



# **North Dakota Public Employees Retirement System**

## ***Request for Proposal***

**Project Name:  
Administrative and Recordkeeping Services  
for Section 125 FlexComp Plan**

**RFP Issue Date: March 4, 2024**

**Proposal Due Date: April 30, 2024**

**Proposed Effective Date: January 1, 2025**

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Bismarck, ND 58502-1657  
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**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) FlexComp Plan. The Board is seeking proposals for a contractor to assist with the services identified in this RFP. The following is a sequence of activities for this RFP:

Date	Activity
March 4, 2024	RFP is issued.
March 22, 2024	Written questions regarding proposals must be received by NDPERS no later than 5:00 p.m. (CDT).
April 8, 2024	NDPERS posts responses to all questions received.
April 30, 2024	Proposals must be received by NDPERS no later than 5:00 p.m. (CDT).
June 2024	NDPERS Board review of proposals.
July 2024	Finalist interviews and Best and Final Offers due, if deemed necessary by the NDPERS Board
July/August 2024	Selection and award of contract by NDPERS.
January 1, 2025	Effective Date of Coverage

### B. Fees

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.

### C. Rating

This proposal will be rated by a review team. 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 contractor should be selected pursuant to this RFP. The Review Team will rate the proposals received and consider information received from all sources, including interview of top scoring vendor(s), in making an award decision.

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, information from interviews and general reputation.

Staff will rate all proposals based on the following criteria:

Technical Proposal:

General Background (Questions Section IV, A.1 to A.4)	10 points
Scope of Work (Questions Section IV, B.1 to B.4)	35 points
Experience	
Firm (Questions Section IV, C.1 to C.4)	7 points
Staffing (Questions Section IV, D.1 to D.3)	8 points

Cost Proposal: 40 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 retirement, health, life, dental, vision, deferred compensation, flex comp, retiree health insurance credit, and EAP programs. This proposal is for assistance in the retirement programs.

Pursuant to 54-52-03, <https://www.ndlegis.gov/cencode/t54c52.pdf>, NDPERS is managed by a Board of Trustees.

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

### **B. FlexComp Plan:**

The FlexComp Plan is authorized under Chapter 54-52.3 of the North Dakota Century Code (NDCC). Additional information on the FlexComp Plan including the plan document can be found on our web site at:

<https://www.ndpers.nd.gov/active-members/insurance-plans-active-members/flexcomp-plan> The Board is hiring a contractor to do the administrative services for this plan. The contract period will be for 2025 and 2026 calendar years with an option to renew the contract for the 2027 and 2028 calendar years and the 2029 and 2030 calendar years. Such renewals will be based upon the cost and the history of the services provided.

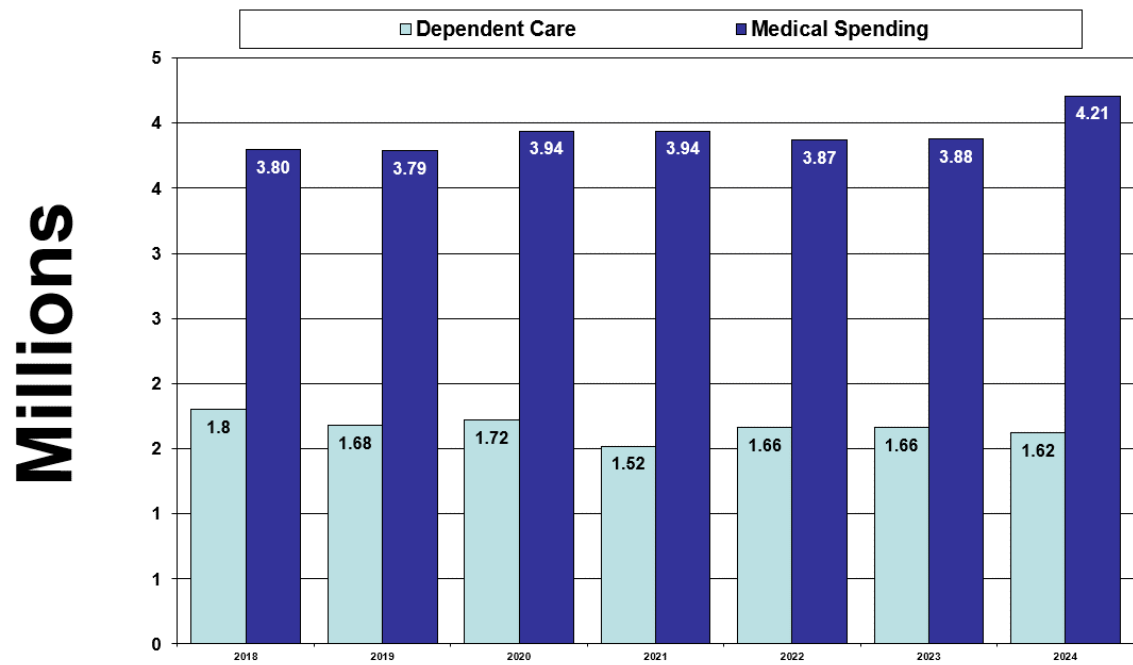
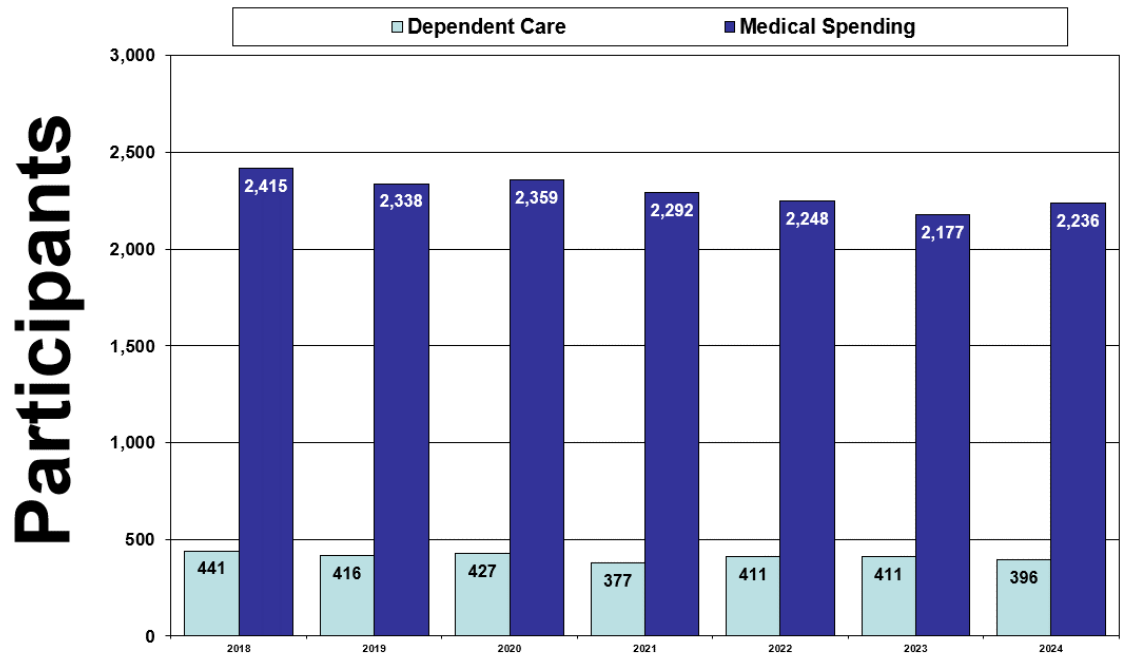
The NDPERS annual enrollment for the 2025 plan year is a three-week period beginning in mid-October 2024 and ending in November 2024. If selected, the contractor will need to provide the services under the scope of work sections.

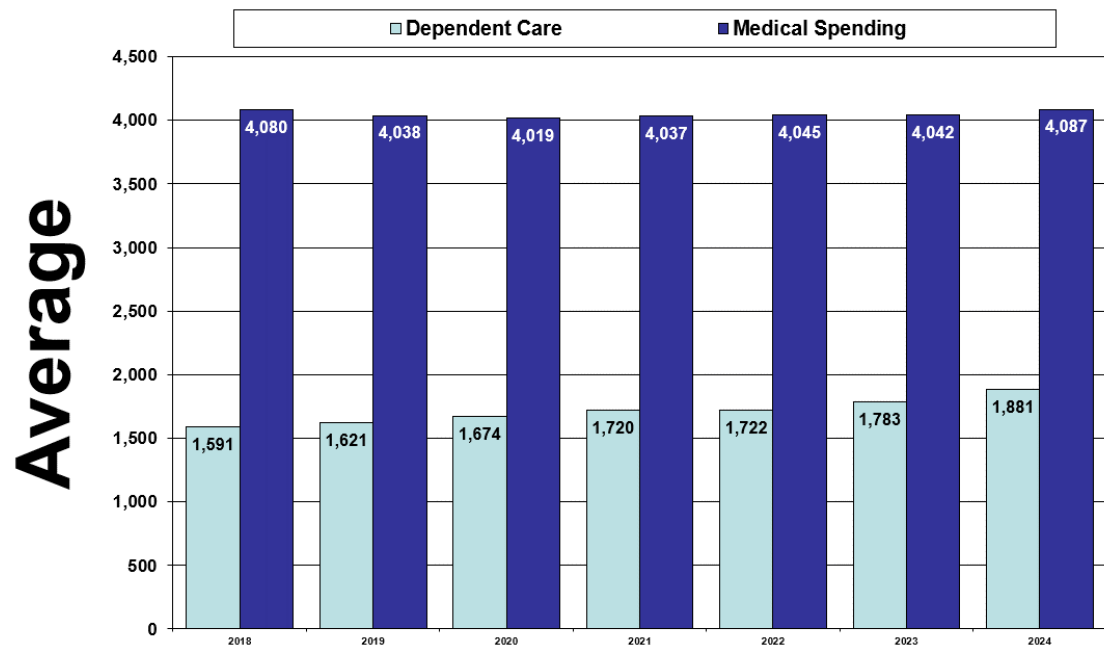
### **North Dakota University System Participation:**

The NDPERS Flexcomp Plan contract allows for the North Dakota University System (NDUS) groups to participate with the contractor under the same terms. There are currently thirteen NDUS institutions with one plan document. Enrollment and billing by institution will be required of the contractor. A separate online enrollment website is required for NDUS. Open enrollment dates are October 14 through November 1. Administrator access is required for each institution.

FlexComp Plan:

The following information relates to the NDPERS FlexComp Plan participation and elections:





## 2024 North Dakota University System Flexcomp Information

	Medical Spending		Dependent Care	
	#Participants	Dollars	#Participants	Dollars
<b>BSC</b>	6	\$ 15,020.00	59	\$ 133,032.92
<b>DSU</b>	6	\$ 28,000.00	29	\$ 60,750.16
<b>LRSC</b>	2	\$ 9,992.00	35	\$ 80,780.08
<b>MASU</b>	2	\$ 4,972.00	24	\$ 55,429.92
<b>MISU</b>	9	\$ 30,324.92	68	\$ 155,568.16
<b>MISUB</b>			2	\$ 1,608.00
<b>NDSCS</b>	13	\$ 52,792.00	84	\$ 188,292.08
<b>NDSU</b>	117	\$ 504,815.92	707	\$1,579,631.88
<b>NDUS</b>	4	\$ 17,208.00	15	\$ 31,162.00
<b>SITS</b>	7	\$ 28,200.00	61	\$ 130,656.00
<b>UNDO</b>	120	\$ 504,642.12	675	\$1,532,400.52
<b>VCSU</b>	9	\$ 34,840.00	34	\$ 71,760.00
<b>WSC0</b>	5	\$ 18,700.00	20	\$ 46,740.00
<b>Total</b>	300	<b>\$ 1,249,506.96</b>	1813	<b>\$4,067,811.72</b>



## **SECTION 3 – SCOPE OF SERVICES**

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This Section outlines the scope of services.

### **A: BID SOLICITATION AND EVALUATION FOR THE FLEXCOMP PLAN**

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

The contractor selected by the NDPERS Board shall handle all administrative and recordkeeping functions, including processing enrollments, terminations and election changes, member correspondence, maintaining individual flexible spending accounts (FSA) accounts for participating employees, assistance with maintaining the plan document, processing reimbursement claims, and recovering/correcting any claim payment errors. Administrative services to be provided shall also include preparing informational plan materials and providing employer and employee training.

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

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

##### **A.2.1 ENROLLMENT SERVICES**

The contractor shall participate in the annual enrollment period for both NDPERS & NDUS for the 2025 calendar year that will run for a three-week period beginning mid-October ending in November 2024. Annual enrollment periods for subsequent years will generally be within the same time periods and communicated in advance. New members and members enrolling during the annual open enrollment will utilize the PERSLink business system or submit enrollment forms. NDUS is requiring a separate online enrollment website be set up by the contractor. All NDPERS enrollments will be forwarded to the contractor via an electronic file transfer for processing on the contractor's system. All required enrollment services shall be in place prior to the start of the annual enrollment period. The contractor shall meet with NDPERS and NDUS staff to discuss and organize the annual enrollments. The contractor shall conduct employer and employee training, as requested, during and around the annual enrollment periods. The contractor shall prepare communication/marketing materials for the flexible spending account (FSA) components of the plans.

***At a minimum, the contractor must provide the following informational materials:***

- Informational material that provides a general description of the flexible spending account plans, lists the major expenses covered by the accounts, stresses the advantages of participating in the program, covers important enrollment and claim filing deadlines, and lists available IVR, Mobile App, and internet services. The informational material will be put on the NDPERS website.
- Informational material containing a more detailed description of the plans, a comprehensive listing of eligible and ineligible expenses under each

plan, use-it-or-lose-it rule, change in family status requirement for election changes, important plan deadlines and cutoffs, procedures for filing claims and using the debit card, COBRA qualifying events, a comprehensive listing of available services, and a description of other important plan provisions. The informational material will be put on the NDPERS website.

- All required FSA forms with instructions. Please note the NDPERS enrollment forms should be used by the contractor (the contractor shall indicate what additional forms it proposes to use including an explanation for their use). If the contractor is unable to use the NDPERS enrollment forms, it shall so specify and indicate why.
- Reimbursement options brochure detailing various reimbursement options and details about submitting for reimbursement under each option.
- All materials must be co-branded with the contractor and NDPERS logo or NDUS logo.

For those enrolling in the FSA plans, the contractor shall provide a welcome kit which shall include the following information:

- An enrollment confirmation letter;
- An explanation of the debit card feature with instructions;
- Debit card(s) for medical spending accounts, preferably co-branded;
- Information regarding COBRA;
- Reimbursement options flyer that includes instructions on submitting claims through various options.

The contractor shall mail welcome kits/informational materials to the participant's home address.

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

The contractor shall administer a debit card program. Debit card(s) shall be provided to each participant prior to the start of the plan year and, for new hires and other newly eligible employees, upon enrolling in the medical spending account. The contractor shall adhere to IRS substantiation rules applicable to the use of debit cards in FSA programs. Any fees associated with the issuance or use of debit cards should be included in the per participant/per month base cost and no cost shall be charged to the participant.

The contractor shall establish a website that employees can access to obtain account information and to utilize on-line services. The website shall include general information regarding the FSA plans. Desired internet services provided by the contractor shall include: (a) ability to download plan forms, (b) access to member account information, including claim payments, pending claims and account balances; and (c) ability to file reimbursement claim forms on-line and via mobile app.

The contractor shall provide a toll-free number that employees 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. CDT.

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

NDPERS and NDUS maintain separate bank accounts, where deductions are deposited and contractor access to the accounts are authorized to make claim transactions. The contractor shall post contributions received from participating employers to individual participant accounts. Reimbursements for incurred expenses shall be made to employees upon the submission of a properly completed reimbursement claim form with required documentation. The contractor shall establish and maintain controls to ensure that only valid claims are processed and that proper documentation to substantiate incurred expenses accompany submitted claims. Participants shall be permitted to mail or fax claim forms to the contractor, and to file claim forms electronically via the contractor's internet site or through use of the vendor's mobile app.

If a filed claim is deemed to be invalid or if additional information is required to process a claim, notification must be sent 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. In accordance with federal rules and guidelines, the maximum amount of reimbursement in the medical spending account (MSA) shall be available at all times during the plan year. To ensure that dependent care spending account (DCSA) participants have immediate access to funds deducted for their DCSA coverage, payroll deductions received from NDPERS and NDUS shall be posted to the participant's account and available for reimbursement. The contractor shall detail their timelines for posting contributions.

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

The contractor shall provide a secure internet site from which enrollment and payroll deduction files can be safely transferred between the contractor and NDPERS or NDUS.

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

The NDPERS and NDUS plan year runs from January 1 through December 31. The program's cut-off date for filing reimbursement claims is April 30, following the end of the plan year. The contractor shall be required to process reimbursement claims received from participants up through the April 30 cutoff date pursuant to applicable IRS guidelines.

The NDPERS and NDUS programs adopted the grace period extension rule for both FSA accounts, which allows participants to be reimbursed for qualifying expenses incurred between January 1 and March 15 following the end of the plan year from the prior year's election. Debit card charges for MSA participants shall be applied toward any prior year unused amount before charging expenses to the current year's election.

In the event a new vendor is selected, NDPERS is interested in options for NDPERS to consider related to how the 2024 grace period could be administered. The vendor should include details on how they typically see other clients handling this transition.

The contractor shall prepare and send a final reconciliation report of the individual member accounts to NDPERS and NDUS. This listing shall include the participant's name, NDPERS ID or NDUS EmplID number, and forfeiture amount. This must be accomplished within 60 days of the April 30 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 available to NDPERS and NDUS:

1. A report prior to the start of the plan year that lists the plan participants and their election amount.
2. A quarterly activity report which includes a detailed listing of participants, deposits to date, claims submitted, claims paid, and current account balances.
3. A preliminary forfeiture report prepared as of December 31 with member account detail.
4. A final forfeiture report with member account detail within sixty (60) days following the close of the plan year.
5. A year-to-year enrollment comparison to be provided in January of each year following annual enrollment.
6. Monthly call center activity and claims processing reports.
7. Monthly outstanding check report.
8. Quarterly performance standard reporting.

### **A.4 CONFIDENTIALITY & 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 and state's confidentiality requirements as set forth in NDCC 54-52.3-05.

## **A.5 PLAN DOCUMENT**

The contractor shall review the NDPERS and NDUS plan documents. Unless noted in the proposal, NDPERS and NDUS will assume that your proposal agrees to follow all the provisions in our plan documents.

## **B: SEQUENCE OF ACTIVITIES**

Following is a sequence of major activities:

<b>August, 2024</b>	NDPERS Board selects a contractor.
<b>August, 2024</b>	Contractor will begin work with the NDPERS and NDUS staff concerning the upcoming annual enrollment.
<b>September, 2024</b>	Contractor will supply to NDPERS and NDUS the written informational material identified in A.2.1 and such other information identified in the August meeting. NDUS sends employee demographic data to contractor to set up enrollment website.
<b>October 14, 2024</b>	<b>NDPERS &amp; NDUS</b> Annual Enrollment starts (tentative).
<b>November 1, 2024</b>	<b>NDPERS &amp; NDUS</b> Annual Enrollment ends (tentative).
<b>December, 2024</b>	NDPERS sends enrollment files to Contractor. Contractor sends enrollment files to NDUS. Contractor must start providing welcome kits to members enrolling pursuant to A.2.1.
<b>January 1, 2025</b>	Contractor starts processing NDPERS and NDUS claims.

## **C. MEETINGS**

The consultant should plan on attending one meeting each year with the NDPERS Board. The contractor may be asked to participate in any annual enrollment meetings or informational meetings. The contractor will attend the 1-day NDPERS biannual payroll conference and annual wellness fair, if requested by NDPERS. Virtual options may be available for these meetings at the discretion of NDPERS.

**D. ONGOING ASSISTANCE**

The contractor shall assist NDPERS and NDUS with maintaining plan document and other plan compliance activities.

## **SECTION 4 – TECHNICAL PROPOSAL FORMAT**

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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 **(points will be deducted for proposals not following this format.)**

### **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 and NDUS are requesting.
3. Describe your organization's approach to administrative and recordkeeping services for Section 125 flexible spending accounts.
4. Indicate your organization's depth of experience in each of the following areas:
  - ◀ FlexComp Plan Medical Spending Accounts
  - ◀ FlexComp Plan Dependent Care Spending Accounts
  - ◀ Preparation of Plan Documents
  - ◀ Preparation of Informational Materials
  - ◀ On-Line Claims Processing
  - ◀ Debit Cards
  - ◀ Mobile Apps
  - ◀ COBRA Administration
  - ◀ Annual Enrollment
  - ◀ Dispute Resolution
  - ◀ Appeals Process
  - ◀ Process for returning and correcting funds paid in error
  - ◀ Grace period claims
5. How would you increase participation and deferrals in the NDPERS and NDUS Flexcomp Plans? Provide an example of how you did this for another client.

## **B. Scope of Work**

1. Detail your understanding of the work effort by restating each of the items in Section 3.A and discussing how you intend to provide services that respond to the work effort identified.
2. It is essential that the contractor move forward quickly upon notification of award. Therefore, the contractor 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 detailed timetable shall be designed to demonstrate how the contractor 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 a procedure for the importing and exporting of eligibility and payroll files must be established with NDPERS and NDUS. The contractor shall identify when this needs to be in place for a January 1, 2025, effective date.
    - All administrative services must be available and in place by the start of the plan year on January 1, 2025.
  - (b) The contractor'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 contractor's mobilization and implementation of the contract.
3. The contractor should set forth a summary of any and all challenges/problems that the contractor anticipates during implementation or the term of the contract. For each challenge/problem identified, the contractor should provide its proposed solution.
4. In the event a new vendor is selected, NDPERS is interested in options for NDPERS to consider related to how the 2024 grace period could be administered. The vendor should include details on how they typically see other clients handling this transition.
5. The contractor should include the location of the contractor's office that will be responsible for managing the contract. The contractor should include the telephone number, email address, and name of the individual(s) to contact.



6. Provide any deviations to the following performance guarantees for this contract.

<b>NDPERS</b>		Fees at risk:	
Performance Guarantees		Results reported: Quarterly	
Contract Period: 1/1/23 - 12/31/23		Fees measured and paid: Quarterly/Annually	
Category	Guarantee	Measured/Reported	Refund
Final Implementation	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.
Turnaround time - All claims	Contractor will adjudicate at least 95% of all eligible claims which 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 pended). Adjudication is considered to be finalized upon the date the check or an Explanation of Benefits (EOB) is issued.	\$2500 per year
Telephone Response - Incoming Calls	80% of Incoming calls will be answered by an attendant within 30 seconds (ASIFlex- based on global measurements)	30 seconds or less	\$300 per quarter
Telephone Response - Abandonment Rate	The telephone abandonment rate will be 3% or less of calls (ASIFlex - based on global measurements)	3% or less	\$300 per quarter
Satisfaction Survey - Customer Service	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
Total			

### **C. Experience of Firm**

1. Provide a listing of references for similar projects your firm has worked on, including names of clients and contact individuals for each.
2. The contractor shall include an organizational chart showing the contractor's entire organizational structure. This chart should show the relationship of the individuals assigned to the contract to the contractors overall organizational structure
3. Provide a listing and the experience your firm has with public sector clients and other clients, including contract information.
4. The contractor shall also discuss its business continuity planning procedures for its operations and their data security policies & procedures.

### **D. Staffing**

1. Provide a list and resume of staff assigned to this project.
2. The contractor 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 – COST PROPOSAL FORMAT**

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Contractor's cost proposal shall be on a per participant per month fee. A participant may be in one or both FlexComp accounts. This fee will include all services identified in this RFP.

Separately, please identify the hourly rate for any services that NDPERS or NDUS may request that are outside the scope of the services requested herein.

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

## **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 March 22, 2024, to submit questions in writing regarding this RFP. All questions shall cite the specific RFP section and paragraph number(s) to which the question refers. Any questions received by NDPERS prior to the date and time above will be answered in a question-and-answer document issued by NDPERS. Only answers provided in writing by NDPERS will be considered official.

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

Questions must be submitted by email to [ndpersbids@nd.gov](mailto:ndpersbids@nd.gov). NDPERS is not responsible for questions received after the submittal deadline.

Answers to questions will be made available on the NDPERS website at <https://www.ndpers.nd.gov/about/bid-opportunities> by April 8, 2024, at 5:00 p.m. CDT.

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

All inquiries regarding these specifications must be in writing and submitted by email to [ndpersbids@nd.gov](mailto:ndpersbids@nd.gov).

### **2. Rules and Regulations**

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

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

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

**PLEASE NOTE** that proposals should follow the Confidential/Proprietary Information instructions in Section 7. 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 7.

**4. Addenda, Amendments, and Clarifications to the RFP**

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

**5. Order of Responses**

Responses must be made in the same order as provided in the specifications. Unless a variation from the specifications of the RFP is specifically noted in a response, the Offeror is agreeing to meet all requirements, including the required contract provisions, stated in this RFP (See Section 9). No proposed variation is binding on NDPERS unless and until accepted by NDPERS.

**6. Submission of Proposals**

To be considered for award, eight (8) printed and bound copies of the technical proposal, 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), April 30, 2024. The Request for Redaction chart in Section 7 MUST be completed and submitted with the proposal. The unbound copy shall bear original signatures and shall be marked as the "Master Copy". The unbound Master Copy shall contain no divider sheets or tabs, and shall be printed on one side only of 8-1/2 in. x 11 in. white paper to enable copying if needed. Colors must reproduce in a legible manner on a black-and-white copier. The unbound original, one (1) copy of the "REDACTED"

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

Responder acknowledges that NDPERS is subject to the North Dakota Open Records Laws, and the documents submitted pursuant to this RFP may be subject to an open records request. Responder is also put on notice that, except for the information that is determined by NDPERS to be confidential or otherwise exempt from the North Dakota Open Records law, NDPERS must disclose to the public upon request any records it receives from Responder. If NDPERS receives a request for information that Responder has requested be kept confidential, NDPERS will review the information submitted by Responder and may also contact Responder for additional input regarding the nature of those records, but NDPERS will be solely responsible for making the ultimate determination of whether the materials submitted are open or exempt. All information that has not been clearly identified by Responder as being confidential and which NDPERS has determined constitutes confidential or exempt information under the North Dakota open records law will be disclosed as an open record. If, as a result of the position taken by Respondent regarding the confidentiality of the information, NDPERS is assessed any damages or fees, Respondent shall indemnify NDPERS for such damages or fees. If no documents or materials are identified and marked by Respondent as confidential, Respondent will be deemed to have consented to the release of the document or material and to have waived any cause of action against NDPERS resulting from the release of the documents or materials. NDPERS will not consider the prices submitted by the Responder to be confidential.

Copies of the proposal shall be delivered to:

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

- The base contract will be for a two-year period of January 1, 2025, through December 31, 2026. All rates and fees must be firm, fixed, and valid for the duration of the base period. Additionally, NDPERS is seeking two, two-year option periods for a potential total contract period of six years.
- Proposals and any other information submitted by organizations in response to this RFP shall become the property of NDPERS and will not be returned.
- NDPERS will not provide compensation to Offerors for any expenses that they incur as part of the proposal process, including but not limited to expenses incurred for preparing proposals, making demonstrations, responding to inquiries, and attending meetings and negotiations. Offerors submit proposals at their own risk and expense.

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

## **7. Conflicts of Interest List**

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

## **8. Acceptance of Proposals**

NDPERS retains the right to reject all proposals submitted. NDPERS is not required to select the proposal with the lowest fees but will take into consideration statutory guidelines and any factors it considers relevant. It is the intent of NDPERS at this time to enter into a contract effective upon execution with services beginning January 1, 2025, through December 31, 2026. The Board at its discretion may extend the contract for up to two additional two-year periods. The premium and benefits structure of these extensions will be subject to negotiations prior to renewal. NDPERS has the right to discontinue the program if the legislature discontinues the program or for any other reason. The Offeror whose proposal is selected will be chosen with the goal of developing a long-term relationship.

## **9. Non-Responsive Proposals**

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

## **10. References**

Each Offeror must provide at least three references from other current and three references from other former public entities of similar size or larger.

NDPERS or its designated representative may ask these clients to provide information regarding the Offeror's overall record of service in providing services for their participants. Providing references in its proposal constitutes the Offeror's permission for NDPERS to contact these entities.

**11. Waiver**

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

**12. Additional Information from Responding Organizations**

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

**13. Interview with Responding Organizations**

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

**14. Modification**

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

**15. Solicitation**

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

**16. News Release**

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



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

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

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

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

**18. Contract Award**

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

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

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

**19. Agreements**

Section 9 – Offer (Agreements), must be signed by a partner or principal of the firm and included with your proposal.

Vendors must sign the attached agreements, including the agreement for services, business associate agreement, and confidential information memorandum of understanding. Vendors may choose to submit a red-lined version of the signed agreements.

## SECTION 7 - CONFIDENTIAL/PROPRIETARY INFORMATION

### Request for Redaction Chart

The Responder submitting a proposal to the attached RFP is **required** to complete the following.

Any provisions of the company's proposal that are desired to be confidential must be identified specifically on each page of the proposal and in a table format as provided below.

Information not identified in the table will be considered an open record by NDPERS, regardless of whether the information is marked confidential in the body of the proposal.

In response to the Request for Proposals entitled Administrative and Recordkeeping Services for Section 125 FlexComp Plan (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)
Insert rows above as necessary				
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)
Insert rows above as necessary				

The above information has been reviewed by Responder's legal counsel and is attested to by \_\_\_\_\_ (insert name of Responder representative who is authorized to contractually bind Responder), on this \_\_\_\_\_ day of \_\_\_\_\_, 2024.

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

## SECTION 8 - CONFLICTS of INTEREST LIST

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Conflicts of Interest List:
Bidders must provide a list of all entities with which it has relationships that create, or appear to create, a conflict of interest with the work that is contemplated in this request for proposals. This list should indicate the name of the entity, the relationship, and a discussion of the conflict.

## SECTION 9 - OFFER (AGREEMENTS)

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### AGREEMENT 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 *Name of Business a type of business* [*Insert Business Name*] having its principal place of business at *principal business address* [*Insert Business Address*] (CONTRACTOR);

#### 2. SCOPE OF WORK

CONTRACTOR agrees to provide the service(s) as specified in the 2024 bid document and VENDOR proposal (attached hereto and incorporated by reference Exhibit A).

#### 3. COMPENSATION – PAYMENTS

##### a. Contractual Amount

NDPERS will pay for the services provided by CONTRACTOR under this contract pursuant to Exhibit A.

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 or Initial Term) begins on *January 1, 2025*, and ends on *December 31, 2026*.

**a. No Automatic Renewal**

This Contract will not automatically renew.

**b. Renewal Option**

STATE may renew this Contract upon satisfactory completion of the Initial Term. STATE reserves the right to execute up to **2** options to renew this Contract under the same terms and conditions for a period of **24** months each (Renewal Term).

**c. Extension Option**

STATE reserves the right to extend this Contract for an additional period, not to exceed 24 months, beyond the current termination date of this Contract.

#### **d. Renegotiation Option**

If, during the initial Term, any renewal, or extension, STATE determines a realignment of the Term is needed (e.g. to align with STATE'S fiscal biennium), the parties may mutually agree, in writing, to a new Term with a termination date not to exceed the total available length of Contract including its initial Term, renewals, and extensions.

#### **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 Agreement.

## 9. 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.

## 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: Rebecca Fricke	Name <a href="#">[Insert Name]</a>
Title: Executive Director	Title <a href="#">[Insert Title]</a>
Address: 1600 East Century Ave, Suite 2 PO Box 1657	Address <a href="#">[Insert Address]</a>
City, State, Zip: Bismarck, ND 58502-1657	City, State, Zip <a href="#">[Insert City, State, Zip]</a>

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.

#### **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 any BAA and/or MOU (if applicable), as may be amended;
- b. STATE's Request for Proposal ("RFP") number 192.03-04-24,
- c. CONTRACTOR's proposal in response to RFP number 192.03-04-24.
- 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 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.

CONTRACTOR is prohibited from boycotting Israel for the duration of this Contract. (See N.D.C.C § 54-44.4-15.) CONTRACTOR represents that it does not and will not engage in a boycotting Israel during the term of this Contract. If STATE receives evidence that CONTRACTOR boycotts Israel, STATE shall determine whether the company boycotts Israel. The foregoing does not apply to contracts with a total value of less than \$100,000 or if CONTRACTOR has fewer than ten full-time employees.

### **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 <b>NDPERS</b>
BY: <i>[Signature]</i>	BY: <i>[Executive Director Signature]</i>
<i>[Printed Name]</i>	Rebecca Fricke
<i>[Title]</i>	NDPERS Executive Director
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.**

#### **2.1. 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.

### 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 01/01/2025, 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 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:

\_\_\_\_\_  
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  
ND Public Employees Retirement System

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

**VENDOR**

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

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

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

**Attach Contractor Records Retention Policy**