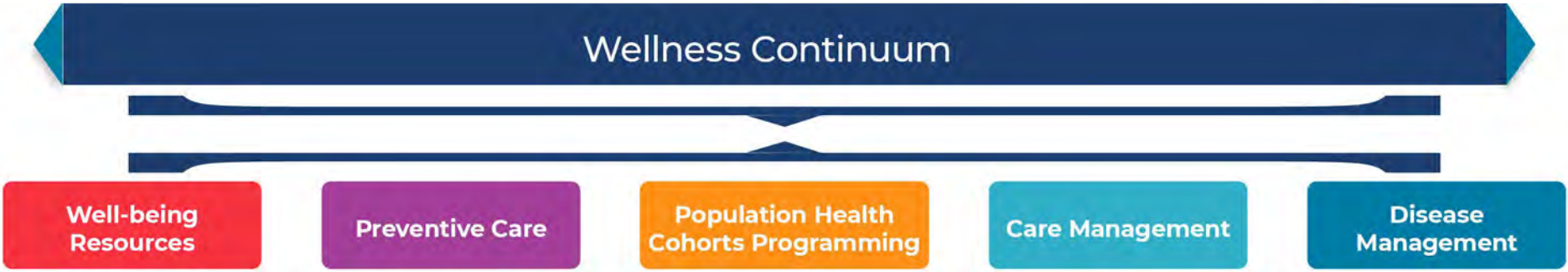
**3 Take a proactive approach to help members get and stay healthier.**  
Through these interventions, we can take a proactive approach to managing chronic illness and help **members stay healthier**, which can result in **lower health care costs over time**.



**4 Monitor and optimize to maximize impact.**  
By monitoring the impact of population health initiatives on healthcare utilization and spending, we are able to refine our strategy over time to maximize our impact on member health outcomes and cost containment.

# Population Health At Sanford Health Plan

- Population Assessment
- Data Integration
- Population Stratification
- Targeted Interventions
- Evaluation



# Social Determinants of Health

### Social Isolation

Predicts likelihood of lower social ties to family and friends; a measure of involuntary loneliness



### Food Insecurity

Predicts likelihood of suffering from food security issues due to financial reasons or lack of access to healthy food



### Transportation Insecurity

Predicts likelihood of experiencing transportation access issues, for financial reason or lack of access to reliable public transportation



### Social Vulnerability

Builds on CDC social vulnerability data (SES, household composition, minority status, language, etc.) at the individual level to obtain a measure of social vulnerability



### Financial Insecurity

Predicts likelihood of deferring treatment due to concerns over cost; this can have down the line impact on outcome and utilization



### Health Ownership

Identifies members' level of interaction with the health care system and personal health choices based on their health status



### Housing Insecurity

Predicts likelihood of experiencing housing security issues and being homeless



# How +Wellness delivers more impact

Maturing to outcomes based, quantifiable programs to improve health and drive savings



### Personalized Member Engagement

Member messaging programs introduce members to our Wellness portal powered by WebMD. Health Risk Assessments are completed and members are invited to explore personalized content tailored to their needs and interests to include daily habits trackers, wellness stats tracking, virtual Lifestyle coaching and more.



### Well-Being Resources

Customized well-being resources are provided to members as complimentary benefit options they may utilize under their health plan coverage. Engaging these well and at-risk member segments through incentivized wellness programming, contributes over time to increased health ownership scores and early mitigation opportunities before health concerns become chronic.

- Daily Habits Tracker
- Virtual Wellness Coaching
- Health Risk Assessment Tools
- Personalized Portal Programming



### Population Health Targeted Cohorts

Data driven teams target specific member cohorts to reduce barriers and costs. This works leads our system value-based strategy and works to drive outcomes impact within your population where it's most needed.

Personalized outreach incorporating SDOH:

- PCP matching
- Preventable ER redirection
- Connection & Resource Center
- Diabetes Prevention Programs



### Targeted Care Management

Powerful data insights allow us to engage your population with personalized care plans that improve health and close gaps in care. We identify those who need the most support and provide what they need to succeed. This data-driven approach promotes better outcomes, lower costs, and healthier members.

- ER Care Transition Program
- Complex Case Management
- 98% Member Satisfaction Rate



### Care Excellence

As part of an integrated care system, Sanford Health Plan is experienced in providing seamless care experiences and the coordinated care essential to improving outcomes. As a 4.5 star NCQA accredited health plan, we have proven quality standards designed specifically to monitor, evaluate and ensure the quality, safety, and appropriateness of the health care services our members receive.



# Member Health Journey Scenarios



Adam



Sarah



Stan



Olivia

### Healthy Living

Help people to live life in a healthy environment

### Emerging Risk

Enable people to manage their own health

### Acute Illness

Enable more effective therapies, faster recovery and better outcomes cost effectively

### Complex Cases

Enable people with chronic health conditions to receive high quality and effective care

- Adam receives his **Annual Exam reminder** via email and direct mail.
- He completes his **HRA** on the wellness portal and begins to use the Daily Habits tools.
- Adam participates in **wellness programs offered by the worksite agency**.
- Fitness incentive eblast**.
- Adam is going to the **gym 3 times/week** and enjoys getting savings for working out.
- He received his **men's health** informational email.
- He schedules his **annual exam** and **colorectal cancer screening**.

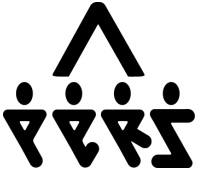
- Sarah's AIC was higher than usual at her latest exam, she's also seen an increase in her BMI.
- Her data places her within a **Targeted Population Health cohort** designed to outreach to members like Sarah for medication adherence.
- She receives information about **Diabetes prevention programming and complimentary wellness and nutrition coaching options**.
- She is interested in nutrition and **starts following a Daily Habits program in her Wellness Portal**.
- Within weeks she is **exercising and eating better**. She loses 20 pounds and her AIC is back to normal at her next visit.

- Stan ended up in the ER where it was discovered he had uncontrolled diabetes.
- He receives a **Care Transition courtesy call** within first week after ER visit.
- Stan continued to use ER and **when we called him** we discovered Stan's PCP had retired and he didn't have a new one yet, **he was paired with a new PCP**.
- His dedicated care management nurse **educates and helps him to understand** his new diabetes regimen and connects him with a **nutritionist and Livongo resources**.
- Stan's **care management nurse checks in** again to see how he is doing.
- Stan is doing well with his new education and tools**; he is feeling much better and appreciates the call.

- Olivia is 42, a new member and has diabetes, heart disease, COPD and anxiety. She does not refill her medication consistently and had been to the ER twice recently due to expressed chest pain.
- Per ER records, it is clear Olivia is not filling medications consistently. **We call her**. She says she cannot afford. **We refer her to social work** for help budgeting to afford medications.
- We also set up a **behavioral health consult** after learning of her anxiety troubles.
- Olivia's **anxiety begins to lower** after meeting with Behavioral health specialist
- She works with an **Embedded Pharmacist at the clinic** and begins to better manage her medications
- We set up an **endocrinology referral** – after which she is **feeling empowered and begins to manage her complex health issues with a SHP care management nurse**.

# Questions?





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# Memorandum

**TO:** NDPERS Board

**FROM:** Scott

**DATE:** July 11, 2023

**SUBJECT:** Empower Provider Status

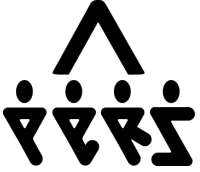
In 2020, the Board made the decision to require all section 457 deferred compensation plan providers to sign an agreement stating that their advisors who provide our members with investment advice will be subject to a fiduciary standard of conduct. (see attachments 1 and 2 for the memos from that time). If a provider refused to sign the agreement, the Board froze that provider to any new participants; current participants could continue to make contributions, if they wished.

Initially, Empower (acting as Mass Mutual) declined to sign the fiduciary agreement, and was therefore frozen to new participants. Later in 2020, Empower (acting as Mass Mutual) proposed an amendment to the fiduciary agreement and requested to be allowed to resume as a full provider. The Board reviewed the proposed amendments and determined they did not provide the level of responsibility the Board desired. As such, the Board declined Empower's request, and they remained frozen. Empower has recently reached out to NDPERS staff to request another chance to sign the fiduciary agreement and be able to sign up new participants.

NDPERS has an unusual 457 plan. Most states and political subdivisions have only one provider. NDPERS has TIAA as the companion plan provider, the Bank of North Dakota and two other active providers outside the companion plan, and many frozen providers. Because of the administrative difficulty with having so many providers, the Board has been proactive in reducing the number of providers over the past several years.

Empower is now requesting another revision of the fiduciary agreement, which is attached, and which they will sign. The Board's attorney, Dean DePountis, has reviewed the agreement and stated it is acceptable.

**Board Action Requested:** Determine whether to allow Empower to sign the amended fiduciary agreement and resume as a full provider.



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# Memorandum

**TO:** NDPERS Board

**FROM:** MaryJo

**DATE:** February 11, 2020

**SUBJECT:** Provider Fiduciary Language Amendment Update

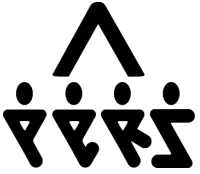
In October 2019, the Board approved a fiduciary responsibilities amendment to be added to all non-Companion Plan NDPERS 457 Deferred Compensation provider contracts. This agreement required investment advisors to act as fiduciaries when providing services to our 457 plan participants. In November, we sent the amendment to each affiliate NDPERS provider company (other than Bank of North Dakota, which does not offer investment options, and TIAA, which has already agreed to a fiduciary standard) asking them to execute the amendment and return it by January 31, 2020.

As of today, the provider company responses received are as follows:

- American Trust Center - pending response
- AXA Equitable - requested for amendment to be withdrawn and allow providers to continue servicing existing NDPERS participants (attached)
- Mass Mutual – requesting additional 30 days to review (attached)
- Jackson National Life – refused amendment (attached)
- Nationwide Life – pending response
- VALIC – proposed revised language being reviewed by legal (attached)
- Waddell & Reed Financial Services – signed and accepted amendment (attached)

**Board Action:** Provide guidance to NDPERS staff on how to address the 457 Deferred Compensation providers that are refusing to sign the amendment.

1. NDPERS should close enrollment to new members and notify existing members that the provider selected refused to sign the fiduciary amendment
2. NDPERS should close contributions for new and existing members



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# Memorandum

**TO:** NDPERS Board

**FROM:** MaryJo

**DATE:** April 14, 2020

**SUBJECT:** Provider Fiduciary Language Amendment Update

At the February 2020 meeting, the Board reviewed responses from the NDPERS 457 Deferred Compensation providers, with the exception of the Companion Plan and BND, regarding the fiduciary language contract amendment approved by the Board in October 2019. The agreement required investment providers to act as fiduciaries in the best interest of the NDPERS participant when providing services. Of the providers, two companies accepted and five refused the NDPERS amendment as drafted.

At the Board's request, staff have outlined options (Attachment 1), along with a communication plan, for the providers refusing the fiduciary language amendment. Attachment 1 also provides advantages and disadvantages to each option for the Board's consideration.

The Communication to 457 Plan Participants would be as follows:

NDPERS has requested for each of the 457 Deferred Compensation Provider Companies to sign an amendment to the current contract requiring investment providers to act as fiduciaries in the best interest of the participant when providing services. Based upon responses, NDPERS is notifying you of the following provider responses.

Accepted Amendment	Refused Amendment
<ul style="list-style-type: none"> <li>• American Trust Center</li> <li>• Waddell &amp; Reed Financial Services</li> </ul>	<ul style="list-style-type: none"> <li>• AXA Equitable</li> <li>• Jackson National Life</li> <li>• VALIC</li> <li>• Mass Mutual</li> <li>• Nationwide Life</li> </ul>

**Board Action:** Provide guidance to NDPERS staff on 457 Deferred Compensation providers that are non-compliant with fiduciary language amendment (options outlined below):

**Option 1 – Terminate Contract**

- provider may not receive any new or existing participant contributions

**Option 2 – Freeze All Contributions**

- provider may not receive any new or existing participant contributions

**Option 3 – Freeze New Participants**

(4 of 13 providers currently in this status – Commonwealth, ING, Lincoln National, Symetra)

- provider may not enroll any new participants
- provider may continue to receive existing participant contributions

**Option 4 – Allow Contributions and New Participants**

- provider may receive any new or existing participant contributions

AMENDMENT NO. 3 TO THE  
NORTH DAKOTA DEFERRED COMPENSATION PLAN PROVIDER  
ADMINISTRATIVE AGREEMENT

This Amendment is made and entered into by and between the North Dakota Public Employees Retirement System Board, administrator of the North Dakota Deferred Compensation Plan ("Retirement Board"), and \_\_\_\_\_ ("Provider"). This is an Amendment to the existing North Dakota Deferred Compensation Plan Provider Administrative Agreement ("Agreement") between the parties. All provisions of the Agreement, including any subsequent amendments, remain in full force and effect except as otherwise noted in this Amendment.

Section II of the Agreement is amended to add the following:

- T. All ~~sales~~ representatives of the Provider who are authorized to ~~solicit participants or who otherwise~~ provide participants with ~~financial~~ advice ~~or guidance~~ of any type pursuant to this Agreement agree to act as a fiduciary with regard to those participants and the advice ~~or guidance~~ given those participants. This fiduciary responsibility requires all ~~sales~~ representatives of the Provider to act in the best interest of the participants, using the care, skill, prudence and diligence that a prudent person acting in a like capacity and familiar with such matters would use under the same circumstances.

In consideration of the mutual covenants, agreements and undertakings set forth in the Agreement, the undersigned have executed this Amendment this \_\_\_\_ day of \_\_\_\_\_, 2019.

PROVIDER NAME:

RETIREMENT BOARD  
North Dakota Public Employees  
Retirement System Board

By: \_\_\_\_\_

By: \_\_\_\_\_

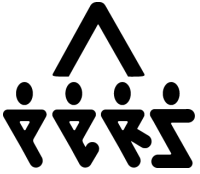
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# Memorandum

**TO:** NDPERS Board

**FROM:** Derrick Hohbein

**DATE:** July 11, 2023

**SUBJECT:** Recordkeeper Request for Proposal (RFP)

Callan, the Board's investment consultant, and NDPERS Staff are currently working on a draft RFP for recordkeeper services for our section 457 Deferred Compensation (457) and 401(a) Defined Contribution (DC) plans. Staff is seeking Board input on the draft RFP, which we expect to present at the August 2023 Board meeting.

- 1) Typically, the contracts that NDPERS will enter into are two-year contracts with two subsequent two-year renewal periods. We have done this because our Budget is done on a two-year period, and the Legislative Assembly meets every other year. A two-year contract also gives us the flexibility to modify our agreement if there are Legislative initiatives the Assembly would decide to implement, although this is something we can address preemptively in the agreement with the recordkeeper.

Callan's recommendation is to have a five-year contract, with two subsequent one- or two-year period renewals. The reason for this recommendation is that when submitting proposals, vendors need to factor in transition costs, which typically are amortized over the length of the contract. Having a five-year contract instead of a two-year contract gives prospective vendors a longer amortization period, thus potentially reducing costs to our members. We would like Board input on the proposed contract period.

- 2) Currently, TIAA's administrative costs for recordkeeping and administration are paid through revenue sharing, a component of our funds' total expense ratio. The Investment Subcommittee is interested in changing the methodology of paying our recordkeeper fees to be a flat per-participant fee. Callan finds this methodology to be the most equitable to our members as recordkeeping services are closely tied to number of accounts, and prevents a revenue sharing shortfall (which we have experienced the last couple of years).

Given the move to an 100% DC structure, a minimum account balance before a member would pay a fee will help offset small account balance erosion from fees. This minimum balance could range from \$1,000 - \$5,000.

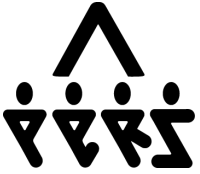
- 3) Finally, would the Board prefer to have finalist interviews in-person, or is a virtual interview option acceptable.

As part of the RFP, staff will also request information from each provider regarding their ability to comply with Secure 2.0, including their ability to accept ROTH contributions. Staff will bring forward additional topics for consideration in the coming months as we begin analyzing the implementation requirements of this Federal mandate.

**Board Action Requested:**

Please provide guidance on the following points of clarification for the Recordkeeper RFP:

- 1) Length of contract and subsequent renewal preferences.
- 2) Methodology and threshold (if applicable) of how the Board would like to pay the recordkeeper.
- 3) Determine if in-person or virtual interviews are preferred.



# Memorandum

**TO:** NDPERS Board

**FROM:** MaryJo Anderson

**DATE:** July 11, 2023

**SUBJECT:** Highway Patrol Final Average Salary Indexing for Deferred Members

North Dakota Century Code § 39-03.1-11(5) provides:

*The final average salary used for calculating deferred vested retirement benefits must be increased annually, from the later of the date of termination of employment or July 1, 1991, until the date the contributor begins to receive retirement benefits from the fund, at a rate as determined by the board not to exceed a rate that would be approximately equal to annual salary increases provided state employees pursuant to action by the legislative assembly.*

As provided in statute, it is necessary for the NDPERS Board to set a rate to be used in establishing the index factor for deferred members of the Highway Patrol. Currently there are 39 members in the system in a deferred vested status.

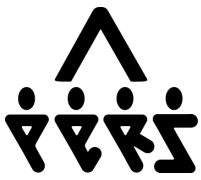
It has been NDPERS' policy to solicit input and a recommendation from the Highway Patrol leadership. The last legislative session provided a 6.00% increase for the first year of agencies' budgets for the 2023-2025 biennium. The North Dakota Highway Patrol leadership is recommending that deferred members in its system receive a 6.00% increase to their final average salary (FAS). A copy of this correspondence is attached for your information.

The current assumption for indexing of deferred members as reported in the Gabriel Roeder & Smith (GRS) July 1, 2022 actuarial report is 3.00% ([page E-3](#)). Therefore, a 6.00% increase will result in an actuarial loss to the plan as confirmed by our consultant.

In the past, the Board has generally approved an indexing percentage, as recommended by the Highway Patrol leadership, that is the same or slightly lower than the salary increases granted to state employees.

**Board Action Requested:**

Affirm or deny the Highway Patrol Administration's recommendation



# Memorandum

**Attachment**

**TO: Major Aaron Hummel**  
**FROM: MaryJo Anderson**  
**DATE: May 30, 2023**  
**SUBJECT: Highway Patrol Indexing**

The Highway Patrol indexing for deferred members of the HP system is up for review. There are currently 39 deferred vested members affected.

For your convenience, listed below are the legislative equivalent grants, as well as the increase percentages set for indexing purposes by the board since 1993 when the factor became policy.

	<b>Legislative Increase</b>	<b>Index Approved</b>
1993	3.00	3.57
1994	2.00	3.00
1995	2.00	2.00
1996	2.00+ 1.00 discretionary	2.00
1997	Average 3.00	3.00
1998	Average 3.00	1.80
1999	2.00 (min \$35)	1.26
2000	2.00 (min \$35)	2.00
2001	3.00 (min \$35)	1.81
2002	3.00 (min \$35)	1.73
2003	None Authorized	-0-
2004	None Authorized	-0-
2005	4.00	4.00
2006	4.00	4.00
2007	4.00	4.00
2008	4.00	4.00
2009	5.00	5.00
2010	5.00	5.00
2011	3.00	2.00
2012	3.00	2.00
2013	3.00	3.00
2014	3.00	3.00
2015	3.00	3.00
2016	3.00	2.00
2017	None Authorized	-0-
2018	None Authorized	-0-
2019	2.00	2.00
2020	2.50	2.50
2021	1.50	1.50
2022	2.00	2.00

As the above illustrates, the rate has historically been set at a percentage that is the same or less than the salary increases granted to state employees. The 2023 legislature provided appropriation to agency budgets by 6.0% for the first year of the 2023-2025 biennium.

This item will be scheduled for the July NDPERS Board meeting agenda. We are requesting your written response by June 12, if possible. If you need additional information, please let me know.

RECEIVED  
JUN 07 2023  
ND PERS

**Attachment**

May 31, 2023

Ms. MaryJo Anderson  
North Dakota Public Employees Retirement System  
1600 East Century Avenue, Suite 2 – Box 1657  
Bismarck, ND 58503

SUBJECT: HIGHWAY PATROL INDEXING

Dear Ms. Anderson:

The North Dakota Highway Patrol recommends that North Dakota Public Employees Retirement System index in at the rate of 6% for 2023.

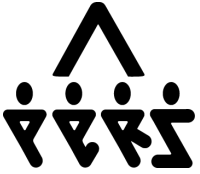
Sincerely,



BRANDON SOLBERG  
Colonel, NDHP  
Superintendent

bs/jr





# Memorandum

**TO:** NDPERS Board

**FROM:** Rebecca

**DATE:** July 11, 2023

**SUBJECT:** Retiree Health Insurance Renewal & Request for Proposal

Effective January 1, 2022, ASIFlex was awarded the bid for the Retiree Health Insurance Credit (RHIC) program third party administrator. Attachment 1 is ASIFlex's renewal rate proposal for the January 1, 2024 through December 31, 2025 plan years. This time period represents the 2<sup>nd</sup> two-year period available for contracting as part of the bid process. As you will see from their proposal, ASIFlex is offering the same services and fees for the upcoming 2-year period as we are currently paying.

As part of their accepted bid, ASIFlex:

- 1) Was the vendor for the July 1, 2015 through December 31, 2020 period;
- 2) Reduced fees from \$1.75 to \$1.25 per account per month as part of the bid and guaranteed them for the life of the contract with them
- 3) Offered a year-end credit for accounts that have no reimbursement activity in monthly contributions. Accounts with contributions of less than \$20 per month with no reimbursement activity would be eligible for a fee credit at year-end. Previously, the threshold was accounts with contributions of less than \$10 per month.

Also included is Attachment 2, which is the RHIC Request For Proposal (RFP). Should the Board not approve a renewal with ASIFlex, staff will need to release the RFP following the decision so that we can go through the RFP process of awarding the bid and potentially transitioning the program to a new vendor by January 1, 2024.

Staff recommends that we amend the current contract to renew with ASIFlex for the January 1, 2024, through December 31, 2025, contract period based upon their cost proposal as outlined in Attachment 1.

**Board Action Requested**

Approve staff's recommendation to amend the current contract to continue with ASIFlex as the RHIC program third party administrator for the January 1, 2024, through December 31, 2025, contract period based upon ASIFlex's renewal cost proposal.

If the Board does not wish to renew with ASIFlex, staff requests the Board's approval of the Retiree Health Insurance Credit (RHIC) RFP so that we can seek another vendor.



June 28, 2023

Ms. Rebecca Fricke  
North Dakota Public Employees Retirement System  
1600 East Century Avenue, Suite 2  
Bismarck, ND 58502-1657

Dear Rebecca:

On behalf of ASIFlex team, we are pleased to provide you with our cost proposal for the continued administration and recordkeeping services for the NDPERS RHIC program. As the incumbent provider of services, we have enjoyed and appreciated the opportunity to work with NDPERS since 2015.

ASIFlex believes we have demonstrated a record of delivering high quality, reliable services to NDPERS and to the RHIC participants. Although operating costs such as postage and mailing, as well as staffing, have continued to increase, we are pleased to continue our current pricing and servicing model with no changes for the 2024-2025 plan years.

If you have any questions or require any additional information, please don't hesitate to contact me (573-777-5601; jriddick@asiflex.com).

Thank you for your time and consideration.

Kind regards,

Sincerely,

A handwritten signature in blue ink, appearing to read 'John M. Riddick', written in a cursive style.

John M. Riddick  
ASIFlex President/CEO





NDPERS RHIC Program  
ASIFlex Cost Proposal  
January 1, 2024 through December 31, 2025

## Exhibit A

### North Dakota Public Employees Retirement System Administrative and Recordkeeping Services for the Retiree Health Insurance Credit Program

#### ACCOUNT FEES

Per participant per month	\$1.25
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#### DE MINIMIS ACCOUNT FEES

ASIFlex will offer a year-end credit for accounts that have had no reimbursement activity. Accounts with contributions of less than \$20 per month with no reimbursement activity would be eligible for a fee credit at year-end. The fee credit provided to NDPERS would be one-half of the year-to-date fees paid to ASIFlex. This arrangement would reduce the costs to NDPERS while also providing reasonable compensation to ASIFlex for the welcome letter and on-going account maintenance.

#### SERVICES OUTSIDE SCOPE

\$100 per hour. We anticipate no additional costs to NDPERS as ASIFlex can provide ad hoc or custom reporting at no additional cost.

**REQUEST FOR PROPOSAL**

**FOR**

**North Dakota  
Public Employees Retirement System**

**Administrative and Recordkeeping Services  
For Retiree Health Insurance Credit Program**

**July**

**2023**

**Request for Proposal  
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## SECTION 1 – INTRODUCTION

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### A. Scope of Work

This Request for Proposal (RFP) is issued for administrative and recordkeeping functions as described in this RFP relating to the North Dakota Public Employees Retirement System (NDPERS) Retiree Health Insurance Credit (RHIC) program. The Board is seeking proposals for a vendor to assist with the services identified in this RFP. The following is a sequence of activities for this RFP:

Date	Activity
July 12, 2023	RFP is issued.
August 10, 2023	Written questions regarding proposals must be received by NDPERS no later than 5:00 p.m. (CDT).
August 17, 2023	NDPERS posts responses to all questions received.
August 31, 2023	Proposals must be received by NDPERS no later than 5:00 p.m. (CDT).
October 2023	Selection and award of contract by NDPERS Board.
January 1, 2024	Vendor begins administration

### B. Fees

1. The Board is seeking a proposal on a per participant per month basis. This number should include full payment for all the services requested in this RFP. This is a fee-only contract, no product sales should be part of the pricing. For RHIC accounts that have no activity during the plan year, a year-end credit to NDPERS will be provided. For example, accounts with RHIC contributions of less than \$10.00 per month with no claims filed would be eligible for a fee credit at year-end. The fee credit provided to NDPERS would be one-half of the year-to-date fees paid. This arrangement provides reasonable compensation for the welcome letter and limited plan year account maintenance required.
2. The contract term will begin on January 1, 2024, upon the execution of the Agreement by NDPERS. The initial contract term will end on December 31, 2025. The NDPERS Board, at its discretion, may extend the contract for up to two additional two (2) year option periods.

**C. Rating**

This proposal will be rated by a review team at NDPERS. Please submit your Technical Proposal and Cost Proposal separately. This evaluation will be submitted to the NDPERS Board for its consideration in determining if a vendor should be selected pursuant to this RFP. Please note the ratings are one factor that will be used by the NDPERS Board in its considerations, the board will consider other factors it deems appropriate and necessary in making a decision including an interview. Staff will rate all proposals based on the following criteria:

Technical Proposal:

General Background (Questions Section 4, A.1 to A.4)	10 points
Scope of Work (Questions Section 4, B.1 to B.6)	45 points
Experience	
Firm (Questions Section 4, C.1 to C.4)	7 points
Staffing (Questions Section 4, D.1 to D.3)	8 points

Cost Proposal: 30 points

## SECTION 2 - BACKGROUND

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### A. The Agency:

The North Dakota Public Employees Retirement System is responsible for the administration of the State's Employee Assistance Program (EAP), retirement, health, life, dental, vision, deferred compensation, FlexComp, and retiree health insurance credit programs. This proposal is for assistance with the Retiree Health Insurance Credit program.

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.

### B. RHIC Program:

The RHIC program is authorized under Chapter 54-52.1-03.3 of the North Dakota Century Code (NDCC). Additional information on the RHIC program including the plan document can be found on our website at <https://www.ndpers.nd.gov/active-members/retirement-plans-active-members/retiree-health-insurance-credit-program-active>. Presently, NDPERS has retained ASIFlex to administer the reimbursement of a member's RHIC to the member for eligible insurance premiums. To facilitate this process, NDPERS sends weekly eligibility files and claim files to ASIFlex. Eligibility files include eligible retiree participant demographic data, RHIC amount, RHIC effective date, direct deposit information, and participant date of death (if applicable). Claim files include total premiums paid to NDPERS to substantiate eligible claims or reduce premium claims due to death and cancellations. Effective July 1, 2015, the RHIC became portable and may be used for not only the NDPERS health plan but also for other non-NDPERS health and prescription drug plans as well as dental, vision, and long-term care plans.

The following information relates to current RHIC participation as of 6/30/2022:

Average amount of credit applied each month:	\$1,197,826
Average monthly RHIC amount per participant:	\$98.25

Following are the July 1, 2023 in force pensions for the NDPERS and Highway Patrol Systems, respectively. This represents the potentially eligible population if all members utilized the RHIC.

Main System	12,910
Highway Patrol	111
Judges	44
Job Service	116
Public Safety	143
Total	13,324

## **SECTION 3 - SCOPE OF SERVICES**

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### **A. BID SOLICITATION AND EVALUATION FOR THE RHIC PROGRAM**

#### **A.1 GENERAL REQUIREMENTS**

The contractor selected by the NDPERS Board shall handle all administrative and recordkeeping functions. This will be an employer payment plan as described in IRS Revenue Ruling 61-146 and IRS Notice 2013-54. The contractor will be responsible for setting up and maintaining individual accounts of participating members based on member indicative data forwarded to the contractor for processing on the contractor's system. This will be a deposit-driven account.

#### **A.2 SPECIFIC REQUIREMENTS**

The contractor shall be required to provide the following administrative services:

##### **A.2.1 ADMINISTRATIVE ACCOUNT SERVICES**

1. All required account services shall be in place prior to January 1, 2024.
2. Set up and maintain individual accounts including processing new accounts, terminations, and account changes. Enroll members for direct deposit based on NDPERS weekly data file submissions. (Currently, over 90% of participant reimbursements are made by direct deposit.)
3. Issue checks for members that do not elect direct deposit. In the case of two or more uncashed checks, the RHIC benefit is suspended until the direct deposit is established.
4. The contractor shall meet with NDPERS staff to discuss and develop an implementation plan.
5. The contractor shall indicate what forms it proposes to use including an explanation for their use.
6. The contractor will be responsible for issuing a minimum of three cobranded & customized plan year notices – 1) participant plan year enrollment, 2) mid-year statement, and 3) end-of-year statement to participants with remaining RHIC balance.
7. The contractor will be responsible for mailing correspondence to participants for any recovery of overpayments on accounts.
8. RHIC year-end credit for accounts that have no activity. For example, accounts with RHIC contributions of less than \$10.00 per month with no claims filed would be eligible for a fee credit at year-end. The fee credit provided to NDPERS would be one-half of the year-to-date fees paid. This arrangement provides reasonable compensation for the welcome letter and limited account maintenance.



### **A.2.2 ADMINISTRATIVE SERVICES**

The contractor shall establish a website for the State's RHIC program that employees can access to obtain account information, register for direct deposit, and submit premiums for RHIC claim reimbursement. The website shall include general information about seeking reimbursement under the RHIC program. Desired internet services provided by the contractor shall include (a) the ability to download reimbursement claim forms, (b) access to member account information, including claim payments, pending claims, and account balances; and (c) the ability to file reimbursement claim forms online.

The contractor shall provide a toll-free number that members can call for general account information or to speak to a representative. Customer service representatives shall be available at a minimum Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. central time.

### **A.2.3 CLAIMS PROCESSING SERVICES**

NDPERS will provide the contractor with the following information each month:

- A file of all members who are eligible for the RHIC benefit and the amount of the available benefit for each month. This file includes direct deposit information for all newly established retiree accounts, direct deposit information for established retiree accounts, and the effective date for canceled/deceased member accounts. Note that currently, over 90% of the accounts are direct deposit.
- A file of all members who paid the monthly premium(s) for an NDPERS-sponsored insurance plan and the amount of premium(s) eligible for reimbursement. This file will be used to substantiate the incurred expenses for members enrolled in NDPERS sponsored insurance plans, in lieu of having the member file a reimbursement claim form for these premiums. (For January 2022 – December 2022 plan year, NDPERS substantiated 68% of RHIC claims by file feed and participants substantiated 32% of RHIC claims through claim form submission.)

The contractor will set up individual member accounts to record each member's monthly benefit amount that is available for reimbursement. To ensure RHIC members have immediate access to their funds, the available benefit provided by NDPERS shall be posted to the member's account and available for reimbursement. The contractor shall process RHIC reimbursements for incurred expenses to member accounts within 1-3 business days. The contractor will also be responsible for verifying members submit properly completed RHIC reimbursement claim forms, along with required supporting documentation. The contractor shall establish and maintain controls to ensure that only valid claims are processed and that proper documentation to substantiate incurred expenses accompanies submitted claims. The contractor will be required to confirm that the coverage qualifies as an accident or health insurance plan and substantiate proof of coverage and proof of payment in compliance with Revenue Ruling 61-146.

If a filed claim is deemed to be invalid or if additional information is required to process a claim, the notification must be sent within 1-3 days to the claimant detailing the reason for the denial of the claim or the specific information needed in order to process the claim. The contractor shall process claim reimbursements on a daily basis during the work week.

#### **A.2.4 ELECTRONIC FILE TRANSFER REQUIREMENTS:**

The contractor shall provide a secure internet site from which eligibility and premium payment files can be safely transferred between the contractor and NDPERS.

#### **A.2.5 END OF YEAR SERVICES**

A final RHIC eligibility file and claim file will be provided after the last check write is processed for the calendar year by NDPERS, which is three days prior to the new plan year set up on January 1. The NDPERS plan year runs from January 1 through December 31. The program's cut-off date for filing reimbursement claims is March 31, following the end of the plan year on December 31. The contractor shall be required to process reimbursement claims received from members for the previous plan year up through the March 31 cutoff date.

The contractor shall prepare and send a final reconciliation report of the individual member accounts to NDPERS. This listing shall include the member's name, PERSLink ID, last 4 digits of social security number, and account balance. This must be accomplished within 60 days of the March 31 cutoff date.

#### **A.3 REPORTS**

The contractor shall compile, on a periodic basis, reports that summarize the claims activity and provide detailed member account information. At a minimum, the following reports shall be prepared and forwarded to NDPERS:

1. A quarterly activity report which includes a detailed listing of participants, deposits to date, claims submitted, claims paid, current account balances, and outstanding and/or suspended checks.
2. A final report with member account detail within sixty (60) days following the close of the plan year as outlined in Section 3.A.2.5.
3. A daily detailed report and email summary notification of the funds being pulled from the NDPERS bank account.

#### **A.4 CONFIDENTIALITY & HIPAA**

The vendor shall comply with the state's confidentiality requirements as set forth in NDCC 54-52.1-11 and 54-52-26 and all applicable HIPAA requirements.

**B: SEQUENCE OF ACTIVITIES**

Following is a sequence of major activities:

Date	Activity
July 12, 2023	RFP is issued.
August 10, 2023	Written questions regarding proposals must be received by NDPERS no later than 5:00 p.m. (CDT).
August 17, 2023	NDPERS posts responses to all questions received.
August 31, 2023	Proposals must be received by NDPERS no later than 5:00 p.m. (CDT).
October 2023	Selection and award of contract by NDPERS Board.
January 1, 2024	Vendor begins administration

**C. MEETINGS**

The consultant should plan on attending one meeting each year with the NDPERS Board, upon request.

## SECTION 4 - INFORMATION REQUESTS

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The proposal must contain your organization's response to the following requested information. Please respond by using the following format and answering each request by restating it followed by your response (**proposals not following this format will lose points**).

### A. General Background:

1. Provide a brief description of the size, structure, and services provided by your organization.
2. Generally, provide your understanding of the services NDPERS is requesting.
3. Describe your organization's approach to administrative and recordkeeping services for premium reimbursement plans.
4. Indicate your organization's depth of experience in each of the following areas:
  - ◀ Substantiating claims
  - ◀ Set up and account maintenance
  - ◀ Claims reimbursement
  - ◀ Direct deposit
  - ◀ Dispute Resolution
  - ◀ Appeals Process
  - ◀ Process for returning and correcting funds paid in error
  - ◀ Call center services for responding to member inquiries

### B. Scope of Work

1. Detail your understanding of the work effort by restating each of the items in Section 3.A and discuss how you intend to provide services that respond to the work effort identified.
2. It is essential that the vendor move forward quickly upon notification of the award. Therefore, the bidder must include as part of its proposal a mobilization and implementation plan, beginning with the date of notification of contract award. Such mobilization and implementation plan should include the following elements:
  - (a) A detailed timetable for the mobilization and implementation period. Such a detailed timetable shall be designed to demonstrate how the bidder will have the contract up and operational following the notification of the contract award. In preparing the timetable, the following key elements should be taken into consideration:
    - All plan materials.
    - The timeline and procedure for the importing and exporting of eligibility files must be established with NDPERS. The contractor shall identify when this needs to be in place for a January 1, 2024, effective date.
  - (b) The bidder's plan for the deployment and use of management,

supervisory, or other key personnel during the mobilization and implementation period. The plan should show all management, supervisory, and key personnel that will be assigned to manage, supervise and monitor the bidder's mobilization and implementation of the contract.

3. The bidder should set forth a summary of any and all challenges/problems that the bidder anticipates during implementation or the term of the contract. For each challenge/problem identified, the bidder should provide its proposed solution.
4. The bidder should include the location of the bidder's office that will be responsible for managing the contract. The bidder should include the telephone number and name of the individual to contact.
5. This is a unique program for NDPERS retirees. How will you train your call center staff to respond to member questions/concerns?
6. Provide your changes to the NDPERS performance standards for this contract for each major activity below.

### NDPERS Performance Guarantees

Category	Guarantee	Measured/Reported	Refund
<b>Final Implementation</b>	The Final Implementation Plan, as described in AR-1 of Attachment A-3: Administrative Requirements will be submitted to NDPERS	Within 2 weeks of the contract award	\$100 per day for each day or partial day during which the Contractor is not in compliance with the Final Implementation Plan.
<b>Turnaround time – All claims</b>	<u>Contractor</u> will adjudicate at least 95% of all eligible claims <u>which</u> received by the Contractor within 14 calendar days.	The claim turnaround time is measured from the date received by the Contractor to the date adjudicated (paid, denied or <u>pending</u> ). Adjudication is considered to be finalized upon the date the check or an Explanation of Benefits (EOB) is issued.	Up to \$2500 per year
<b>Telephone Response - Incoming Calls</b>	80% of Incoming calls will be answered by an attendant within 30 seconds ( <u>ASIFlex</u> -based on global measurements)	30 seconds or less	\$300 per quarter
<b>Telephone Response - Abandonment Rate</b>	The telephone abandonment rate will be 3% or less of calls ( <u>ASIFlex</u> - based on global measurements)	3% or less	\$300 per quarter
<b>Satisfaction Survey - Customer Service</b>	At least once per year, the Contractor shall measure employee and retiree satisfaction through a customer satisfaction survey. Employees and retirees will indicate their level of satisfaction pertaining to customer service using a five-point scale with one being the lowest rating and five being the highest rating. NDPERS and the Contractor will mutually agree on the number and content of the questions to be included in the survey.	85% and higher	\$1200 per year

**C. Experience of Firm**

1. Provide a listing of similar projects your firm has worked on, names of clients, and contact individuals for each.
2. The bidder shall include an organizational chart showing the bidder's entire organizational structure. This chart should show the relationship of the individuals assigned to the contract to the bidder's overall organizational structure.
3. Provide a listing and the experience your firm has with public sector clients and other clients.
4. The vendor shall also discuss its disaster planning procedures for its operations.

**D. Staffing**

1. Provide a list and resume of staff assigned to this project.
2. The bidder should also include a list of backup staff that may be called upon to assist or replace primary individuals assigned.
3. Provide the locations of where the work will be done on this project and its staff.

## **SECTION 5 – FEES/HOURS**

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Contractor's proposal for fees shall be on a per-participant per-month fee. A participant may be enrolled in one or several eligible insurance products. This fee will include all services identified in this RFP. Separately, please identify the hourly rate for any services that NDPERS may request that are outside the scope of the services requested herein.

### **Term of the Contract**

The contract term will begin on January 1, 2024, upon the execution of the Agreement by NDPERS. The initial contract term will end on December 31, 2025. The NDPERS Board, at its discretion, may extend the contract for up to two additional two (2) year option periods.

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

## **SECTION 6 - SUBMISSION OF PROPOSAL**

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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 August 10, 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 17, 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;"><b>Katheryne Korom, Research &amp; Project Manager</b> <b>NDPERS</b> <b>Email: <a href="mailto:ndpersbids@nd.gov">ndpersbids@nd.gov</a></b></p>
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### **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 8). No proposed variation is binding on NDPERS unless and until accepted by NDPERS.

### **6. Submission of Proposals**

To be considered for the award, six (6) printed and bound copies, one (1) unbound copy of the Offeror's technical and price proposal, one (1) electronic, PDF redacted copy of the proposal on a separate USB flash drive labeled "REDACTED", and one (1) electronic, editable, PDF original copy of the proposal on a separate USB flash drive labeled "ORIGINAL" (note that the electronic redacted and original copies may not be a picture) must be received by NDPERS on or before 5:00 P.M. (CDT), August 31, 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 USB flash drive, and one (1) copy of the “ORIGINAL” proposal on a USB flash drive shall be provided in separate sealed envelopes.

Responder acknowledges that NDPERS is subject to the North Dakota Open Records Laws, and the documents submitted pursuant to this RFP may be subject to 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 ADMINISTRATIVE AND RECORDKEEPING SERVICES FOR RETIREE HEALTH INSURANCE CREDIT PROGRAM”.
- 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 8 – Agreement for Services, must be signed by a partner or principal of the firm and included with your proposal.

The Agreement between NDPERS and the Contractor will incorporate the RFP as finally amended and/or clarified, the Contractor's proposal as amended or clarified, if applicable, and any other information the Contractor may be required to provide (hereinafter Contract Documents).

The Contract Documents are intended as the complete and exclusive statement of the agreement between NDPERS and the Contractor and supersede all prior or contemporaneous agreements, negotiations, course of prior dealings, or oral representations relating to the Agreement subject matter.

The terms and conditions of any agreements, amendments, modifications, or other documents submitted by the Offeror that conflict with or in any way purport

to amend or add to any of the terms and conditions of the Agreement are specifically objected to by NDPERS and are of no force or effect, unless specifically agreed to by NDPERS and incorporated into the Agreement for Services as an amendment signed by both parties.

The Agreement may be amended by mutual consent of the parties. No modification or amendment to the Agreement shall become valid unless in writing and signed by both parties. All correspondence regarding modifications or amendments to the Agreement must be forwarded to NDPERS for prior review and approval.

The contracting organization agrees that it shall not publicize the Contract Documents or disclose, confirm or deny any details thereof to third parties or use any photographs or video recordings of NDPERS' or participating entities' employees or use NDPERS' name in connection with any sales promotion or publicity event without the prior express written approval of NDPERS.

## SECTION 7 - CONFIDENTIAL/PROPRIETARY INFORMATION

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### 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 ADMINISTRATIVE AND RECORDKEEPING SERVICES FOR RETIREE HEALTH INSURANCE CREDIT PROGRAM (please check one):

Offeror asserts that the information noted in the table below constitutes proprietary, trade secret, commercial, or financial information as defined by North Dakota Century Code section 44-04-18.4, and desires that the information noted in the table below not be disclosed if requested pursuant to the North Dakota Open Records law. **Offeror has submitted a redacted copy of the proposal on a USB flash drive labeled "REDACTED" that accurately and completely redacts the information noted in the table below.**

Offeror makes NO assertion that any information in its Proposal, in whole or in part, should be protected from disclosure under the North Dakota Open Records law.

Technical Proposal:				
Specific wording that Responder desires to protect	Page Number, Section Number	Specific reason Responder believes the language should not be disclosed	North Dakota Century Code provision that allows NDPERS to withhold the information if requested	Has this information ever been publicly disclosed? (Yes/No)
<i>Insert rows above as necessary</i>				
Cost Proposal:				
Specific wording that Responder desires to protect	Page Number, Section Number	Specific reason Responder believes the language should not be disclosed	North Dakota Century Code provision that allows NDPERS to withhold the information if requested	Has this information ever been publicly disclosed? (Yes/No)
<i>Insert rows above as necessary</i>				

The above information has been reviewed by Responder's legal counsel and is attested to by \_\_\_\_\_ (insert name of Responder representative who is authorized to contractually bind Responder), on this \_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_ (Signature)

## SECTION 8 - AGREEMENT FOR SERVICES

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### 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

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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**

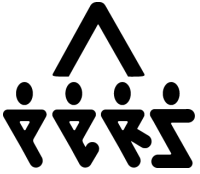
BY: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**Attach Contractor Records Retention Policy**





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

**Scott A. Miller**  
Executive Director  
(701) 328-3900  
1-800-803-7377

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# Memorandum

**TO:**                   NDPERS Board

**FROM:**               Rebecca & Scott

**DATE:**               July 11, 2023

**SUBJECT:**           HB 1040 Implementation

As discussed at the June meeting, a number of efforts are underway to determine the steps necessary to smoothly and efficiently close the Defined Benefit (DB) plan to new hires and have new hires participate in the new Defined Contribution (DC) plan. Please note that the provisions of the DC plan outlined in HB 1040 are significantly different than our current DC plan, so once the closure occurs, we will have a two-tiered DC plan. Attached is a document that was prepared to outline what each section of HB 1040 does. We thought the Board may be interested in reviewing this document to understand the efforts needed to ensure compliance with the provisions.

We also discussed that SB 2015 (OMB Appropriations Bill) provided the option for the Board to close the DB plan earlier..

*"[Sections 36-40, 44-50] become effective on January 1, 2024 if before that date, the retirement board certifies to the legislative council that the public employees retirement system is prepared to close the main system defined benefit retirement plan on December 31, 2023, and to open the new defined contribution retirement plan on January 1, 2024."*

Therefore, the Board has the discretion to determine if NDPERS is prepared to close the DB plan and open the DC plan to new hires effective January 1, 2024. To assist the Board in this decision, staff have identified the following as high-level efforts needed. This list is not all-inclusive, but meant to provide the Board with the breadth of the actions needed for this change to be made.

## **Administrative Rules Promulgation**

There are a number of administrative rules related to the current DC Plan that will need to be modified or, in many cases, repealed. In addition, new rules will be needed to properly administer the provisions outlined in HB 1040. Specifically:

- 1) Define the election window that new hires will have to select the additional employee contribution, up to 3%, that they can pay into their DC plan. The guidance received from Ice Miller based upon the type of plan that we are is that no more than 30 days should be permitted to ensure IRS compliance. Once this amount is selected, changes cannot be made to the contribution amount to the section 401(a) DC plan. Both items need to be outlined in rules.
- 2) Specify the additional contribution must be in whole percentages, rather than fractional percentages, whether it is an employee election to contribute the additional contribution to the DC plan or the 457 plan.
- 3) Clarify that enrollment in the DC plan will be automatic after the effective date of HB 1040 for new hires that meet eligibility requirements, rather than requiring an enrollment form to be enrolled. This mirrors the current enrollment process into the DB plan for new hires.
- 4) Clarify if individuals that were previously eligible for the DC plan that either waived a transfer or failed to take action, thus remaining in the DB plan, have a new election opportunity if they have less than 5 years of NDPERS service.
- 5) Need rules outlining the process related to payment of the incentive for state employees with less than 5 years of NDPERS service that elect to transfer from DB plan to DC plan.
  - a. When are incentives to be paid
  - b. All NDPERS service on file applies in determining eligibility for transfer
  - c. Incentive will be paid by the employing agency at the time the incentive payment is due
  - d. Incentive will not be paid if the employee terminates employment or transfers to a participating political subdivision prior to the incentive being paid
- 6) Develop rules for contribution reporting similar to what we have for the DB plan to define eligible wages to report, bonus eligibility, and other wage reporting provisions (see 71-02-06-04 & 71-02-06-05 & 71-02-06-06 & 71-02-06-08 & 71-02-06-09 for examples)
- 7) Existing rules that may need modification or repeal:
  - a. 71-08-01-03
  - b. 71-08-01-04
  - c. 71-08-01-05
  - d. 71-08-01-07
  - e. 71-08-02-01
  - f. 71-08-07-01
  - g. 71-02-08-01
  - h. 71-02-08-05
- 8) Define board standards applicable to the DC plan recordkeeper for claims paying ability

The Internal Revenue Code considers administrative rules to be part of the Plan Document and, therefore, rules are required in order to administer the plan. The regular rulemaking process takes approximately 9 months. Staff have reviewed the emergency rule making provisions and determined they are not applicable to allow us, and we cannot expedite the rulemaking process. Therefore, the soonest we could have rules effective for this implementation is April 1, 2024.

### **Record keeper RFP**

When Callan was hired by the Board to be the Investment Consultant, part of Callan's responsibilities was to develop and lead the RFP process for the DC/457 Companion Plan Recordkeeper. The current contract with TIAA is through June 30, 2024. Staff began reviewing the current RFP in February, 2023, to make updates based upon changes since the last time the product was bid. Staff then provided this updated version to Callan so that they could review it and make changes based upon their experience and to bring it more in line with industry standards. During the past month, staff have been meeting weekly with Callan on the draft document, to incorporate suggested changes and also additional language that is needed due to the passing of HB 1040. The following is the tentative schedule that staff will ask the Board to approve at a future meeting as part of the overall RFP approval that will allow necessary implementation time should a new vendor be selected. It will also allow any changes that need to be implemented by July 1, 2024, when the new contract would begin, related to mapping participants' investment options to new investment options:

- Publish August 16
- Questions Due September 8
- Post Answers September 29
- Proposals Due October 16
- Callan recommends 2-3 vendors to Staff October 31 (Callan mentioned this may not apply and could be done quickly)
- Callan recommends finalists at December 12<sup>th</sup> meeting, and Callan requests BAFOs ahead of interviews
- Interviews and/or Award at Special December meeting or January's regular Board meeting

HB 1040 has specific requirements of the Board and its vendor related to member education and the investment options provided. These requirements are also being added to the RFP document to ensure that any interested vendor understands what the Board's expectations of the vendor will be to ensure compliance with the law.

One of staff's greatest concerns regarding a January 1, 2024, DB plan closure date is that new DC plan members will become confused and frustrated if they begin with one vendor and then six months later go through the disruption and black-out periods that will result from a transition to a new vendor. Staff believes it is better for our members to have the potential vendor transition completed prior to the DB plan closure date. Accordingly, from a member perspective, we believe a January 1, 2025 closure date is preferable.

### **System Programming**

Staff continue to analyze and document the necessary programming changes related to the bill. Areas identified include but will not be limited to the following items, as we expect additional items to be identified as we move forward with programming and receive questions from Sagitec:

- 1) The bill requires an additional 1% employer contribution effective January 1, 2024. Implementing this portion of the bill is in progress and should not be an issue. This increase is not contingent on the plan closure date.
- 2) The DC plan provisions in HB 1040 are significantly different than the current DC plan. As a result, major PERSLink programming changes will be needed for the new DC Plan, the DB Plan, and the 457 plan. There will also be significant changes in our employer contribution reporting processes.

The new DC plan provisions have a reduced mandatory employee contribution, but with the option for the employee to contribute additional amounts, up to 3% of wages, to either the DC plan or the NDPERS 457 plan. If the employee does not make the election for additional contributions to go to the DC plan, or does not maximize the 3% as a new hire, then they can make the election within the NDPERS 457 plan if their employer participates in that plan. Based upon what the employee does, there is a corresponding match by the employer.

- 3) The provisions of HB 1040 also require that deferred DB plan members who are re-hired after the effective date of the closure will be re-enrolled in the DB plan and will not become members of the DC plan. Business rules will need to be programmed into PERSLink to ensure the proper administration of these eligibility provisions.
- 4) There are also provisions related to participation of members in the Public Safety, Judges, Highway Patrol and other state retirement systems that will need programming to validate proper plan enrollment.
- 5) Programming of the special election opportunity for state employees with less than 5 years of NDPERS service to move to the old DC plan will also be complex. First, NDPERS will have to identify these members. Then, NDPERS will need to provide these employees with notice of their election opportunity, including an estimate of the transfer amount should they elect to transfer. This amount is to be the actuarial present value, which PERSLink will need to be programmed to calculate; this is not currently a value that is programmed or stored on our system. In addition, for the

incentive the employees receive to transfer, validations will need to be developed to ensure the processing of the \$3,333 each year, for up to 3 years. The system will need to provide an invoice process for the incentive which will need to be developed.

- 6) PERSLink has a high volume of templates for member and employer communications. A thorough review of our correspondence will need to take place so that updates are made to avoid incorrect information leaving our office. In addition, new templates and documents will need to be created to reflect the new DC plan provisions for new hires after the DB closure date.

Staff have asked Sagitec for their estimate on how long they believe the programming will take on their end to then be turned over to staff to test. Sagitec indicated the earliest staff should expect to see testing is at least six to seven months (Attachment 2). The reason for the timeframe is due to the substantial differences in our current programming for the three plans impacted. Keep in mind that once Sagitec turns the programming over to staff to test, and once staff tests the changes, it is anticipated that additional changes and clarifications will need to be made before the programming becomes "live". Anytime we have changes to our system, this back and forth between NDPERS staff and Sagitec developers occurs to ensure that the programming is correct before it goes live on our production site.

### **Employer Payroll Updates**

Once Sagitec determines what programming will be necessary for PERSLink related to employer reporting, we will then need to communicate what changes employers will need to make to their payroll systems to ensure that their system is correctly capturing contributions, both those made to the retirement plans and also the NDPERS 457 plan. In the past, employer contributions to the retirement plans has always been a set amount or percentage, and not variable based upon an election made by the member. HB 1040 changes this for new participants, which will need to be captured to make sure that the contributions are posted to the correct plan, with the correct employer match dollars associated with it.

NDPERS updates the OMB PeopleSoft payroll system and works closely with Higher Education on changes related to benefits administration needed on the Higher Education PeopleSoft payroll system.

Political subdivisions participating in the retirement and 457 plans will need to make changes so they are in place prior to the DB closure effective date. As of January 2023, 373 political subdivisions participate in the DB plan and 180 participate in the 457 plan. Political subdivisions cannot currently participate in the DC plan. A very small number have employed a DC plan member as it only occurs if a state employee who elected to transfer to the DC plan becomes an employee of the political subdivision following their election. So employers will also need to be able to set up the DC plan on their payroll system.

Political subdivisions run their payroll through a variety of different payroll software; NDPERS does not have any way of knowing how many different payroll systems our political subdivisions use. What we do know is that once we communicate the changes that

need to be made, we will need to allow time for the changes to be made to their payroll system.

### **Communication and Educational Requirements**

Section 57 of SB 2015 requires that during the 2023-2025 biennium, “the public employees retirement system shall conduct an informational campaign to educate current and prospective employees of the transition from the defined benefit plan to the defined contribution plan”. Staff will need to determine the timeline for this campaign and what all it entails. You may recall that NDPERS has already provided notice of the passing of HB 1040 to current employers and employees. Once the Board determines the DB closure date, it will be easier to determine the timeline for this campaign and what communication is necessary to meet the statutory requirement.

We also know that all the current documents for the DB and DC plans will need to be updated to reflect the changes made due to HB 1040. Once updated, these will need to be updated on our website, member self-service, and employer self-service. Significant changes will be required to templates that have been built into PERSLink, which will require extensive programming, as discussed earlier.

HB 1040 has requirements of the Board, or its vendor, related to the education of new DC participants of the benefits of a defined contribution plan, as well as the available investment options. These materials will need to be developed between NDPERS staff and the vendor selected by the Board as the DC/457 Companion Plan Recordkeeper for dissemination to the eligible population.

### **Political subdivision & Plan Participation**

NDPERS has begun hearing from many city and county employers about concerns that they have related to their public safety employees and whether they will be able to retain and recruit these types of employees with the closing of the DB plan. Many of them have inquired about joining the Public Safety plan prior to the DB plan closing to ensure they have a competitive pension plan for these employees.

As of January 2023, there were 51 counties participating in the DB plan and only 21 offering the Public Safety plan. There are 98 cities in the DB plan and only 22 of them participate in the Public Safety plan. That means that a significant volume of employers may be interested in joining the Public Safety Plan prior to the DB closure date.

Staff also have questions related to once the DB plan is closed, if a political subdivision opts to join the Public Safety plan, will any individuals in the DC plan be permitted to become members of the Public Safety plan with the group joining, or must they remain in the DC Plan. It appears that section 7 of HB 1040, under 4(b), implies that they must remain in the DC plan. This is an item that staff will have legal review. But if this is the case, then employers will want to understand this when making their decision regarding joining the Public Safety plan.

For groups in the DB plan that decide to offer the Public Safety plan, the PERS staff faces a heavy workload because eligible service and account information needs to move from the DB plan to the Public Safety plan for each eligible employee. Staff are concerned with our ability to handle the volume of transfers within the short time period if the Board moves forward with a January 1, 2024, DB closure date. A longer transition period would allow us to reach out to employers in batches to make sure they understand their options. We can also encourage a more staggered enrollment for political subdivisions into the Public Safety plan. A longer time period allows us to manage these group enrollments better.

In addition, many employers in our DB plan do not offer the NDPERS 457 plan as a supplemental retirement plan. As you know, provisions of HB 1040 have an employee election regarding additional contributions. If the additional contributions are made to the NDPERS 457 plan, then an employer match of up to 3% is also made. However, the provisions are specific only to the NDPERS 457 plan and do not apply to other supplemental retirement plans that an employer may offer.

As of January 2023, there were 373 political subdivisions participating in the DB plan and only 180 employers participating in the NDPERS 457 plan. Therefore, roughly 200 employers may want to enroll in the NDPERS 457 plan so that their new hires enrolled in the new DC plan can later elect a higher contribution percentage and receive the employer match. Similar to the above discussion on the Public Safety plan, a longer time period will allow us to properly communicate the option and ensure that employers understand the benefit to their employees of offering the NDPERS 457 plan. We would be able to stagger the communications and group enrollments into the plan in a more efficient manner for both employers and NDPERS.

In both of these areas, staff are hearing from political subdivisions that they need time to make the decision on offering the Public Safety plan and/or the NDPERS 457 plan. They have concerns with making the decision by January 1, 2024.

### **Special Election Transfer Opportunity**

As discussed earlier, HB 1040 provides that current state employees with less than 5 years of NDPERS service credit will be given an opportunity to terminate their membership in the DB plan and transfer to the current DC plan. They are to be given a 3 month window beginning on the date of the DB closure. As an incentive, for any eligible state employee that decides to transfer to the DC plan, the individual will receive \$3,333 per year for up to three years following the election, as long as they remain state employees. NDPERS does not know how many state employees will be eligible for the transfer. However, HRMS estimated it could be up to approximately 2,300 based upon the PeopleSoft payroll system.

NDPERS will need to prepare communication materials for this special window, including preparing a comparison document, estimated transfer calculation, notification letter, and election form. The communication should be sent at least 30 days prior to the window opening to allow employees time to review their options and ask questions as needed.

Staff do have questions that need to be explored with GRS, our actuary, regarding the transfer calculation so we understand how the “actuarial present value based upon assumption that the member will retire based upon normal retirement age, plus interest from January 1 until the date of the transfer at interest rate of ½ less than the actuarial interest assumption at time of election” is calculated. Once this is understood, we will need to work with Sagitec to determine if this is something that can be programmed so the generation of the transfer calculation and special window can be more easily disseminated to this eligible population. Otherwise, we may need to hire a vendor to assist us with these calculations, or look to utilize temporary staff depending upon the complexity of the calculation.

### **Hiring of Staff**

Based upon discussions at the June meeting, staff are moving forward with developing the classifications and job descriptions for the two positions provided to NDPERS. The counselor position should be onboard within the next 4-6 weeks. Staff hope to have the DC Programs Manager on staff by or before October 1. Both these positions will be instrumental in NDPERS being able to support the work efforts needed due to HB 1040 and the on-going work as we support the many plans that NDPERS administers.

### **STAFF RECOMMENDATION:**

With any plan implementation, time is important. Therefore, the sooner the Board can make a decision on a firm effective date, the better it is for staff to move this implementation forward and properly communicate the change to employers and members.

Staff do not believe that the new DC plan development and launch can be successfully accomplished earlier than January 1, 2025, due to the information and timelines outlined above. As such, staff recommends that the Board affirms the timeline originally passed in HB 1040, with a January 1, 2025, transition from the DB plan to the new DC plan.

### **BOARD ACTION REQUESTED:**

Direct staff regarding the Defined Benefit Plan closure effective date so that staff can move forward with ensuring the implementation is complete by this date and begin necessary communications.



## **HB 1040 Summary by Section:**

### Section 1 (TFFR section of code):

- Clarifies that dual membership will not exist under TFFR code (15-39.1-10.3) for new DC plan members

### Section 2 (Main section of code):

- Defines deferred members as those not actively participating in the main plan but whose account remains intact
- Modifies eligible employee definition to differentiate that new hires defined in 54-52-02.15 after plan closure are not members of main but new DC plan

### Section 3 (Main section of code):

- Clarifies that DC election window for newly elected & appointed state officials closes when DB plan closes.
- After plan closure to new hires, elected and appointed state officials hired on or after this date will be members of the new DC plan.

### Section 4 (Main section of code):

- Temporary employees hired prior to plan closure to new hires can elect to join main plan
- A temporary employee who participates in the main plan prior to the closure date, who then becomes permanent after the closure date, remains a member of main plan for their retirement
- As of plan closure, temporary employees may elect to participate in the new DC plan

### Section 5 (Main section of code):

- Clarifies that before plan closure, eligible elected officials of counties have the option to enroll in the main plan within first 6 months of term
- After plan closure, eligible elected officials of counties have the option to enroll in the new DC plan within the first 6 months of term

### Section 6(Main section of code):

- Clarifies that non-state appointed officials appointed prior to plan closure will be members of the main plan if they meet participation requirements
- Non-state appointed officials appointed after the plan closure will be members of the new DC plan if they meet participation requirements

### Section 7 (Main section of code):

- Defines eligible employees for new DC plan:

- Meets eligibility requirements of chapter
- Is 18 years of age
- Becomes a participating member after plan closure date
- Not eligible to participate in the LE plan, judges plan, HP plan, TFFR plan or TIAA through higher ed
- Indicates that as of plan closure date, the main plan is closed to new eligible employees unless the employee was participating or a deferred member prior to the plan closure, even if rehired after plan closure
- Otherwise, a new hire as of plan closure is a participant in new DC plan
- Clarifies that a participating or deferred DC member who becomes eligible to participate in LE, judges, HP, TFFR or TIAA can participate in these alternate plans
- If a member of LE, judge, HP, TFFR or TIAA becomes an eligible employee under this section after the plan closure date will be members of the new DC plan for their new employment that makes them eligible
- The board shall adopt rules related to this section

Section 8 (Main section of code):

- Modifies EE contribution rate to just reflect 7% EE contribution to the DB plan (previously had 4% with 3 different 1% increases done in past)

Section 9 (Main section of code):

- Adds an additional 1% employer contribution to the main plan beginning January 2024
- Requires the Board to report annually to the employee benefits committee the amount necessary to maintain the funds actuarial soundness

Section 10 (Main section of code):

- Requires the State to pay the ADEC for all main plan and DC plan members over a closed period of 30 ½ years beginning January 2026.
- By November 15 of each even-numbered year, the Board to publish the contribution rate required based upon the July 1 actuarial report of that year
- Political subs continue to pay 8.12% employer contribution (7.12% current + 1% as of 1/24)
- Political subs continue to pay 1.14% employer contribution towards retirement rather than RHIC for new hires as of 1/1/2020 and after

Section 11 (Main section of code):

- Technical correction to clarify the retirement system

Section 12 (Main section of code):

- Clarifies that dual membership provisions do not apply to new DC plan members (verify that is what it does as believe that was the intent)

Section 13: (457 Plan section of code):

- Allows new DC plan members who do not elect within window of new hire date to contribute up to the additional 3% EE contribution to make the election to participate in NDPERS 457 (if employer offers)
- If new DC plan member elects additional contributions to the NDPERS 457 plan, then the employer will match up to 3% into 457 plan

Section 14 (DC section of code):

- Modifies definition of deferred member of the main plan to match similar change in main section of code
- Clarifies that an eligible employee of the new DC plan is one who becomes hired and is not a deferred member after the plan closure date
- Clarifies the definition of an eligible employee of the old DC plan is one who met the criteria prior to the plan closure
- Adds governmental unit to the definitions (so political subs are included)
- Adds definition of normal retirement date
- Adds definition of temporary employee

Section 15 (DC section of code):

- Clarifies election on joining only applies to eligible employees prior to plan closure date
- Clarifies election on joining for deferred members who are re-employed only applies prior to plan closure date
- Clarifies amount temporary employees are required to pay for participation in the plan (see 54-52.6-09.6)
- States that as of plan closure, an eligible employee is no longer allowed to elect participation (removes election window)

Section 16 (DC section of code):

- Unless provided under 54-52-02.5 or 54-52-02.15 (main sections of code), as of plan closure, an eligible employee must participate in the new DC plan
- A temporary employee as of plan closure may elect to participate
- A county elected official as of plan closure may elect to participate
- A non-state appointed official as of plan closure who meets eligibility requirements may elect to participate

Section 17 (DC section of code):

- Defines special election window for main plan members to transfer to old DC plan:
- Eligible employees for window are:
  - o Permanent state employees
  - o Less than five years of service (based upon total service in chapter 54-52)

- At least 18 years of age
- 3 month window from plan closure date to elect
- Election is irrevocable
- Transfer is a lump sum to the member's DC plan as long as they are still employed at time of transfer
- If terminate prior to transfer, will remain member of main plan
- The lump sum is calculated based on the actuarial present value based upon assumption that the member will retire based upon normal retirement age, plus interest from January 1 until the date of transfer at interest rate of ½ less than the actuarial interest assumption at time of election
- Transfers remain eligible for health benefits under 54-52.1

Section 18 (DC section of code):

- Clarifies transfer amount for eligible employees who have an election to transfer from main to DB prior to plan closure

Section 19 (DC section of code):

- Board to provide investment menu of investment options
  - Include predetermined investment portfolio options constructed to reflect different risk profiles and automatically reallocate and rebalance as a participating member ages
  - All a member to construct an investment portfolio using some or all of the investment options
- Board shall provide diversified menu of mutual funds and in-plan lifetime annuity options, either fixed, variable or a combination of both

Section 20 (DC section of code):

- Requires the Board to select one or more annuity providers to provide annuity options
- Sets criteria for Board to select an annuity provider:
  - Provider subsidiaries and affiliates have appropriate financial strength and stability
    - In compliance with title 26.1
    - Is in good standing with the insurance commissioner of the provider's domiciliary state and has been within the past 7 years, not operating under an order of rehabilitation or liquidation
  - May require a provider to provide annuities
  - Must have determined the provider has a claims paying ability rating that meets standards adopted by the Board
  - Determine whether the annuity provider is able to provide contracted rights & benefits to members

- Determine the costs, fees and commissions of the annuity options are appropriate
- Determine whether the annuity provider is experienced in paying lifetime retirement income through annuities
- Determine whether the provider offers a menu of annuity options that are:
  - Suitable for members
  - Contract terms and income benefits are clearly stated
  - Annuity options offer a range of lifetime income options
- Determine if provider offers objective and participant-specific education and tools to help participants understand appropriate use of annuities as a long-term retirement savings vehicle

Section 21 (DC section of code):

- Technical correction

Section 22 (DC section of code):

- Old DC plan members will continue to contribute 7% as EE contribution
- State employees with less than 5 years of service credit that elect to transfer to DC will contribute 7% as EE contribution also
- New DC plan members will contribute 4% as EE contribution with option to contribute up to 3% additional to plan
- Old DC plan members and those members who transfer due to special 3 month window (state employees with less than 5 years of service) will have an ER contribution equal to 7.12%
- New DC plan members will have a 4.12% ER contribution and based upon if the new DC plan member contributes additionally to DC plan, will have up to the 3% match based upon the amount the employee is contributing
- The 1.14% ER contribution that was previously for RHIC will continue to be made to the DC plan for all DC plan members (old & new)

Section 23 (DC section of code):

- The state shall contribute to the main plan the ADEC minus the ER contributions under 54-52.2-09 & 54-52.6-09
- If a state employer uses federal funds to pay any or all of an employee's wages, state funds must be used (federal funds can't be used)

Section 24 (DC section of code):

- Temporary employees can elect to participate within 180 days of temp employment and if elected, contribute 9.26% (required) and can contribute up to an additional 6%.
- Employer cannot contribute towards a temps contribution

Section 25 (DC section of code):

- Clarifies that service in main plan is recognized by DC plan upon transfer for old plan members and state employees that elect to transfer due to special 3 month window

Section 26 (DC section of code):

- Adds distribution option of periodic distributions, including annuities
- Otherwise, technical corrections

Section 27 (DC section of code):

- Board, or Board's vendor, to provide information to members eligible to elect between main and DC plan
  - o Enrollment information including benefits of DC plan, investment options, assumption of risk and administrative/investment costs
  - o Ongoing investment and retirement income planning (set, measure and adjust income/savings goals)
  - o Retirement income education, including distribution options and in-plan annuitization options
  - o Advice and guidance information, tools and services focused on long-term planning and investing and life events

Section 28 (DC section of code):

- Technical correction

Section 29 (DC section of code):

- Board to provide a report to the EBPC on the status of the DC plan

Section 30 (DC section of code):

- If any section of 54-52.6 does not comply with applicable federal statutes or rules, the Board shall adopt appropriate terminology for that section so that it complies with federal statutes or rules, subject to the approval of the EBPC, and are effective until the legislative assembly amends the section to be in compliance with IRS.

Section 31:

- \$65 Million to be paid to NDPERS main plan based upon revenues received in state share of oil and gas taxes, based upon priority list (we are 8<sup>th</sup> in list)

Section 32:

- Repeals section 54-52-06.5 and 54-52.6-03

Section 33:

- During interim, legislative management shall study the main system, funding options and contributions by political subdivisions. They shall report findings and recommendations along with legislation to implement recommendations to the 69<sup>th</sup> assembly

Section 34:

- During interim, legislative management shall study best practices for public employee retirement plans including db plans, dc plans, hybrid plans, cash benefit plans and stacked hybrid plans to include development of legislation to implement the retirement plan suited to best meet the needs of the state, political subdivisions and public employees. Report findings along with legislation to the 69<sup>th</sup> assembly

Section 35:

- Transfer of \$135 Million from SIF to main plan during the 2023-2025 biennium

Section 36:

- Section 10 of the act is effective January 2026 based upon July 1, 2024 actuarial analysis

Section 37:

- Sections 9, 31, 33, 34 & 35 effective August 1, 2023
- Sections 1-8, 11-22, 24-30 & 32 are effective January 1, 2025
- Sections 10, 23 and 36 are effective January 1, 2026

See SB 2015, Sections 36-40, 44-50 “become effective on January 1, 2024 if before that date, the retirement board certifies to the legislative council that the public employees retirement system is prepared to close the main system defined benefit retirement plan on December 31, 2023, and to open the new defined contribution retirement plan on January 1, 2024.”

**From:** [Hohbein, Derrick L.](#)  
**To:** [Mueller, Maik](#)  
**Cc:** [Fricke, Rebecca D.](#); [Miller, Scott A.](#); [Anderson, MaryJo V.](#)  
**Subject:** Re: SB1040 changes - Plan design changes for Main closure  
**Date:** Friday, June 16, 2023 3:27:37 PM

---

Thanks for the input and analyze Maik.

Becca this is something we'll need to incorporate into your memo.

---

**From:** Mueller, Maik <Maik.Mueller@sagitec.com>  
**Sent:** Friday, June 16, 2023 3:22 PM  
**To:** Hohbein, Derrick L. <dhohbein@nd.gov>  
**Subject:** SB1040 changes - Plan design changes for Main closure

**\*\*\*\*\* CAUTION:** This email originated from an outside source. Do not click links or open attachments unless you know they are safe. **\*\*\*\*\***

Hi Derrick,

Based on the changes covered in the bill I anticipate the development to the PERSLink system to be at a minimum 6-7 months. More time may be needed as we uncover additional details. As you know, interpretation of one word in a bill can make a difference of several weeks in development.

The changes required for SB1040 are much different than those adding a new Defined Benefit or Defined Contribution plan. The past additions followed logic that was already implemented for previous plans. Below are some of the high level system changes we are anticipating.

#### Defined Contribution

- Redesign enrollment to allow for percent of wages election vs flat amount
- Redesign payroll reporting to consider the percent of wage election when calculating contribution amounts and possible interface file layout changes to accommodate the additional values
  - This is a very large effort as it does not follow any of our current setup for retirement plan contributions

Deferred Compensation – affects multiple providers (currently 13 where a member can elect multiple providers to split their deduction)

- Redesign enrollment to allow for percent of wages election vs flat amount
- Redesign payroll reporting to consider the percent of wage election when calculating contribution amounts and possible interface file layout changes to accommodate the additional values

Thanks,

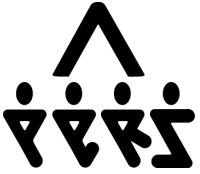


**MAIK MUELLER | SR BUSINESS ANALYST**

Sagitec Solutions | 422 County Rd D East | Saint Paul MN 55117

c. 701.400.3223 | e. [maik.mueller@sagitec.com](mailto:maik.mueller@sagitec.com)

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# Memorandum

**TO:**                   NDPERS Board

**FROM:**               Rebecca

**DATE:**               July 11, 2023

**SUBJECT:**           Wellness Renewal

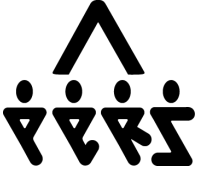
NDPERS staff has completed the renewal of the Employer Based Wellness Program for the plan year July 1, 2023, to June 30, 2024. This renewal determines those employers that will qualify for the 1% health insurance premium discount during the plan year. Employers are given the opportunity to combine efforts with another NDPERS employer in order to qualify.

At this time, there are a total of 173 out of 222 employers electing to participate in the wellness program. This is an employer participation rate of 78%. However, approximately 96% of employees covered on the insurance plan are working for employers that are offering wellness programs and activities to their employees.

The breakdown of the participating employers is as follows:

- 109 state agencies, universities and district health units
- 25 counties
- 12 school districts
- 13 cities
- 14 political subdivisions

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



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# Memorandum

**TO:**                   NDPERS Board

**FROM:**               Katheryne Korom

**DATE:**               July 11, 2023

**SUBJECT:**           Employee Assistance Program (EAP) Update

The NDPERS Board approved the four current EAP vendors as agency choices for the 2023-2025 biennium at the May 2023 Board meeting. These providers were CHI St. Alexius, The Village, eni NexGen, and Live Well Solutions.

The following three agencies switched EAP providers during our open enrollment:

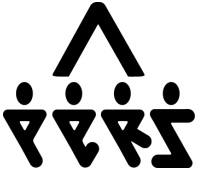
- ND Protection & Advocacy
- ND Department of Financial Institutions
- ND Department of Transportation

The following two new agencies selected EAP providers during our open enrollment:

- ND Center for Distance Education
- ND Department of Mineral Resources

If you have any questions, we will be available at the NDPERS Board meeting.

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



# Memorandum

**TO:** NDPERS Board

**FROM:** Katheryne Korom

**DATE:** July 11, 2023

**SUBJECT:** Uniform Group Insurance Consultant Request for Proposal (RFP)

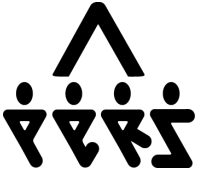
The Uniform Group Insurance Consultant RFP was issued on July 3, 2023.

Following are the key dates for the proposal process:

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.

If you have any questions, we will be available at the NDPERS Board Meeting.

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



# Memorandum

**TO:** NDPERs Board

**FROM:** Katheryne Korom

**DATE:** July 11, 2023

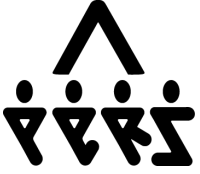
**SUBJECT:** Group Voluntary Vision Benefits Plan Request for Proposal (RFP)

Rebekah Ferstadt and the team at Buck have completed the Best and Final Offer (BAFO) requests from the two top-ranked vision benefit plan providers. Buck Consulting will be available at the NDPERs Board meeting to review their findings and answer any questions.

An adjusted proposed timeline for the proposal process is below:

Date	Activity
February 1, 2023	RFP is issued.
February 24, 2023	Written questions regarding proposals must be received by NDPERs no later than 5:00 p.m. (CDT).
March 10, 2023	NDPERs posts responses to all questions received.
March 31, 2023	Proposals must be received by NDPERs no later than 5:00 p.m. (CDT).
May 2023	NDPERs Board review of proposals.
July 2023	Best and Final Offers presented to the Board, and finalist interviews if deemed appropriate by Buck Consulting.
End of August 2023	Selection and award of contract by NDPERs.

**Board Action Requested:** Select vendor for the Group Voluntary Vision Benefits Plan.



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# Memorandum

**TO:** NDPERS Board

**FROM:** Derrick Hohbein, CPA

**DATE:** July 11, 2023

**SUBJECT:** Consultant Fees for the Quarter Ended March 2023

Attached is a quarterly report showing the consulting, investment, and administrative fees paid during the quarter ended June 2023.

This is informational only.

Attachment

## North Dakota Public Employees Retirement System Consulting/Investment/Administrative Fees For the Quarter ended June 30, 2023

Program/Project	Fee Type	Apr-23	May-23	Jun-23	Fees Paid During The Quarter	Fees Paid Fiscal Year-To-Date
<b>Actuary/Consulting Fees:</b>						
Mid Dakota Clinic	Retirement Disability				-	\$ 1,350
Ice Miller	Legal fees Employee benefit matters		5,397	2,930	8,327	\$ 26,123
Deloitte	Legislative Analysis		1,219	2,275	3,494	\$ 37,700
Deloitte	Claims Projections				-	\$ 38,350
Deloitte	Consulting		894	2,113	3,006	\$ 15,113
State Auditor's Office	PBM Audit		5,554		5,554	\$ 221,915
Buck Consulting	Life/Dental/Vision RFP		5,833	3,333	12,500	\$ 46,666
OSG	Microfiche Conversion				-	\$ 19,502
Nexus	IT Consulting		1,073	8,808	21,320	\$ 31,200
Klausner, Kaufman, Jensen & Levinson	Litigation vs Legislature			59,520	59,520	\$ 59,520
Elsberry & Shively Inc	Litigation vs Legislature			11,047	11,047	\$ 11,047
Gabriel Roeder Smith & Company	Retirement				-	\$ 103,000
Gabriel Roeder Smith & Company	RHIC				-	\$ 14,400
Gabriel Roeder Smith & Company	GASB 67/68				-	\$ 26,750
Gabriel Roeder Smith & Company	GASB 74/75				-	\$ 7,000
Gabriel Roeder Smith & Company	Projections				-	\$ 19,300
Gabriel Roeder Smith & Company	Actuarial Factor Updates				-	\$ 15,000
Gabriel Roeder Smith & Company	Legislation	20,995	9,250	850	31,095	\$ 137,015
Gabriel Roeder Smith & Company	Retirement			2,250	2,250	\$ 16,123
Gabriel Roeder Smith & Company	RHIC				-	\$ -
Gabriel Roeder Smith & Company	Deferred Comp				-	\$ -
Gabriel Roeder Smith & Company	Flexcomp				-	\$ -
Callan & Associates	Asset Allocation & Liability Study				-	\$ -
Callan & Associates	Investment Consultant Expenses		12,824		12,824	\$ 50,174
Callan & Associates	Record Keeper Search				-	\$ -
<b>Audit Fees:</b>						
Clifton Larson Allen	Annual Audit Fee				-	\$ 115,141
<b>Legal Fees:</b>						
ND Attorney General	Administrative		3,410	3,227	5,171	\$ 11,808
<b>Investment Fees:</b>						
SIB - Investment Fees	Retirement (DB)		1,807,574	1,805,278	*	3,612,852 \$ 19,905,321
SIB - Investment Fees	Ret Health Credit		134,384	138,084	*	272,468 \$ 1,509,954
SIB - Investment Fees	Insurance		14,238	15,597	*	29,835 \$ 156,959
SIB - Administrative Fees	Retirement (DB)		46,312	91,390	*	137,702 \$ 627,487
					-	\$ 18,146,864
<b>Administrative Fee:</b>						
Sanford Health Plan	Health Plan		1,229,061	1,227,395	*	2,456,457 \$ 13,601,584



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# Memorandum

**TO:**                   NDPERS Board

**FROM:**               Derrick Hohbein, CPA

**DATE:**               July 11, 2023

**SUBJECT:**           IT Consultant

At the February 2023 meeting, we discussed the need for an IT Consultant to analyze some of our outdated IT programs. The Board approved Staff to move forward utilizing Nexus under the State's contract, at a limit not to exceed \$50,000.

To date, Nexus has analyzed twelve different ancillary programs in our office. Of the twelve programs analyzed, six were programs that still were relevant to our operations. Nexus was able to help us identify all the validations within each program, the incoming and outgoing file feeds within each program, and what each button in the interface does.

The final and most comprehensive program is what we use to administer the payroll reporting requirements for our FlexComp program. FlexComp is the only program that is administered (for everything other than enrollments) outside of PERSLink. Nexus is currently in the process of redesigning this process, bringing it from an obsolete code to a modern code where all of our IT staff will have the ability to run the program from any computer. Nexus is nearing the completion of this enhancement, but we have reached our \$50,000 threshold previously set by the board.

Staff has been extremely satisfied with the performance of Nexus thus far. Nexus estimates they will be able to complete the redesign of our FlexComp reporting process for under \$10,000. We also know there are other processes



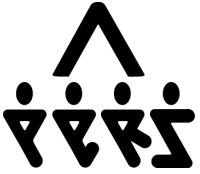
currently being done on a manual basis that Nexus could help us streamline, and the Board may want to consider appropriating additional funds in case there are other cost-effective initiatives that Staff identifies.

The Board has delegated to the Executive Director the authority to execute contracts below \$10,000 without the Board's review and approval. While this proposal is below the \$10,000 threshold, it is with the same provider under a contract that exceeded that threshold. As such, Scott did not feel he had the authority to approve the increase without Board review and approval.

**Board Action Requested:**

Consider providing additional spending authority to complete the FlexComp payroll reporting process redesign, at an amount not exceed of \$10,000.

If the Board is interested in giving Staff the discretion of pursuing other cost effective upgrades that can be fit into our existing appropriation authority, please provide direction on if Scott has the authority to approve those initiatives under \$10,000, or if you prefer the full Board's approval on those projects.



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# Memorandum

**TO:**                   NDPERS Board

**FROM:**               Scott

**DATE:**               July 11, 2023

**SUBJECT:**           Board Subcommittee/State Investment Board Assignments

The NDPERS Board has two standing subcommittees, the Audit Subcommittee and the Investment Subcommittee, and two ad hoc committees, the Election Subcommittee and the Performance Review and Compensation Subcommittee. The Board also has two members on the State Investment Board (SIB).

The Audit Subcommittee membership is described in its charter:

The audit committee will consist of two to five members with the majority of the members selected from the Board of Directors, and one may be selected from outside the organization. The Board or its nominating committee will appoint committee members and the committee chair. The Board should attempt to appoint committee members who are knowledgeable and experienced in financial matters, including the review of financial statements.

Mona (Chair) and Adam are the only remaining Audit Subcommittee members after the Board membership transition and the resignation of our at-large member. As such, the Board should consider appointing one or two additional Board members, and perhaps an at-large member. Mona and Shawna Platz, your Chief Audit Officer, have suggested perhaps appointing Nina Strand as the at-large member. They can provide more information on that candidate. The Audit Subcommittee typically meets quarterly.

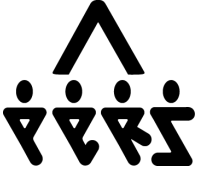
The Investment Subcommittee typically has between three and four members, and one alternate. Currently, the only remaining members are Adam (Chair) and Mona. The Board Chair appoints these members. As such, Mona will need to appoint one or two more members, and an alternate. The Investment Subcommittee also usually meets quarterly.

We just completed an election, and so we do not need an active Election Subcommittee until the next election.

The Performance Review and Compensation Subcommittee typically has three members. This Subcommittee's purpose is to review the performance evaluations for the Executive Director and recommend a compensation figure to the full Board. This interim the Board has also tasked the Subcommittee with doing a compensation study of the Executive Director position for purposes of taking any possible change to the next Legislative Assembly for any necessary appropriation. Because Casey (Chair) is the only remaining Subcommittee member, I would suggest appointing an additional two members. The Board Chair appoints these members. This Subcommittee meets on an ad hoc basis.

Last Session, the Legislative Assembly reduced the number of PERS Board members on the SIB from three to two. Adam is the only Board member remaining on the SIB. As such, the Board needs to appoint an additional Board member to the SIB. We also usually have a Board member appointed as an alternate, in the event the regular SIB member cannot attend. That is currently Mona. The SIB meets monthly.

**BOARD ACTION REQUESTED:** Prior to the Board meeting, consider whether you would like to serve on one of these subcommittees or the SIB. The Chair and the Board will need to appoint the necessary Board members to the appropriate Subcommittees and the SIB.



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# Memorandum

**TO:**                   NDPERS Board

**FROM:**               Scott Miller

**DATE:**               July 11, 2023

**SUBJECT:**           Contracts under \$10,000

Attached is a document that shows the contracts under \$10,000 that I have signed since the last update. Please let me know if you have any questions on any of these contracts.

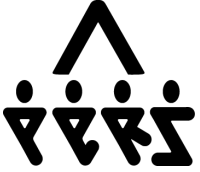
This topic is informational only.

## Contracts Signed During 2023:

Vendor	Amount	Notes
NDIT	\$ -	Service Level Agreement (January 2023)
Spherion Staffing	~ \$7,200	Temporary Staffing for Admin Services
Marco	\$ 3,654.49	Replacement of North & Batch Printers
Inter Office	\$ 1,179.44	Chair
Central Services	\$ -	Staff authorization to pickup printed materials
Inter Office	\$ 280.00	Adjust height of workstation in scanning room

## Contracts Signed Since Last Reported:

Vendor	Amount	Notes
NDIT	\$ -	Service Level Agreement (June 2023)
Callan	\$ -	Recordkeeper RFP scope of work.



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# Memorandum

**TO:**                   NDPERS Board

**FROM:**               Scott

**DATE:**               July 11, 2023

**SUBJECT:**           Litigation Update

This is a placeholder to provide the Board with an update on the litigation regarding the Board makeup.

**VII. MEMBER \*EXECUTIVE SESSION**

- A. Retirement Benefit Appeal Case #820 – MaryJo (Board Acton)**
- B. Retirement Benefit Appeal Case #821 – MaryJo (Board Acton)**

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

**Confidential material will be sent under separate cover**