



**Board of Examiners in Optometry**  
PO Box 6  
Langford, SD 57454  
[sdoptboard@venturecomm.net](mailto:sdoptboard@venturecomm.net)  
Telephone: (605) 493-6504  
Fax: (605) 493-6579  
Website: <http://optometry.sd.gov>

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## AGENDA

March 31, 2016  
Telephonic Meeting  
6:00 p.m. (CST)

1. Attendance
2. Approval of Agenda
3. Treasurer's Report
4. New Business
  - a. Contracts
5. Time and place of next meeting:

April 22, 2016  
Tieszen Law Office  
Conference Room  
Pierre, SD  
9:00a.m. (CST)
6. Adjournment

***The public may listen to and participate in the teleconference meeting at the Tieszen Law Office, Prof. LLC, 306 East Capitol, Suite 300, Pierre, S.D.***

***This meeting is being held in a physically accessible place. Individuals needing assistance, pursuant to the Americans with Disabilities Act, should contact the in Board of Examiners in Optometry (605-493-6504) or [sdoptboard@venturecomm.net](mailto:sdoptboard@venturecomm.net) at least 24 hours advance of the meeting to make any necessary arrangements.***

Subobject	Description	FY09 Actual	FY10 Actual	FY11 Actual	FY12 Actual	FY13 Actual	FY14 Actual	FY15 Actual	FY16 2/27/2016
	Salaries								
5101030	Board & Comm Members	1,020	1,140	480	960	720	720	660	240
5102010	OASI-Employer's	82	92	41	76	56	55	51	19
5203010	Auto-State								
	Board Member Travel	1,744	1,824	826	1,004	1,268	996	855	569
	*Includes: Auto, Meals, Lodging								
5204020	Dues & Memberships	600	750	750	750	750	750	750	750
5204060	Ed & Training	4,000	4,000	4,000	4,000	4,000	4,000	4,000	4,000
5204050	Computer Consultant (database)					3,799	2,813	406	754
5204100	Medical Consultant (investigator)					2,375	-	-	360
5204080	Legal Consultant	11,669	10,849	9,573	7,218	25,953	25,482	16,949	9,559
5204090	Management Consultant	19,266	20,516	21,573	24,390	28,974	25,960	28,588	22,235
5204160	Workshop								
5204200	Central Services	651	653	598	636	681	778	802	673
5204203	Central Services			8					
5204204	Central Services	118	139	113	128	199	261	233	144
5204207	Central Services	288	262	201	220	111	319	208	75
5204960	Other Contractual				88				
5205310	Printing-State	-	331	96			483		1048
5204590	Ins Premiums & Surety Bds	975	900	-	975	470	750	740	-
5205350	Postage				9				36
5207905	Computer		2593	-				1868	0
5207451	Office Furniture and Fixtures				850				
	<b>Total Expenses</b>	<b>40,413.00</b>	<b>44,049.00</b>	<b>38,259.00</b>	<b>41,304.00</b>	<b>69,356.00</b>	<b>63,367.00</b>	<b>56,110.00</b>	<b>40,462.00</b>
	<b>TOTAL REVENUE</b>	<b>50,166.18</b>	<b>49,661.00</b>	<b>50,824.22</b>	<b>53,104.77</b>	<b>52,660.58</b>	<b>54,109.40</b>	<b>54,491.16</b>	<b>70,035.54</b>
		9,753.00	5,612.00	12,565.00	11,801.00	-16,695.00	-9,258.00	-1,618.84	29,573.54



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## FY16 CONTRACT SUMMARY

- **Tieszen Law Office- Legal Services**
  - \$150/hour
  - Not to exceed \$25,000
  
- **South Dakota Optometric Society- Education Services**
  - \$4000 per year
  
- **BPro- Database Services**
  - \$58/hour
  - Not to exceed \$1,500
  
- **Kathryn Haivala- Investigative Services**
  - \$90/hour
  - Not to exceed \$1,000
  
- **Lisa Kollis-Young- Investigative Services**
  - \$90/hour
  - Not to exceed \$1,000
  
- **Deni Amundson- Administrative Services**
  - Salary- \$1708/month
  - Rent- \$400/month
  - Office and travel expenses reimbursed, not to exceed \$7,000
  - \$1562 for professional liability insurance

**AGREEMENT FOR LEGAL SERVICES  
BETWEEN  
THE SOUTH DAKOTA DEPARTMENT OF HEALTH  
BOARD OF OPTOMETRY EXAMINERS  
AND  
TIESZEN LAW OFFICE, PROF., LLC**

The South Dakota Department of Health, Board of Optometry Examiners, hereinafter SDBOE and Tieszen Law Office, Prof., LLC, hereinafter Attorney hereby agree that SDBOE will receive legal advice and representation as provided in this Agreement.

**Section I. Scope of Work:**

Attorney agrees to provide legal services and represent SDBOE as needed.

**Section II. Payment Provisions:**

It is hereby agreed that, upon SDBOE's satisfaction that services have been completed and in consideration of fulfillment of the terms of this Agreement, SDBOE shall pay Attorney within thirty (30) days of receipt of acceptable invoices, subject to ordinary State of South Dakota voucher clearance requirements, an amount equal to the number of hours billed times an hourly rate not to exceed one hundred and fifty dollars (\$150.00). The total amount expended for such legal services under this contract shall not exceed \$25,000.00.

SDBOE will pay Attorney's expenses as a separate item. Expenses incurred by Attorney on behalf of SDBOE shall be reimbursed upon SDBOE receipt of itemized invoices listing all expenses actually incurred in the performance of this Agreement. The total amount of expenses under this contract shall not exceed \$25,000.00.

THE TOTAL CONTRACT AMOUNT is an amount not to exceed \$25,000.00. Payment will be made consistent with the terms of SDCL chapter 5-26.

**Section III. Independent Contractor:**

While performing the services hereunder, Attorney is acting as an independent contractor and not as an officer, agent or employee of SDBOE or of the State of South Dakota.

**Section IV. Hold Harmless and Indemnification:**

Attorney agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require Attorney to be responsible for or defend against claims or

damages arising from the errors or omissions of the State, its officers, agents or employees or from the errors or omissions of third parties that are not officers, employees or agents of the Attorney, unless such errors or omissions resulted from the acts or omissions of Attorney. Nothing in this agreement is intended to impair the insurance coverage of Attorney or any subrogation rights of Attorney's insurers.

**Section V. Insurance:**

Attorney hereby agrees to maintain during the term of this Agreement appropriate and adequate insurance coverage including occurrence based commercial general liability insurance of not less than \$1,000,000 for each occurrence, business automobile liability insurance of \$1,000,000 for each accident, and professional liability insurance with a limit of not less than \$1,000,000. Attorney agrees to provide properly executed Certificates of Insurance clearly evidencing all insurance required in this Agreement to SDBOE before beginning work under this Agreement. In the event of a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, Attorney agrees to provide a new certificate of insurance showing continuous coverage in the amounts required. Attorney shall furnish copies of insurance policies if requested by SDBOE.

**Section VI. Limitations Upon Legal Representation:**

It is agreed and acknowledged by Attorney that in order for Attorney to represent the State of South Dakota or the interests of SDBOE in any court of law, s/he or any substitute counsel must receive an appointment as an Assistant Attorney General from the Attorney General of the State per SDCL 16-18-27.

**Section VII. Term of the Agreement:**

The term of this Agreement shall commence on June 1, 2014, and shall remain in effect through May 31, 2015.

**Section VIII. Termination:**

This Agreement may be terminated by either party hereto upon thirty (30) days prior written notice.

**Section IX. Default Provision:**

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. This Agreement will be terminated by the State if the Legislature fails to appropriate funds or grant expenditure authority. Termination for this reason is not a default by the State nor does it give rise to a claim against the State.

Section X. **Amendment:**

The provisions in this Agreement may only be altered, modified or changed by written amendment hereto, subject to the same approval requirements as in this Agreement. Each amendment shall be attached to and become a part of this Agreement.

Section XI. **Agreement Not Assignable:**

This Agreement is not assignable by Attorney either in whole or in part, without the prior written consent of SDBOE.

Section XII **Payments Include All Taxes:**

Payments made to Attorney as specified herein shall be deemed to include all taxes of any description, federal, state or municipal assessed against Attorney by reason of this Agreement.

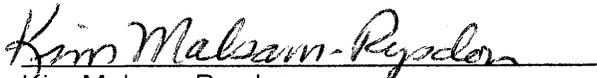
Section XIII **South Dakota Law Controlling:**

It is expressly understood and agreed by the parties hereto that this Agreement shall be governed by the laws of the State of South Dakota both as to interpretation and performance. Both parties further agree that any dispute arising from the terms and conditions of this Agreement, which cannot be resolved by mutual agreement, will be tried in Sixth Judicial Circuit Court, Hughes County, South Dakota.

Section XIV **Conflict of Interest:**

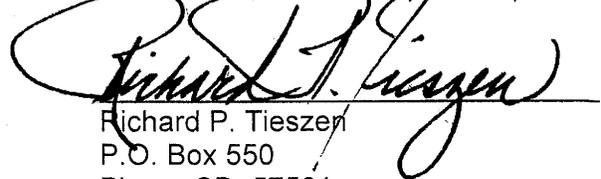
Attorney agrees not to participate as Counsel, in person or his law firm, in opposition to the interests of the State of South Dakota or any of its departments, bureaus, boards or commissions consistent with the policy attached hereto and labeled Exhibit A.

**FOR SDBOE:**

  
\_\_\_\_\_  
Kim Malsam-Rysdon  
Secretary of Health  
South Dakota Department of Health

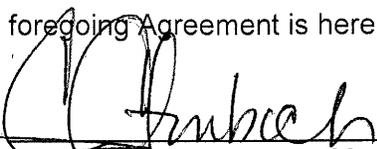
5/19/15  
\_\_\_\_\_  
Dated:

**TIESZEN LAW OFFICE, PROF., LLC:**

  
\_\_\_\_\_  
Richard P. Tieszen  
P.O. Box 550  
Pierre, SD 57501

\_\_\_\_\_  
Dated:

The foregoing Agreement is hereby approved.

  
\_\_\_\_\_  
Litigation/Legal Contract Manager,

Dated: 5/20/15

The foregoing Agreement is hereby approved as to form.

Approved as to Form  
Marty J. Jackley *by JPH AAL*  
\_\_\_\_\_  
Marty Jackley  
Attorney General  
5/26/15  
Dated:

## POLICY CONCERNING CONFLICTS OF INTEREST

This policy is adopted to address the issue of potential conflicts of interest with regard to the State of South Dakota and attorneys contracting with the State of South Dakota ("State") to perform legal services. This policy will be attached as an addendum to any contract for legal services entered into between the State and any attorney contracting to perform those legal services and shall become a part of that contract.

A. Except as provided in paragraph B of this policy, if an attorney contracting to perform legal services with the State has a pending claim against the State or its employees on behalf of a client; or in the event an attorney with an existing contract for legal services with the State is approached by a client seeking to file a lawsuit against the State or its employees, the contracting attorney shall notify the Attorney General and the manager of the state PEPL Fund in writing of that conflict of interest prior to the time a contract is signed or prior to undertaking representation of the adverse client. The Attorney General shall personally decide within ten working days whether or not the State will waive any conflict of interest created by that claim. The Attorney General will consider the magnitude of the claim against the State, the appearance of impropriety which could adversely affect the interests of the State, the degree, if any, to which the contracting attorney has or will gain access to information which would give him an undue advantage in representing a client whose interests are adverse to the State, whether the department or agency against which the claim is made is also a department or agency that will be represented by the contracting attorney, and any other factor which the Attorney General may deem pertinent in his discretion.

Notification of the Attorney General under this paragraph, prior to the commencement of an action is not required if the contracting attorney is approached by a client to commence an action against the State and the contracting attorney has a good faith belief that absent immediately filing, the action would be barred by a statute of limitations or comparable provision. Under these circumstances, the contracting attorney shall, as soon as practical, contact the Attorney General regarding the conflict and agrees that if the conflict of interest is not waived, to withdraw from representing the client in the pending action.

B. Any conflict of interest which may be created by the following situations will automatically be deemed to be waived by the Attorney General and will not be subject to the notification requirements of this policy statement:

1. Any action where the contracting attorney represents a codefendant with the State in a claim or lawsuit, regardless of any cross-claim or third-party claim which the State and

the attorney's non-State client may have against each other; unless the cross-claim or third-party claim was readily apparent at the time of contracting with the non-State client and seeks significant monetary consequences; the cross-claim is against a state agency which the contracting attorney represents; or by virtue of representation of the State under contract the attorney had access to information which would give the non-State client an unfair advantage.

2. Any condemnation action in which the contracting attorney represents a condemnee.
3. Any administrative licensing proceeding in which the contracting attorney appears representing a client, regardless of the fact that the client may make a claim which would be adverse to a position taken by a department or agency of state government; unless the claims, if successful, will have significant monetary consequences to the State; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.
4. Any administrative proceeding before the Department of Revenue in which the contracting attorney's client may have a claim which would create a potential liability for the State of South Dakota; unless the claim, if successful, will have significant monetary consequences to the State; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.
5. Any bankruptcy proceeding in which the contracting attorney represents a client other than the State of South Dakota and in which the State of South Dakota has a secured or unsecured claim.
6. Any activity relating to the negotiation of a contract with the State of South Dakota and another client represented by the contracting attorney; unless the contracting attorney is actively representing the department or agency of state government with which the contract is being negotiated; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.
7. The defense of any criminal action; unless the attorney has an existing contract as a special prosecutor in criminal actions for the State of South Dakota; or if, in representation of the State under contract, the contracting attorney had access to information which would give the non-State client an unfair advantage in the criminal action.
8. Any small claims action in which the contracting attorney represents any plaintiff or defendant with interests adverse to those of the State.
9. Any action brought through representation under a long-term contract or appointment of any other governmental entity, whether or not that governmental entity has interests that are adverse to those of the State; unless the claim, if successful, will have significant monetary consequences against the State of South Dakota.
10. Any action in which the State is a named party but has only a nominal interest, as in mortgage foreclosures and quiet title actions.

11. Any lobbying activity by the contracting attorney

12. Any worker's compensation case in which the contracting attorney represents a claimant; unless the contracting attorney represents the South Dakota Department of Labor in matters relating to worker's compensation claims or benefits.

C. The Attorney General reserves the right to raise a conflict of interest, notwithstanding the automatic waiver provisions of paragraph B of this policy, where a conflict of interest covered by the South Dakota Rules of Professional Conduct exists and in the discretion of the Attorney General, is it determined to be in the State's best interest to raise the conflict. The Attorney General shall notify the contracting attorney of the existence of the conflict and the delineation of waiver within seven days of the Attorney General's actual notice of the contracting attorney's action against the State.

D. For purposes of this policy: 1) the term "contracting attorney" means the attorney actually signing the agreement and his entire law firm; 2) the term "State" means the State of South Dakota and any branch, constitutional office, department, agency, institution, board, commission, authority, or other entity by state government; and 3) the term "significant monetary consequences" means that the suit, claim, action or other proceeding against the State, if successful, could reasonably result in the State making payments to the contracting attorney, the client or the class the client represents in excess of \$50,000 or in the case of the proceeding against the Department of Revenue, or other state taxing entity payments or lost revenue in excess of \$50,000.

E. This guideline shall not be construed as altering or reducing an attorney's obligations to his client under the South Dakota Rules of Professional Conduct specifically stated herein.



STATE OF SOUTH DAKOTA  
CONSULTANT CONTRACT/LETTER OF AGREEMENT  
FOR CONSULTANT SERVICES  
BETWEEN

South Dakota Optometric Society  
P.O. Box 1173  
Pierre, SD 57501

Referred to as "Consultant"

SD Department of Health  
SD Board of Optometry Examiners  
P.O. Box 6  
Langford, SD 57454

Referred to as "State"

State and Consultant hereby enter into a contract for Consultant Services.

I. CONSULTANT

- A. The term of this Contract shall begin June 1, 2015 and end May 31, 2016. State will not pay for any services provided by Consultant unless this contract is signed by all parties BEFORE CONSULTANT BEGINS TO PROVIDE SERVICES.
- B. Consultant is not a full or part-time employee of State or any agency of the state of South Dakota.
- C. Consultant, as an independent contractor, is solely responsible for the withholding and payment of applicable income and Social Security taxes due and owing from money received under this contract.
- D. Consultant will not use equipment, supplies or facilities owned by the state of South Dakota.
- E. Consultant will not purchase capital assets or equipment using State funds.
- F. Consultant agrees to:
  1. Conduct all continuing education programs in accordance with requirements of SDCL Ch. 36-7, SDCL 36-7-20.3 and the administrative rules governing optometrists in the State of South Dakota.
  2. Program Charges.  
Consultant, in providing such continuing education programs, shall charge an attendance fee based upon written approval of the Board. Any such attendance fee shall be equally applied to all licensed optometrists, irrespective of whether such licensed optometrists are members or non-members of the Society. Each fee for attendance shall be determined on a "per head basis".
  3. Speakers.  
All speakers, educators, or training participants in the continuing education programs presented by the consultant, or any substitutes therefore, shall be approved by the Board.

4. Course Work.  
All continuing education programs relative to this Contract, course work, agendas or programs, and training Seminars, shall be approved by Board resolution.
5. Scope of Consultant Services.  
Consultant shall independently determine the manner in which such programs shall be presented, the dates of such programs shall be presented, the dates of such continuing education programs, location, topic or topics, length of the programs, and the frequency with which each program is offered. However, the consultant shall obtain prior approval by resolution of the Board before establishing the number and type or topic of credit hours which shall be offered, approved, or certified for each continuing education program.

G. **INSURANCE:** Consultant agrees, at its sole cost and expense, to maintain the following insurance:

1. Commercial General Liability Insurance:

Consultant shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000 each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this contract or be no less than two times the occurrence limit.

2. Professional Liability Insurance:

Consultant shall procure and maintain professional liability insurance with a limit of not less than one million dollars.

3. Business Automobile Liability Insurance:

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

4. Worker's Compensation Insurance:

Consultant shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

5. Certificates of Insurance:

Before beginning work under this Contract, Consultant shall furnish State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Contract. In the event of a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, 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 State.

H. Consultant agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as a result of performing services hereunder. This section does not require Consultant to be responsible for

or defend against claims or damages arising solely from acts or omissions of the State, its officers, agents or employees.

- I. This contract does not require Consultant to engage in a function or activity involving the use or disclosure of State's Protected Health Information (PHI), as defined in the Health Insurance Portability and Accountability Act (HIPAA), 45 CFR § 160.103.

## II. STATE

- A. State will pay, upon State's satisfaction that services have been completed, up to \$4,000.00.
- B. State will not pay the Consultant expenses as a separate item.
- C. TOTAL CONTRACT AMOUNT (Not to Exceed) \$4,000.00. Payment will be made upon receipt of itemized invoices, and consistent with SDCL Ch. 5-26.
- D. State will not be held liable for reimbursement of amounts shown on an itemized billing if not received within 30 calendar days from the close of the month being reported. However, the final invoice of the State of South Dakota fiscal year, ending every year on June 30<sup>th</sup>, shall be submitted no later than June 9<sup>th</sup> so payment may be made in the same Fiscal Year as the services are provided.

## III. OTHER PROVISIONS

- A. CHOICE OF LAW AND FORUM. The terms and conditions of this contract are subject to and will be construed under the laws of the State of South Dakota. The parties further agree that any dispute arising from the terms and conditions of this contract, which cannot be resolved by mutual agreement, will be tried in the Sixth Judicial Circuit Court, Hughes County, South Dakota.
- B. INTEGRATION. This contract is a complete version of the entire agreement between the parties with respect to the subject matter within this contract and supersedes all prior or contemporaneous written or oral understandings, agreements and communications between them with respect to such subject matter. This contract may be modified or amended only by a writing signed by both parties.
- C. TERMINATION: This contract may be terminated by either party hereto upon thirty (30) days written notice, and may be terminated by State for cause at any time, with or without notice.
- D. NOTICE: Any notice or other communication required under this contract shall be in writing and sent to the address set forth above. Notices shall be given by and to the State Contact Person on behalf of State, and by and to the Consultant Contact Person on behalf of 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.
- E. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION: Consultant agrees that neither Consultant, nor any of Consultant's principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by any Federal department or agency. Consultant will provide immediate written notice to the Department of Health, Division of Administration (600 East Capitol Avenue, Pierre, SD 57501 (605) 773-3361), if Consultant, or any of Consultant's principals, becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions involving Federal funding. Consultant further agrees that if this contract involves federal funds or federally mandated compliance, then Consultant is in compliance with all applicable regulations pursuant to Executive Order 12549, including Debarment and Suspension and Participants' Responsibilities, 29 C.F.R. § 98.510 (1990).
- F. FUNDING TERMINATION: This contract depends upon the continued availability of appropriated funds and expenditure authority from Congress, the Legislature or the Executive Branch for this purpose. This contract will be terminated for cause by State if Congress, the Legislature or Executive Branch fails to appropriate

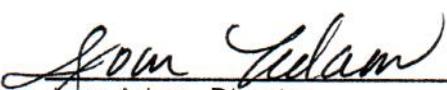
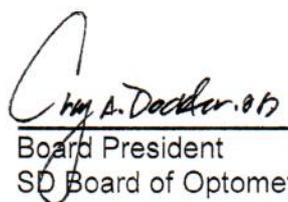
funds, terminates funding or does not grant expenditure authority. Funding termination is not a default by State nor does it give rise to a claim against State.

- G. **NONASSIGNMENT/SUBCONTRACTING:** Consultant shall not assign this contract, or any portion thereof, without the prior written consent of State. Consultant's assignment or attempted assignment of this contract, or any portion thereof, without State's prior written consent constitutes a material breach of contract. The Consultant may not use subcontractors to perform the services described herein without the express prior written consent of State. 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 in a manner consistent with this Agreement. 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.
- H. **FEDERAL AND STATE LAWS:** Consultant agrees that it will comply with all federal and state laws, rules and regulations as they may apply to the provision of services pursuant to this contract, including the Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. §§ 12101-12213, and any amendment thereto, Section 306 of the Clean Air Act, and Section 508 of the Clean Water Act. Both parties further agree to provide services covered by this contract without regard to race, color, national origin, sex, age or disability as prohibited by state or federal law.
- I. **OWNERSHIP:** All 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 contract, excluding medical records kept in the normal course of Consultant's business, will become the sole property of State. State hereby grants Consultant the unrestricted right to retain copies of and use these materials and the information contained therein in the normal course of Consultant's business for any lawful purpose. Either the originals, or reproducible copies satisfactory to State, of all technical data, evaluations, reports and other work product of Consultant shall be delivered to State upon completion or termination of services under this contract.
- J. **REPORTING OF PERSONAL INJURIES AND/OR PROPERTY DAMAGE:** Consultant agrees to report promptly to State any event encountered in the course of performance of this contract which results in injury to the person or property of third parties, or which may otherwise subject Consultant or State to liability. Reporting to State under this section does not satisfy Consultant's obligation to report any event to law enforcement or other entities as required by law.
- K. **SEVERABILITY:** In the event that any term or provision of this contract shall violate any applicable law, such provision does not invalidate any other provision hereof.
- L. **AUDIT REQUIREMENTS:**  
(EXPENDING \$750,000 OR MORE)  
A nonprofit subrecipient, (as well as profit hospitals) (Consultant), expending \$750,000 or more in one year in Federal awards, must have an annual audit made in accordance with 2 CFR Chapter I, Chapter II, Part 200, et al. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.  
  
All audits must be conducted by an auditor approved by the Auditor General to perform the audit. Approval may be obtained by forwarding a copy of the audit engagement letter to the Department of Legislative Audit, 427 South Chapelle, c/o 500 East Capitol, Pierre, SD 57501-5070. On continuing engagements, the Auditor General's approval should be obtained annually. The auditor must follow the Auditor General's guidelines when conducting the audit. The draft audit report must be submitted to the Auditor General for approval prior to issuing the final report. The auditor must file the requested copies of the final audit report with the Auditor General. Audits shall be completed and filed with granting agencies by the end of the ninth month following the end of the fiscal year being audited or 30 days after receipt of the auditor's report, whichever is earlier. If it appears that a required audit cannot be completed by the end of the ninth month following your fiscal year, you must request an extension from the federal agency for which the majority of federal expenditures relates.  
  
Failure to complete audit(s) as required will result in the disallowance of audit costs as direct or indirect charges to programs. Additionally, a percentage of awards may be withheld, overhead costs may be disallowed, and/or awards may be suspended, until the audit is completed satisfactorily.
- M. **PERSONNEL:** Neither the Consultant nor any employee or agent thereof will hold him or herself out as or claim to be an officer or employee of State and will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of State including, but not limited to, workers' compensation, health, life, malpractice insurance, and retirement membership or credit.
- N. **FORCE MAJEURE:** Neither Consultant nor State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure". As used in this contract, "force majeure" means acts of God, acts of the public enemy, acts of

the State and any governmental entity in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes or other labor disputes, freight embargoes, or unusually severe weather.

- O. **CONTRACT ORIGINAL AND COPIES:** An original of this contract will be retained by the State Auditor's Office. A photocopy will be on file with the South Dakota Department of Health and a second original will be sent to Consultant.
- P. **RECORD RETENTION/EXAMINATION:** Consultant agrees to maintain all records that are pertinent to this contract and retain them for a period of three years following final payment against the contract. State agrees to assume responsibility for these items after that time period. These records shall be subject at all reasonable times for inspection, review or audit by State, other personnel duly authorized by State, and federal officials so authorized by law.
- Q. **DRUG FREE WORK PLACE:** Consultant agrees to encourage all its employees to refrain from using illegal drugs which may affect an employee's ability to perform the essential functions required under the terms and conditions of this contract. State reserves the right to terminate this contract if Consultant, or any of its employees or agents, is convicted of using illegal drugs. Consultant further agrees that if this contract involves federal funds or federally mandated compliance, then Consultant is in compliance with the requirements of the "Drug-Free Workplace Act" (Public Law 100-690 Title V, Subtitle D, 41 U.S.C. §§ 701 et seq.).
- R. **LOBBYING:** Consultant agrees to not use any of the funds received pursuant to this contract for lobbying purposes. Consultant further agrees that if this contract involves federal funds or federally mandated compliance, the Consultant is in compliance with all applicable regulations pursuant to Section 319 of Public Law 101-121, Guidance for New Restrictions on Lobbying, including Certification and Disclosure, 29 C.F.R. § 93.110 (1990).
- S. **RECYCLING.** State strongly encourages Consultant to establish a recycling program to help preserve our natural resources and reduce the need for additional landfill space.

The parties signify their agreement by signing below.

 _____ Joan Adam, Director Division of Administration Department of Health	<u>6/15/15</u> Date	 _____ Amy A. Dackler, Board President SD Board of Optometry Examiners	<u>5-26-15</u> Date
 _____ Kari J. Williams Date Administrator, Financial Management Department of Health	<u>6-18-15</u> Date	 _____ Debra Mottram Consultant Signature	<u>6-9-15</u>

State Contact Person: Susan Sporrer Phone: (605) 773-3361  
Consultant Contact Person: Denise Amundson Phone: 605-493.6504

**The following shall be completed by the Consultant:**

Nonprofit \_\_\_\_\_ Profit \_\_\_\_\_  
 Consultant fiscal year beginning \_\_\_\_\_ and ending \_\_\_\_\_

**The following shall be completed by the State:**

MSA Account code 5 2 0 4 \_ \_ \_ \_ \_

Fund Source Name:	Fund Source Name:	Fund Source Name:
CFDA No:	CFDA No:	CFDA No:
Program: SD Board Optometry Examiners	Program: SD Board of	Program: SD Board of
CO: 6503-Other	CO: 6503-Other	CO: 6503-Other

SDCL 1-24A-1 states that a copy of all consulting contracts shall be filed by the 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.

STATE OF SOUTH DAKOTA  
CONSULTANT CONTRACT/LETTER OF AGREEMENT  
FOR CONSULTANT SERVICES  
BETWEEN

BPRO Inc.  
124 West Dakota  
Pierre, SD 57501  
\_\_\_\_\_  
Referred to as "Consultant"

SD Department of Health  
SD Board of Optometry Examiners  
P.O. Box 6  
Langford, SD 57454  
\_\_\_\_\_  
Referred to as "State"

State and Consultant hereby enter into a contract for Consultant Services.

I. CONSULTANT

- A. The term of this Contract shall begin June 1, 2015 and end May 31, 2016. State will not pay for any services provided by Consultant unless this contract is signed by all parties BEFORE CONSULTANT BEGINS TO PROVIDE SERVICES.
- B. Consultant is not a full or part-time employee of State or any agency of the state of South Dakota.
- C. Consultant, as an independent contractor, is solely responsible for the withholding and payment of applicable income and Social Security taxes due and owing from money received under this contract.
- D. Consultant will not use equipment, supplies or facilities owned by the state of South Dakota.
- E. Consultant will not purchase capital assets or equipment using State funds.
- F. Consultant agrees to:
  - 1. Provide resources for maintaining systems owned by South Dakota Board of Optometry Examiners. Maintaining systems includes the following functions: support, client service and minor enhancements. This contract covers specific deliverables related to enhancements of systems.
  - 2. The functions of support, client service and enhancements are defined as follows:
    - Support
      - Fix System errors.
    - Client Service
      - Client Facilitation (Example: Answer general client questions, phone calls, e-mails).
      - System Facilitation (Example: Working with clients on questions, training clients on the use of a system).

- Adhoc reporting.

Enhancements (Enhancements as described in the system table below)

- Analysis, Design or Coding with intent to add value to an existing system. (Example: add a new permanent report, modify an existing report or screen, add a new field).

3. Before work is done on systems included within this contract, approval must be obtained from the system authorization contact noted in Attachment A. If the vendor receives a request for work from anyone other than the system authorization contact, the vendor shall verify the request and obtain approval from the system authorization contact before the work is started.
4. The systems and deliverables of this contract are as described in Attachment A.

G. **INSURANCE:** Consultant agrees, at its sole cost and expense, to maintain the following insurance:

1. Commercial General Liability Insurance:

Consultant shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000 each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this contract or be no less than two times the occurrence limit.

2. Professional Liability Insurance:

Consultant shall procure and maintain professional liability insurance with a limit of not less than one million dollars.

3. Business Automobile Liability Insurance:

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

4. Worker's Compensation Insurance:

Consultant shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

5. Certificates of Insurance:

Before beginning work under this Contract, Consultant shall furnish State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Contract. In the event of a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, 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 State.

H. Consultant agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits,

damages, liability or other proceedings that may arise as a result of performing services hereunder. This section does not require Consultant to be responsible for or defend against claims or damages arising solely from acts or omissions of the State, its officers, agents or employees.

- I. This contract does not require Consultant to engage in a function or activity involving the use or disclosure of State's Protected Health Information (PHI), as defined in the Health Insurance Portability and Accountability Act (HIPAA), 45 CFR § 160.103.

## II. STATE

- A. State will pay, upon State's satisfaction that services have been completed, up to \$1,500.00.
- B. State will not pay the Consultant expenses as a separate item.
- C. TOTAL CONTRACT AMOUNT (Not to Exceed) \$1,500.00. Payment will be made upon receipt of itemized invoices, and consistent with SDCL Ch. 5-26.
- D. State will not be held liable for reimbursement of amounts shown on an itemized billing if not received within 30 calendar days from the close of the month being reported. However, the final invoice of the State of South Dakota fiscal year, ending every year on June 30<sup>th</sup>, shall be submitted no later than June 9<sup>th</sup> so payment may be made in the same Fiscal Year as the services are provided.
- E. State agrees to:
  1. Payment on this contract will be made upon satisfactory completion of work, receipt of an invoice, and an allowable processing time. Terms of payment are as follows:
    - a. The consultant shall submit invoices detailing time of the South Dakota Board of Optometry Examiners, PO Box 6, Langford, SD 57454 and will be paid the invoice amount within thirty (30) days of receipt of said invoice, subject to ordinary State of South Dakota voucher clearance requirements.
    - b. The State will make payment for services upon satisfactory completion of services performed.
    - c. The State will make payment for satisfactory services at a rate of \$58.00 an hour.

## III. OTHER PROVISIONS

- A. CHOICE OF LAW AND FORUM. The terms and conditions of this contract are subject to and will be construed under the laws of the State of South Dakota. The parties further agree that any dispute arising from the terms and conditions of this contract, which cannot be resolved by mutual agreement, will be tried in the Sixth Judicial Circuit Court, Hughes County, South Dakota.

- B. **INTEGRATION.** This contract is a complete version of the entire agreement between the parties with respect to the subject matter within this contract and supersedes all prior or contemporaneous written or oral understandings, agreements and communications between them with respect to such subject matter. This contract may be modified or amended only by a writing signed by both parties.
- C. **TERMINATION:** This contract may be terminated by either party hereto upon thirty (30) days written notice, and may be terminated by State for cause at any time, with or without notice.
- D. **NOTICE:** Any notice or other communication required under this contract shall be in writing and sent to the address set forth above. Notices shall be given by and to the State Contact Person on behalf of State, and by and to the Consultant Contact Person on behalf of 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.
- E. **CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:** Consultant agrees that neither Consultant, nor any of Consultant's principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by any Federal department or agency. Consultant will provide immediate written notice to the Department of Health, Division of Administration (600 East Capitol Avenue, Pierre, SD 57501 (605) 773-3361), if Consultant, or any of Consultant's principals, becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions involving Federal funding. Consultant further agrees that if this contract involves federal funds or federally mandated compliance, then Consultant is in compliance with all applicable regulations pursuant to Executive Order 12549, including Debarment and Suspension and Participants' Responsibilities, 29 C.F.R. § 98.510 (1990).
- F. **FUNDING TERMINATION:** This contract depends upon the continued availability of appropriated funds and expenditure authority from Congress, the Legislature or the Executive Branch for this purpose. This contract will be terminated for cause by State if Congress, the Legislature or Executive Branch fails to appropriate funds, terminates funding or does not grant expenditure authority. Funding termination is not a default by State nor does it give rise to a claim against State.
- G. **NONASSIGNMENT/SUBCONTRACTING:** Consultant shall not assign this contract, or any portion thereof, without the prior written consent of State. Consultant's assignment or attempted assignment of this contract, or any portion thereof, without State's prior written consent constitutes a material breach of contract. The Consultant may not use subcontractors to perform the services described herein without the express prior written consent of State. 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 in a manner consistent with this Agreement. 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.
- H. **FEDERAL AND STATE LAWS:** Consultant agrees that it will comply with all federal and state laws, rules and regulations as they may apply to the provision of services pursuant to this contract, including the Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. §§ 12101-12213, and any amendment thereto, Section 306 of the Clean Air Act, and Section 508 of the Clean Water Act. Both parties further agree to provide services covered by this contract without regard to race, color, national origin, sex, age or disability as prohibited by state or federal law.
- I. **OWNERSHIP:** All 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 contract, excluding medical records kept in the normal course of Consultant's business, will become the sole property of State. State hereby grants Consultant the unrestricted right to retain copies of and use these materials and the information contained therein in the normal course of Consultant's business for any lawful purpose. Either the originals, or reproducible copies satisfactory to State, of all technical data, evaluations, reports and other work product of Consultant shall be delivered to State upon completion or termination of services under this contract.
- J. **REPORTING OF PERSONAL INJURIES AND/OR PROPERTY DAMAGE:** Consultant agrees to report promptly to State any event encountered in the course of performance of this contract which results in injury to the person or property of third parties, or which may otherwise subject Consultant or State to liability. Reporting to State under this section does not satisfy Consultant's obligation to report any event to law enforcement or other entities as required by law.
- K. **SEVERABILITY:** In the event that any term or provision of this contract shall violate any applicable law, such provision does not invalidate any other provision hereof.

- L. **AUDIT REQUIREMENTS:**  
(EXPENDING \$750,000 OR MORE)  
A nonprofit subrecipient, (as well as profit hospitals) (Consultant), expending \$750,000 or more in one year in Federal awards, must have an annual audit made in accordance with 2 CFR Chapter I, Chapter II, Part 200, et al. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- All audits must be conducted by an auditor approved by the Auditor General to perform the audit. Approval may be obtained by forwarding a copy of the audit engagement letter to the Department of Legislative Audit, 427 South Chapelle, c/o 500 East Capitol, Pierre, SD 57501-5070. On continuing engagements, the Auditor General's approval should be obtained annually. The auditor must follow the Auditor General's guidelines when conducting the audit. The draft audit report must be submitted to the Auditor General for approval prior to issuing the final report. The auditor must file the requested copies of the final audit report with the Auditor General. Audits shall be completed and filed with granting agencies by the end of the ninth month following the end of the fiscal year being audited or 30 days after receipt of the auditor's report, whichever is earlier. If it appears that a required audit cannot be completed by the end of the ninth month following your fiscal year, you must request an extension from the federal agency for which the majority of federal expenditures relates.
- Failure to complete audit(s) as required will result in the disallowance of audit costs as direct or indirect charges to programs. Additionally, a percentage of awards may be withheld, overhead costs may be disallowed, and/or awards may be suspended, until the audit is completed satisfactorily.
- M. **PERSONNEL:** Neither the Consultant nor any employee or agent thereof will hold him or herself out as or claim to be an officer or employee of State and will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of State including, but not limited to, workers' compensation, health, life, malpractice insurance, and retirement membership or credit.
- N. **FORCE MAJEURE:** Neither Consultant nor State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure". As used in this contract, "force majeure" means acts of God, acts of the public enemy, acts of the State and any governmental entity in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes or other labor disputes, freight embargoes, or unusually severe weather.
- O. **CONTRACT ORIGINAL AND COPIES:** An original of this contract will be retained by the State Auditor's Office. A photocopy will be on file with the South Dakota Department of Health and a second original will be sent to Consultant.
- P. **RECORD RETENTION/EXAMINATION:** Consultant agrees to maintain all records that are pertinent to this contract and retain them for a period of three years following final payment against the contract. State agrees to assume responsibility for these items after that time period. These records shall be subject at all reasonable times for inspection, review or audit by State, other personnel duly authorized by State, and federal officials so authorized by law.
- Q. **DRUG FREE WORK PLACE:** Consultant agrees to encourage all its employees to refrain from using illegal drugs which may affect an employee's ability to perform the essential functions required under the terms and conditions of this contract. State reserves the right to terminate this contract if Consultant, or any of its employees or agents, is convicted of using illegal drugs. Consultant further agrees that if this contract involves federal funds or federally mandated compliance, then Consultant is in compliance with the requirements of the "Drug-Free Workplace Act" (Public Law 100-690 Title V, Subtitle D, 41 U.S.C. §§ 701 et seq.).
- R. **LOBBYING:** Consultant agrees to not use any of the funds received pursuant to this contract for lobbying purposes. Consultant further agrees that if this contract involves federal funds or federally mandated compliance, the Consultant is in compliance with all applicable regulations pursuant to Section 319 of Public Law 101-121, Guidance for New Restrictions on Lobbying, including Certification and Disclosure, 29 C.F.R. § 93.110 (1990).
- S. **RECYCLING.** State strongly encourages Consultant to establish a recycling program to help preserve our natural resources and reduce the need for additional landfill space.

The parties signify their agreement by signing below.

Jean Adam  
Jean Adam, Director  
Division of Administration  
Department of Health

4/8/15  
/Date

[Signature]  
Consultant Signature

4/5/15  
Date

Brandon Campea, BPro  
Print or Type Consultant Name

[Signature]  
Kari J. Williams  
Administrator, Financial Management  
Department of Health

4-9-15  
Date

S.D. Board President: Craig A. Dockter, OD      5-26-15

State Contact Person: Denise Amundson Phone: (605) 493-6504

Consultant Contact Person: Brandon Campea Phone: 605-224-8114

**The following shall be completed by the Consultant:**

Nonprofit  Profit   
Consultant fiscal year beginning \_\_\_\_\_ and ending \_\_\_\_\_

**The following shall be completed by the State:**

MSA Account code 5204 \_\_\_\_\_

Fund Source Name:	Fund Source Name:	Fund Source Name:
CFDA No:	CFDA No:	CFDA No:
Program: SD Board of Optometry Examiners	Program: SD Board of	Program: SD Board of
CO: 6503-Other	CO: 6503-Other	CO: 6503-Other

SDCL 1-24A-1 states that a copy of all consulting contracts shall be filed by the 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.





STATE OF SOUTH DAKOTA  
CONSULTANT CONTRACT/LETTER OF AGREEMENT  
FOR CONSULTANT SERVICES  
BETWEEN

Kathryn Haivala  
1710 North Avenue  
Spearfish, SD 57783  
Referred to as "Consultant"

SD Department of Health  
SD Board of Optometry Examiners  
P.O. Box 6  
Langford, SD 57454  
Referred to as "State"

State and Consultant hereby enter into a contract for Consultant Services.

I. CONSULTANT

- A. The term of this Contract shall begin November 1, 2015 and end May 31, 2016. State will not pay for any services provided by Consultant unless this contract is signed by all parties BEFORE CONSULTANT BEGINS TO PROVIDE SERVICES.
- B. Consultant is not a full or part-time employee of State or any agency of the state of South Dakota.
- C. Consultant, as an independent contractor, is solely responsible for the withholding and payment of applicable income and Social Security taxes due and owing from money received under this contract.
- D. Consultant will not use equipment, supplies or facilities owned by the state of South Dakota.
- E. Consultant will not purchase capital assets or equipment using State funds.
- F. Consultant agrees to:
  - 1. The Investigator shall investigate all complaints referred to the Investigator by the Board to determine whether a practitioner is in violation of SDCL Ch. 36-7 and the applicable administrative rules promulgated by the Board.
  - 2. Upon completion of the investigation, the Investigator shall issue a report to the attorneys for the Board in a form satisfactory to the Board regarding the results of the investigation.
  - 3. In discharging his duties, the Investigator shall comply with SDCL Ch. 1-26 and SDCL Ch. 36-7 with respect to the compliant procedure and all other applicable administrative rules promulgated by the Board. The Investigator shall confer as necessary with the president, secretary, and attorneys for the Board;
  - 4. Investigator shall provide testimony or evidence as required and including but not limited to any licensure, disciplinary, administrative, or court proceedings.

G. **INSURANCE:** Consultant agrees, at its sole cost and expense, to maintain the following insurance:

1. Commercial General Liability Insurance:

Consultant shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000 each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this contract or be no less than two times the occurrence limit.

2. Professional Liability Insurance:

Consultant shall procure and maintain professional liability insurance with a limit of not less than one million dollars.

3. Business Automobile Liability Insurance:

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

4. Worker's Compensation Insurance:

Consultant shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

5. Certificates of Insurance:

Before beginning work under this Contract, Consultant shall furnish State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Contract. In the event of a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, 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 State.

H. Consultant agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as a result of performing services hereunder. This section does not require Consultant to be responsible for or defend against claims or damages arising solely from acts or omissions of the State, its officers, agents or employees.

I. This contract does not require Consultant to engage in a function or activity involving the use or disclosure of State's Protected Health Information (PHI), as defined in the Health Insurance Portability and Accountability Act (HIPAA), 45 CFR § 160.103.

II. STATE

A. State will pay, upon State's satisfaction that services have been completed, up to \$90.00 per hour.

B. State will pay the Consultant expenses as a separate item:

State will reimburse Consultant for postage, telephone calls, facsimiles or other photographic reproductions, and travel expenses.

Travel expense such as mileage, meals, and lodging will be reimbursed at State rates.

- C. TOTAL CONTRACT AMOUNT (Not to Exceed) \$1,000.00. Payment will be made upon receipt of itemized invoices, and consistent with SDCL Ch. 5-26.
- D. State will not be held liable for reimbursement of amounts shown on an itemized billing if not received within 30 calendar days from the close of the month being reported. However, the final invoice of the State of South Dakota fiscal year, ending every year on June 30<sup>th</sup>, shall be submitted no later than June 9<sup>th</sup> so payment may be made in the same Fiscal Year as the services are provided.

### III. OTHER PROVISIONS

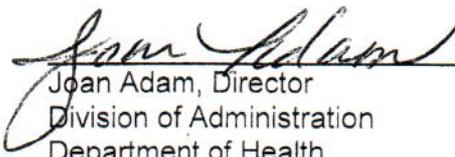
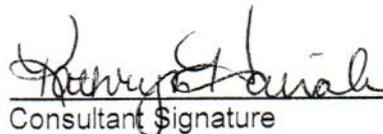
- A. CHOICE OF LAW AND FORUM. The terms and conditions of this contract are subject to and will be construed under the laws of the State of South Dakota. The parties further agree that any dispute arising from the terms and conditions of this contract, which cannot be resolved by mutual agreement, will be tried in the Sixth Judicial Circuit Court, Hughes County, South Dakota.
- B. INTEGRATION. This contract is a complete version of the entire agreement between the parties with respect to the subject matter within this contract and supersedes all prior or contemporaneous written or oral understandings, agreements and communications between them with respect to such subject matter. This contract may be modified or amended only by a writing signed by both parties.
- C. TERMINATION: This contract may be terminated by either party hereto upon thirty (30) days written notice, and may be terminated by State for cause at any time, with or without notice.
- D. NOTICE: Any notice or other communication required under this contract shall be in writing and sent to the address set forth above. Notices shall be given by and to the State Contact Person on behalf of State, and by and to the Consultant Contact Person on behalf of 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.
- E. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION: Consultant agrees that neither Consultant, nor any of Consultant's principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by any Federal department or agency. Consultant will provide immediate written notice to the Department of Health, Division of Administration (600 East Capitol Avenue, Pierre, SD 57501 (605) 773-3361), if Consultant, or any of Consultant's principals, becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions involving Federal funding. Consultant further agrees that if this contract involves federal funds or federally mandated compliance, then Consultant is in compliance with all applicable regulations pursuant to Executive Order 12549, including Debarment and Suspension and Participants' Responsibilities, 29 C.F.R. § 98.510 (1990).
- F. FUNDING TERMINATION: This contract depends upon the continued availability of appropriated funds and expenditure authority from Congress, the Legislature or the Executive Branch for this purpose. This contract will be terminated for cause by State if Congress, the Legislature or Executive Branch fails to appropriate funds, terminates funding or does not grant expenditure authority. Funding termination is not a default by State nor does it give rise to a claim against State.
- G. NONASSIGNMENT/SUBCONTRACTING: Consultant shall not assign this contract, or any portion thereof, without the prior written consent of State. Consultant's assignment or attempted assignment of this contract, or any portion thereof, without State's prior written consent constitutes a material breach of contract. The Consultant may not use subcontractors to perform the services described herein without the express prior written consent of State. 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 in a manner consistent with this Agreement. 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.

- H. **FEDERAL AND STATE LAWS:** Consultant agrees that it will comply with all federal and state laws, rules and regulations as they may apply to the provision of services pursuant to this contract, including the Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. §§ 12101-12213, and any amendment thereto, Section 306 of the Clean Air Act, and Section 508 of the Clean Water Act. Both parties further agree to provide services covered by this contract without regard to race, color, national origin, sex, age or disability as prohibited by state or federal law.
- I. **OWNERSHIP:** All 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 contract, excluding medical records kept in the normal course of Consultant's business, will become the sole property of State. State hereby grants Consultant the unrestricted right to retain copies of and use these materials and the information contained therein in the normal course of Consultant's business for any lawful purpose. Either the originals, or reproducible copies satisfactory to State, of all technical data, evaluations, reports and other work product of Consultant shall be delivered to State upon completion or termination of services under this contract.
- J. **REPORTING OF PERSONAL INJURIES AND/OR PROPERTY DAMAGE:** Consultant agrees to report promptly to State any event encountered in the course of performance of this contract which results in injury to the person or property of third parties, or which may otherwise subject Consultant or State to liability. Reporting to State under this section does not satisfy Consultant's obligation to report any event to law enforcement or other entities as required by law.
- K. **SEVERABILITY:** In the event that any term or provision of this contract shall violate any applicable law, such provision does not invalidate any other provision hereof.
- L. **AUDIT REQUIREMENTS:  
(EXPENDING \$750,000 OR MORE)**  
A nonprofit subrecipient, (as well as profit hospitals) (Consultant), expending \$750,000 or more in one year in Federal awards, must have an annual audit made in accordance with 2 CFR Chapter I, Chapter II, Part 200, et al. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.
- All audits must be conducted by an auditor approved by the Auditor General to perform the audit. Approval may be obtained by forwarding a copy of the audit engagement letter to the Department of Legislative Audit, 427 South Chapelle, c/o 500 East Capitol, Pierre, SD 57501-5070. On continuing engagements, the Auditor General's approval should be obtained annually. The auditor must follow the Auditor General's guidelines when conducting the audit. The draft audit report must be submitted to the Auditor General for approval prior to issuing the final report. The auditor must file the requested copies of the final audit report with the Auditor General. Audits shall be completed and filed with granting agencies by the end of the ninth month following the end of the fiscal year being audited or 30 days after receipt of the auditor's report, whichever is earlier. If it appears that a required audit cannot be completed by the end of the ninth month following your fiscal year, you must request an extension from the federal agency for which the majority of federal expenditures relates.
- Failure to complete audit(s) as required will result in the disallowance of audit costs as direct or indirect charges to programs. Additionally, a percentage of awards may be withheld, overhead costs may be disallowed, and/or awards may be suspended, until the audit is completed satisfactorily.
- M. **PERSONNEL:** Neither the Consultant nor any employee or agent thereof will hold him or herself out as or claim to be an officer or employee of State and will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of State including, but not limited to, workers' compensation, health, life, malpractice insurance, and retirement membership or credit.
- N. **FORCE MAJEURE:** Neither Consultant nor State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure". As used in this contract, "force majeure" means acts of God, acts of the public enemy, acts of the State and any governmental entity in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes or other labor disputes, freight embargoes, or unusually severe weather.
- O. **CONTRACT ORIGINAL AND COPIES:** An original of this contract will be retained by the State Auditor's Office. A photocopy will be on file with the South Dakota Department of Health and a second original will be sent to Consultant.
- P. **RECORD RETENTION/EXAMINATION:** Consultant agrees to maintain all records that are pertinent to this contract and retain them for a period of three years following final payment against the contract. State agrees to assume responsibility for these items after that time period. These records shall be subject at all reasonable times for inspection, review or audit by State, other personnel duly authorized by State, and federal officials so authorized by law.
- Q. **DRUG FREE WORK PLACE:** Consultant agrees to encourage all its employees to refrain from using illegal drugs which may affect an employee's ability to perform the essential functions required under the terms and

conditions of this contract. State reserves the right to terminate this contract if Consultant, or any of its employees or agents, is convicted of using illegal drugs. Consultant further agrees that if this contract involves federal funds or federally mandated compliance, then Consultant is in compliance with the requirements of the "Drug-Free Workplace Act" (Public Law 100-690 Title V, Subtitle D, 41 U.S.C. §§ 701 et seq.).

- R. LOBBYING: Consultant agrees to not use any of the funds received pursuant to this contract for lobbying purposes. Consultant further agrees that if this contract involves federal funds or federally mandated compliance, the Consultant is in compliance with all applicable regulations pursuant to Section 319 of Public Law 101-121, Guidance for New Restrictions on Lobbying, including Certification and Disclosure, 29 C.F.R. § 93.110 (1990).
- S. RECYCLING: State strongly encourages Consultant to establish a recycling program to help preserve our natural resources and reduce the need for additional landfill space.

The parties signify their agreement by signing below.

 _____ Joan Adam, Director Division of Administration Department of Health	11/23/15 _____ Date	 _____ Board President SD Board of Optometry Examiners	11/19/15 _____ Date
 _____ Kari J. Williams Administrator, Financial Management Department of Health	11-23-15 _____ Date	 _____ Consultant Signature	11/10/15 _____ Date

State Contact Person: Susan Sporrer Phone: 605-773-3361  
 Consultant Contact Person: Kathryn Haivala Phone: 605-642-8480

**The following shall be completed by the Consultant:**

Nonprofit  Profit   
 Consultant fiscal year beginning 11/1/15 and ending 5/31/16

**The following shall be completed by the State:**

MSA Account code 5204 \_\_\_\_\_

Fund Source Name:	Fund Source Name:	Fund Source Name:
CFDA No:	CFDA No:	CFDA No:
Program: SD Board Optometry Examiners	Program: SD Board of	Program: SD Board of
CO: 6503-Other	CO: 6503-Other	CO: 6503-Other

SDCL 1-24A-1 states that a copy of all consulting contracts shall be filed by the 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.

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STATE OF SOUTH DAKOTA  
CONSULTANT CONTRACT/LETTER OF AGREEMENT  
FOR CONSULTANT SERVICES  
BETWEEN

Lisa Kollis-Young  
6201 South Callington Circle  
Sioux Falls, SD 57108

Referred to as "Consultant"

SD Department of Health  
SD Board of Optometry Examiners  
P.O. Box 6  
Langford, SD 57454

Referred to as "State"

State and Consultant hereby enter into a contract for Consultant Services.

I. CONSULTANT

- A. The term of this Contract shall begin January 1, 2016 and end May 31, 2016. State will not pay for any services provided by Consultant unless this contract is signed by all parties BEFORE CONSULTANT BEGINS TO PROVIDE SERVICES.
- B. Consultant is not a full or part-time employee of State or any agency of the state of South Dakota.
- C. Consultant, as an independent contractor, is solely responsible for the withholding and payment of applicable income and Social Security taxes due and owing from money received under this contract.
- D. Consultant will not use equipment, supplies or facilities owned by the state of South Dakota.
- E. Consultant will not purchase capital assets or equipment using State funds.
- F. Consultant agrees to:
  - 1. The Investigator shall investigate all complaints referred to the Investigator by the Board to determine whether a practitioner is in violation of SDCL Ch. 36-7 and the applicable administrative rules promulgated by the Board.
  - 2. Upon completion of the investigation, the Investigator shall issue a report to the attorneys for the Board in a form satisfactory to the Board regarding the results of the investigation.
  - 3. In discharging his duties, the Investigator shall comply with SDCL Ch. 1-26 and SDCL Ch. 36-7 with respect to the compliant procedure and all other applicable administrative rules promulgated by the Board. The Investigator shall confer as necessary with the president, secretary, and attorneys for the Board;
  - 4. Investigator shall provide testimony or evidence as required and including but not limited to any licensure, disciplinary, administrative, or court proceedings.

G. **INSURANCE:** Consultant agrees, at its sole cost and expense, to maintain the following insurance:

1. Commercial General Liability Insurance:

Consultant shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000 each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this contract or be no less than two times the occurrence limit.

2. Professional Liability Insurance:

Consultant shall procure and maintain professional liability insurance with a limit of not less than one million dollars.

3. Business Automobile Liability Insurance:

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

4. Worker's Compensation Insurance:

Consultant shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

5. Certificates of Insurance:

Before beginning work under this Contract, Consultant shall furnish State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Contract. In the event of a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, 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 State.

H. Consultant agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as a result of performing services hereunder. This section does not require Consultant to be responsible for or defend against claims or damages arising solely from acts or omissions of the State, its officers, agents or employees.

I. This contract does not require Consultant to engage in a function or activity involving the use or disclosure of State's Protected Health Information (PHI), as defined in the Health Insurance Portability and Accountability Act (HIPAA), 45 CFR § 160.103.

II. **STATE**

A. State will pay, upon State's satisfaction that services have been completed, up to \$90.00 per hour.

B. State will pay the Consultant expenses as a separate item:

State will reimburse Consultant for postage, telephone calls, facsimiles or other photographic reproductions, and travel expenses.

Travel expense such as mileage, meals, and lodging will be reimbursed at State rates.

- C. TOTAL CONTRACT AMOUNT (Not to Exceed) \$1,000.00. Payment will be made upon receipt of itemized invoices, and consistent with SDCL Ch. 5-26.
- D. State will not be held liable for reimbursement of amounts shown on an itemized billing if not received within 30 calendar days from the close of the month being reported. However, the final invoice of the State of South Dakota fiscal year, ending every year on June 30<sup>th</sup>, shall be submitted no later than June 9<sup>th</sup> so payment may be made in the same Fiscal Year as the services are provided.

### III. OTHER PROVISIONS

- A. CHOICE OF LAW AND FORUM. The terms and conditions of this contract are subject to and will be construed under the laws of the State of South Dakota. The parties further agree that any dispute arising from the terms and conditions of this contract, which cannot be resolved by mutual agreement, will be tried in the Sixth Judicial Circuit Court, Hughes County, South Dakota.
- B. INTEGRATION. This contract is a complete version of the entire agreement between the parties with respect to the subject matter within this contract and supersedes all prior or contemporaneous written or oral understandings, agreements and communications between them with respect to such subject matter. This contract may be modified or amended only by a writing signed by both parties.
- C. TERMINATION: This contract may be terminated by either party hereto upon thirty (30) days written notice, and may be terminated by State for cause at any time, with or without notice.
- D. NOTICE: Any notice or other communication required under this contract shall be in writing and sent to the address set forth above. Notices shall be given by and to the State Contact Person on behalf of State, and by and to the Consultant Contact Person on behalf of 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.
- E. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION: Consultant agrees that neither Consultant, nor any of Consultant's principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by any Federal department or agency. Consultant will provide immediate written notice to the Department of Health, Division of Administration (600 East Capitol Avenue, Pierre, SD 57501 (605) 773-3361), if Consultant, or any of Consultant's principals, becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions involving Federal funding. Consultant further agrees that if this contract involves federal funds or federally mandated compliance, then Consultant is in compliance with all applicable regulations pursuant to Executive Order 12549, including Debarment and Suspension and Participants' Responsibilities, 29 C.F.R. § 98.510 (1990).
- F. FUNDING TERMINATION: This contract depends upon the continued availability of appropriated funds and expenditure authority from Congress, the Legislature or the Executive Branch for this purpose. This contract will be terminated for cause by State if Congress, the Legislature or Executive Branch fails to appropriate funds, terminates funding or does not grant expenditure authority. Funding termination is not a default by State nor does it give rise to a claim against State.
- G. NONASSIGNMENT/SUBCONTRACTING: Consultant shall not assign this contract, or any portion thereof, without the prior written consent of State. Consultant's assignment or attempted assignment of this contract, or any portion thereof, without State's prior written consent constitutes a material breach of contract. The Consultant may not use subcontractors to perform the services described herein without the express prior written consent of State. 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 in a manner consistent with this Agreement. 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.

- H. **FEDERAL AND STATE LAWS:** Consultant agrees that it will comply with all federal and state laws, rules and regulations as they may apply to the provision of services pursuant to this contract, including the Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. §§ 12101-12213, and any amendment thereto, Section 306 of the Clean Air Act, and Section 508 of the Clean Water Act. Both parties further agree to provide services covered by this contract without regard to race, color, national origin, sex, age or disability as prohibited by state or federal law.
- I. **OWNERSHIP:** All 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 contract, excluding medical records kept in the normal course of Consultant's business, will become the sole property of State. State hereby grants Consultant the unrestricted right to retain copies of and use these materials and the information contained therein in the normal course of Consultant's business for any lawful purpose. Either the originals, or reproducible copies satisfactory to State, of all technical data, evaluations, reports and other work product of Consultant shall be delivered to State upon completion or termination of services under this contract.
- J. **REPORTING OF PERSONAL INJURIES AND/OR PROPERTY DAMAGE:** Consultant agrees to report promptly to State any event encountered in the course of performance of this contract which results in injury to the person or property of third parties, or which may otherwise subject Consultant or State to liability. Reporting to State under this section does not satisfy Consultant's obligation to report any event to law enforcement or other entities as required by law.
- K. **SEVERABILITY:** In the event that any term or provision of this contract shall violate any applicable law, such provision does not invalidate any other provision hereof.
- L. **AUDIT REQUIREMENTS:**  
(EXPENDING \$750,000 OR MORE)  
A nonprofit subrecipient, (as well as profit hospitals) (Consultant), expending \$750,000 or more in one year in Federal awards, must have an annual audit made in accordance with 2 CFR Chapter I, Chapter II, Part 200, et al. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.  
  
All audits must be conducted by an auditor approved by the Auditor General to perform the audit. Approval may be obtained by forwarding a copy of the audit engagement letter to the Department of Legislative Audit, 427 South Chapelle, c/o 500 East Capitol, Pierre, SD 57501-5070. On continuing engagements, the Auditor General's approval should be obtained annually. The auditor must follow the Auditor General's guidelines when conducting the audit. The draft audit report must be submitted to the Auditor General for approval prior to issuing the final report. The auditor must file the requested copies of the final audit report with the Auditor General. Audits shall be completed and filed with granting agencies by the end of the ninth month following the end of the fiscal year being audited or 30 days after receipt of the auditor's report, whichever is earlier. If it appears that a required audit cannot be completed by the end of the ninth month following your fiscal year, you must request an extension from the federal agency for which the majority of federal expenditures relates.  
  
Failure to complete audit(s) as required will result in the disallowance of audit costs as direct or indirect charges to programs. Additionally, a percentage of awards may be withheld, overhead costs may be disallowed, and/or awards may be suspended, until the audit is completed satisfactorily.
- M. **PERSONNEL:** Neither the Consultant nor any employee or agent thereof will hold him or herself out as or claim to be an officer or employee of State and will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of State including, but not limited to, workers' compensation, health, life, malpractice insurance, and retirement membership or credit.
- N. **FORCE MAJEURE:** Neither Consultant nor State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure". As used in this contract, "force majeure" means acts of God, acts of the public enemy, acts of the State and any governmental entity in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes or other labor disputes, freight embargoes, or unusually severe weather.
- O. **CONTRACT ORIGINAL AND COPIES:** An original of this contract will be retained by the State Auditor's Office. A photocopy will be on file with the South Dakota Department of Health and a second original will be sent to Consultant.
- P. **RECORD RETENTION/EXAMINATION:** Consultant agrees to maintain all records that are pertinent to this contract and retain them for a period of three years following final payment against the contract. State agrees to assume responsibility for these items after that time period. These records shall be subject at all reasonable times for inspection, review or audit by State, other personnel duly authorized by State, and federal officials so authorized by law.

- Q. **DRUG FREE WORK PLACE:** Consultant agrees to encourage all its employees to refrain from using illegal drugs which may affect an employee's ability to perform the essential functions required under the terms and conditions of this contract. State reserves the right to terminate this contract if Consultant, or any of its employees or agents, is convicted of using illegal drugs. Consultant further agrees that if this contract involves federal funds or federally mandated compliance, then Consultant is in compliance with the requirements of the "Drug-Free Workplace Act" (Public Law 100-690 Title V, Subtitle D, 41 U.S.C. §§ 701 et seq.).
- R. **LOBBYING:** Consultant agrees to not use any of the funds received pursuant to this contract for lobbying purposes. Consultant further agrees that if this contract involves federal funds or federally mandated compliance, the Consultant is in compliance with all applicable regulations pursuant to Section 319 of Public Law 101-121, Guidance for New Restrictions on Lobbying, including Certification and Disclosure, 29 C.F.R. § 93.110 (1990).
- S. **RECYCLING.** State strongly encourages Consultant to establish a recycling program to help preserve our natural resources and reduce the need for additional landfill space.

The parties signify their agreement by signing below.

Joan Adam  
 Joan Adam, Director  
 Division of Administration  
 Department of Health

1/14/16  
 Date

Craig Doekler  
 Board President  
 SD Board of Optometry Examiners

1-2-15  
 Date

Kari J. Williams  
 Administrator, Financial Management  
 Department of Health

1/14/16  
 Date

Lisa Kollis Young  
 Consultant Signature

12/22/15  
 Date

State Contact Person: Susan Sporrer

Phone: 605-773-3361

Consultant Contact Person: Lisa Kollis Young

Phone: 605-376-0068

**The following shall be completed by the Consultant:**

Nonprofit  Profit   
 Consultant fiscal year beginning 2016 and ending 2016

**The following shall be completed by the State:**

MSA Account code 5204 \_\_\_\_\_

Fund Source Name:	Fund Source Name:	Fund Source Name:
CFDA No:	CFDA No:	CFDA No:
Program: SD Board Optometry Examiners	Program: SD Board of	Program: SD Board of
CO: 6503-Other	CO: 6503-Other	CO: 6503-Other

SDCL 1-24A-1 states that a copy of all consulting contracts shall be filed by the 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.

12/11/15  
 C.A.A. 506.15



STATE OF SOUTH DAKOTA  
CONSULTANT CONTRACT/LETTER OF AGREEMENT  
FOR CONSULTANT SERVICES  
BETWEEN

Denise Amundson  
P.O. Box 6  
Langford, SD 57454  
Referred to as "Consultant"

SD Department of Health  
SD Board of Optometry Examiners  
P.O. Box 6  
Langford, SD 57454  
Referred to as "State"

State and Consultant hereby enter into a contract for Consultant Services.

I. CONSULTANT

- A. The term of this Contract shall begin June 1, 2015 and end May 31, 2016. State will not pay for any services provided by Consultant unless this contract is signed by all parties BEFORE CONSULTANT BEGINS TO PROVIDE SERVICES.
- B. Consultant is not a full or part-time employee of State or any agency of the state of South Dakota.
- C. Consultant, as an independent contractor, is solely responsible for the withholding and payment of applicable income and Social Security taxes due and owing from money received under this contract.
- D. Consultant will not use equipment, supplies or facilities owned by the state of South Dakota.
- E. Consultant will not purchase capital assets or equipment using State funds.
- F. Consultant agrees to:
  - 1. To administer, under the direction of the Board, the various licensing responsibilities, including such duties as application screening, compiling and reviewing continuing education eligibility and credit for the Board's deliberations; services as liaison between the Board of Optometry Examiners and state agencies; records retention; and enforcement of legal licensing requirements. Coordinate administration of examinations to South Dakota applicants for an optometry license. Maintain current listing, files, and appropriate documentation for all licenses, determine eligibility for and process renewal applications. Serve as state contact for National Associations and all other State Boards. Serve as liaison between Attorney General's Office and the Board's private attorneys and complaint investigator for Board of all complaints received by the Board of Optometry Examiners, including cooperating with investigators, the Board's attorneys and board members;

2. To serve as Executive Secretary of the Board, including, but not limited to, handling routine correspondence, telephone inquiries, printing facsimile transmission, the processing of state vouchers, administration of appropriate fiscal records, prepare annual budget, prepare travel vouchers for all board members, and other duties which may reasonably be expected to be performed; and
3. To schedule, coordinate and attend when necessary all regular and special meetings of the Board and provide all appropriate notices required by law. Prepare agendas, financial reports, coordinate rules hearings, and serve as liaison between the Board and lobbyists.

G. INSURANCE: Consultant agrees, at its sole cost and expense, to maintain the following insurance:

1. Commercial General Liability Insurance:

Consultant shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000 each occurrence. If such insurance contains a general aggregate limit it shall apply separately to this contract or be no less than two times the occurrence limit.

2. Professional Liability Insurance:

Consultant shall procure and maintain professional liability insurance with a limit of not less than one million dollars.

3. Business Automobile Liability Insurance:

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

4. Worker's Compensation Insurance:

Consultant shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

5. Certificates of Insurance:

Before beginning work under this Contract, Consultant shall furnish State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Contract. In the event of a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, 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 State.

H. Consultant agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as a result of performing services hereunder. This section does not require Consultant to be responsible for or defend against claims or damages arising solely from acts or omissions of the State, its officers, agents or employees.

- I. This contract does not require Consultant to engage in a function or activity involving the use or disclosure of State's Protected Health Information (PHI), as defined in the Health Insurance Portability and Accountability Act (HIPAA), 45 CFR § 160.103.

## II. STATE

- A. State will pay, upon State's satisfaction that services have been completed, up to \$25,296.00. Payments under this Contract shall be made in a monthly payment of \$400.00 for use of office facilities and in a monthly payment of \$2,108.00 for services detailed herein.
- B. State will pay Consultant expenses as a separate item, including but not limited to: postage, office supplies, facsimiles, and travel expenses.

Travel expenses will be reimbursed at state rates.

The total amount for such expenses will not exceed \$7,000.00 plus \$1,562.00 for professional liability insurance..

- C. TOTAL CONTRACT AMOUNT (Not to Exceed) \$32,296.00 plus \$1,562.00 for professional liability insurance. Payment will be made upon receipt of itemized invoices, and consistent with SDCL Ch. 5-26.
- D. State will not be held liable for reimbursement of amounts shown on an itemized billing if not received within 30 calendar days from the close of the month being reported. However, the final invoice of the State of South Dakota fiscal year, ending every year on June 30<sup>th</sup>, shall be submitted no later than June 9<sup>th</sup> so payment may be made in the same Fiscal Year as the services are provided.

## III. OTHER PROVISIONS

- A. CHOICE OF LAW AND FORUM. The terms and conditions of this contract are subject to and will be construed under the laws of the State of South Dakota. The parties further agree that any dispute arising from the terms and conditions of this contract, which cannot be resolved by mutual agreement, will be tried in the Sixth Judicial Circuit Court, Hughes County, South Dakota.
- B. INTEGRATION. This contract is a complete version of the entire agreement between the parties with respect to the subject matter within this contract and supersedes all prior or contemporaneous written or oral understandings, agreements and communications between them with respect to such subject matter. This contract may be modified or amended only by a writing signed by both parties.
- C. TERMINATION: This contract may be terminated by either party hereto upon thirty (30) days written notice, and may be terminated by State for cause at any time, with or without notice.
- D. NOTICE: Any notice or other communication required under this contract shall be in writing and sent to the address set forth above. Notices shall be given by and to the State Contact Person on behalf of State, and by and to the Consultant Contact Person on behalf of 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.
- E. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION: Consultant agrees that neither Consultant, nor any of Consultant's principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in transactions by any Federal department or agency. Consultant will provide immediate written notice to the Department of Health, Division of Administration (600 East Capitol Avenue, Pierre, SD 57501 (605) 773-3361), if Consultant, or any of Consultant's principals, becomes debarred, suspended, proposed for debarment,

declared ineligible, or voluntarily excluded from participation in transactions involving Federal funding. Consultant further agrees that if this contract involves federal funds or federally mandated compliance, then Consultant is in compliance with all applicable regulations pursuant to Executive Order 12549, including Debarment and Suspension and Participants' Responsibilities, 29 C.F.R. § 98.510 (1990).

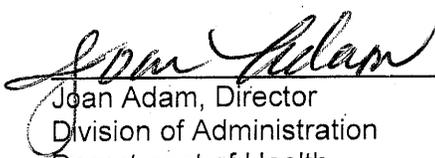
- F. **FUNDING TERMINATION:** This contract depends upon the continued availability of appropriated funds and expenditure authority from Congress, the Legislature or the Executive Branch for this purpose. This contract will be terminated for cause by State if Congress, the Legislature or Executive Branch fails to appropriate funds, terminates funding or does not grant expenditure authority. Funding termination is not a default by State nor does it give rise to a claim against State.
- G. **NONASSIGNMENT/SUBCONTRACTING:** Consultant shall not assign this contract, or any portion thereof, without the prior written consent of State. Consultant's assignment or attempted assignment of this contract, or any portion thereof, without State's prior written consent constitutes a material breach of contract. The Consultant may not use subcontractors to perform the services described herein without the express prior written consent of State. 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 in a manner consistent with this Agreement. 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.
- H. **FEDERAL AND STATE LAWS:** Consultant agrees that it will comply with all federal and state laws, rules and regulations as they may apply to the provision of services pursuant to this contract, including the Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. §§ 12101-12213, and any amendment thereto, Section 306 of the Clean Air Act, and Section 508 of the Clean Water Act. Both parties further agree to provide services covered by this contract without regard to race, color, national origin, sex, age or disability as prohibited by state or federal law.
- I. **OWNERSHIP:** All 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 contract, excluding medical records kept in the normal course of Consultant's business, will become the sole property of State. State hereby grants Consultant the unrestricted right to retain copies of and use these materials and the information contained therein in the normal course of Consultant's business for any lawful purpose. Either the originals, or reproducible copies satisfactory to State, of all technical data, evaluations, reports and other work product of Consultant shall be delivered to State upon completion or termination of services under this contract.
- J. **REPORTING OF PERSONAL INJURIES AND/OR PROPERTY DAMAGE:** Consultant agrees to report promptly to State any event encountered in the course of performance of this contract which results in injury to the person or property of third parties, or which may otherwise subject Consultant or State to liability. Reporting to State under this section does not satisfy Consultant's obligation to report any event to law enforcement or other entities as required by law.
- K. **SEVERABILITY:** In the event that any term or provision of this contract shall violate any applicable law, such provision does not invalidate any other provision hereof.
- L. **AUDIT REQUIREMENTS:**  
(EXPENDING \$750,000 OR MORE)  
A nonprofit subrecipient, (as well as profit hospitals) (Consultant), expending \$750,000 or more in one year in Federal awards, must have an annual audit made in accordance with 2 CFR Chapter I, Chapter II, Part 200, et al. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards.

All audits must be conducted by an auditor approved by the Auditor General to perform the audit. Approval may be obtained by forwarding a copy of the audit engagement letter to the Department of Legislative Audit, 427 South Chapelle, c/o 500 East Capitol, Pierre, SD 57501-5070. On continuing engagements, the Auditor General's approval should be obtained annually. The auditor must follow the Auditor General's guidelines when conducting the audit. The draft audit report must be submitted to the Auditor General for approval prior to issuing the final report. The auditor must file the requested copies of the final audit report with the Auditor General. Audits shall be completed and filed with granting agencies by the end of the ninth month following the end of the fiscal year being audited or 30 days after receipt of the auditor's report, whichever is earlier. If it appears that a required audit cannot be completed by the end of the ninth month following your fiscal year, you must request an extension from the federal agency for which the majority of federal expenditures relates.

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

- M. PERSONNEL: Neither the Consultant nor any employee or agent thereof will hold him or herself out as or claim to be an officer or employee of State and will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of State including, but not limited to, workers' compensation, health, life, malpractice insurance, and retirement membership or credit.
- N. FORCE MAJEURE: Neither Consultant nor State shall be liable to the other for any delay in, or failure of performance of, any covenant or promise contained in this contract, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to the extent that, such delay or failure is caused by "force majeure". As used in this contract, "force majeure" means acts of God, acts of the public enemy, acts of the State and any governmental entity in its sovereign capacity, fires, floods, epidemics, quarantine restrictions, strikes or other labor disputes, freight embargoes, or unusually severe weather.
- O. CONTRACT ORIGINAL AND COPIES: An original of this contract will be retained by the State Auditor's Office. A photocopy will be on file with the South Dakota Department of Health and a second original will be sent to Consultant.
- P. RECORD RETENTION/EXAMINATION: Consultant agrees to maintain all records that are pertinent to this contract and retain them for a period of three years following final payment against the contract. State agrees to assume responsibility for these items after that time period. These records shall be subject at all reasonable times for inspection, review or audit by State, other personnel duly authorized by State, and federal officials so authorized by law.
- Q. DRUG FREE WORK PLACE: Consultant agrees to encourage all its employees to refrain from using illegal drugs which may affect an employee's ability to perform the essential functions required under the terms and conditions of this contract. State reserves the right to terminate this contract if Consultant, or any of its employees or agents, is convicted of using illegal drugs. Consultant further agrees that if this contract involves federal funds or federally mandated compliance, then Consultant is in compliance with the requirements of the "Drug-Free Workplace Act" (Public Law 100-690 Title V, Subtitle D, 41 U.S.C. §§ 701 et seq.).
- R. LOBBYING: Consultant agrees to not use any of the funds received pursuant to this contract for lobbying purposes. Consultant further agrees that if this contract involves federal funds or federally mandated compliance, the Consultant is in compliance with all applicable regulations pursuant to Section 319 of Public Law 101-121, Guidance for New Restrictions on Lobbying, including Certification and Disclosure, 29 C.F.R. § 93.110 (1990).
- S. RECYCLING. State strongly encourages Consultant to establish a recycling program to help preserve our natural resources and reduce the need for additional landfill space.

The parties signify their agreement by signing below.

 Joan Adam, Director Division of Administration Department of Health	<u>6/8/15</u> Date	 Board President SD Board of Optometry Examiners	<u>5-26-15</u> Date
 Kari J. Williams Administrator, Financial Management Department of Health	<u>6-9-15</u> Date	 Consultant Signature	<u>5/18/15</u> Date

State Contact Person: Susan Sporrer Phone: (605) 773-3361

Consultant Contact Person: Denise Amundson Phone: 605-493-6504

**The following shall be completed by the Consultant:**

Nonprofit \_\_\_\_\_ Profit \_\_\_\_\_  
Consultant fiscal year beginning \_\_\_\_\_ and ending \_\_\_\_\_

**The following shall be completed by the State:**

MSA Account code 5 2 0 4 \_\_\_\_\_

Fund Source Name:	Fund Source Name:	Fund Source Name:
CFDA No:	CFDA No:	CFDA No:
Program: SD Board Optometry Examiners	Program: SD Board of	Program: SD Board of
CO: 6503-Other	CO: 6503-Other	CO: 6503-Other

SDCL 1-24A-1 states that a copy of all consulting contracts shall be filed by the 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.