

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

**Pregnancy Health Home Program: Marketing and Public Relations  
Outreach**

PROPOSALS ARE DUE NO LATER THAN DECEMBER 28, 2023 BY 5PM CDT

**RFP9212**

**BUYER:** Department of Social Services  
Division of Medical Services

**POC:** Kirsten Blachford  
[Kirsten.Blachford@state.sd.us](mailto:Kirsten.Blachford@state.sd.us)

**READ CAREFULLY**

FIRM NAME: \_\_\_\_\_ AUTHORIZED SIGNATURE: \_\_\_\_\_  
(Digital Signature allowed)

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 South Dakota Department of Social Services (DSS) is seeking a qualified marketing agency to assist South Dakota Medicaid in developing a marketing plan and communication services for its new Pregnancy Health Home program. The plan and services are to include promotion of the enhanced services that will be created and made available to participants through the creation of this program. The professional services being requested are described in 3.0 Scope of Work.

South Dakota Medicaid provides healthcare coverage to approximately 120,000 enrolled South Dakotans. Approximately 37 percent of the individuals covered by South Dakota Medicaid are American Indian. Approximately 50 percent of the births in South Dakota are covered by Medicaid. DSS estimates approximately 150 providers will participate in the program and that approximately 4,000 women will participate in the program.

A primary objective of this new program is to ensure that pregnant women receive prenatal care. Similarly, DSS intends to bring about the enhancement of prenatal/post partum care that is provided by Medicaid providers. Market research aimed at examining reasons why prenatal care is not currently sought by pregnant mothers is to be gathered by the firm selected for this project. These data will help inform program design while also assist South Dakota Medicaid in making this new program known among eligible participants.

The Pregnancy Health Home program will enroll medical providers that provide prenatal and postpartum services. Pregnant women enrolled in Medicaid will choose or be assigned a participating provider. The program will require providers to provide care coordination services to pregnant women and will require participating providers to address barriers to care and take action to improve health outcomes. The program has an anticipated implementation date of April 1, 2024.

### 1.2 **ISSUING OFFICE AND RFP REFERENCE NUMBER**

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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 (LOI) to respond to this RFP by the date noted in section 1.4 SCHEDULE OF ACTIVITIES. While preferred, a Letter of Intent is not mandatory to submit a proposal. The LOI should be sent as an email to [Kirsten.Blachford@state.sd.us](mailto:Kirsten.Blachford@state.sd.us) with the subject line **Letter of Intent for RFP9212**.

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

RFP Publication	<u>November 13, 2023</u>
Letter of Intent to Respond Due	<u>November 21, 2023, by 5 pm CDT</u>
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### **1.5 SUBMITTING YOUR PROPOSAL**

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### **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 is 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 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.

**1.9 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.

**1.10 CERTIFICATION OF NO STATE LEGISLATOR INTEREST**

Offeror (i) understands neither a state legislator nor a business in which a state legislator has an ownership interest may be directly or indirectly interested in any contract with the State that was authorized by any law passed during the term for which that legislator was elected, or within one year thereafter, and (ii) has read South Dakota Constitution Article 3, Section 12 and has had the opportunity to seek independent legal advice on the applicability of that provision to any Agreement entered into as a result of this RFP. By signing an Agreement pursuant to this RFP, Offeror hereby certifies that the Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.

**1.11 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.

**1.12 OFFEROR INQUIRIES**

Offerors may email inquiries concerning this RFP to obtain clarification of requirements. No inquiries will be accepted after the date and time in the schedule of activities. Email inquiries must be sent to [Kirsten.Blachford@state.sd.us](mailto:Kirsten.Blachford@state.sd.us) with the following wording, exactly as written, in the subject line: **RFP9212 Questions**.

The Department of Social Services (DSS) will respond to offerors' inquiries by posting offeror aggregated questions and Department responses on the DSS website at <http://dss.sd.gov/keyresources/rfp.aspx> no later than the date and time listed in the schedule of activities. For expediency, DSS 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.

**1.13 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. 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.

Offerors may submit a redacted copy of their proposal when they respond though this is optional.

**1.14 LENGTH OF CONTRACT**

The contract will be issued for a period of two (2) years. Anticipated start date is **March 1, 2024**.

**1.15 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.

**1.16 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 A**.

**Attachment B** is the Business Associate Agreement (BAA).

Any contract resulting from this RFP will include the State's required IT terms and conditions as seen in **Exhibit A** from the Bureau of Information and Telecommunications (BIT) . Because we expect a wide range of proposed solutions, we have included the widest number of possible clauses.

***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.

**3.0 SCOPE OF WORK**

The offers will be responsible for the following items:

- 3.1 Develop a two-year marketing plan for the program including an awareness campaign for South Dakota Medicaid pregnancy coverage including specific focus related to accessing prenatal care and

Medicaid covered services to promote healthy birth outcomes for both mother and child. The plan should include marketing strategies and align with the demographics of target audiences identified through focus group research completed by the firm. The response should include the Offeror approach for developing the plan.

- 3.2 The Offeror will execute and produce research-driven and evidence-based advertising and marketing campaign strategies through market research. The offeror may refine strategies with qualitative or quantitative research methods, including but not limited to focus groups, surveys, online testing, etc. to pre-test strategies, concepts, slogans, or messages. Importance will be placed on the Offeror's ability to produce a research-driven media campaign, including audience delivery, cost, and efficiency analysis. The Offeror should describe their approach to this item.
- 3.3 The Offeror will plan, negotiate, and buy media to effectively reach the target audience. The offer should describe their approach to this item.
- 3.4 The Offeror will develop the program brand including, but not limited to developing program naming options and developing a program logo. The naming and logo options must be provided to the State for approval no later than April 1, 2024. The Offeror should describe their approach to this item.
- 3.5 The Offeror will work collaboratively with State staff on creative development including but not limited to the following: advertising concepts, messages, themes, slogans, design of advertising and publication layouts, production of videos from concept through storyboard to final production, copywriting for print, video, radio, television, social and digital media, digital photo collection (South Dakota specific), design of promotional items, and web development. The Offeror will agree to consider all materials, evaluations, reports, recommendations, documents, drawings, plans, specifications, technical data and information, copyrights, patents, licenses or other products produced as a result of the services rendered under this Agreement the sole property of the State, except for photography with previous copyrights. The Offeror will agree to provide the working files.
- 3.6 The Offeror will agree to be responsible for developing and designing documents in formats suitable for print and web, for printing of advertising, public relations, and promotional materials, and for providing specifications for the production of printed materials and promotional items as agreed upon with the State for purchase through the State procurement system. Initial printed and promotional material must be provided to the State for approval no later than February 1, 2024.
- 3.7 The Offeror will agree to evaluate media and provide schedules that deliver advertising in appropriate media environments to the specified audience efficiently and at satisfactory levels. The Offeror will be asked to evaluate and execute media plans which may include, but are not limited to, television, radio, print, social, digital, and out-of-home media outlets. The Offeror will process all invoices from media outlets and provide the State with an itemized monthly bill as directed by the State. Offeror may also be required to provide cost, delivery, efficiency, and bonus value summaries as directed by the State.
- 3.8 The Offeror will agree to develop content, maintain, track, monitor, provide reports and implement strategies to increase reach and engagement of appropriate websites and social media accounts. The Offeror will provide expertise in use of appropriate digital communication strategies and Internet-based communication tools like longer-form videos and native advertising associated with different population.
- 3.9 The Offeror will agree to produce messages in video appropriate for digital and social media platforms (i.e. Facebook, Instagram, Snapchat, etc.), DVD, TV and or motion picture quality formats satisfactory to the State. The Offeror may be required to research the availability and success of outside sources of multimedia and procure these services for use in the South Dakota advertising campaign. Prior experience in these areas is preferred.

- 3.10 The Offeror will provide a detailed campaign plan satisfactory to the State that outlines the overall campaign strategy; campaign budget; and development and placement timelines within one (1) month of award. The Offeror will be required to provide monthly written progress reports by the 10th of the month in a format agreed upon with the State. The Offeror may be asked to provide periodic written reports related to specific projects throughout the contract period.
- 3.11 The Offeror will agree to work collaboratively with State staff to develop a website focused on the program and Medicaid pregnancy coverage. The Offeror will agree to follow state web standards found here [https://www.sd.gov/bit?id=bit\\_standards\\_web](https://www.sd.gov/bit?id=bit_standards_web).
- 3.12 The Offeror will agree to work collaboratively with State staff on public relations efforts including but not limited to the following: talking points, press releases, op-eds, media kits, and event planning and coordination.
- 3.13 The Offeror will complete a final report at the end of the project to include an executive summary and summary of the effectiveness of the campaign.

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

- 4.1 Provide a portfolio of concise descriptions and samples of your public health and/or prevention marketing experience. Include two (2) examples of each of the following:
  - 4.1.1 Radio ads;
  - 4.1.2 Print ads designed for magazine or event program publications;
  - 4.1.3 URL addresses of agency-designed websites;
  - 4.1.4 Layout images of brochures or other collateral material;
  - 4.1.5 Examples of Internet ads; including mobile and social media platforms; and
  - 4.1.6 Images of out-of-home advertisements.
- 4.2 Briefly describe the photographic resources (still and video) at your disposal. Photographs (and video) consistent with the settings and populations in South Dakota are needed for a variety of marketing and communication applications. It is the desire of the State to build an appropriate photo collection to use for Department materials and publications. (max 1 page)
- 4.3 Briefly describe your agency's experience with public relations related to public health awareness issues. Discuss success in media advocacy and earned media efforts. Provide appropriate examples. (max 1 page)
- 4.4 Briefly describe the agency's process for maintaining, analyzing, and promoting social media accounts. Discuss how your agency integrates social media into overall campaigns, including content development, promotions strategies and monitoring processes. Include example documents of social media editorial calendars and social media reports. (max 1 page)
- 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 provide detailed examples that document their ability and proven history in handling special project constraints.
- 4.7 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.

4.8 **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 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.

4.9 The offeror **may be** required to submit a copy of their most recent independently audited financial statements.

4.10 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 "SUBMITTING YOUR PROPOSAL" proposals shall only 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 have a separator page between each 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. Vendors may submit a redacted copy with the full proposal as stated in Section 1.12 Proprietary Information. SDCL 1-27-1.5 and See SDCL 1-27-1.5 and 1-27-1.6.

## **7.0 COST PROPOSAL**

7.1 The Offeror must include a cost proposal. The cost proposal needs to include the following:

- 7.1.1 Offerer fee schedule/billing for services;
- 7.1.2 Account management;
- 7.1.3 Research;
- 7.1.4 Creative Development;
- 7.1.5 Production;
- 7.1.6 Media Placement;
- 7.1.7 Web development and public relations;
- 7.1.8 If offerer has different categories or services within these categories, the offerer will note those in the fee schedule.

The Offeror shall complete and submit ***RFP9212 Attachment C Cost Proposal.xlsx*** as part of their final proposal. The cost proposal shall indicate the anticipated costs for year one and year two.



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Division of Medical Services

**POC:** Kirsten Blachford  
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FIRM NAME: \_\_\_\_\_ AUTHORIZED SIGNATURE: \_\_\_\_\_  
(Digital Signature allowed)

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

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

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

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

**PRIMARY CONTACT INFORMATION**

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All proposals must be completed and received by DSS by the date and time indicated in the Schedule of Activities.

### **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 is 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 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.

**1.9 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.

**1.10 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. No inquiries will be accepted after the date and time in the schedule of activities. Email inquiries must be sent to [Kirsten.Blachford@state.sd.us](mailto:Kirsten.Blachford@state.sd.us) with the following wording, exactly as written, in the subject line: **RFP9212 Questions**.

The Department of Social Services (DSS) will respond to offerors' inquiries by posting offeror aggregated questions and Department responses on the DSS website at <http://dss.sd.gov/keyresources/rfp.aspx> no later than the date and time listed in the schedule of activities. For expediency, DSS 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. 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.

Offerors may submit a redacted copy of their proposal when they respond though this is optional.

**1.13 LENGTH OF CONTRACT**

The contract will be issued for a period of two (2) years. Anticipated start date is **March 1, 2024**.

**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 A**.

**Attachment B** is the Business Associate Agreement (BAA).

Any contract resulting from this RFP will include the State's required IT terms and conditions as seen in **Exhibit A** from the Bureau of Information and Telecommunications (BIT) . Because we expect a wide range of proposed solutions, we have included the widest number of possible clauses.

***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.

**3.0 SCOPE OF WORK**

The offers will be responsible for the following items:

- 3.1 Develop a two-year marketing plan for the program including an awareness campaign for South Dakota Medicaid pregnancy coverage including specific focus related to accessing prenatal care and Medicaid covered services to promote healthy birth outcomes for both mother and child. The plan should include marketing strategies and align with the demographics of target audiences identified through focus group research completed by the firm. The response should include the Offeror approach for developing the plan.
- 3.2 The Offeror will execute and produce research-driven and evidence-based advertising and marketing campaign strategies through market research. The offeror may refine strategies with qualitative or quantitative research methods, including but not limited to focus groups, surveys, online testing, etc. to pre-test strategies, concepts, slogans, or messages. Importance will be placed on the Offeror's



ability to produce a research-driven media campaign, including audience delivery, cost, and efficiency analysis. The Offeror should describe their approach to this item.

- 3.3 The Offeror will plan, negotiate, and buy media to effectively reach the target audience. The offer should describe their approach to this item.
- 3.4 The Offeror will develop the program brand including, but not limited to developing program naming options and developing a program logo. The naming and logo options must be provided to the State for approval no later than April 1, 2024. The Offeror should describe their approach to this item.
- 3.5 The Offeror will work collaboratively with State staff on creative development including but not limited to the following: advertising concepts, messages, themes, slogans, design of advertising and publication layouts, production of videos from concept through storyboard to final production, copywriting for print, video, radio, television, social and digital media, digital photo collection (South Dakota specific), design of promotional items, and web development. The Offeror will agree to consider all materials, evaluations, reports, recommendations, documents, drawings, plans, specifications, technical data and information, copyrights, patents, licenses or other products produced as a result of the services rendered under this Agreement the sole property of the State, except for photography with previous copyrights. The Offeror will agree to provide the working files.
- 3.6 The Offeror will agree to be responsible for developing and designing documents in formats suitable for print and web, for printing of advertising, public relations, and promotional materials, and for providing specifications for the production of printed materials and promotional items as agreed upon with the State for purchase through the State procurement system. Initial printed and promotional material must be provided to the State for approval no later than February 1, 2024.
- 3.7 The Offeror will agree to evaluate media and provide schedules that deliver advertising in appropriate media environments to the specified audience efficiently and at satisfactory levels. The Offeror will be asked to evaluate and execute media plans which may include, but are not limited to, television, radio, print, social, digital, and out-of-home media outlets. The Offeror will process all invoices from media outlets and provide the State with an itemized monthly bill as directed by the State. Offeror may also be required to provide cost, delivery, efficiency, and bonus value summaries as directed by the State.
- 3.8 The Offeror will agree to develop content, maintain, track, monitor, provide reports and implement strategies to increase reach and engagement of appropriate websites and social media accounts. The Offeror will provide expertise in use of appropriate digital communication strategies and Internet-based communication tools like longer-form videos and native advertising associated with different population.
- 3.9 The Offeror will agree to produce messages in video appropriate for digital and social media platforms (i.e. Facebook, Instagram, Snapchat, etc.), DVD, TV and or motion picture quality formats satisfactory to the State. The Offeror may be required to research the availability and success of outside sources of multimedia and procure these services for use in the South Dakota advertising campaign. Prior experience in these areas is preferred.
- 3.10 The Offeror will provide a detailed campaign plan satisfactory to the State that outlines the overall campaign strategy; campaign budget; and development and placement timelines within one (1) month of award. The Offeror will be required to provide monthly written progress reports by the 10th of the month in a format agreed upon with the State. The Offeror may be asked to provide periodic written reports related to specific projects throughout the contract period.
- 3.11 The Offeror will agree to work collaboratively with State staff to develop a website focused on the program and Medicaid pregnancy coverage. The Offeror will agree to follow state web standards found here [https://www.sd.gov/bit?id=bit\\_standards\\_web](https://www.sd.gov/bit?id=bit_standards_web).

3.12 The Offeror will agree to work collaboratively with State staff on public relations efforts including but not limited to the following: talking points, press releases, op-eds, media kits, and event planning and coordination.

3.13 The Offeror will complete a final report at the end of the project to include an executive summary and summary of the effectiveness of the campaign.

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

4.1 Provide a portfolio of concise descriptions and samples of your public health and/or prevention marketing experience. Include two (2) examples of each of the following:

4.1.1 Radio ads;

4.1.2 Print ads designed for magazine or event program publications;

4.1.3 URL addresses of agency-designed websites;

4.1.4 Layout images of brochures or other collateral material;

4.1.5 Examples of Internet ads; including mobile and social media platforms; and

4.1.6 Images of out-of-home advertisements.

4.2 Briefly describe the photographic resources (still and video) at your disposal. Photographs (and video) consistent with the settings and populations in South Dakota are needed for a variety of marketing and communication applications. It is the desire of the State to build an appropriate photo collection to use for Department materials and publications. (max 1 page)

4.3 Briefly describe your agency's experience with public relations related to public health awareness issues. Discuss success in media advocacy and earned media efforts. Provide appropriate examples. (max 1 page)

4.4 Briefly describe the agency's process for maintaining, analyzing, and promoting social media accounts. Discuss how your agency integrates social media into overall campaigns, including content development, promotions strategies and monitoring processes. Include example documents of social media editorial calendars and social media reports. (max 1 page)

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 provide detailed examples that document their ability and proven history in handling special project constraints.

4.7 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.

4.8 **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 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.

4.9 The offeror **may be** required to submit a copy of their most recent independently audited financial statements.

4.10 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 "SUBMITTING YOUR PROPOSAL" proposals shall only 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 have a separator page between each 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. Vendors may submit a redacted copy with the full proposal as stated in Section 1.12 Proprietary Information. SDCL 1-27-1.5 and See SDCL 1-27-1.5 and 1-27-1.6.

## **7.0 COST PROPOSAL**

7.1 The Offeror must include a cost proposal. The cost proposal needs to include the following:

- 7.1.1 Offerer fee schedule/billing for services;
- 7.1.2 Account management;
- 7.1.3 Research;
- 7.1.4 Creative Development;
- 7.1.5 Production;

- 7.1.6 Media Placement;
- 7.1.7 Web development and public relations;
- 7.1.8 If offerer has different categories or services within these categories, the offerer will note those in the fee schedule.

The Offeror shall complete and submit ***RFP9212 Attachment C Cost Proposal.xlsx*** as part of their final proposal. The cost proposal shall indicate the anticipated costs for year one and year two.



**STATE OF SOUTH DAKOTA  
DEPARTMENT OF SOCIAL SERVICES  
DIVISION OF MEDICAL SERVICES**

**Consultant Contract  
For Consultant Services  
Between**

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

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Referred to as Consultant

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Referred to as State

The State hereby enters into a contract (the "Agreement" hereinafter) for consultant services with the Consultant. While performing services hereunder, Consultant is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

1. CONSULTANT'S South Dakota Vendor Number is \_\_\_\_\_. Upon execution of agreement, Consultant will provide the State with Consultant's Employer Identification Number or Federal Tax Identification Number.
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 9212.
3. PROVISIONS:
  - A. The Purpose of this Consultant contract is:
    1. The South Dakota Department of Social Services (DSS) is seeking a qualified marketing agency to assist South Dakota Medicaid in developing a marketing plan and communication services for its new Pregnancy Health Home program. The plan and services are to include promotion of the enhanced services that will be created and made available to participants through the creation of this program.
    2. Does this Agreement involve Protected Health Information (PHI)? YES ( X ) NO ( )  
If PHI is involved, a Business Associate Agreement must be attached and is fully incorporated herein as part of the Agreement (refer to **Attachment B**).
    3. The Consultant WILL ( ) WILL NOT ( X ) use state equipment, supplies or facilities.
    4. If WILL is indicated above, the following state equipment, supplies, or facilities will be used.
  - B. The Consultant agrees to perform the following services (add an attachment if needed):
    - 1.
  - C. The State agrees to:
    - 1.

2. Make payment for services upon satisfactory completion of services and receipt of bill. Payment will be in accordance with SDCL 5-26-2.

3. Will the State pay Consultant expenses as a separate item?

YES ( ) NO ( X )

If YES, expenses submitted will be reimbursed as identified in this Agreement.

D. The TOTAL CONTRACT AMOUNT will not exceed \$ .

4. BILLING:

Consultant agrees to submit a bill for services within (30) days following the month in which services were provided. Consultant will prepare and submit a monthly bill for services. Consultant 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 Consultant and to assist in the correction of problem areas identified by the State's monitoring activities.

6. LICENSING AND STANDARD COMPLIANCE:

The Consultant 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 Consultant 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 Consultant's failure to ensure the safety of all individuals served is assumed entirely by the Consultant.

7. ASSURANCE REQUIREMENTS:

(For Federally funded contracts only). The Consultant 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, Consultant 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. Consultant 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 SDCL ch 5-18A:

Contractor certifies and agrees that the following information is correct:

The bidder or offeror is not an organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly-owned subsidiaries, majority-owned subsidiaries, parent companies, or affiliates, of those entities or business associations, regardless of their principal place of business, which is ultimately owned or controlled, directly or indirectly, by a foreign parent entity from, or the government of, the People's Republic of China, the Republic of Cuba, the Islamic Republic of Iran, the Democratic People's Republic of Korea, the Russian Federation, or the Bolivarian Republic of Venezuela.

It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the purchasing agency 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, and further would be cause to suspend and debar a business under SDCL § 5-18D-12.

The successful bidder or offeror further agrees to provide immediate written notice to the purchasing 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 and would be cause to suspend and debar a business under SDCL § 5-18D-12.

10. CERTIFICATION OF NO STATE LEGISLATOR INTEREST:

Contractor (i) understands neither a state legislator nor a business in which a state legislator has an ownership interest may be directly or indirectly interested in any contract with the State that was authorized by any law passed during the term for which that legislator was elected, or within one year thereafter, and (ii) has read South Dakota Constitution Article 3, Section 12 and has had the opportunity to seek independent legal advice on the applicability of that provision to this Agreement. By signing this Agreement, Contractor hereby certifies that this Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.

11. RETENTION AND INSPECTION OF RECORDS:

The Consultant 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 Consultant 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 Consultant 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 Consultant'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 Consultant's established record retention policies.

All payments to the Consultant 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 Consultant.

12. WORK PRODUCT:

Consultant 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 Consultant 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 Consultant 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.

Consultant 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. TERMINATION:**

This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Consultant 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 Consultant at the time of termination may be adjusted to cover any additional costs to the State as a result of Consultant'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 Consultant and it is determined that the Consultant 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 by not limited to the terms of sections 10, 11, 15, 23, 24 and 27.

**14. 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 day written notice. Consultant 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 Consultant waives any claim against the same.

**15. 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.

**16. 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.

**17. 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.

**18. SUPERSESSION:**

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.

**19. IT STANDARDS:**

Any service, software or hardware provided under this Agreement will comply with state standards which can be found at [https://bit.sd.gov/bit?id=bit\\_standards\\_overview](https://bit.sd.gov/bit?id=bit_standards_overview).

**20. 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.

**21. 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 Consultant, 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.

**22. SUBCONTRACTORS:**

The Consultant 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 Consultant 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 Consultant 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 Consultant is required to assist in this process as needed.

**23. 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.

**24. INDEMNIFICATION:**

Consultant 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 losses or equitable relief that may arise at least in part as a result of an act or omission in performing services under this Agreement. Consultant 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. Consultant'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, Consultant 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 Consultant, engage attorneys and other professionals to defend the State of South Dakota, its officers, agents, and employees, or to assist Consultant in the defense. This section does not require Consultant to be responsible for or defend against claims or proceedings for damages, liabilities, losses or equitable relief arising solely from errors or omissions of the State, its officers, agents, or employees.

**25. INSURANCE:**

Before beginning work under this Agreement, Consultant 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 Consultant, 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 Consultant agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Consultant shall furnish copies of insurance policies if requested by the State.

A. Commercial General Liability Insurance:

Consultant 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:

Consultant 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:

Consultant 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:

Consultant agrees to procure and maintain professional liability insurance with a limit not less than \$1,000,000.

(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.) 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.

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

Consultant 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. Consultant 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.

27. CONFLICT OF INTEREST:

Consultant 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 Consultant expressly agrees to be bound by the conflict resolution process set forth in SDCL 5-18A-17 through 5-18A-17.6.

28. CONFIDENTIALITY OF INFORMATION:

For the purpose of the sub-paragraph, "State Proprietary Information" shall include all information disclosed to the Consultant by the State. Consultant 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. Consultant 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. Consultant 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. Consultant 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 Consultant; (ii) was known to Consultant 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 Consultant without the benefit or influence of the State's information; (v) becomes known to Consultant 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. Consultant 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 disclosed, 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. Consultant 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 Consultant 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.

**29. REPORTING PROVISION:**

Consultant 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 Consultant, or the State of South Dakota or its officers, agents or employees to liability. Consultant shall report any such event to the State immediately upon discovery.

Consultant'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. Consultant'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 Consultant to report any event to law enforcement or other entities under the requirements of any applicable law.

**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 Consultant 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 Consultant 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.

**33. 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.

**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. AUTHORITY TO EXECUTE:**

Consultant represents and warrants that the execution, delivery, and performance of this Agreement has been duly authorized by Consultant and that no approval, authorization, or consent of any governmental or regulatory agency is required to be obtained in order for Consultant to enter into this Agreement and perform its obligations under this Agreement. If the Consultant 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 Consultant is an individual person, partnership, or other non-corporate entity, Consultant is authorized to conduct business in and is in good standing in each jurisdiction in which Consultant will conduct business in connection with this Agreement. Consultant 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. Consultant will maintain all required certifications, licenses, permits and authorizations during the term of this Agreement at its own expense.

37. AUTHORIZED SIGNATURES:

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

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Consultant Signature

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Date

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Consultant 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

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State – DSS Cabinet Secretary Matthew K. Althoff

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Date

State Agency Coding:

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

DSS Program Contact Person	_____
Phone	_____

DSS Fiscal Contact Person	<u>Contract Accountant</u>
Phone	<u>605 773-3586</u>

Consultant Program Contact Person	_____
Phone	_____
Consultant Program Email Address	_____

Consultant Fiscal Contact Person	_____
Phone	_____
Consultant Fiscal Email Address	_____

SDCL 1-24A-1 states that a copy of all consulting contracts shall be filed by the State agency with the State Auditor within five days after such contract is entered into and finally approved by the contracting parties. For further information about consulting contracts, see the State Auditor's policy handbook.



## Attachment B

### 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.

## **Exhibit A**

### **Bureau of Information and Telecommunications Required IT Contract Terms**

**Any contract resulting from this RFP will include the State's required IT terms and conditions as listed below, along with any additional terms and conditions as negotiated by the parties. Due to the changing landscape of IT security and data privacy, the State reserves the right to add additional IT terms and conditions or modify the IT terms and conditions listed below to the resulting contract:**

Pursuant to South Dakota Codified Law § 1-33-44, the Bureau of Information and Telecommunications ("BIT") oversees the acquisition of office systems technology, software, and services; telecommunication equipment, software, and services; and data processing equipment, software, and services for departments, agencies, commissions, institutions, and other units of state government. As part of its duties as the Executive Branch's centralized IT agency, BIT requires the contract terms and conditions of this Exhibit XX. For purposes of this Exhibit, [Vendor Name] will be referred to as the "Vendor."

It is understood and agreed to by all parties that BIT has reviewed and approved only this Exhibit. Due to the ever-changing security and regulatory landscape in IT and data privacy, before renewal of this Agreement BIT must review and approve the clauses found in this Exhibit as being the then current version of the clauses and if any additional required clauses are needed. Changes to clauses in this Exhibit must be approved in writing by all parties before they go into effect and a renewal of this Agreement is possible.

The Parties agree, when used in this Exhibit, the term "Vendor" will mean the Vendor and the Vendor's employees, subcontractors, agents, assigns, and affiliated entities.

#### **Section I. Cyber Liability Insurance**

The Vendor will maintain cyber liability insurance with liability limits in the amount of \$\_\_\_\_\_ to protect any and all State Data the Vendor receives as part of the project covered by this agreement including State Data that may reside on devices, including laptops and smart phones, utilized by Vendor employees, whether the device is owned by the employee or the Vendor. If the Vendor has a contract with a third-party to host any State Data the Vendor receives as part of the project under this Agreement, then the Vendor will include a requirement for cyber liability insurance as part of the contract between the Vendor and the third-party hosting the data in question. The third-party cyber liability insurance coverage will include State Data that resides on devices, including laptops and smart phones, utilized by third-party employees, whether the device is owned by the employee or the third-party Vendor. The cyber liability insurance will cover expenses related to the management of a data breach incident, the investigation, recovery and restoration of lost data, data subject notification, call management, credit checking for data subjects, legal costs, and regulatory fines. Before beginning work under this Agreement, the Vendor will furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement and which provide that such insurance may not be canceled, except on 30 days prior written notice to the State. The Vendor will furnish copies of

insurance policies if requested by the State. The insurance will stay in effect for three years after the work covered by this Agreement is completed.

## **Section II. Rejection or Ejection of Vendor**

The State, at its option, may require the vetting of any of the Vendor, and the Vendor's subcontractors, agents, Assigns, or affiliated entities. The Vendor is required to assist in this process as needed.

The State reserves the right to reject any person from participating in the project or require the Vendor to remove from the project any person the State believes is detrimental to the project or is considered by the State to be a security risk. The State will provide the Vendor with notice of its determination, and the reasons for the rejection or removal if requested by the Vendor. If the State signifies that a potential security violation exists with respect to the request, the Vendor must immediately remove the individual from the project.

## **Section III. Domain Name Ownership**

Any website(s) that the Vendor creates as part of this Agreement must have the domain name registered by and owned by the State. If, as part of this Agreement, the Vendor is providing a service that utilizes a website with the domain name owned by the Vendor, the Vendor must give 30 days' written notice before abandoning the site. If the Vendor intends to sell the site to another party, the Vendor must give the State 30 days' written notice and grant the State the right of first refusal. For any site or domain, whether hosted by the Vendor or within the State web infrastructure, any and all new web content should first be created in a development environment and then subjected to security scan before being approved for a move up to the production level. This paragraph does not include websites developed for the Vendor's internal use.

## **Section IV. Software Functionality and Replacement**

The software licensed by the Vendor to the State under this Agreement will provide the functionality as described in the software documentation, which the Vendor agrees to provide to the State prior to or upon the execution of this Agreement.

The Vendor agrees that:

- A. If, in the opinion of the State, the Vendor reduces or replaces the functionality contained in the licensed product and provides this functionality as a separate or renamed product, the State will be entitled to license such software product at no additional license or maintenance fee.
- B. If, in the opinion of the State, the Vendor releases an option, future product, purchasable product or other release that has substantially the same functionality as the software product licensed to the State, and it ceases to provide maintenance for the older software product, the State will have the option to exchange licenses for such replacement product or function at no additional charge. This includes situations where the Vendor discontinues the licensed product and recommends movement to a new product as a replacement option regardless of any additional functionality the replacement product may have over the licensed product.

## **Section V. Federal Intellectual Property Bankruptcy Protection Act**

The Parties agree that the State will be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto. The State also maintains its termination privileges if the Vendor enters bankruptcy.

#### **Section VI. Non-Disclosure and Separation of Duties**

The Vendor will enforce separation of job duties and require non-disclosure agreements of all staff that have or can have access to State Data or the hardware that State Data resides on. The Vendor will limit staff knowledge to those staff who duties that require them to have access to the State Data or the hardware the State Data resides on.

#### **Section VII. Cessation of Business**

The Vendor will notify the State of impending cessation of its business or that of a tiered provider and the Vendor's contingency plan. This plan should include the immediate transfer of any previously escrowed assets and data and State access to the Vendor's facilities to remove or destroy any state-owned assets and data. The Vendor will implement its exit plan and take all necessary actions to ensure a smooth transition of service with minimal disruption to the State. The Vendor will provide a fully documented service description and perform and document a gap analysis by examining any differences between its services and those to be provided by its successor. The Vendor will also provide a full inventory and configuration of servers, routers, other hardware, and software involved in service delivery along with supporting documentation, indicating which if any of these are owned by or dedicated to the State. The Vendor will work closely with its successor to ensure a successful transition to the new equipment, with minimal downtime and impact on the State, all such work to be coordinated and performed in advance of the formal, final transition date.

#### **Section VIII. Legal Requests for Data**

Except as otherwise expressly prohibited by law, the Vendor will:

- A. Immediately notify the State of any subpoenas, warrants, or other legal orders, demands or requests received by the Vendor seeking State Data maintained by the Vendor,
- B. Consult with the State regarding the Vendor's response,
- C. Cooperate with the State's requests in connection with efforts by the State to intervene and quash or modify the legal order, demand or request, and
- D. Upon the State's request, provide the State with a copy of both the demand or request and its proposed or actual response.

#### **Section IX. eDiscovery**

The Vendor will contact the State upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to, or which in any way might reasonably require access to State Data. The Vendor will not respond to service of process, and other legal requests related to the State without first notifying the State unless prohibited by law from providing such notice.

#### **Section X. Service Level Agreements**

The Vendor warrants and agrees that the Vendor has provided to the State all Service Level Agreements (SLA) related to the deliverables of the Agreement. The Vendor further warrants that it will provide the deliverables to the State in compliance with the SLAs.

#### **Section XI. Access Attempts**

The Vendor will log all access attempts, whether failed or successful, to any system connected to the hosted system which can access, read, alter, intercept, or otherwise impact the hosted system or its data or data integrity. For all systems, the log must include at least: login page used, username used, time and date stamp, incoming IP for each authentication attempt, and the authentication status, whether successful or not. Logs must be maintained not less than 7 years in a searchable database in an electronic format that is un-modifiable. At the request of the State, the Vendor agrees to grant the State access to those logs to demonstrate compliance with the terms of this Agreement and all audit requirements related to the hosted system.

#### **Section XII. Access to State Data**

Unless this Agreement is terminated, the State's access to State Data amassed pursuant to this Agreement will not be hindered if there is a:

- A. Contract dispute between the parties to this Agreement,
- B. There is a billing dispute between the parties to this Agreement, or
- C. The Vendor merges with or is acquired by another company.

#### **Section XIII. Password Protection**

All aspects of the Vendor's products provided to the State pursuant to this Agreement will be password protected. If the Vendor provides the user with a preset or default password, that password cannot include any Personally Identifiable Information (PII), data protected under the Family Educational Rights and Privacy Act (FERPA), Protected Health Information (PHI), Federal Tax Information (FTI), or any information defined under federal or state law, rules, or regulations as confidential information or fragment thereof. On an annual basis, the Vendor will document its password policies for all Vendor employees to ensure adequate password protections are in place. The process used to reset a password must include security questions or Multifactor Authentication. Upon request, the Vendor will provide to the State the Vendor's password policies, logs, or administrative settings to demonstrate the password policies are actively enforced.

#### **Section XIV. Provision of Data**

State Data is any data produced or provided by the State as well as any data produced or provided for the State by the Vendor or a third-party.

Upon notice of termination by either party or upon reaching the end of the term of this Agreement, the Vendor will provide the State all current State Data in a non-proprietary format. In addition, the Vendor agrees to extract any information (such as metadata, which includes data structure descriptions, data dictionary, and data) stored in repositories not hosted on the State's IT infrastructure in a format chosen by the State. If the State's chosen format is not possible, the Vendor will extract the information into a text file format and provide it to the State.

Upon the effective date of the termination of this Agreement, the Vendor will again provide the State with all current State Data in a non-proprietary format. In addition, the Vendor will again

extract any information (such as metadata) stored in repositories not hosted on the State's IT infrastructure in a format chosen by the State. As before, if the State's chosen format is not possible, the Vendor will extract the information into a text file format and provide it to the State.

#### **Section XV. Threat Notification**

A credible security threat consists of the discovery of an exploit that a person considered an expert on Information Technology security believes could be used to breach any aspect of a system that is holding State Data or a product provided by the Vendor. Upon becoming aware of a credible security threat with the Vendor's product(s) and or service(s) being used by the State, the Vendor or any subcontractor supplying product(s) or service(s) to the Vendor needed to fulfill the terms of this Agreement will notify the State within two business days of any such threat. If the State requests, the Vendor will provide the State with information on the threat.

#### **Section XVI. Adverse Event**

The Vendor must notify the State contact within three days if the Vendor becomes aware that an Adverse Event has occurred. An Adverse Event is the unauthorized use of system privileges, unauthorized access to State Data, execution of malware, physical intrusions and electronic intrusions that may include network, applications, servers, workstations, and social engineering of staff. If the Adverse Event was the result of the Vendor's actions or inactions, the State can require a risk assessment of the Vendor the State mandating the methodology to be used as well as the scope. At the State's discretion a risk assessment may be performed by a third party at the Vendor's expense. State Data is any data produced or provided by the State as well as any data produced or provided for the State by a third-party.

#### **Section XVII. Source Code**

The Vendor will provide to the South Dakota Bureau of Information and Telecommunications, for safekeeping, a copy of source code developed or maintained for use by the State under the terms of this Agreement. The source code provided will be the version currently running on the State's production environment.

#### **Section XVIII. Browser**

The system, site, or application must be compatible with Vendor supported versions of Edge, Chrome, Safari, and Firefox browsers. Silverlight, QuickTime, PHP, Adobe ColdFusion, and Adobe Flash will not be used in the system, site, or application. Adobe Animate CC is allowed if files that require third-party plugins are not required.

#### **Section XIX. Information Technology Standards**

Any service, software, or hardware provided under this Agreement will comply with State standards which can be found at [https://bit.sd.gov/bit?id=bit\\_standards\\_overview](https://bit.sd.gov/bit?id=bit_standards_overview).

#### **Section XX. Product Usage**

The State cannot be held liable for any additional costs or fines for mutually understood product usage over and above what has been agreed to in this Agreement unless there has been an audit conducted on the product usage. This audit must be conducted using a methodology agreed to by the State. The results of the audit must also be agreed to by the State before the State can be



held to the results. Under no circumstances will the State be required to pay for the costs of said audit.

#### **Section XXI. Malicious Code**

- A. The Vendor warrants that the Agreement deliverables contain no code that does not support an application requirement.
- B. The Vendor warrants that the Agreement deliverables contains no malicious code.
- C. The Vendor warrants that the Vendor will not insert into the Agreement deliverables or any media on which the Agreement deliverables is delivered any malicious or intentionally destructive code.
- D. In the event any malicious code is discovered in the Agreement deliverables, the Vendor must provide the State at no charge with a copy of or access to the applicable Agreement deliverables that contains no malicious code or otherwise correct the affected portion of the services provided to the State. The remedies in this Section are in addition to other additional remedies available to the State.

#### **Section XXII. License Agreements**

The Vendor warrants that it has provided to the State and incorporated into this Agreement all license agreements, End User License Agreements (EULAs), and terms of use regarding its software or any software incorporated into its software before execution of this Agreement. Failure to provide all such license agreements, EULAs, and terms of use will be a breach of this Agreement at the option of the State. The parties agree that neither the State nor its end users will be bound by the terms of any such agreements not timely provided pursuant to this paragraph and incorporated into this Agreement. Any changes to the terms of this Agreement or any additions or subtractions must first be agreed to by both parties in writing before they go into effect. This paragraph will control and supersede the language of any such agreements to the contrary.

#### **Section XXIII. Web and Mobile Applications**

- A. The Vendor's application is required to:
  - 1. have no code or services including web services included in or called by the application unless they provide direct, functional requirements that support the State's business goals for the application,
  - 2. encrypt data in transport and at rest using a mutually agreed upon encryption format,
  - 3. close all connections and close the application at the end of processing,
  - 4. have documentation that is in grammatically complete text for each call and defined variables (i.e., using no abbreviations and using complete sentences) sufficient for a native speaker of English with average programming skills to determine the meaning or intent of what is written without prior knowledge of the application,
  - 5. have no code not required for the functioning of application,
  - 6. have no "back doors", a back door being a means of accessing a computer program that bypasses security mechanisms, or other entries into the application other than those approved by the State,
  - 7. permit no tracking of device user's activities without providing a clear notice to the device user and requiring the device user's active approval before the application captures tracking data,

8. have no connections to any service not required by the functional requirements of the application or defined in the project requirements documentation,
9. fully disclose in the "About" information that is the listing of version information and legal notices, of the connections made, permission(s) required, and the purpose of those connections and permission(s),
10. ask only for those permissions and access rights on the user's device that are required for the defined requirements of the Vendor's application,
11. access no data outside what is defined in the "About" information for the Vendor's application,
12. conform to Web Content Accessibility Guidelines 2.0,
13. have Single Sign On capabilities with the State's identity provider,

If the application does not adhere to the requirements given above or the Vendor has unacceptable disclosures, at the State's discretion, the Vendor will rectify the issues at no cost to the State.

#### **Section XXIV. Data Location and Offshore Services**

The Vendor must provide its services to the State as well as storage of State Data solely from data centers located in the continental United States. The Vendor will not provide access to State Data to any entity or person(s) located outside the continental United States that are not named in this Agreement without prior written permission from the State. This restriction also applies to disaster recovery; any disaster recovery plan must provide for data storage entirely within the continental United States.

#### **Section XXV. Use of Portable Devices**

The Vendor must prohibit its employees, agents, affiliates, and subcontractors from storing State Data on portable devices, including personal computers, except for devices that are used and kept only at the Vendor's data center(s). All portable devices used for storing State Data must be password protected and encrypted.

#### **Section XXVI. Remote Access**

The Vendor will prohibit its employees, agents, affiliates, and subcontractors from accessing State Data remotely except as necessary to provide the services under this Agreement and consistent with all contractual and legal requirements. The accounts used for remote access cannot be shared accounts and must include multifactor authentication. If the State Data that is being remotely accessed is legally protected data or considered sensitive by the State, then:

- A. The device used must be password protected,
- B. The data is not put onto mobile media (such as flash drives),
- C. No non-electronic copies are made of the data, and
- D. A log must be maintained by the Vendor detailing the data which was accessed, when it was accessed, and by whom it was accessed.

The Vendor must follow the State's data sanitization standards, as outlined in this Agreement's Data Sanitization clause, when the remotely accessed data is no longer needed on the device used to access the data.

#### **Section XXVII. Data Encryption**

If State Data will be remotely accessed or stored outside the State's IT infrastructure, the Vendor warrants that the data will be encrypted in transit (including via any web interface) and at rest at no less than AES256 level of encryption with at least SHA256 hashing.

#### **Section XXVIII. Rights, Use, and License of and to State Data**

The parties agree that all rights, including all intellectual property rights, in and to State Data will remain the exclusive property of the State. The State grants the Vendor a limited, nonexclusive license to use the State Data solely for the purpose of performing its obligations under this Agreement. This Agreement does not give a party any rights, implied or otherwise, to the other's data, content, or intellectual property, except as expressly stated in the Agreement.

Protection of personal privacy and State Data must be an integral part of the business activities of the Vendor to ensure there is no inappropriate or unauthorized use of State Data at any time. To this end, the Vendor must safeguard the confidentiality, integrity, and availability of State Data and comply with the following conditions:

- A. The Vendor will not copy, disclose, retain, or use State Data for any purpose other than to fulfill its obligations under this Agreement.
- B. The Vendor will not use State Data for the Vendor's own benefit and will not engage in data mining of State Data or communications, whether through automated or manual means, except as specifically and expressly required by law or authorized in writing by the State through a State employee or officer specifically authorized to grant such use of State Data.

#### **Section XXIX. Software License**

The State grants the Vendor a nonexclusive, worldwide, revocable, fully paid, nontransferable license to all code provided to the Vendor and all modifications to the licensed code, which becomes property of the State, pursuant to this Agreement. The license rights granted in this Agreement will continue so long as the Parties are under a contract regarding the licensed code.

- A. The State grants the Vendor the right to:
  - 1. use the licensed code for only the State's benefit pursuant to this Agreement,
  - 2. make as many copies of the licensed code as necessary to fulfill its obligations under this Agreement,
  - 3. modify the licensed code pursuant to the terms of this Agreement,
  - 4. publicly perform the licensed code, if applicable; and
  - 5. publicly display the licensed code, if applicable.
- B. The Vendor is not granted the following rights and is prohibited from doing the following:
  - 1. creating derivative works from the licensed code,
  - 2. distributing the licensed code, and
  - 3. sublicensing the licensed code.

Copies of the licensed code created or transferred pursuant to this Agreement are licensed to the Vendor, not sold. The Vendor receives no title to or ownership of any copy or of the licensed code itself. Furthermore, the Vendor receives no rights to the licensed code other than those specifically granted in this Agreement.

### **Section XXX. Transfer of Ownership of Work Product**

Upon the effective date of this Agreement, the Vendor hereby assigns to the State all of the Vendor's ownership, right, title, and interest in and to any copyrights in any code and other assets created pursuant this Agreement ("Work Product"), including all modifications to the licensed code provided to the Vendor by the State. All modifications to the licensed code become part of the licensed code once accepted by the State and is subject to all the aspects of this Agreement regarding "licensed code."

- A. **License.** To the extent that this Section does not provide the State with full ownership, right, title, and interest in and to the Work Product, the Vendor hereby grants the State a perpetual, irrevocable, fully paid, royalty-free, worldwide license to reproduce, create derivative works from, distribute, publicly display, publicly perform, and use the Work Product, with the right to sublicense each such right.
- B. **Further Assistance and Survival.** The Vendor will reasonably assist the State in obtaining and enforcing copyrights in the Work Product, at the State's expense. The rights granted in this Section will survive any termination or expiration of this Agreement.
- C. **Transfer of Employee Rights.** Prior to the effective date of this Agreement, the Vendor will ensure that all its employees and contractors who may in any way be involved in creating the Work Product are subject to written agreements with the Vendor that grants the Vendor all such employees' or contractors' present and future ownership and other rights in and to the Work Product.

### **Section XXXI. Third Party Hosting**

If the Vendor has the State's data hosted by another party, the Vendor must provide the State the name of this party. The Vendor must provide the State with contact information for this third party and the location of their data center(s). The Vendor must receive from the third party written assurances that the State's data will always reside in the continental United States and provide these written assurances to the State. This restriction includes the data being viewed or accessed by the third-party's employees or contractors. If during the term of this Agreement the Vendor changes from the Vendor hosting the data to a third-party hosting the data or changes third-party hosting provider, the Vendor will provide the State with 180 days' advance notice of this change and at that time provide the State with the information required above.

### **Section XXXII. Securing of Data**

All facilities used to store and process State Data will employ industry best practices, including appropriate administrative, physical, and technical safeguards to secure such data from unauthorized access, disclosure, alteration, and use. Such measures will be no less protective than those used to secure the Vendor's own data of a similar type, and in no event less than commercially reasonable in view of the type and nature of the data involved.

### **Section XXXIII. Security Processes**

The Vendor will disclose its non-proprietary security processes and technical limitations to the State such that adequate protection and flexibility can be attained between the State and the Vendor. For example: virus checking and port sniffing.

### **Section XXXIV. Import and Export of Data**

The State will have the ability to import or export data piecemeal or in entirety at its discretion without interference from the Vendor. This includes the ability for the State to import or export data to/from other vendors.

#### **Section XXXV. Scanning Authorization**

The Vendor will provide the State at no cost and at a date, time, and for duration agreeable to both parties, authorization to scan and access to a test system containing test data for security scanning activities. The system and data provided to the State by the Vendor for testing purposes will be considered a test system containing test data. The State will not scan any environment known by the State to be a production environment at the time the scan is performed by the State. The Vendor provides their consent for the State or any third-party acting for the State to scan the systems and data provided as the State wishes using any methodology that the State wishes. Any scanning performed by the State will not be considered a violation of any licensure agreements the State has with the Vendor or that the Vendor has with a third-party.

Scanning by the State or any third-party acting for the State will not be considered reverse engineering. If the State's security scans discover security issues the State may collaborate, at the State's discretion with, the Vendor on remediation efforts. These remediation efforts will not be considered a violation of any licensure agreements between the State and the Vendor. In the event of conflicting language, this clause supersedes any other language in this, or any other agreement made between the State and the Vendor.

The Vendor agrees to work with the State to rectify any serious security issues revealed by security scanning. This includes additional security scanning that must be performed after any remediation efforts to confirm the security issues have been resolved and no further security issues exist. If the Vendor and the State agree that scanning results cannot be achieved that are acceptable to the State, then the State may terminate the Agreement without further obligation.

#### **Section XXXVI. System Upgrades**

The Vendor must provide advance notice of 30 days to the State of any major upgrades or system changes the Vendor will be implementing unless the changes are for reasons of security. A major upgrade is a replacement of hardware, software, or firmware with a newer or improved version, in order to bring the system up to date or to improve its characteristics. The State reserves the right to postpone these changes unless the upgrades are for security reasons. The State reserves the right to scan the Vendor's systems for vulnerabilities after a system upgrade. These vulnerability scans can include penetration testing of a test system at the State's discretion.

#### **Section XXXVII. Banned Services**

The Vendor warrants that any hardware or hardware components used to provide the services covered by this Agreement were not manufactured by Huawei Technologies Company or ZTE Corporation, or any subsidiary or affiliate of such entities. Any company considered to be a security risk by the government of the United States under the International Emergency Economic Powers Act or in a United States appropriation bill will be included in this ban.

#### **Section XXXVIII. Multifactor Authentication for Hosted Systems**

If the Vendor is hosting on their system or performing Software as a Service where there is the potential for the Vendor or the Vendor's subcontractor to see protected State Data, then Multifactor Authentication (MFA) must be used before this data can be accessed. The Vendor's MFA, at a minimum must adhere to the requirements of *Level 3 Authentication Assurance for MFA* as defined in NIST 800-63.