

REQUEST FOR PROPOSAL

**Enrollment in the State of North Dakota's
Employee Assistance Program 2025-2027**

Prepared by:

**North Dakota Public Employees Retirement System
P.O. Box 1657
Bismarck, ND 58502-1657**

I. BACKGROUND

The 1995 Legislature authorized an Employee Assistance Program (EAP), for employees of state agencies and higher education. This program allows permanent employees to receive confidential assistance in many areas without accessing the health care system.

EAP coverage applies to approximately 120 agencies. These agencies have about 16,000 employees with about 25,000 dependents. Residence of these members is mainly in North Dakota and bordering cities, but potentially includes remote workers located outside of the state. Eligibility for a dependent is the same as the NDPERS Group Medical Plan.

ELIGIBLE DEPENDENT - a dependent of the employee who qualifies for membership under this Benefit Plan in accordance with the requirements specified below:

- A. The employee's spouse under a legally existing marriage.
- B. The employee's or the employee's living, covered spouse's children under the age of 26 years. Children are considered under age 26 until the end of the month in which the child becomes 26 years of age. The term child or children includes:
 - 1) Children physically placed with the employee for adoption or whom the employee or the employee's living, covered spouse has legally adopted.
 - 2) Children living with the employee for whom the employee or the employee's living, covered spouse has been appointed legal guardian by court order.
 - 3) The employee's grandchildren or those of the employee's living, covered spouse if:
 - a) Be the natural child of the Subscriber's Dependent child, a child placed with the Subscriber's Dependent child for adoption, a legally adopted child by the Subscriber's Dependent child, a child for whom the Subscriber's Dependent child has legal guardianship, a stepchild of the Subscriber's Dependent child, or foster child of the Subscriber's Dependent child. These same definitions apply to dependents of the Dependent child(ren) of the Subscriber's living, covered Spouse; and
 - b) The Subscriber's Dependent child must be a Covered Dependent under this Certificate of Coverage for the dependent of the Dependent child to be eligible; and
 - c) The Subscriber's Dependent child must be chiefly dependent on the Subscriber for support as determined by N.D.C.C. §26.1-36-22 (3)(4).

- 4) Children for whom the employee or the employee's living, covered spouse are required by court order to provide health benefits.
- 5) Children beyond the age of 26 who are incapable of self-sustaining employment by reason of a disabling condition and chiefly dependent upon the Certificate holder/Subscriber for support and maintenance. If the Plan so requests, the Subscriber must provide proof of the child's disability within *thirty-one* (31) days of the Plan's request. Such a request may be no more than annually following the two year period of the disabled dependent child's attainment of the limiting age [N.D.C.C. § 26.1-36-22 (4)]. If a person has a disabled dependent that is over the limiting age but was never previously covered by the Plan, they are eligible for coverage if the disability occurred prior to reaching the limiting age of 26. If for any reason, Subscriber drops coverage for a disabled dependent prior to age 26, then wishes to cover the child again, coverage must be added prior to the child turning age 26. If the disabled child has reached age 26, the child must be continuously covered under the Plan in order to maintain eligibility.

II. ADMINISTRATION

NDPERS administers the EAP. The NDPERS EAP is an agency-based program with each individual agency choosing an EAP vendor. NDPERS does all agency billing and Vendor payments. Enrollment, orientation, services, and reporting is the responsibility of the vendor. Individual agency reports are supplied on at least an annual basis. Overall reporting on utilization shall be reported back to NDPERS on an annual basis. Reporting shall include but not be limited to cases, services, treatments, referrals, and management training.

III. EAP PROGRAM FORMAT, SOLICITATION PROCESS, AND TIME FRAMES

NDPERS has adopted a methodology for providing EAP services that is called an "Agency Based Approach." Pursuant to this method, each agency is the focal point for the decision on which EAP vendor would be the most appropriate for their employees. To implement this approach, the NDPERS Board establishes a list of qualified vendors based upon this bid process and a renewal procedure for existing Vendors. EAP vendors that are able to successfully meet the minimum requirements are placed on a list of qualified vendors. Each agency is offered the list and allowed to select one vendor from that list to provide services to that agency's employee base. An agency may select multiple vendors for geographical reasons.

In recognition of the above, this solicitation process involves two steps. First, each new vendor must complete this RFP and be approved by the NDPERS Board. The approved vendors will be placed upon a list of qualified vendors that will be sent to each agency. Information on the vendor's EAP and pricing will be included with the list of agencies. Second, each agency will review the list of qualified vendors and select a vendor to provide services to that agency for the upcoming biennium. NDPERS will then finalize a contract with each of the selected vendors for services. The initial selection by NDPERS to place a vendor on the list of qualified vendors does not guarantee the vendor will be selected by any of the agencies. If not selected by any agency, the vendor

will not have a contract with NDPERS for services.

The estimated time frames for this solicitation and agency selection process are as follows:

Date	Activity
February 3, 2025	NDPERS will issue RFP
February 28, 2025	Proposals are due
April 2025	NDPERS Board will select vendors
May 2025	List of vendor information will be given to agencies
May 30, 2025	Agencies vendor selection due
No later than June 6, 2025	Vendors will be notified of any agency changes
July 1, 2025	Effective date of EAP contract

IV. SCOPE OF WORK

NDPERS is seeking a vendor(s) to provide the following services:

A. Member Orientation

- 1) The vendor shall conduct the member orientation for state employees in the EAP. This effort will consist of the following activities:
 - a) Prepare and print appropriate informational material for distribution to all employers.
 - b) Conduct all presentations in a courteous, prudent, and professional manner without any pressure or harassment. The emphasis of all presentations and informational material shall be placed upon a factual representation of the features of the EAP.
 - c) Attend and present information at the NDPERS virtual Employer Conference upon request per the guidelines provided by NDPERS.
 - d) Participate in NDPERS or agency wellness and benefit fairs or meetings upon request.
- 2) If the EAP vendor selected by the agency is not the vendor that provided services during the 2023-2025 biennium, the EAP vendor

must:

- a) Distribute informational material to all agency employees advising them of the change in vendors and supplying appropriate reference material.
- b) If requested by the employer, hold an informational meeting for agency employees.

B. Minimum Services

- 1) Confidential, voluntary, short-term assessment, and counseling sessions for employees and families experiencing life problems of any kind. The EAP will provide counseling for problems related, but not limited to: stress, addiction, family, work, grief, tobacco, alcohol and drugs, marriage and divorce, depression, parent-child relationships, child/spouse abuse, aging, eating disorders, finances, school, gambling, suicide, and mental health. Proper referrals will be made if more extensive or further counseling is needed and the number of personal counseling sessions is exhausted.
- 2) Intervention, assessment, referral, and ongoing consultation with supervisors or employees regarding problems in the workplace.
- 3) Consultation and case management regarding challenging workplace problems, such as harassment, conflict resolution, violence, critical incidents, work performance, and change.
- 4) Educational programs, including training of State supervisory personnel on the use of EAP services and employee seminars.
- 5) Administrative services, including employee communications.
- 6) The table in Section VII - 9 shows the minimum requirements for selected features of the EAP.
- 7) All services proposed as part of the EAP must be available within the proposed geographic area.
- 8) Before March 1 of each year, the vendor will provide NDPERS an aggregate report of services provided to NDPERS members for the previous calendar year and the results of a member satisfaction survey.

C. Consulting

The vendor will be expected to serve as a consultant for the EAP to the agency and to the NDPERS Board, Executive Director, and NDPERS staff. In this capacity, the vendor may be expected to attend meetings to present findings and

recommendations as required. The NDPERS Board meets on a monthly basis. The vendor must provide the following:

- 1) Information on proposed state and federal laws affecting the EAP.
- 2) General assistance to NDPERS regarding the administration of the EAP.
- 3) Advice in determining the eligibility and services of the EAP.
- 4) The effect of changes in law or administrative interpretations on the operations of the EAP.

V. NDPERS ACTIVITIES

NDPERS will assist the vendor in the following:

- 1) Notify the vendor of any new agencies.
- 2) Include information on the EAP in our NDPERS newsletters.
- 3) Assist the vendor with establishing contacts with each of the agencies. The payroll/personnel staff of these agencies will set up meetings with their employees.
- 4) Assign an individual to act as the project leader and be the primary contact within each agency.

VI. FEES

NDPERS receives its funding for this program from the covered state agencies.

NDPERS is requesting each vendor bid this project on a fixed fee per active employee per month basis for enrollments (any changes beyond the fixed fee will not be allowed).

NDPERS will make payment to the vendor by multiplying the total monthly per employee fee by the number of employees in the agencies that chose the Vendor to contract for services. NDPERS will provide each vendor with details of each monthly premium payment electronically in the HIPAA 820 file format.

Bids exceeding \$1.54 per contract (employee) per month will not meet the minimum qualification and will be disqualified from further consideration. **Price per contract must be evenly divisible by two.**

VII. INFORMATION REQUESTS

The proposal must contain, in a separate section, your organization's responses to the following requested information:

- 1) Provide a brief description of the size, structure, and services provided by your organization, with special emphasis on past experience as an EAP vendor.
- 2) Provide, in detail, your understanding of the services NDPERS is requesting; specifically addressing the scope of work in Section IV, timeframes for delivery, and how you intend to staff the project.

3) The vendor should provide the following information:

- An organizational chart of the company which identifies its principal officers and staff members.
- The qualifications of the vendor's staff members who will be associated with the contract (i.e., education levels and experience with EAP plans). Identify the relationship of staff to the vendor or project manager (i.e., full-time employee, part-time employee, etc.).
- The day-to-day contact or project manager of the vendor's organization and the qualifications and authority of any such persons.
- Describe the quality assurance guidelines or ongoing monitoring system you have in place for evaluating professional staff. Who is responsible for assuring high standards of care?
- Locations the vendor currently maintains or plans to maintain. Offices and staff located in and outside of North Dakota. Any subcontractors for EAP services. Please explain.
- Please explain how you will provide services in areas you do not have an office.

4) If some staff is not yet hired or there are plans for expansion, the vendor should provide detailed descriptions.

5) Experience and reliability of the vendor's organization is considered in the evaluation process. Therefore, the vendor is advised to submit any information, which documents successful and reliable experience in past performances; especially those performances related to the requirements of this RFP.

6) The vendor **MUST** specify the principal business of the vendor and when the vendor began working in this area.

7) Please discuss your capabilities to provide referral and evaluation services under the Omnibus Transportation Employee Testing Act of 1991. However, these services are not being requested as part of the EAP.

8) Bidders must provide a list of all entities with which it has relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this request for proposals. The list submitted should indicate the name of the entity, the relationship, and a discussion on the conflict.

9) Complete the following table and questions with information on your proposed EAP. The vendor shall show where their proposed services meet or exceed the minimum requirements in the following table.

EAP Features	Minimum	Vendor
EAP Established	1 year	
Number of Annual Sessions Per Individual	6	
Number of Annual Sessions Per Incident	6 (Full Individual Minimum)	
Coverage	Employee and Dependents	
Staffing	Licensed Social Workers	
Appointment Timing	Within 72 hours	
Emergency Appointments	Within 24 hours	
Weekend/Holiday Appointments	Emergency	
1-800 number	Minimum one line	
Phone Counseling	Minimum one staffed line	
24 hour Crisis 'Hot' Line Staffing	Minimum one staffed line by LSW	
On-site Employee Orientation	1 per year (Smaller groups may be combined)	
On-site Seminars	None, except as noted in IV, A, 1, c & d	
Off-site Seminars	None, except as noted in IV, A, 1, c & d	
Management Training	Minimum Requirements: Stress, Conflict, Crisis, Change Management	
Management Consulting	Available to all supervisory/management staff	
Additional/Specialty Services Available	@ Additional Cost	
Employee Newsletters Supervisory Newsletters Internal Marketing Material (i.e., payroll stuffers, posters, etc.)	Quarterly Biannually As needed	
Agency/NDPERS Reporting - Utilization	Aggregate annual report on utilization to NDPERS	
Agency/NDPERS Reporting - Survey	Aggregate annual report on member satisfaction to NDPERS	
Price	\$1.54 Maximum	
OTHER UNIQUE FEATURES		

Questions:

1. Indicate how long your organization has been in the EAP market.
2. Specify how long your organization has been in existence and whether it is a division of a parent company. Does it have an affiliation with other business entities? If so, explain the nature of these affiliations. Is it privately or publicly held?
3. Has your organization been through recent reorganization or name changes? If yes, briefly describe the nature of the reorganization and list past names of your organization.
4. Provide a summary of any and all claims, pending litigation, and judgements that have been entered against your organization in the past five years that are directly related to its provision of an EAP.
5. For cases in which a plan member requires additional services beyond those available through the EAP, which are not covered by the State health plan, how do you recommend handling referrals so that members do not get the mistaken impression that these services are covered?
6. How are emergency and crisis situations handled? How do you recommend your organization be contacted in the case of emergency admissions? What is your response time?
7. For short-term counseling within the EAP, what number of sessions per individual do you recommend and why? Is this number a total per individual per year or per problem incident? Do you recommend a different number of sessions based upon incident treatment? Explain your answers.
8. Typically, what percent of cases do you resolve within the EAP through short-term counseling and what percent are referred outside the EAP?
9. If treatment outside the EAP is recommended, typically how many visits are made to an EAP counselor before outside referral is made?
10. Describe the range of counseling services available which you recommend be provided within the EAP. Will all services be offered to employees at all your locations?
11. Describe educational courses you would propose for supervisors on use of an EAP and other employee educational programs. Indicate frequency, topics, and specify associated costs.
12. Describe educational courses or awareness campaigns specific to wellness-related topics.
13. Describe educational courses or awareness campaigns specific to the topics of depression, mental health, and suicide for both supervisors and employees.

14. Describe the nature and scope of employee communications that are provided as part of your fee. Include a sample of all communication material you customarily prepare.
15. Are you able to customize written materials and communications? Is there an additional cost associated with customization?
16. Under the plan of benefits you indicate a certain number of sessions are available to each member. Please define what constitutes a session (i.e., duration or time).
17. Concerning the management training and consulting services that are part of the services proposed, please define the depth, scope and range of these services (number of sessions, hours of management consulting, etc.).
18. What services does your EAP provide relating to maintaining a drug free workplace and employee testing? To what extent are these services part of your proposal and, to the extent they are not, what is the cost for those additional services?
19. What services (virtual and/or in-person) do you provide for employers and employees?
20. Do you have a licensed addiction counselor or substance abuse counselor on staff or available through your network?

VIII. SUBMISSION OF PROPOSAL

- A. 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 Vendor and shall not be chargeable to NDPERS.
- B. The bidder shall sign the proposal. The signer must be a partner or principal of the firm. An unsigned proposal will be rejected.
- C. Address or deliver the RFP to:

Katheryne Korom
North Dakota Public Employees Retirement System
1600 East Century Avenue, Suite 2
PO Box 1657
Bismarck, ND 58502-1657
(701) 328-3900
- D. Six (6) copies of the proposal must be received at the above listed location by: **5:00 p.m. Central Time, on February 28, 2025.** The package the proposal is delivered in must be plainly marked "**PROPOSAL TO PROVIDE EAP SERVICES.**" In addition to the six (6) physical copies, submit an electronic copy of the proposal. The electronic copy of the proposal can be sent by email to: katherynekorom@nd.gov and must be received by **5:00 p.m. Central Time, on**

February 28, 2025. A proposal shall be considered late and will be rejected if either the physical copies or the electronic copy are received at any time after the exact time specified for return of proposals.

- E. The policy of the NDPERS Board is to solicit proposals with bona fide intent to award a contract. This policy will not affect the right of the NDPERS Board to reject any or all proposals.
- F. The NDPERS Board may request representatives of your organization appear before them for interviewing purposes. Travel expenses and related costs will be the responsibility of the organization being interviewed.
- G. The NDPERS Board will award the contracts for service no later than June 2025.
- H. In evaluating the proposals, price will not be the sole factor. The NDPERS Board may consider any factors it deems necessary and proper for best value, including but not limited to: price, quality of service, response to this request, experience, staffing, and general reputation.
- I. The vendor must sign the attached Contract, including the business associate agreement. The signed Contract and business associate agreement must be submitted with the proposal. If the NDPERS Board accepts the proposal, the Contract and business associate agreement will be signed and a copy will be returned.
- J. NDPERS reserves the right to make the decision exclusively based on whatever criteria the Board deems appropriate.

Appendix A – CONTRACT

CONTRACT FOR SERVICES BETWEEN (*Insert Name of Contractor*) AND NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM

1. PARTIES

The parties to this contract (Contract) are the state of North Dakota, acting through its *North Dakota Public Employees Retirement System* (STATE), and [*Insert Name of Business a type of business*] having its principal place of business at [*Insert principal Business Address*] (CONTRACTOR);

2. SCOPE OF WORK

CONTRACTOR, in exchange for the compensation paid by STATE under this Contract, shall provide the services as specified in the 2025 bid document and referenced in Exhibit A – SOW.

3. COMPENSATION – PAYMENTS

a. Contractual Amount

STATE shall pay for the accepted services provided by CONTRACTOR under this Contract an amount not to exceed [Amount] (Contractual Amount).

The Contractual Amount is firm for the duration of this Contract and constitutes the entire compensation due CONTRACTOR for performance of its obligations under this Contract regardless of the difficulty, materials or equipment required, including fees, licenses, overhead, profit and all other direct and indirect costs incurred by CONTRACTOR, except as provided by an amendment to this Contract.

b. Payment

- 1) Payment made in accordance with this Compensation section shall constitute payment in full for the services and work performed and the deliverables and work(s) provided under this Contract and CONTRACTOR shall not receive any additional compensation hereunder.
- 2) STATE shall make payment under this Contract within forty-five (45) calendar days after receipt of a correct invoice.
- 3) Payment of an invoice by STATE will not prejudice STATE's right to object to or question that or any other invoice or matter in relation thereto. CONTRACTOR's invoice will be subject to reduction for amounts included in any invoice or payment made which are determined by STATE, on the basis of audits conducted in accordance with the terms of this Contract, not to constitute allowable costs. At STATE's sole discretion, all payments shall be subject to reduction for amounts equal to prior overpayments to CONTRACTOR.

- 4) For any amounts that are or will become due and payable to STATE by CONTRACTOR, STATE reserves the right to deduct the amount owed from payments that are or will become due and payable to CONTRACTOR under this Contract.

c. Travel

CONTRACTOR acknowledges travel costs are covered by the Contractual Amount and shall not invoice STATE for travel costs.

d. Prepayment

STATE will not make any advance payments before performance or delivery by CONTRACTOR under this Contract.

e. 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. STATE will furnish certificates of exemption upon request by the CONTRACTOR.

f. Taxpayer ID

CONTRACTOR'S federal employer ID number is: *[Insert FEIN]*.

4. TERM OF CONTRACT

This Contract term (Term) begins on *July 1, 2025* and ends on *June 30, 2027*.

a. No Automatic Renewal

This Contract will not automatically renew.

5. TIME IS OF THE ESSENCE

CONTRACTOR hereby acknowledges that time is of the essence for performance under this Contract unless otherwise agreed to in writing by the Parties.

6. TERMINATION

a. Termination by Mutual Agreement

This Contract may be terminated by mutual consent of both Parties executed in writing.

b. Early Termination in the Public Interest

STATE is entering this Contract for the purpose of carrying out the public policy of the State of North Dakota, as determined by its Governor, Legislative Assembly, Agencies and Courts. If this Contract ceases to further the public policy of the State of North Dakota, STATE, in its sole discretion, by written notice to CONTRACTOR, may terminate this Contract in whole or in part.

c. Termination for Lack of Funding or Authority

STATE by written notice to CONTRACTOR, may terminate the whole or any part of this Contract under any of the following conditions:

- 1) If funding from federal, state, or other sources is not obtained or continued at levels sufficient to allow for purchase of the services or goods in the indicated quantities or term.
- 2) If federal or state laws or rules are modified or interpreted in a way that the services or goods are no longer allowable or appropriate for purchase under this Contract or are no longer eligible for the funding proposed for payments authorized by this Contract.
- 3) If any license, permit, or certificate required by law or rule, or by the terms of this Contract, is for any reason denied, revoked, suspended, or not renewed.

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

d. Termination for Cause.

STATE may terminate this Contract effective upon delivery of written notice to CONTRACTOR, or any later date stated in the notice:

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

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

7. FORCE MAJEURE

Neither Party shall be held responsible for delay or default caused by fire, riot, terrorism, pandemic (excluding COVID-19), acts of God, or war if the event was not foreseeable through the exercise of reasonable diligence by the affected Party, the event is beyond the Party's reasonable control, and the affected Party gives notice to the other Party promptly upon occurrence of the event causing the delay or default or that is reasonably expected to cause a delay or default. If CONTRACTOR is the affected Party and does not resume performance within fifteen (15) days or another period agreed

between the Parties, then STATE may seek all available remedies, up to and including termination of this Contract pursuant to its Termination Section, and STATE shall be entitled to a pro-rata refund of any amounts paid for which the full value has not been realized, including amounts paid toward software subscriptions, maintenance, or licenses.

8. INDEMNIFICATION

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 Contract.

9. INSURANCE

CONTRACTOR shall secure and keep in force during the term of this Contract and CONTRACTOR shall require all subcontractors, prior to commencement of a contract 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 Contract shall not be limited by the insurance required in this Contract.
- 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 CONTRACT 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 Contract. All endorsements shall be provided as soon as practicable.
- 7) Failure to provide insurance as required in this Contract is a material breach of contract entitling the STATE to terminate this Contract 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.

10. WORKS FOR HIRE

CONTRACTOR acknowledges that all work(s) under this Contract is "work(s) for hire" within the meaning of the United States Copyright Act (Title 17 United States Code) and hereby assigns to STATE all rights and interests CONTRACTOR may have in the work(s) it prepares under this Contract, including any right to derivative use of the work(s). All software and related materials developed by CONTRACTOR in performance of this Contract for STATE shall be the sole property of STATE, and CONTRACTOR hereby assigns and transfers all its right, title, and interest therein to STATE. CONTRACTOR shall execute all necessary documents to enable STATE to protect STATE's intellectual property rights under this section.

11. WORK PRODUCT

All work product, equipment or materials created for STATE or purchased by STATE under this Contract belong to STATE and must be immediately delivered to STATE at STATE's request upon termination of this Contract.

12. NOTICE

All notices or other communications required under this Contract must be given by registered or certified mail and are complete on the date postmarked when addressed to the Parties at the following addresses:

STATE	CONTRACTOR
Name: Mike Seminary	Name [Insert Name]
Title: Board Chairman	Title [Insert Title]
Address: 1600 East Century Ave, Suite 2 PO Box 1657	Address [Insert Address]
City, State, Zip: Bismarck, ND 58502-1657	City, State, Zip [Insert City, State, Zip]

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.

13. CONFIDENTIALITY

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

Information CONTRACTOR receives from STATE or Participants under this Contract may be subject to Health Insurance Portability and Accountability Act (HIPAA), 45 C.F.R. Part 160 and Subparts A, C, and E of Part 164. To that extent, CONTRACTOR is required to execute a Business Association Agreement, attached herewith and incorporated as Exhibit B.

14. COMPLIANCE WITH PUBLIC RECORDS LAWS

Under the North Dakota public records law and subject to the Confidentiality clause of this Contract, certain records may be open to the public upon request.

Public records may include: (a) records STATE receives from CONTRACTOR under this Contract, (b) records obtained by either Party under this Contract, and (c) records generated by either Party under this Contract.

CONTRACTOR agrees to contact STATE immediately upon receiving a request for information under the public records law and to comply with STATE's instructions on how to respond to such request.

15. INDEPENDENT ENTITY

CONTRACTOR is an independent entity under this Contract 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 Contract, except to the extent specified in this Contract.

16. 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 in accordance with the Termination for Cause section of this Contract.

CONTRACTOR may enter 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 STATE.

17. SPOILIATION – PRESERVATION OF EVIDENCE

CONTRACTOR shall promptly notify STATE of all potential claims that arise or result from this Contract. CONTRACTOR shall also take all reasonable steps to preserve all physical evidence and information that may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and grants to STATE the opportunity to review and inspect such evidence, including the scene of an accident.

18. MERGER AND MODIFICATION, CONFLICT IN DOCUMENTS

This Contract, 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 Contract. This Contract 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 Contract, the documents must control in this order of precedence:

- a. The terms of this Contract, including all attachments and exhibits, as may be amended;
- b. STATE's Request for Proposal ("RFP") number 192.02-03-25,
- c. CONTRACTOR's proposal in response to RFP number 192.02-03-25.
- d. All automated end-user agreements (e.g., click-through, shrink-wrap, or browse-wrap) are specifically excluded and null and void. Clicking shall not represent acknowledgement or agreement to any terms or conditions contained in those agreements.

19. SEVERABILITY

If any term of this Contract is declared to be illegal or unenforceable by a court having competent

jurisdiction, the validity of the remaining terms is unaffected and, if possible, the rights and obligations of the Parties are to be construed and enforced as if this Contract did not contain that term.

20. APPLICABLE LAW AND VENUE

This Contract 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*.

21. ALTERNATIVE DISPUTE RESOLUTION – JURY TRIAL

By entering this Contract, STATE 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.

22. ATTORNEY FEES

In the event a lawsuit is instituted by STATE to obtain performance due under this Contract, and STATE is the prevailing Party, CONTRACTOR shall, except when prohibited by N.D.C.C. § 28-26-04, pay STATE's reasonable attorney fees and costs in connection with the lawsuit.

23. 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 and in good standing all licenses and permits required by law 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.

24. STATE AUDIT

Pursuant to N.D.C.C. § 54-10-19, 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 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.

25. COUNTERPARTS

This Contract may be executed in multiple, identical counterparts, each of which is to be deemed an original, and all of which taken together shall constitute one and the same contract.

26. EFFECTIVENESS OF CONTRACT

This Contract is not effective until fully executed by both Parties. If no start date is specified in the Term of Contract, the most recent date of the signatures of the Parties shall be deemed the Effective Date.

CONTRACTOR	STATE OF NORTH DAKOTA
<i>[insert business]</i>	Acting through its NDPERS
BY: <i>[Signature]</i>	BY: <i>[Board Chairman Signature]</i>
<i>[Printed Name]</i>	Mike Seminary
<i>[Title]</i>	NDPERS Board Chairman
Date:	Date:

EXHIBIT A - Scope of Work

A. Member Orientation

- 1) The vendor shall conduct the member orientation for state employees in the EAP. This effort will consist of the following activities:
 - a) Prepare and print appropriate informational material for distribution to all employers.
 - b) Conduct all presentations in a courteous, prudent, and professional manner without any pressure or harassment. The emphasis of all presentations and informational material shall be placed upon a factual representation of the features of the EAP.
 - c) Attend and present information at the NDPERS virtual Employer Conference upon request per the guidelines provided by NDPERS.
 - d) Participate in NDPERS or agency wellness and benefit fairs or meetings upon request.
- 2) If the EAP vendor selected by the agency is not the vendor that provided services during the 2023-2025 biennium, the EAP vendor must:
 - a) Distribute informational material to all agency employees advising them of the change in vendors and supplying appropriate reference material.
 - b) If requested by the employer, hold an informational meeting for agency employees.

B. Minimum Services

- 1) Confidential, voluntary, short-term assessment, and counseling sessions for employees and families experiencing life problems of any kind. The EAP will provide counseling for problems related, but not limited to: stress, addiction, family, work, grief, tobacco, alcohol and drugs, marriage and divorce, depression, parent-child relationships, child/spouse abuse, aging, eating disorders, finances, school, gambling, suicide, and mental health. Proper referrals will be made if more extensive or further counseling is needed and the number of personal counseling sessions is exhausted.
- 2) Intervention, assessment, referral, and ongoing consultation with supervisors or employees regarding problems in the workplace.
- 3) Consultation and case management regarding challenging workplace problems, such as harassment, conflict resolution, violence, critical incidents, work performance, and change.

- 4) Educational programs, including training of State supervisory personnel on the use of EAP services and employee seminars.
- 5) Administrative services, including employee communications.
- 6) The table in Section VII - 9 shows the minimum requirements for selected features of the EAP.
- 7) All services proposed as part of the EAP must be available within the proposed geographic area.
- 8) Before March 1 of each year, the vendor will provide NDPERS an aggregate report of services provided to NDPERS members for the previous calendar year and the results of a member satisfaction survey.

C. Consulting

The vendor will be expected to serve as a consultant for the EAP to the agency and to the NDPERS Board, Executive Director, and NDPERS staff. In this capacity, the vendor may be expected to attend meetings to present findings and recommendations as required. The NDPERS Board meets on a monthly basis. The vendor must provide the following:

- 1) Information on proposed state and federal laws affecting the EAP.
- 2) General assistance to NDPERS regarding the administration of the EAP.
- 3) Advice in determining the eligibility and services of the EAP.
- 4) The effect of changes in law or administrative interpretations on the operations of the EAP.

Exhibit B - Business Associate Agreement

This Business Associate Agreement is entered into by and between, the North Dakota Public Employees Retirement System (“NDPERS”) and the [ENTER BUSINESS ASSOCIATE NAME, ADDRESS OF ASSOCIATE], each individually a “Party” and collectively the “Parties.” This Agreement is hereby incorporated into the underlying Contract, **CONTRACT FOR SERVICES BETWEEN (Insert Name of Contractor) AND NORTH DAKOTA PUBLIC EMPLOYEES RETIREMENT SYSTEM**, between the parties dated [insert date of original contract] (hereinafter both the Agreement and underlying Contract shall collectively be referred to as the “Agreement”).

DEFINITIONS

Terms used, but not otherwise defined, in this Agreement have the same meaning as those terms in the HIPAA Rules.

Catch-all definitions:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Specific definitions:

- a. Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR § 160.103, and in reference to the party to this Agreement, shall mean [Insert Name of Business Associate].
- b. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR § 160.103, and in reference to the party to this Agreement, shall mean NDPERS.
- c. Electronic Protected Health Information. “Electronic Protected Health Information” (ePHI) shall generally have the same meaning as the term “electronic protected health information” at 45 CFR § 160.103.
- d. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- e. Protected Health Information. “Protected Health Information” (PHI) shall generally have the same meaning as the term “protected health information” at 45 CFR § 160.103 that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity.

OBLIGATIONS OF BUSINESS ASSOCIATE

The Business Associate agrees to:

- a. Not use or disclose PHI other than as permitted or required by this Agreement or as required by law, or as otherwise authorized in writing by Covered Entity;
- b. Use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to ePHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;
- c. Not request, use, or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. § 164 if done by Covered Entity, except that Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate.
- d. Not request, use, or disclose more than the minimum amount of PHI necessary to accomplish the purpose of the use, disclosure, or request in accordance with 45 C.F.R. § 164.502(b).
- e. Not share, use, or disclose PHI in any form via any medium with any individual beyond the boundaries and jurisdiction of the United States of America without express written authorization from Covered Entity.
- f. Ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such PHI, in accordance with 45 CFR § 164.502(e)(1) and § 164.308(b).
- g. Within twenty (20) business days of receiving written notice from Covered Entity, make any amendments to PHI in a Designated Record Set, as directed or agreed to by Covered Entity pursuant to 45 CFR § 164.526, or take other measures as necessary to satisfy the Covered Entity's obligations under 45 CFR § 164.526.
- h. PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of Business Associate.
- i. Report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 C.F.R. § 164.410, and any security incident of which it becomes aware;
- j. 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 Rules.
- k. To make available to the Secretary 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 Rules, subject to any applicable legal privileges.

- l. Provide to Covered Entity within fifteen (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.
- m. To provide, within ten (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 under 45 C.F.R. § 164.524, in the event that PHI in the Business Associate's possession constitutes a Designated Record Set.

REPORTING OF A VIOLATION TO COVERED ENTITY BY BUSINESS ASSOCIATE

Business Associate shall report to Covered Entity's Breach Investigation Team (BIT) via email at ndpers-info@nd.gov any use or disclosure of PHI or ePHI not provided for by this Agreement, of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR § 164.410, and any Security Incident of which it becomes aware, immediately, and in no case later than ten (10) business days after the use or disclosure.

- a. Security Incident. "Security Incident" means (as defined by 45 CFR § 164.304), the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. For purposes of clarification of this Section, Security Incident includes use, disclosure, modification, or destruction of PHI by an employee or otherwise authorized user of its system of which Business Associate becomes aware. Business Associate shall track all Security Incidents and shall report such Security Incidents in summary fashion as may be requested by the Covered Entity.
 - i. Unsuccessful Security Incidents. Business Associate and Covered Entity agree that this Agreement constitutes notice from Business Associate of such Unsuccessful Security Incidents. By way of example, Covered Entity and Business Associate consider the following to be illustrative of Unsuccessful Security Incidents when they do not result in unauthorized access, use, disclosure, modification, or destruction of PHI or interference with an information system:
 1. Pings on Business Associate's firewall;
 2. Port Scans, which are attempts to log on to a system or enter a database with an invalid password or username;
 3. Denial-of-service attacks that do not result in a server being taken off-line; and
 4. Malware (e.g., worms, viruses).
- b. Discovery of a Violation. If the use or disclosure amounts to a breach of Unsecured PHI

or ePHI, Business Associate shall ensure its report is made to Covered Entity's Breach Investigation Team (BIT) via email at ndpers-info@nd.gov immediately upon becoming aware of the Breach, and in no case later than ten (10) business days after discovery. The Violation shall be treated as "discovered" on the first day which the Violation is known to the Business Associate or, by exercising reasonable diligence would have been known to the Business Associate. For purposes of clarification of this Section, Business Associate must notify Covered Entity of an incident involving the acquisition, access, use, or disclosure of PHI or ePHI in a manner not permitted under 45 C.F.R. Part E within ten (10) business days after an incident even if Business Associate has not conclusively determined within that time that the incident constitutes a Breach as defined by HIPAA Rules.

- c. Investigation of Breach. Business Associate shall immediately investigate the Violation and report in writing within ten (10) business days to Covered Entity with the following information:
 - i. Each Individual whose PHI has been or is reasonably believed to have been accessed, acquired, or disclosed during the Incident;
 - ii. A description of the types of PHI that were involved in the Violation (such as full name, social security number, date of birth, home address, account number);
 - iii. A description of unauthorized persons known or reasonably believed to have improperly used or disclosed PHI or confidential data;
 - iv. A description of where the PHI or confidential data is believed to have been improperly transmitted, sent, or utilized;
 - v. A description of probable causes of the improper use or disclosure;
 - vi. A brief description of what Business Associate is doing to investigate the Incident, to mitigate losses, and to protect against further Violations;
 - vii. The actions Business Associate has undertaken or will undertake to mitigate any harmful effect of the occurrence; and
 - viii. A Corrective Action Plan that includes the steps Business Associate has taken or shall take to prevent future similar Violations.
- d. Breach Notification.
 - i. Business Associate shall cooperate and coordinate with Covered Entity in the preparation of any reports or notices to the Individual, required to be made under the HIPAA Rules or any other Federal or State laws, rules or regulations, provided that any such reports or notices shall be subject to the prior written approval of Covered Entity.

- ii. Covered Entity shall make the final determination whether the Breach requires notices to affected Individuals and whether the notices shall be made by Covered Entity or Business Associate.
 - iii. For any notice regarding a Breach of Unsecured PHI caused by Business Associate that Covered Entity is required to provide pursuant to 45 C.F.R. §§ 164.404 – 164.408, Business Associate shall reimburse Covered Entity for all costs associated with Covered Entity’s obligation of notifying affected Individuals, the Secretary, and the media.
- e. Mitigation. Business Associate shall mitigate to the extent practicable, and at its sole expense, any harmful effects known to the Business Associate of a use, disclosure, or loss of PHI by Business Associate in violation of the requirements of this Agreement, including, without limitation, any Security Incident or Breach of Unsecured PHI. Business Associate shall reasonably cooperate with the Covered Entity’s efforts to seek appropriate injunctive relief or otherwise prevent or curtail such threatened or actual Breach, or to recover its PHI, including complying with a reasonable Corrective Action Plan.

Permitted Uses and Disclosures by Business Associate

- a. General Use and Disclosure Provisions. Business Associate may only use or disclose the minimum PHI and ePHI to perform functions, activities, or services for, or on behalf of, Covered Entity, specifically, as necessary to perform the services set forth in the Agreement. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth in subsection b below.
- b. Specific Use and Disclosure Provisions. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI and ePHI:
 - a. As required by law.
 - b. To make uses, disclosures, and requests for PHI consistent with Covered Entity’s minimum necessary policies and procedures.
 - c. For the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
 - d. To report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. §§ 164.304 and 164.502(j)(1).

Obligations of Covered Entity

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

Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Subpart E of 45 CFR Part 164 if done by Covered Entity, except that the Business Associate may use or disclose PHI and ePHI for management and administration and legal responsibilities of Business Associate.

Term and Termination

- a. Term. The Term of this Agreement shall be effective as of July 1, 2025, 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 Agreement or expiration of the services provided.

c. Termination for Cause. Business Associate agrees that if in good faith Covered Entity determines that Business Associate has materially breached any of its obligations under this Agreement, Covered Entity may:

1. Exercise any of its rights to reports, access, and inspection under this Agreement;
2. Require the Business Associate to cure the breach or end the violation within the time specified by Covered Entity;
3. Terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity
4. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
5. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
6. Before exercising either (c)(2) or (c)(3), Covered Entity shall provide written notice of preliminary determination to Business Associate describing the violation and the action Covered Entity intends to take.

d. Effect of Termination

1. Upon termination, cancellation, expiration, or other conclusion of this Agreement, Business Associate shall:
 - a. Return to Covered Entity or, if return is not feasible, destroy all PHI, ePHI, and any compilation of PHI in any media or form. Business Associate agrees to ensure that this provision also applies to PHI and ePHI in possession of subcontractors and agents of Business Associate. Business Associate agrees that any original record or copy of PHI and ePHI in any media is included in and covered by this provision, as well as all originals or copies of PHI or ePHI provided to subcontractors or agents of Business Associate. Business Associate agrees to complete the return or destruction as promptly as possible, but not more than thirty (30) business days after the conclusion of this Agreement. Business Associate will provide written documentation evidencing that return or destruction of all PHI and ePHI has been completed.
 - b. If Business Associate destroys PHI and ePHI, it shall be done with the use of technology or methodology that renders the PHI or ePHI unusable, unreadable, or undecipherable to unauthorized individuals as specified by the Secretary. Acceptable methods for destroying PHI or ePHI include:
 - a. For paper, film, or other hard copy media: shredding or destroying in order that PHI cannot be read or reconstructed; and

- b. For electronic media: clearing, purging, or destroying consistent with the standards of the National Institute of Standards and Technology (NIST).

Redaction is specifically excluded as a method of destruction of PHI and ePHI.

- c. If Business Associate believes that the return or destruction of PHI or ePHI is not feasible, Business Associate shall provide written notification of the conditions that make return or destruction not feasible. If Business Associate determines that return or destruction of PHI or ePHI is not feasible, Business Associate shall extend the protections of this Agreement to the PHI or ePHI and prohibit further uses or disclosures of the PHI and ePHI without the express written authorization of Covered Entity. Subsequent use or disclosure of any PHI and ePHI subject to this provision will be limited to the use or disclosure that makes return or destruction not feasible.

Miscellaneous

- a. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules 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 HIPAA Rules and any other applicable laws or regulations upon the effective date of such amendment, regardless of whether this Agreement has been formally amended.
- c. Survival. The respective rights and obligations of Business Associate under Section 7(d), 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 and Business Associate to comply with the HIPAA Rules.
- e. Headings. Paragraph Headings used in this Agreement are for the convenience of the Parties and shall have no legal meaning in the interpretation of this Agreement.
- f. Severability. With respect to any provision of this Agreement finally determined by a court of competent jurisdiction to be unenforceable, such court shall have jurisdiction to reform such provision so that it is enforceable to the maximum extent permitted by applicable law, and the Parties shall abide by such court's determination. In the event that any provision of this Agreement cannot be reformed, such provision shall be deemed to be severed from this Agreement, but every other provision of this Agreement shall remain in full force and effect.

- g. 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.
- h. 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 state District Court of Burleigh County, North Dakota.
- i. Contact Persons. Business Associate shall identify “key contact persons” in Attachment A for all matters relating to this Agreement and shall notify Covered Entity of any change in these key contacts during the term of this Agreement in writing within ten (10) business days.
- j. 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.

Entire Agreement

This Agreement and the underlying 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** [“Covered Entity”] and **ENTER BUSINESS ASSOCIATE NAME** [“Business Associate”] 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:

 Mike Seminary, Board Chairman
 ND Public Employees Retirement System

 Signature

 Printed Name

 Title

 Date

 Date

ATTACHMENT "A"
BUSINESS ASSOCIATE KEY CONTACT PERSONS

When applicable, Business Associate shall notify Covered Entity of any change in key contacts during the term of this Agreement in writing within ten business days.

Website URL (if applicable):	
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FIRST POINT OF CONTACT	
Name:	
Title:	
Address:	
Phone Number:	
Fax Number:	
Email Address:	

SECOND POINT OF CONTACT	
Name:	
Title:	
Address:	
Phone Number:	
Fax Number:	
Email Address:	

Business Associate

(Signature): _____

(Print Name): _____

(Title): _____

(Date): _____