

STATE OF SOUTH DAKOTA  
OFFICE OF PROCUREMENT MANAGEMENT  
523 EAST CAPITOL AVENUE  
PIERRE, SOUTH DAKOTA 57501-3182

**South Dakota Overdose Follow-Up Program Development**

**PROPOSALS ARE DUE NO LATER THAN 5:00 PM CST ON AUGUST 18, 2023**

RFP# 23RFP8929

BUYER: Division of Behavioral Health

POC: Kirsten Smart  
Kirsten.Smart@state.sd.us

**READ CAREFULLY**

FIRM NAME: \_\_\_\_\_ AUTHORIZED SIGNATURE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ TYPE OR PRINT NAME: \_\_\_\_\_

CITY/STATE: \_\_\_\_\_ TELEPHONE NO: \_\_\_\_\_

ZIP (9 DIGIT): \_\_\_\_\_ FAX NO: \_\_\_\_\_

FEDERAL TAX ID#: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

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**PRIMARY CONTACT INFORMATION**

CONTACT NAME: \_\_\_\_\_ TELEPHONE NO: \_\_\_\_\_

FAX NO: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

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## 1.0 GENERAL INFORMATION

### 1.1 PURPOSE OF REQUEST FOR PROPOSAL (RFP)

The Department of Social Services, Division of Behavioral Health (DBH), in partnership with the Department of Health, is soliciting proposals to support an Overdose Follow-Up Program for individuals who have been identified as having recently experienced an opioid or other drug overdose. Eligible entities include South Dakota-based organizations that provide direct services (medical, behavioral health, peer support, or related) to individuals impacted by opioids or other drug use. Other states have implemented Overdose Follow-Up Programs, and although DBH understands a South Dakota program may be structured differently than other states' programs, the DBH envisions that the Overdose Follow-Up Program will include, but is not limited to, similar qualities found in the example state models which can be found using the links below. The DBH is interested in specific community programs (i.e., urban area, rural area, and tribal community) and the utilization of telehealth to serve individuals statewide, with preference to a statewide program. The follow-up program should provide needed supports to help reduce the likelihood that these individuals will experience future drug overdoses and support the above goals. Up to \$300,987 is available for year 1. Funding will be ongoing until all has been utilized. The DBH would like to continue to support each program award as long as funding is available, and the program is meeting programmatic expectations.

- Links to example programs:
  - New Jersey: [DMHAS Opioid Overdose Recovery Program](#)
  - West Virginia: [Huntington Quick Response Team](#)
  - Georgia: [Navigate Recovery- LIFELINE](#)

### 1.2 ISSUING OFFICE AND RFP REFERENCE NUMBER

The Division of Behavioral Health is the issuing office for this document and all subsequent addenda relating to it, on behalf of the State of South Dakota, Department of Social Services. The reference number for the transaction is 23RFP8929. Refer to this number on all proposals, correspondence, and documentation relating to the RFP.

Please refer to the Department of Social Services' website link <http://dss.sd.gov/keyresources/rfp.aspx> for the RFP, any related questions/answers, changes to schedule of activities, amendments, etc.

### 1.3 LETTER OF INTENT

All interested Offerors are requested to submit a non-binding **Letter of Intent** to respond to this RFP. While preferred, a Letter of Intent is not mandatory to submit a proposal.

The letter of intent must be received by email to the Department of Social Services by the specified due date below and must be addressed to [Kirsten.Smart@state.sd.us](mailto:Kirsten.Smart@state.sd.us). Place the following, exactly as written, in the subject line of your email: **Letter of Intent for 23RFP8929**. Be sure to reference the RFP number in any attached letter or document.

### 1.4 SCHEDULE OF ACTIVITIES (SUBJECT TO CHANGE)

|                                                   |                           |
|---------------------------------------------------|---------------------------|
| RFP Publication                                   | 07/5/2023                 |
| Letter of Intent Due                              | 07/14/2023                |
| Offeror Questions Due                             | 07/21/2023                |
| Response to Offeror Questions Due                 | 07/31/2023                |
| Request for SFTP folder Deadline                  | 08/18/2023 by 5:00 pm CST |
| Proposal Submission                               | 08/18/2023 by 5:00 pm CST |
| Oral Presentations                                | N/A                       |
| Proposal Revisions (if required)                  | N/A                       |
| Anticipated Awarded Decision/Contract Negotiation | 09/18/2023                |

## 1.5 **SUBMITTING YOUR PROPOSAL**

Proposals may be submitted as PDFs via Secured File Transfer Protocol (SFTP). Offerors must request an SFTP folder by emailing Kirsten Smart at the email indicated on page one. The subject line should be “**23RFP8929 SFTP Request**”. The email should contain the name and the email of the person who will be responsible for uploading the document(s).

Please note, Offerors will need to work with their own technical support staff to set up an SFTP compatible software on Offeror’s end. While the State of South Dakota can answer questions, the State of South Dakota is not responsible for the software required.

No proposal may be accepted from, or any contract or purchase order awarded to any person, firm or corporation that is in arrears upon any obligations to the State of South Dakota, or that otherwise may be deemed irresponsible or unreliable by the State of South Dakota.

## 1.6 **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS**

By signing and submitting this proposal, the Offeror certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation, by any Federal department or agency, from transactions involving the use of Federal funds. Where the Offeror is unable to certify to any of the statements in this certification, the bidder shall attach an explanation to their offer.

## 1.7 **NON-DISCRIMINATION STATEMENT**

The State of South Dakota requires that all contractors, vendors, and suppliers doing business with any State agency, department, or institution, provide a statement of non-discrimination. By signing and submitting their proposal, the Offeror certifies they do not discriminate in their employment practices with regard to race, color, creed, religion, age, sex, ancestry, national origin or disability.

## 1.8 **CERTIFICATION RELATING TO PROHIBITED ENTITY**

For contractors, vendors, suppliers, or subcontractors who enter into a contract with the State of South Dakota by submitting a response to this solicitation or agreeing to contract with the State, the bidder or offeror certifies and agrees that the following information is correct:

The bidder or Offeror, in preparing its response or offer or in considering proposals submitted from qualified, potential vendors, suppliers, and subcontractors, or in the solicitation, selection, or commercial treatment of any vendor, supplier, or subcontractor, is not an entity, regardless of its principal place of business, that is ultimately owned or controlled, directly or indirectly, by a foreign national, a foreign parent entity, or foreign government from China, Iran, North Korea, Russia, Cuba, or Venezuela, as defined by South Dakota Executive Order 2023-02. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to reject the bid or response submitted by the bidder or Offeror on this project and terminate any contract awarded based on the bid or response. The successful bidder or Offeror further agrees to provide immediate written notice to the contracting executive branch agency if during the term of the contract it no longer complies with this certification and agrees such noncompliance may be grounds for contract termination.

## 1.9 **RESTRICTION OF BOYCOTT OF ISRAEL**

For contractors, vendors, suppliers, or subcontractors with five (5) or more employees who enter into a contract with the State of South Dakota that involves the expenditure of one hundred thousand dollars

(\$100,000) or more, by submitting a response to this solicitation or agreeing to contract with the State, the bidder or Offeror certifies and agrees that the following information is correct:

The bidder or Offeror, in preparing its response or offer or in considering proposals submitted from qualified, potential vendors, suppliers, and subcontractors, or in the solicitation, selection, or commercial treatment of any vendor, supplier, or subcontractor, has not refused to transact business activities, has not terminated business activities, and has not taken other similar actions intended to limit its commercial relations, related to the subject matter of the bid or offer, with a person or entity on the basis of Israeli national origin, or residence or incorporation in Israel or its territories, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to reject the bid or response submitted by the bidder or Offeror on this project and terminate any contract awarded based on the bid or response. The successful bidder or Offeror further agrees to provide immediate written notice to the contracting executive branch agency if during the term of the contract it no longer complies with this certification and agrees such noncompliance may be grounds for contract termination.

#### 1.10 **MODIFICATION OR WITHDRAWAL OF PROPOSALS**

Proposals may be modified or withdrawn by the Offeror prior to the established due date and time.

No oral, telephonic, telegraphic or facsimile responses or modifications to informal, formal bids, or Request for Proposals will be considered.

#### 1.11 **OFFEROR INQUIRIES**

Offerors may email inquiries concerning this RFP to obtain clarification of requirements. Email inquiries must be sent to Kirsten.Smart@state.sd.us with the following wording, exactly as written, in the subject line: **RFP 23RFP8929 Questions**.

The Department of Social Services will respond to Offerors' inquiries by posting Offeror aggregated questions and Department responses on the Department of Social Services' website at <http://dss.sd.gov/keyresources/rfp.aspx> no later than 20 business after receipt of inquiries. For expediency, the Department of Social Services may combine similar questions. Offerors may not rely on any other statements, either of a written or oral nature, that alter any specification or other term or condition of this RFP. Offerors will be notified in the same manner as indicated above regarding any modifications to this RFP.

#### 1.12 **PROPRIETARY INFORMATION**

The proposal of the successful Offeror(s) becomes public information. Proprietary information can be protected under limited circumstances such as client lists and non-public financial statements. Pricing and service elements are not considered proprietary. An entire proposal may not be marked as proprietary. ***Offerors must clearly identify in the Executive Summary and mark in the body of the proposal any specific proprietary information they are requesting to be protected.*** The Executive Summary must contain specific justification explaining why the information is to be protected. Proposals may be reviewed and evaluated by any person at the discretion of the State. All materials submitted become the property of the State of South Dakota and may be returned only at the State's option.

#### 1.13 **LENGTH OF CONTRACT**

The initial contract will be September 18, 2023 – May 31, 2024. Future contracts will operate on the state contract year (June 1 – May 31) and dependent on the offeror's performance in implementing the services as outlined.

#### 1.14 **GOVERNING LAW**

Venue for any and all legal action regarding or arising out of the transaction covered herein shall be solely in Hughes County, State of South Dakota. The laws of South Dakota shall govern this transaction.

#### 1.15 **DISCUSSIONS WITH OFFERORS (ORAL PRESENTATION/NEGOTIATIONS)**

An oral presentation by an Offeror to clarify a proposal may be required at the sole discretion of the State. However, the State may award a contract based on the initial proposals received without discussion with the Offeror. If oral presentations are required, they will be scheduled after the submission of proposals. Oral presentations will be made at the Offeror's expense.

This process is a Request for Proposal/Competitive Negotiation process. Each Proposal shall be evaluated, and each respondent shall be available for negotiation meetings at the State's request. The State reserves the right to negotiate on any and/or all components of every proposal submitted. From the time the proposals are submitted until the formal award of a contract, each proposal is considered a working document and as such, will be kept confidential. The negotiation discussions will also be held as confidential until such time as the award is completed.

### **2.0 STANDARD AGREEMENT TERMS AND CONDITIONS**

Any contract or agreement resulting from this RFP will include, at minimum, the State's standard terms and conditions as seen in Attachment 1 and Attachment 2. Which Attachment that applies will be determined by the nature of the Offeror's proposal. As part of the negotiation process, the contract terms listed in Attachment 1 or 2 may be altered or deleted. The Offeror should indicate in their response any issues they have with any specific contract terms. If the Offeror does not indicate any contract term issues, then the State will assume the terms are acceptable. Attachment 3, the Business Associates Agreement, may also apply and will be added as needed.

### **3.0 SCOPE OF WORK**

The vendor will work collaboratively with State staff on the creation, implementation, and sustainability of an overdose follow-up program or programs in South Dakota.

Offerors must submit responses to each of the following requirements specified in sections 3.1 through 3.5.

3.1 **KEY DATA:** The proposal must use and highlight data that supports the program proposal.

3.2 **SERVICES:** The proposal must detail the Offeror's plan to establish innovative, evidence-based approaches that accomplish the above goals, beginning services within three (3) months of contract initiation. Services may include but are not limited to follow-up visits, referral to harm reduction and treatment/detox services, provision of or access to naloxone and overdose training and prevention, peer supports, and care coordination.

3.3 **SERVICE AREA:** The proposal must identify the Offeror's proposed service area to deliver services to individuals who have recently experienced an opioid or other drug overdose. Proposal must describe the level of services needed in these areas to substantially achieve the goals above.

3.4 **IMPLEMENTATION PLAN:** The proposal must identify the Offeror's plan and timeline for implementation of services. If proposal includes infrastructure needs, the proposal must identify the timeline for such efforts. The proposal must also meet the following requirements:

- 3.4.1 Define approach for unique, vulnerable populations in the target geographic area such as but not limited to pregnant women.
- 3.4.2 Define core program hours and staffing required to provide those services.
- 3.4.3 Provide a work week schedule detailing how staff will be deployed to ensure coverage during the core program hours, including on-call resources.

- 3.4.4 Describe the composition and qualifications of proposed staff team, including number and type of staff required, level of licensure as applicable, and staffing structure (i.e., who would oversee the program and make sure requirements are met, key positions of staff and those that need to be hired).
  - 3.4.5 Provide a flow chart outlining operational steps of the proposed program, with roles and responsibilities at each step. The flow chart must include how referrals are made and how the individual consents to participating in the follow-up program.
    - Example: Emergency room call to answering service, dispatch receives call and contacts recovery specialist; recovery specialist texts/calls back to signal they are on their way, etc.
  - 3.4.6 Provide a project timeline that details key milestones per month planned to achieve during the first year, and any milestones identified thereafter. Minimum milestones to include are the timing for onboarding of staff (if not already on staff), the timing and duration of training before service delivery, and the target date to begin service delivery.
  - 3.4.7 Provide evidence of existing partnership(s) or evidence of emerging partnerships (via Letter of Commitment or Affiliation Agreement) with any appropriate entities for the program (if not the bidder directly). Such programs may include but are not limited to:
    - Emergency room department(s)
    - EMS service unit(s) in the area/region targeted for program development
    - Treatment agencies or providers, specifically those that provide Medications for Opioid Use Disorder (MOUD) or detoxification services
    - Care coordination services available through the South Dakota Treatment Resource Hotline
  - 3.4.8 For each partnership described above, the Letter of Commitment or Affiliation Agreement should include information regarding:
    - Overall integration into the bidder's approach, emphasizing how each entity will work together, share information, and coordinate responsive care for individuals impacted by an opioid or other drug overdose
    - Data sharing to facilitate referrals of individuals impacted by overdose to the Peer Supporters, and/or from EMS as appropriate
    - How the bidder's approach aligns with or adapts from existing procedures and protocols
    - How each partnership supports expanded access to care for individuals impacted by an opioid or other drug overdose
  - 3.4.9 Provide evidence of existing policy or commit to implement policy that prohibits discrimination against individuals in need of these services should their prevention, treatment and/or recovery be assisted with legitimately prescribed medications, and that no individual be denied full access to participation in programs, services or activities offered to others due to the use of legitimately prescribed medications.
  - 3.4.10 Provide discussion on how telehealth resources may be leveraged to support the implementation strategy.
  - 3.4.11 Tools and activities the bidder will implement to ensure fidelity to the evidence-based practices deployed.
- 3.5 **DATA AND PROGRAM OUTCOMES:** The proposal must indicate agreement to meet the requirements for the submission of outcome data as required by the Division of Behavioral Health.

#### **4.0 PROPOSAL REQUIREMENTS AND COMPANY QUALIFICATIONS**

- 4.1 The Offeror is cautioned that it is the Offeror's sole responsibility to submit information related to the evaluation categories and that the State of South Dakota is under no obligation to solicit such information if it is not included with the proposal. The Offeror's failure to submit such information may cause an adverse impact on the evaluation of the proposal.
- 4.2 **Offeror's Contacts:** Offerors and their agents (including subcontractors, employees, consultants, or anyone else acting on their behalf) must direct all of their questions or comments regarding the RFP, the evaluation, etc. to the point of contact of the buyer of record indicated on the first page of this RFP. Offerors and their agents may not contact any state employee other than the buyer of record regarding any of these matters during the solicitation and evaluation process. Inappropriate contacts are grounds for suspension and/or exclusion

from specific procurements. Offerors and their agents who have questions regarding this matter should contact the buyer of record.

- 4.3 The Offeror may be required to submit a copy of their most recent independently audited financial statements.
- 4.4 Provide the following information related to at least three previous and current service/contracts performed by the Offeror's organization which are similar to the requirements of this RFP. Provide this information for any service/contract that has been terminated, expired or not renewed in the past three years:
  - a. Name, address and telephone number of client/contracting agency and a representative of that agency who may be contacted for verification of all information submitted;
  - b. Dates of the service/contract; and
  - c. A brief, written description of the specific prior services performed and requirements thereof.
- 4.5 The Offeror must submit information that demonstrates their availability and familiarity with the locale in which the project (s) are to be implemented.
- 4.6 The Offeror must detail examples that document their ability and proven history in handling special project constraints.
- 4.7 The Offeror must describe their proposed project management techniques.
- 4.8 If an Offeror's proposal is not accepted by the State, the proposal will not be reviewed/evaluated.

## **5.0 PROPOSAL RESPONSE FORMAT**

- 5.1 Only a PDF copy shall be submitted.
  - 5.1.1 As outlined in section 1.5 proposals shall be submitted electronically via SFTP
  - 5.1.2 The proposal should be page numbered and should have an index and/or a table of contents referencing the appropriate page number.
- 5.2 All proposals must be organized and tabbed with labels for the following headings:
  - 5.2.1 **RFP Form.** The State's Request for Proposal form completed and signed.
  - 5.2.2 **Executive Summary.** The one or two page executive summary is to briefly describe the Offeror's proposal. This summary should highlight the major features of the proposal. It must indicate any requirements that cannot be met by the Offeror. The reader should be able to determine the essence of the proposal by reading the executive summary. Proprietary information requests should be identified in this section.
  - 5.2.3 **Detailed Response.** This section should constitute the major portion of the proposal and must contain at least the following information:
    - 5.2.3.1 A complete narrative of the Offeror's assessment of the work to be performed, the Offeror's ability and approach, and the resources necessary to fulfill the requirements. This should demonstrate the Offeror's understanding of the desired overall performance expectations.
    - 5.2.3.2 A specific point-by-point response, in the order listed, to each requirement in the RFP as detailed in Sections 3 and 4. The response should identify each requirement being addressed as enumerated in the RFP.
    - 5.2.3.3 A clear description of any options or alternatives proposed.

- 5.2.4 **Cost Proposal.** Cost will be evaluated independently from the technical proposal. Offerors may submit multiple cost proposals. All costs related to the provision of the required services must be included in each cost proposal offered.

See section 7.0 for more information related to the cost proposal.

## **6.0 PROPOSAL EVALUATION AND AWARD PROCESS**

- 6.1 After determining that a proposal satisfies the mandatory requirements stated in the Request for Proposal, the evaluator(s) shall use subjective judgment in conducting a comparative assessment of the proposal by considering each of the following criteria listed in order of importance:
- 6.1.1 Specialized expertise, capabilities, and technical competence as demonstrated by the proposed approach and methodology to meet the project requirements;
  - 6.1.2 Resources available to perform the work, including any specialized services, within the specified time limits for the project;
  - 6.1.3 Record of past performance, including price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration;
  - 6.1.4 Availability to the project locale;
  - 6.1.5 Familiarity with the project locale;
  - 6.1.6 Proposed project management techniques,
  - 6.1.7 Ability and proven history in handling special project constraints; and
  - 6.1.8 Cost proposal.
- 6.2 Experience and reliability of the Offeror's organization are considered subjectively in the evaluation process. Therefore, the Offeror 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.
- 6.3 The qualifications of the personnel proposed by the Offeror to perform the requirements of this RFP, whether from the Offeror's organization or from a proposed subcontractor, will be subjectively evaluated. Therefore, the Offeror should submit detailed information related to the experience and qualifications, including education and training, of proposed personnel.
- 6.4 The State reserves the right to reject any or all proposals, waive technicalities, and make award(s) as deemed to be in the best interest of the State of South Dakota.
- 6.5 **Award:** The requesting agency and the highest ranked Offeror shall mutually discuss and refine the scope of services for the project and shall negotiate terms, including compensation and performance schedule.
- 6.5.1 If the agency and the highest ranked Offeror are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the agency, the agency shall, either orally or in writing, terminate negotiations with the contractor. The agency may then negotiate with the next highest ranked contractor.



- 6.5.2 The negotiation process may continue through successive Offerors, according to agency ranking, until an agreement is reached, or the agency terminates the contracting process.
- 6.5.3 Only the response of the vendor awarded work becomes public. Responses to work orders for vendors not selected and the evaluation criteria and scoring for all proposals are not public. SDCL 1-27-1.5 and See SDCL 1-27-1.5 and 1-27-1.6.

## **7.0 COST PROPOSAL**

The Offeror must submit a budget proposal and budget justification identifying and itemizing projected costs for operation of the proposed follow-up program for a one year period. The budget proposal must be provided in the exact format included on the attached cost proposal (Attachment 4).

The Excel Spreadsheet should be downloaded as ***RFP\_23RFP8929\_Attachment\_4-Cost\_Proposal\_Template.xlsx***. This can be downloaded from <https://dss.sd.gov/keyresources/rfp.aspx>

**Attachment 1 – Sample Contract for Grantess**

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF SOCIAL SERVICES  
DIVISION OF BEHAVIORAL HEALTH**

**Individual Beneficiary/Recipient Agreement  
Between**

State of South Dakota  
Department of Social Services  
DIVISION OF BEHAVIORAL HEALTH  
700 Governors Drive  
Pierre SD 57501-2291

\_\_\_\_\_  
Referred to as Grantee

\_\_\_\_\_  
Referred to as State

The State hereby enters in to an agreement (the “Agreement” hereinafter) for an award of (Federal) and/or (State) financial assistance to a Grantee.

1. Grantee’s South Dakota Vendor Number is \_\_\_\_\_. Upon execution of agreement, Grantee will provide the State with Grantee’s Employer Identification Number or Federal Tax Identification Number.

2. PERIOD OF PERFORMANCE:

A. This Agreement shall be effective as of June 1, 2023 and shall end on May 31, 2024, unless sooner terminated pursuant to the terms hereof.

B. This Agreement is the result of request for proposal process, RFP # \_\_\_\_\_

3. BASIS FOR SUBAWARD AMOUNTS:

This grant is made for the purpose of \_\_\_\_\_.

|                                     |    |
|-------------------------------------|----|
| Amount provided by State/Grantor is | \$ |
| Amount matched by Grantee           | \$ |
| Total Grant Amount                  | \$ |

4. PROVISIONS (add an addendum if needed):

A. The Grantee agrees to:

1. \_\_\_\_\_.

2. Does this Agreement involve Protected Health Information (PHI)? YES ( ) NO ( X )  
If PHI is involved, a Business Associate Agreement must be attached and is fully incorporated herein as part of the Agreement (refer to attachment).

3. Provide documentation of expenditures incurred.

B. The State agrees to:

1. \_\_\_\_\_.

5. **PROPERTY MANAGEMENT STANDARDS:**

The Grantee agrees to observe Federal Government uniform standards governing the utilization of property whose cost was charged to a project supported by a federal grant.

6. **TECHNICAL ASSISTANCE:**

The State agrees to provide technical assistance regarding Department of Social Services' rules, regulations and policies to the Grantee and to assist in the correction of problem areas identified by the State's monitoring activities.

7. **LICENSING AND STANDARD COMPLIANCE:**

The Grantee agrees to comply with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this Agreement. The Grantee will maintain effective internal controls in managing the federal award. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Grantee's failure to ensure the safety of all individuals served is assumed entirely by the Grantee.

8. **ASSURANCE REQUIREMENTS:**

(For Federally funded contracts only). The Grantee agrees to abide by all applicable provisions of the following assurances: Byrd Anti Lobbying Amendment (31 USC 1352), Debarment and Suspension (Executive orders 12549 and 12689) (Debarment and Suspension), Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996 as amended, Clean Air Act, Federal Water Pollution Control Act, Charitable Choice Provisions and Regulations, Equal Treatment for Faith-Based Religions at Title 28 Code of Federal Regulations Part 38, the Violence Against Women Reauthorization Act of 2013 and American Recovery and Reinvestment Act of 2009, as applicable; and any other nondiscrimination provision in the specific statute(s) under which application for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply to the award.

9. **COMPLIANCE WITH EXECUTIVE ORDER 2020-01:**

By entering into this Agreement, Grantee certifies and agrees that it has not refused to transact business activities, it has not terminated business activities, and it has not taken other similar actions intended to limit its commercial relations, related to the subject matter of this Agreement, with a person or entity that is either the State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or doing business in the State of Israel, with the specific intent to accomplish a boycott of divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to terminate this Agreement. Grantee further agrees to provide immediate written notice to the State if during the term of this Agreement it no longer complies with this certification and agrees such noncompliance may be grounds for termination of this Agreement.

10. **COMPLIANCE WITH EXECUTIVE ORDER 2023-02:**

Contractor certifies and agrees that the following information is correct:

In preparing its response or offer or in considering proposals submitted from qualified, potential vendors, suppliers, and subcontractors, or in the solicitation, selection, or commercial treatment of any vendor, supplier, or subcontractor, Contractor is not an entity, regardless of its principal place of business, that is ultimately owned or controlled, directly or indirectly, by a foreign national, a foreign parent entity, or foreign government from China, Iran, North Korea, Russia, Cuba, or Venezuela, as defined by South Dakota Executive Order 2023-02.

Contractor further agrees that, if this certification is false, such false certification will constitute grounds for the State to terminate this Agreement. Contractor further agrees to provide immediate written notice to the State if during the term of this Agreement it no longer complies with this certification and agrees such noncompliance may be grounds for termination of this Agreement.

**11. RETENTION AND INSPECTION OF RECORDS:**

The Grantee agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, statistical, fiscal, and other information records necessary for reporting and accountability required by the State. The Grantee shall retain such records for a period of six years from the date of submission of the final expenditure report. If such records are under pending audit, the Grantee agrees to hold such records for a longer period upon notification from the State. The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement. State Proprietary Information retained in Grantee's secondary and backup systems will remain fully subject to the obligations of confidentiality stated herein until such information is erased or destroyed in accordance with Grantee's established record retention policies.

All payments to the Grantee by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment of this Agreement shall be returned to the State within thirty days after written notification to the Grantee.

**12. WORK PRODUCT:**

Grantee hereby acknowledges and agrees that all reports, plans, specifications, technical data, drawings, software system programs and documentation, procedures, files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, State Proprietary Information, State Data, End User Data, Personal Health Information, and all information contained therein provided to the State by the Grantee in connection with its performance of service under this Agreement shall belong to and is the property of the State and will not be used in any way by the Grantee without the written consent of the State.

Paper, reports, forms, software programs, source code(s) and other materials which are a part of the work under this Agreement will not be copyrighted without written approval of the State. In the unlikely event that any copyright does not fully belong to the State, the State nonetheless reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and otherwise use, and to authorize others to use, any such work for government purposes.

Grantee agrees to return all information received from the State to State's custody upon the end of the term of this Agreement, unless otherwise agreed in a writing signed by both parties.

**13. AUDIT REQUIREMENTS:**

For nonprofit sub-recipients if federal funds of \$750,000 or more have been expended by the Grantee during the Grantee's fiscal year the audit shall be conducted in accordance with OMB Circular A-133, now under Subpart F-Audit Requirements in 2 CFR Part 200 by an auditor approved by the Auditor General to perform the audit. On continuing audit engagements, the Auditor General's approval should be obtained annually. Audits shall be completed and filed with the Department of Legislative Audit by the end of the fourth month following the end of the fiscal year being audited. For an A-133, now under Subpart F audit, approval must be obtained by forwarding a copy of the audit engagement letter to:

Department of Legislative Audit  
A-133 Coordinator  
427 South Chapelle  
% 500 East Capitol  
Pierre, SD 57501-5070

For either an entity-wide, independent financial audit or an A-133, now under Subpart F-Audit, the Grantee assures resolution of all interim audit findings. The Grantee shall facilitate and aid any such reviews, examinations, agreed upon procedures etc., the Department or its' contractor(s) may perform.

Failure to complete audit(s) as required will result in the disallowance of audit costs as direct or indirect charges to programs. Additionally, a percentage of awards may be withheld, overhead costs may be disallowed, and/or awards may be suspended, until the audit is completely satisfied.

**14. COST PRINCIPLES:**

If applicable, Grantee agrees to comply in full with the administrative requirements and cost principles as outlines in OMB uniform administrative requirements, cost principles, and audit requirements for federal awards – 2 CFR Part 200 (Uniform Administrative Requirements).

**15. TERMINATION:**

This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Grantee breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time, with or without notice. Upon termination of this Agreement, all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination. If termination for breach is effected by the State, any payments due to Grantee at the time of termination may be adjusted to cover any additional costs to the State as a result of Grantee's breach. Upon termination the State may take over the work and may award another party a contract to complete the work contemplated by this Agreement. If the State terminates for a breach by Grantee and it is determined that the Grantee was not at fault, then Consultant shall be paid for eligible services rendered and expenses incurred up to the date of termination.

Any terms of this Agreement that would, by their nature or through the express terms of this Agreement, survive the expiration or termination of this Agreement shall so survive, including but not limited to the terms of sections 11,12,18,25,26 and 30.

**16. FUNDING:**

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of the law or federal funds reduction, this Agreement will be terminated by the State upon five days written notice. Grantee agrees that termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State or any officer, agent or employee of the State and Grantee waives any claim against the same.

**17. ASSIGNMENT AND AMENDMENT:**

This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

**18. CONTROLLING LAW:**

This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to any conflicts of law principles, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit pertaining to or affecting this Agreement shall be resolved in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

**19. SUPERSESSSION:**

All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire Agreement with respect to the subject matter hereof.

**20. IT STANDARDS:**

Any service, software or hardware provided under this Agreement will comply with state standards which can be found at <http://bit.sd.gov/standards/>.

**21. SEVERABILITY:**

In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement, which shall remain in full force and effect.

**22. NOTICE:**

Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the Division being contracted with on behalf of the State, and by the Grantee, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail,

provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

**23. SUBCONTRACTORS/SUBGRANTEES:**

The Grantee will not use subcontractors or subgrantees to perform work under this Agreement without the express prior written consent from the State. The State reserves the right to reject any person from the contract presenting insufficient skills or inappropriate behavior.

The Grantee will include provisions in its subcontracts or subgrants requiring its subcontractors and/or subgrantees to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Grantee will cause its subcontractors, subgrantees, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance. The State, at its option, may require the vetting of any subcontractors and or subgrantees. The Grantee is required to assist in this process as needed.

**24. STATE'S RIGHT TO REJECT:**

The State reserves the right to reject any person or entity from performing the work or services contemplated by this Agreement, who present insufficient skills or inappropriate behavior, or is considered by the state to be a security risk.

**25. INDEMNIFICATION:**

Grantee agrees to indemnify the State of South Dakota, its officers, agents, and employees, from and against all claims or proceedings for actions, suits, damages, liabilities, other lossess or equitable releif that may arise at least in part as a result of an act or omission in performing services under this Agreement. Granteeshall defend the State of South Dakota, its officers, agents, and employees against any claim, including any claim, action, suit, or other proceeding related to the claim. Consultant's obligation to idemnify includes the payment of attorney fees and other costs of defense. In defending the State of South Dakota, its officers, agents, and employees, Granteeshall engage other professionals, subject to the written approval of the State which shall not be unreasonably withheld. Notwithstanding the foregoing, the State may, in its sole discretion and at the expense of Consultant, engage attorneys and other professionals to defend the State of South Dakota, its officers, agents, and employees, or to assist Granteein the defense. This section does not require Granteeto be responsible for or defend against claims or proceedings for damages, liabilities, lossess or equitable relief arising solely from errors or omissions of the State, its officers, agents, or employees.

**26. INSURANCE:**

Before beginning work under this Agreement, the Grantee shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement, including naming the State of South Dakota, its officers and employees as additional insureds, as set forth below. The Grantee, at all times during the term of this Agreement, shall maintain in force insurance coverage of the types and limits listed below. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Grantee agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Grantee shall furnish copies of insurance policies if requested by the State.

**A. Commercial General Liability Insurance:**

The Grantee shall maintain occurrence-based commercial general liability insurance or an equivalent form with a limit of not less than \$1,000,000 for each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two times the occurrence limit. The insurance policy shall name the State of South Dakota, its officers and employees, as additional insureds, but liability coverage is limited to claims not barred by sovereign immunity. The State of South Dakota, its officers and employees do not hereby waive sovereign immunity for discretionary conduct as provided by law.

**B. Business Automobile Liability Insurance:**

The Grantee shall maintain business automobile liability insurance or an equivalent form with a limit of not less than \$1,000,000 for each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles. The insurance shall include coverage for owned, hired, and non-owned vehicles.

The insurance policy shall name the State of South Dakota, its officers and employees, as additional

insureds but liability coverage is limited to claims not barred by sovereign immunity. The State of South Dakota, its officers and employees do not hereby waive sovereign immunity for discretionary conduct as provided by law.

**C. Worker's Compensation Insurance:**

The Grantee shall procure and maintain Workers' Compensation and employers' liability insurance as required by South Dakota or federal law.

**D. Professional Liability Insurance:**

The Grantee agrees to procure and maintain professional liability insurance with limit not less than \$1,000,000. The insurance policy shall name the State of South Dakota, its officers and employees, as additional insureds but liability coverage is limited to claims not barred by sovereign immunity. The State of South Dakota, its officers and employees do not hereby waive sovereign immunity for discretionary conduct as provided by law.

**27. TERMS:**

By accepting this Agreement, the Grantee assumes certain administrative and financial responsibilities. Failure to adhere to these responsibilities without prior written Approval by the State shall be in violation of the terms of this Agreement, and the Agreement shall be subject to termination.

**28. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:**

Grantee certifies, by signing this Agreement, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or any state or local government department or agency. Grantee further agrees that it will immediately notify the State if during the term of this Agreement it or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

**29. CONFLICT OF INTEREST:**

Grantee agrees to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain as contemplated by SDCL 5-18A-17 through 5-18A-17.6. Any potential conflict of interest must be disclosed in writing. In the event of a conflict of interest, the Grantee expressly agrees to be bound by the conflict resolution process set forth in SDCL 5-18A-17 through 5-18A-17.6.

**30. CONFIDENTIALITY OF INFORMATION:**

For the purpose of the sub-paragraph, "State Proprietary Information" shall include all information disclosed to the Grantee by the State. Grantee acknowledges that it shall have a duty to not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. Grantee shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this Agreement; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this Agreement; (iii) make State Proprietary Information available to any of its employees, officers, agents or consultants except those who have agreed to obligations of confidentiality at least as strict as those set out in this Agreement and who have a need to know such information. Grantee is held to the same standard of caring in guarding State Proprietary Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. Grantee shall protect confidentiality of the State's information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. State Proprietary Information shall not include information that (i) was in the public domain at the time it was disclosed to Grantee; (ii) was known to Grantee without restriction at the time of disclosure from the State; (iii) that is disclosed with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by Grantee without the benefit or influence of the State's information; (v) becomes known to Grantee without restriction from a source not connected to the State of South Dakota. State's Proprietary Information shall include names, social security numbers, employer numbers, addresses and all other data about applicants, employers or other clients to whom the State provides services of any kind. Grantee understands that this information is confidential and protected under applicable State law at SDCL 1-27-1.5, modified by SDCL 1-27-1.6, SDCL 28-

1-29, SDCL 28-1-32, and SDCL 28-1-68 as applicable federal regulation and agrees to immediately notify the State if the information disclosure, either intentionally or inadvertently. The parties mutually agree that neither of them shall disclose the contents of the Agreement except as required by applicable law or as necessary to carry out the terms of the Agreement or to enforce that party's rights under this Agreement. Grantee acknowledges that the State and its agencies are public entities and thus are bound by South Dakota open meetings and open records laws. It is therefore not a breach of this Agreement for the State to take any action that the State reasonably believes is necessary to comply with the South Dakota open records or open meetings laws. If work assignment performed in the course of this Agreement required security requirements or clearance, the Grantee will be required to undergo investigation or may be required to sign separate confidentiality agreements, and it will limit access to the confidential information and related work activities to employees that have executed such agreements.

31. RECIPIENT, SUB-RECIPIENT ATTESTATION:

By signing this Agreement, Recipient or Sub-recipient attests to the following requirements as set forth in SDCL §1-56-10:

(A) A conflict of interest policy is enforced within the recipient's or Sub-recipient's organization;

(B) The Internal Revenue Service Form 990 has been filed, if applicable, in compliance with federal law, and is displayed immediately after filing on the recipient's or Sub-recipient's website;

(C) An effective internal control system is employed by the recipient's or Sub-recipient's organization; and

(D) If applicable, the recipient or Sub-recipient is in compliance with the federal Single Audit Act, in compliance with § 4-11-2.1, and audits are displayed on the recipient's or Sub-recipient's website.

A recipient or Sub-recipient further represents that any and all concerns or issues it had in complying with the foregoing attestations were raised and addressed by the State prior to signing this Agreement.

In the event of a significant change in the conflict of interest policy, recipient or Sub-recipient agrees to provide immediate notice of such change to the State and provide a copy of the new conflict of interest policy. Recipient or Sub-recipient understands that any change in the conflict of interest policy may result in a change in their monitoring or other performance requirements under the grant and expressly agrees to comply with those changes and to facilitate any additional monitoring as required by the State.

32. DAVIS-BACON ACT:

When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").

33. COMPLIANCE WITH 40 U.S.C. 3702 AND 3704:

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

34. FUNDING AGREEMENT AND "RIGHTS TO INVENTION":

If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the Grantee wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Grantee must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.



**35. FORCE MAJEURE:**

Notwithstanding anything in this Agreement to the contrary, neither party shall be liable for any delay or failure to perform under the terms and conditions of this Agreement, if the delay or failure is caused by war, terrorist attacks, riots, civil commotion, fire, flood, earthquake or any act of God, or any causes beyond the party's reasonable control provided, however that in order to be excused from delay or failure to perform, the party must act diligently to remedy the cause of such delay or failure and must give notice to the other party as provided in this Agreement as soon as reasonably possible of the length and cause of the delay in performance.

**36. WAIVER OF BREACH:**

The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provisions in this Agreement.

**37. HEADINGS:**

The headings in this Agreement are for convenience and reference only and shall not govern, limit, modify or in any manner affect the scope, meaning, or intent of the provisions of this Agreement.

**38. SOVEREIGN IMMUNITY:**

Nothing in this Agreement is intended to constitute a waiver of sovereign immunity by or on behalf of the State of South Dakota, its agencies, officers, or employees.

**39. AUTHORITY TO EXECUTE:**

Grantee represents and warrants that the execution, delivery, and performance of this Agreement has been duly authorized by Grantee and that no approval, authorization, or consent of any governmental or regulatory agency is required to be obtained in order for Grantee to enter into this Agreement and perform its obligations under this Agreement. If the Grantee is a corporation, said corporation is duly incorporated, validly existing, and in good standing under the laws of its state of incorporation and has all requisite corporate power and authority to execute, deliver, and perform its obligations under this Agreement. If Grantee is an individual person, partnership, or other non-corporate entity, Grantee is authorized to conduct business in and is in good standing in each jurisdiction in which Grantee will conduct business in connection with this Agreement. Grantee has obtained all licenses, certifications, permits, and authorizations necessary to perform the services under this Agreement and currently is in good standing with all regulatory agencies that regulate any or all aspects of Consultant's performance of the services. Grantee will maintain all required certifications, licenses, permits and authorizations during the term of this Agreement at its own expense.

40. AUTHORIZED SIGNATURES:

In witness hereto, the parties signify their agreement by affixing their signatures hereto.

|                                                   |       |
|---------------------------------------------------|-------|
| _____                                             | _____ |
| Grantee Signature                                 | Date  |
| _____                                             |       |
| Grantee Printed Name                              |       |
| _____                                             | _____ |
| State - DSS Division Director                     | Date  |
| _____                                             | _____ |
| State - DSS Chief Financial Officer Jason Simmons | Date  |
| _____                                             | _____ |
| State – DSS Cabinet Secretary Matthew K. Althoff  | Date  |

DSS Purchase Order #: 24SC08 \_ \_ \_ \_

DSS Agreement #: 24-08 \_ \_ - \_ \_ \_

**State Agency Coding:**

|              |       |       |       |       |
|--------------|-------|-------|-------|-------|
| CFDA#        | _____ | _____ | _____ | _____ |
| Company      | _____ | _____ | _____ | _____ |
| Account      | _____ | _____ | _____ | _____ |
| Center Req   | _____ | _____ | _____ | _____ |
| Center User  | _____ | _____ | _____ | _____ |
| Dollar Total | _____ | _____ | _____ | _____ |
|              | _____ | _____ | _____ | _____ |

DSS Program Contact Person \_\_\_\_\_  
Phone \_\_\_\_\_

DSS Fiscal Contact Person Contract Accountant  
Phone 605 773-3586

Grantee Program Contact Person \_\_\_\_\_  
Phone \_\_\_\_\_  
Grantee Program Email Address \_\_\_\_\_

Grantee Fiscal Contact Person \_\_\_\_\_  
Phone \_\_\_\_\_  
Grantee Fiscal Email Address \_\_\_\_\_

**Attachment 2 – Sample contract when DSS purchases services**

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF SOCIAL SERVICES  
DIVISION OF BEHAVIORAL HEALTH**

**Purchase of Services Agreement  
For Provider Services  
Between**

State of South Dakota  
Department of Social Services  
DIVISION OF BEHAVIORAL HEALTH  
700 Governors Drive  
Pierre, SD 57501-2291

\_\_\_\_\_  
Referred to as Provider

\_\_\_\_\_  
Referred to as State

The State hereby enters into a contract (the “Agreement” hereinafter) for procurement of goods or services. While performing services hereunder, Provider is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

1. PROVIDER’S South Dakota Vendor Number is \_\_\_\_\_.
2. PERIOD OF PERFORMANCE:
  - A. This Agreement shall be effective as of \_\_\_\_\_ and shall end on \_\_\_\_\_, unless sooner terminated pursuant to the terms hereof.
  - B. Agreement is the result of request for proposal process, RFP #\_\_\_\_\_
3. PROVISIONS:
  - A. The Purpose of this Provider contract:
    - 1.
    2. Does this Agreement involve Protected Health Information (PHI)? YES ( ) NO ( X )  
If PHI is involved, a Business Associate Agreement must be attached and is fully incorporated herein as part of the Agreement (refer to attachment) .
    3. The Provider will use state equipment, supplies or facilities.
  - B. The Provider agrees to perform the following services (add an attachment if needed):
    - 1.
  - C. The TOTAL CONTRACT AMOUNT will not exceed \$ \_\_\_\_\_.  
Payment will be in accordance with SDCL 5-26

4. **BILLING:**

Provider agrees to submit a bill for services within (30) days following the month in which services were provided. Provider will prepare and submit a monthly bill for services. Provider agrees to submit a final bill within 30 days of the Agreement end date to receive payment for completed services. If a final bill cannot be submitted in 30 days, then a written request for extension of time and explanation must be provided to the State.

5. **TECHNICAL ASSISTANCE:**

The State agrees to provide technical assistance regarding Department of Social Services rules, regulations and policies to the Provider and to assist in the correction of problem areas identified by the State's monitoring activities.

6. **LICENSING AND STANDARD COMPLIANCE:**

The Provider agrees to comply in full with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this Agreement. The Provider will maintain effective internal controls in managing the federal award. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Provider's failure to ensure the safety of all individuals served is assumed entirely by the Provider.

7. **ASSURANCE REQUIREMENTS:**

(For Federally funded contracts only). The Provider agrees to abide by all applicable provisions of the following: Byrd Anti Lobbying Amendment (31 USC 1352), Executive orders 12549 and 12689 (Debarment and Suspension), Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996 as amended, Clean Air Act, Federal Water Pollution Control Act, Charitable Choice Provisions and Regulations, Equal Treatment for Faith-Based Religions at Title 28 Code of Federal Regulations Part 38, the Violence Against Women Reauthorization Act of 2013 and American Recovery and Reinvestment Act of 2009, as applicable; and any other nondiscrimination provision in the specific statute(s) under which application for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply to the award.

8. **COMPLIANCE WITH EXECUTIVE ORDER 2020-01:**

By entering into this Agreement, Provider certifies and agrees that it has not refused to transact business activities, it has not terminated business activities, and it has not taken other similar actions intended to limit its commercial relations, related to the subject matter of this Agreement, with a person or entity that is either the State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or doing business in the State of Israel, with the specific intent to accomplish a boycott of divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State to terminate this Agreement. Provider further agrees to provide immediate written notice to the State if during the term of this Agreement it no longer complies with this certification and agrees such noncompliance may be grounds for termination of this Agreement.

9. **COMPLIANCE WITH EXECUTIVE ORDER 2023-02:**

Contractor certifies and agrees that the following information is correct:

In preparing its response or offer or in considering proposals submitted from qualified, potential vendors, suppliers, and subcontractors, or in the solicitation, selection, or commercial treatment of any vendor, supplier, or subcontractor, Contractor is not an entity, regardless of its principal place of business, that is ultimately owned or controlled, directly or indirectly, by a foreign national, a foreign parent entity, or foreign government from China, Iran, North Korea, Russia, Cuba, or Venezuela, as defined by South Dakota Executive Order 2023-02.

Contractor further agrees that, if this certification is false, such false certification will constitute grounds for the State to terminate this Agreement. Contractor further agrees to provide immediate written notice to the State if during the term of this Agreement it no longer complies with this certification and agrees such noncompliance may be grounds for termination of this Agreement.

**10. RETENTION AND INSPECTION OF RECORDS:**

The Provider agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, statistical, fiscal, other records, and information necessary for reporting and accountability required by the State. The Provider shall retain such records for a period of six years from the date of submission of the final expenditure report. If such records are under pending audit, the Provider agrees to hold such records for a longer period upon notification from the State. The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement. State Proprietary Information retained in Provider's secondary and backup systems will remain fully subject to the obligations of confidentiality stated herein until such information is erased or destroyed in accordance with Provider's established record retention policies.

All payments to the Provider by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment of this Agreement shall be returned to the State within thirty days after written notification to the Provider.

**11. WORK PRODUCT:**

Provider hereby acknowledges and agrees that all reports, plans, specifications, technical data, drawings, software system programs and documentation, procedures, files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, State Proprietary Information, as defined in the Confidentiality of Information paragraph herein, state data, end user data, Protected Health Information as defined in 45 CFR 160.103, and all information contained therein provided to the State by the Provider in connection with its performance of service under this Agreement shall belong to and is the property of the State and will not be used in any way by the Provider without the written consent of the State.

Paper, reports, forms, software programs, source code(s) and other materials which are a part of the work under this Agreement will not be copyrighted without written approval of the State. In the unlikely event that any copyright does not fully belong to the State, the State nonetheless reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and otherwise use, and to authorize others to use, any such work for government purposes.

Provider agrees to return all information received from the State to State's custody upon the end of the term of this Agreement, unless otherwise agreed in a writing signed by both parties.

**12. TERMINATION:**

This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Provider breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time, with or without notice. Upon termination of this Agreement, all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination. If termination for breach is effected by the State, any payments due to Provider at the time of termination may be adjusted to cover any additional costs to the State as a result of Provider's breach. Upon termination the State may take over the work and may award another party a contract to complete the work contemplated by this Agreement. If the State terminates for a breach by Provider and it is determined that the Provider was not at fault, then Provider shall be paid for eligible services rendered and expenses incurred up to the date of termination.

Any terms of this Agreement that would, by their nature or through the express terms of this Agreement, survive the expiration or termination of this Agreement shall so survive, including but not limited to the terms of sections 10, 11, 15, 23, 24 and 27.

**13. FUNDING:**

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of the law or federal funds reduction, this Agreement will be terminated by the State upon five days written notice. Provider agrees that termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State or any officer, agent or employee of the State and Provider waives any claim against the same.

14. ASSIGNMENT AND AMENDMENTS:

This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

15. CONTROLLING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota, without regard to any conflicts of law principles, decisional law, or statutory provision which would require or permit the application of another jurisdiction's substantive law. Venue for any lawsuit pertaining to or affecting this Agreement shall be resolved in the Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

16. THIRD PARTY BENEFICIARIES:

This agreement is intended to govern only the rights and interests of the parties named herein. It is not intended to create, does not and may not be relied upon to create, any rights, substantive or procedural, enforceable at law in any matters, civil or criminal.

17. SUPERSESSON:

All prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

18. IT STANDARDS:

Any service, software or hardware provided under this Agreement will comply with state standards which can be found at <http://bit.sd.gov/standards/>.

19. SEVERABILITY:

In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement, which shall remain in full force and effect.

20. NOTICE:

Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the Division being contracted with on behalf of the State, and by the Provider, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

21. SUBCONTRACTORS:

The Provider may not use subcontractors to perform the services described herein without express prior written consent from the State. The State reserves the right to reject any person from the Agreement presenting insufficient skills or inappropriate behavior.

The Provider will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Provider will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance. The State, at its option, may require the vetting of any subcontractors. The Provider is required to assist in this process as needed.

22. STATE'S RIGHT TO REJECT:

The State reserves the right to reject any person or entity from performing the work or services contemplated by this Agreement, who present insufficient skills, presents inappropriate behavior, or is considered by the state to be a security risk.

**23. INDEMNIFICATION:**

Provider agrees to indemnify the State of South Dakota, its officers, agents, and employees, from and against all claims or proceedings for actions, suits, damages, liabilities, other loss or equitable relief that may arise at least in part as a result of an act or omission in performing services under this Agreement. Provider shall defend the State of South Dakota, its officers, agents, and employees against any claim, including any claim, action, suit, or other proceeding related to the claim. Provider's obligation to indemnify includes the payment of attorney fees and other costs of defense. In defending the State of South Dakota, its officers, agents, and employees, Provider shall engage other professionals, subject to the written approval of the State which shall not be unreasonably withheld. Notwithstanding the foregoing, the State may, in its sole discretion and at the expense of Provider, engage attorneys and other professionals to defend the State of South Dakota, its officers, agents, and employees, or to assist Provider in the defense. This section does not require Provider to be responsible for or defend against claims or proceedings for damages, liabilities, loss or equitable relief arising solely from errors or omissions of the State, its officers, agents, or employees.

**24. INSURANCE:**

Before beginning work under this Agreement, Provider shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement, including naming the State of South Dakota, its officers and employees as additional insureds, as set forth below. The Provider, at all times during the term of this Agreement, shall maintain in force insurance coverage of the types and limits listed below. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Provider agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Provider shall furnish copies of insurance policies if requested by the State.

**A. Commercial General Liability Insurance:**

Provider shall maintain occurrence-based commercial general liability insurance or an equivalent form with a limit of not less than \$1,000,000 for each occurrence. If such insurance contains a general aggregate limit, it shall apply separately to this Agreement or be no less than two times the occurrence limit. The insurance policy shall name the State of South Dakota, its officers and employees, as additional insureds, but liability coverage is limited to claims not barred by sovereign immunity. The State of South Dakota, its officers and employees do not hereby waive sovereign immunity for discretionary conduct as provided by law.

**B. Business Automobile Liability Insurance:**

Provider shall maintain business automobile liability insurance or an equivalent form with a limit of not less than \$1,000,000 for each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles. The insurance shall include coverage for owned, hired, and non-owned vehicles. The insurance policy shall name the State of South Dakota, its officers and employees, as additional insureds but liability coverage is limited to claims not barred by sovereign immunity. The State of South Dakota, its officers and employees do not hereby waive sovereign immunity for discretionary conduct as provided by law.

**C. Worker's Compensation Insurance:**

Provider shall procure and maintain Workers' Compensation and employers' liability insurance as required by South Dakota or federal law.

**D. Professional Liability Insurance or Miscellaneous Professional Liability Insurance:**

Provider agrees to procure and maintain professional liability insurance with a limit not less than \$1,000,000. The insurance policy shall name the State of South Dakota, its officers and employees, as additional insureds but liability coverage is limited to claims not barred by sovereign immunity. The State of South Dakota, its officers and employees do not hereby waive sovereign immunity for discretionary conduct as provided by law.

(Medical Health Professional shall maintain current general professional liability insurance with a limit of not less than one million dollars for each occurrence and three million dollars in the aggregate. Such insurance shall include South Dakota state employees as additional insureds in the event a claim, lawsuit, or other proceeding is filed against a state employee as a result of the services provided pursuant to this Agreement. If insurance provided by Medical Health Professional is provided on a claim made basis, then Medical Health Professional shall provide "tail" coverage for a period of five years after the termination of coverage.)



25. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:

Provider certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by the federal government or any state or local government department or agency. Provider further agrees that it will immediately notify the State if during the term of this Agreement either it or its principals become subject to debarment, suspension or ineligibility from participating in transactions by the federal government, or by any state or local government department or agency.

26. CONFLICT OF INTEREST:

Provider agrees to establish safeguards to prohibit employees or other persons from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain as contemplated by SDCL 5-18A-17 through 5-18A-17.6. Any potential conflict of interest must be disclosed in writing. In the event of a conflict of interest, the Provider expressly agrees to be bound by the conflict resolution process set forth in SDCL 5-18A-17 through 5-18A-17.6.

27. CONFIDENTIALITY OF INFORMATION:

For the purpose of the sub-paragraph, "State Proprietary Information" shall include all information disclosed to the Provider by the State. Provider acknowledges that it shall have a duty to not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. Provider shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this Agreement; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this Agreement; (iii) make State Proprietary Information available to any of its employees, officers, agents or providers except those who have agreed to obligations of confidentiality at least as strict as those set out in this Agreement and who have a need to know such information. Provider is held to the same standard of care in guarding State Proprietary Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. Provider shall protect confidentiality of the State's information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. State Proprietary Information shall not include information that (i) was in the public domain at the time it was disclosed to Provider; (ii) was known to Provider without restriction at the time of disclosure from the State; (iii) that is disclosed with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by Provider without the benefit or influence of the State's information; (v) becomes known to Provider without restriction from a source not connected to the State of South Dakota. State's Proprietary Information shall include names, social security numbers, employer numbers, addresses and all other data about applicants, employers or other clients to whom the State provides services of any kind. Provider understands that this information is confidential and protected under applicable State law at SDCL 1-27-1.5, modified by SDCL 1-27-1.6, SDCL 28-1-29, SDCL 28-1-32, and SDCL 28-1-68 as applicable federal regulation and agrees to immediately notify the State if the information is disclosure, either intentionally or inadvertently. The parties mutually agree that neither of them shall disclose the contents of the Agreement except as required by applicable law or as necessary to carry out the terms of the Agreement or to enforce that party's rights under this Agreement. Provider acknowledges that the State and its agencies are public entities and thus are bound by South Dakota open meetings and open records laws. It is therefore not a breach of this Agreement for the State to take any action that the State reasonably believes is necessary to comply with the South Dakota open records or open meetings laws. If work assignments performed in the course of this Agreement require additional security requirements or clearance, the Provider will be required to undergo investigation or may be required to sign separate confidentiality agreements, and it will limit access to the confidential information and related work activities to employees that have executed such agreements.

28. REPORTING PROVISION:

Provider agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to any person or property, or which may otherwise subject Provider, or the State of South Dakota or its officers, agents or employees to liability. Provider shall report any such event to the State immediately upon discovery.

Provider's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Provider's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of Provider to report any event to law enforcement or other entities under the requirements of any applicable law.

29. COST REPORTING REQUIREMENTS:

☐ The Provider agrees to submit a cost report in the format required by the State and is due four months following the end of the Provider's fiscal year.

or

☒ No reporting is required.

30. DAVIS-BACON ACT:

When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").

31. COMPLIANCE WITH 40 U.S.C. 3702 AND 3704:

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

32. FUNDING AGREEMENT AND "RIGHTS TO INVENTION":

If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the Provider wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Provider must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

33. FORCE MAJEURE:

Notwithstanding anything in this Agreement to the contrary, neither party shall be liable for any delay or failure to perform under the terms and conditions of this Agreement, if the delay or failure is caused by war, terrorist attacks, riots, civil commotion, fire, flood, earthquake or any act of God, or any causes beyond the party's reasonable control provided, however that in order to be excused from delay or failure to perform, the party must act diligently to remedy the cause of such delay or failure and must give notice to the other party as provided in this Agreement as soon as reasonably possible of the length and cause of the delay in performance.

34. WAIVER OF BREACH:

The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provisions in this Agreement.

35. HEADINGS:

The headings in this Agreement are for convenience and reference only and shall not govern, limit, modify or in any manner affect the scope, meaning, or intent of the provisions of this Agreement.

36. SOVEREIGN IMMUNITY:

Nothing in this Agreement is intended to constitute a waiver of sovereign immunity by or on behalf of the State of South Dakota, its agencies, officers, or employees.

37. AUTHORITY TO EXECUTE:

Provider represents and warrants that the execution, delivery, and performance of this Agreement has been duly authorized by Provider and that no approval, authorization, or consent of any governmental or regulatory agency is required to be obtained in order for Provider to enter into this Agreement and perform its obligations under this Agreement. If the Provider is a corporation, said corporation is duly incorporated, validly existing, and in good standing under the laws of its state of incorporation and has all requisite corporate power and authority to execute, deliver, and perform its obligations under this Agreement. If Provider is an individual person, partnership, or other non-corporate entity, Provider is authorized to conduct

business in and is in good standing in each jurisdiction in which Provider will conduct business in connection with this Agreement. Provider has obtained all licenses, certifications, permits, and authorizations necessary to perform the services under this Agreement and currently is in good standing with all regulatory agencies that regulate any or all aspects of Provider's performance of the services. Provider will maintain all required certifications, licenses, permits and authorizations during the term of this Agreement at its own expense.

SAMPLE

## 38. AUTHORIZED SIGNATURES:

In witness hereto, the parties signify their agreement by affixing their signatures hereto.

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Provider Signature

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Date

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Provider Printed Name

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State - DSS Division Director

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Date

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State - DSS Chief Financial Officer Jason Simmons

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Date

---

State – DSS Cabinet Secretary Matthew K. Althoff

---

Date

State Agency Coding:

|              |       |       |       |       |
|--------------|-------|-------|-------|-------|
| CFDA #       | _____ | _____ | _____ | _____ |
| Company      | _____ | _____ | _____ | _____ |
| Account      | _____ | _____ | _____ | _____ |
| Center Req   | _____ | _____ | _____ | _____ |
| Center User  | _____ | _____ | _____ | _____ |
| Dollar Total | _____ | _____ | _____ | _____ |

DSS Program Contact Person Melanie Boetel  
Phone 605-367-5236

DSS Fiscal Contact Person Contract Accountant  
Phone 605 773-3586

Provider Program Contact Person \_\_\_\_\_  
Phone \_\_\_\_\_  
Provider Program Email Address \_\_\_\_\_

Provider Fiscal Contact Person \_\_\_\_\_  
Phone \_\_\_\_\_  
Provider Fiscal Email Address \_\_\_\_\_

## Attachment 3 - Sample Business Associates Agreement

### STATE OF SOUTH DAKOTA DEPARTMENT OF SOCIAL SERVICES

#### Attachment 3

#### Business Associate Agreement

#### 1. Definitions

##### General definition:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, 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 the Provider, Consultant or entity contracting with the State of South Dakota as set forth more fully in the Agreement this Business Associate Agreement is attached.
- (b) CFR. “CFR” shall mean the Code of Federal Regulations.
- (c) 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 South Dakota Department of Social Services.
- (d) Designated Record Set. “Designated Record Set” shall have the meaning given to such term in 45 CFR 164.501.
- (e) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164 (Subparts A, C, D and E). More specifically, the “Privacy Rule” shall mean the regulations codified at 45 CFR Part 160 and Part 164 (Subparts A and E), and the “Security Rule” shall mean the regulations codified at 45 CFR Part 160 and Part 164 (Subparts A and C).
- (f) Protected Health Information. “Protected Health Information” or “PHI” shall mean the term as defined in 45 C.F.R. §160.103, and is limited to the Protected Health Information received from, or received or created on behalf of Covered Entity by Business Associate pursuant to performance of the Services under the Agreement.

#### 2. Obligations and Activities of Business Associate

Business Associate agrees to:

- (a) Not Use or Disclose Protected Health Information other than as permitted or required by the Agreement or as Required by Law;
- (b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent Use or Disclosure of Protected Health Information other than as provided for by the Agreement;
- (c) Report to covered entity any Use or Disclosure of Protected Health Information not provided for by the Agreement of which it becomes aware, including Breaches of Unsecured Protected Health Information as required at 45 CFR

164.410, and any Security Incident of which it becomes aware within five (5) business days of receiving knowledge of such Use, Disclosure, Breach, or Security Incident;

- (d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;
- (e) Make available Protected Health Information in a designated record set to the covered entity as necessary to satisfy covered entity's obligations under 45 CFR 164.524. Business associate shall cooperate with covered entity to fulfill all requests by Individuals for access to the Individual's Protected Health Information that are approved by covered entity. If business associate receives a request from an Individual for access to Protected Health Information, business associate shall forward such request to covered entity within ten (10) business days. Covered entity shall be solely responsible for determining the scope of Protected Health Information and Designated Record Set with respect to each request by an Individual for access to Protected Health Information;
- (f) Make any amendment(s) to Protected Health Information in a designated record set as directed or agreed to by the covered entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy covered entity's obligations under 45 CFR 164.526. Within ten (10) business days following any such amendment or other measure, business associate shall provide written notice to covered entity confirming that business associate has made such amendments or other measures and containing any such information as may be necessary for covered entity to provide adequate notice to the Individual in accordance with 45 CFR 164.526. Should business associate receive requests to amend Protected Health Information from an Individual, Business associate shall cooperate with covered entity to fulfill all requests by Individuals for such amendments to the Individual's Protected Health Information that are approved by covered entity. If business associate receives a request from an Individual to amend Protected Health Information, business associate shall forward such request to covered entity within ten (10) business days. Covered entity shall be solely responsible for determining whether to amend any Protected Health Information with respect to each request by an Individual for access to Protected Health Information;
- (g) Maintain and make available the information required to provide an accounting of Disclosures to the covered entities necessary to satisfy covered entity's obligations under 45 CFR 164.528. Business associate shall cooperate with covered entity to fulfill all requests by Individuals for access to an accounting of Disclosures that are approved by covered entity. If business associate receives a request from an Individual for an accounting of Disclosures, business associate shall immediately forward such request to covered entity. Covered entity shall be solely responsible for determining whether to release any account of Disclosures;
- (h) To the extent the business associate is to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s); and
- (i) Make its internal practices, books, and records available to the covered entity and / or the Secretary of the United States Department of Health and Human Services for purposes of determining compliance with the HIPAA Rules.

### **3. Permitted Uses and Disclosures by Business Associate**

- (a) Except as otherwise limited by this Agreement, Business Associate may make any uses and Disclosures of Protected Health Information necessary to perform its services to Covered Entity and otherwise meet its obligations under this Agreement, if such Use or Disclosure would not violate the Privacy Rule if done by the covered entity. All other Uses or Disclosure by Business Associate not authorized by this Agreement or by specific instruction of Covered Entity are prohibited.
- (b) The business associate is authorized to use Protected Health Information if the business associate de-identifies the information in accordance with 45 CFR 164.514(a)-(c). In order to de-identify any information, Business Associate must remove all information identifying the Individual including, but not limited to, the following: names, geographic subdivisions smaller than a state, all dates related to an Individual, all ages over the age of 89 (except such ages may be aggregated into a single category of age 90 or older), telephone numbers, fax numbers, electronic mail (email)

addresses, medical record numbers, account numbers, certificate/ license numbers, vehicle identifiers and serial numbers (including license plate numbers, device identifiers and serial numbers), web universal resource locators (URLs), internet protocol (IP) address number, biometric identifiers (including finger and voice prints), full face photographic images (and any comparable images), any other unique identifying number, and any other characteristic or code.

- (c) Business associate may Use or Disclose Protected Health Information as Required by Law.
- (d) Business associate agrees to make Uses and Disclosures and requests for Protected Health Information consistent with covered entity's Minimum Necessary policies and procedures.
- (e) Business associate may not Use or Disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by covered entity except for the specific Uses and Disclosures set forth in (f) and (g).
- (f) Business associate may Disclose Protected Health Information for the proper management and administration of business  
associate or to carry out the legal responsibilities of the business associate, provided the Disclosures are Required by Law.
- (g) Business associate may provide Data Aggregation services relating to the Health Care Operations of the covered entity.

#### **4. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions**

- (a) Covered entity shall notify business associate of any limitation(s) in the Notice of Privacy Practices of covered entity under 45 CFR 164.520, to the extent that such limitation may affect business associate's Use or Disclosure of Protected Health Information.
- (b) Covered entity shall notify business associate of any changes in, or revocation of, the permission by an Individual to Use  
or Disclose his or her Protected Health Information, to the extent that such changes may affect business associate's Use or Disclosure of Protected Health Information.
- (c) Covered entity shall notify business associate of any restriction on the Use or Disclosure of Protected Health Information that covered entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may  
affect business associate's Use or Disclosure of Protected Health Information.

#### **5. Term and Termination**

- (a) Term. The Term of this Agreement shall be effective as of and shall terminate on the dates set forth in the primary Agreement this Business Associate Agreement is attached to or on the date the primary Agreement terminates, whichever is sooner.
- (b) Termination for Cause. Business associate authorizes termination of this Agreement by covered entity, if covered entity determines business associate has violated a material term of the Agreement.
- (c) Obligations of Business Associate Upon Termination.
  - 1. Except as provided in paragraph (2) of this section, upon termination of this agreement for any reason, business associate shall return or destroy all Protected Health Information received from, or created or received by business associate on behalf of covered entity. This provision shall apply to Protected Health Information that is in the possession of Subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.



2. If business associate determines that returning or destroying the Protected Health Information is infeasible, business associate shall provide to covered entity, within ten (10) business days, notification of the conditions that make return or destruction infeasible. Upon such determination, business associate shall extend the protections of this agreement to such Protected Health Information and limit further Uses and Disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as business associate maintains such Protected Health Information.

(d) Survival. The obligations of business associate under this Section shall survive the termination of this Agreement.

## 6. 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 compliance with the requirements of the HIPAA Rules and any other applicable law.
- (c) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.
- (d) Conflicts. In the event of a conflict in between the terms of this Business Associate Agreement and the Agreement to which it is attached, the terms of this Business Associate Agreement shall prevail to the extent such an interpretation ensures compliance with the HIPAA Rules.

## **Attachment 4 – Cost Proposal**

Please use ***RFP\_23RFP8929\_Attachment\_4-Cost\_Proposal\_Template.xlsx*** to create your cost proposal. If you have more than one cost proposal you may submit multiple copies of the template. Please indicate clearly which is which.

This can be downloaded from <https://dss.sd.gov/keyresources/rfp.aspx>