

VIA TELECONFERENCE
SOUTH DAKOTA BOARD OF CERTIFIED PROFESSIONAL MIDWIVES
BOARD MEETING

27705 460th Ave. Chancellor SD
Thursday, March 16, 2022 1:00pm - 4:00pm (CST)
Minutes

President Debbie Pease **called the meeting to order at 1:10 p.m.** after welcoming everyone and offering some instruction to help run the meeting more effectively.

Secretary Cavender-Wilson called the roll. A quorum was present. **Members of the board in attendance:** Debbie Pease President, Sue Rooks Vice President, and Autumn Cavender-Wilson Secretary were all present via phone.

Others in attendance: Tammy Weis, SD Board of CPM Exec Secretary at the CPM office. Steven Blair, Assistant Attorney General and legal counsel for the board, Mariah Pokorny, Dept of Health and board liaison, Bernadette Boes, Dept of Health, Newborn Screening Coordinator, CPMs: Eudine Stevens, Debbie Eaks, Elaine Arnold, and Grace Fox; Student Midwife Abby Paulson and Bob Mercer Keloland News, were present via phone.

Pease asked to **adjust the agenda** to add Eudine Stevens, CPM with smooth hospital transfer policy changes. **Rooks moved to make the change,** Cavender-Wilson second. The board voted unanimously. **MOTION PASSED.** Cavender-Wilson moved to reorder items on the agenda, Rooks second. The board voted unanimously. **MOTION PASSED.** **Cavender Wilson then moved to approve the final agenda as amended,** Rooks second. The board voted unanimously. **MOTION PASSED**

Pease asked if there was any **member of the public on the call** who wished to address the board. Debbie Eaks, CPM spoke about Completion of Care reports and confidentiality. Eudine Stevens, CPM also expressed a desire to see Completion of Care revisited.

The board moved to **approve the draft minutes from Sept 15, 2022.** There were no additions or corrections. Rooks moved to **accept them as presented,** Cavender Wilson second. The board voted unanimously. **MOTION PASSED**

Weis presented the financial report. Documents were attached to the agenda for the fiscal year including revenue, expenditure and cash balance. Revenue was very low in December but with license renewals it is now rebounding. There were no questions or concerns. Debbie Pease stated that she **did not want to be paid for this meeting.** Rooks and Cavender Wilson also requested not to be paid for the meeting.

Bernadette Boes, Dept of Health Newborn Screening Coordinator presented information concerning newborn screening statistics and available teaching tools. She has heel stick kits available for out of hospital birth providers and is distributing hearing screening units to midwives doing at least 20 births per year. The new Refusal Document was presented and everyone was welcomed to attend the Newborn Screening Advisory Committee Meeting on April 12th - virtually or in person. Topics: Newborn Hearing, XALD, MPSI, MPSII. CPMs were asked if anyone would like to sit on the advisory board.

Eudine Stevens, CPM from Conde, SD told about her experience during a hospital transfer which led to the hospital adopting a standard of care for out of hospital birth transfers. She referenced a smooth transitions program that she had worked with in Washington State.

Steve Blair, Legal counsel for the board, offered his written opinion about the changes to the Birth Report form (Completion of Care) from our last meeting. A letter that was sent to the board by Eudine Stevens CPM questioning whether the changes were supported by SDCL was also discussed. The board then discussed changes that would need to be made to the document to bring it into compliance with both

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the SDCL and the ARSD. **Cavender Wilson moved that we make these changes: add a reference to ARSD 20860310 (6), change the title to match the ARSD verbiage, eliminate the prenatal section, add the word "maternal" to the titles of both postpartum sections, change the neonatal section from 42 days to 28 days to match national standards.** Rooks Second. The board voted unanimously.

MOTION PASSED

Weis gave an office report. We have one new CPM pending, one completed renewal and two probable. One CPM moved and is putting her license on inactive status.

We had 42 births in 2022 with five transfers - four postpartum and one preterm labor.

We are down to three board members. We are waiting for the Governor to make appointments of a CPM and a physician that does obstetrical care.

We have investigated two complaints and will potentially take action on one today.

Rooks moved that the board go to Executive session **pursuant to 36C 1-27-1.5 Sub (5) so that we can discuss confidential records that are a part of an investigation** Cavender Wilson Second. The board voted unanimously. **MOTION PASSED**

The board went into **Executive Session** at 3:02pm

President Pease **reconvened the meeting** at 3:05 to take action on the matter discussed in Executive Session.

Cavender Wilson moved that we accept the investigators recommendation on the complaint from 9/28/2022 to **dismiss the complaint for lack of probable cause** and direct our Executive Secretary to communicate that information to all affected parties. Second by Pease. Rooks recused herself because she was the investigator. The board voted unanimously. **MOTION PASSED.**

Changes in the way that the complaint process is communicated was discussed. Rooks moved that we adopt the following policy statement: "The SD Board of CPMs will process complaints according to the provisions of SDCL 36-1C and SDCL 1-26 and will post an outline of the process with the complaint form on our web page. Second by Cavender Wilson. The board voted unanimously. **MOTION PASSED.**

The Dept. of Health contract for our Exec Sec. and the 7% cost of living increase which was approved by the SD Legislature was discussed. **Rooks moved to renew the current contract** with the cost of living increase as approved by the SD legislature for state employees. Cavender Wilson second. The board voted unanimously. **MOTION PASSED.**

Pease informed the board that **SB162 passed the 2023 Legislative Session** and will directly affect the SD Board of CPM because of the provision that time set aside at public meetings for the public to speak to the board now must be divided and timed by topic.

President Pease announced that our next meeting will be Sept 21, 2023 (1-4pm CST). Cavender Wilson moved to adjourn. Rooks Second. The board voted unanimously. **MOTION PASSED.**

Sum of TRAN_AMT1			FY	Month	
			2024	2024 Total	Grand Total
Expense Cat	Acct SubObject	Account Name	July		
Other	5204200	CENTRAL SERVICES	88.74	88.74	88.74
Grand Total			88.74	88.74	88.74

			Fiscal Year				
Expense Cat	SubObject	Account Name	2019	2020	2021	2022	2023
Other	5101030	BOARD & COMM MBRS FEES	840.00	600.00	480.00	60.00	
	5102010	OASI-EMPLOYER'S SHARE	64.26	45.90	36.72	4.59	
	5203100	LODGING/IN-STATE	0.00				
	5204080	LEGAL CONSULTANT			(0.00)		
	5204090	MANAGEMENT CONSULTANT	6,341.80	7,216.26	8,043.76	7,232.30	8,132.30
	5204160	WORKSHOP REGISTRATION FEE	75.35	76.05			
	5204181	BIT DEVELOPMENT COSTS			84.10	89.50	
	5204200	CENTRAL SERVICES	289.19	320.11	350.12	298.61	272.96
	5204207	HUMAN RESOURCES SERVICES	376.54	225.87	173.46		28.28
	5204360	ADVERTISING-NEWSPAPER	696.42			276.81	
	5204510	RENTS-OTHER		23.91			
	5204590	INS PREMIUMS & SURETY BDS	900.00	880.00	245.00	825.00	995.00
	5205020	OFFICE SUPPLIES					105.00
	5208080	REFUND OF PRIOR YRS REV			1,000.00		
	5208290	OTHER INTEREST PAYMENTS					4.07
	5228000	OPER TRANS OUT -NON BUDGT			917.39		
Grand Total			9,583.56	9,388.10	11,330.55	8,786.81	9,537.61

2024		Grand Total
		1,980.00
		151.47
		0.00
		(0.00)
		36,966.42
		151.40
		173.60
88.74		1,619.73
		804.15
		973.23
		23.91
		3,845.00
		105.00
		1,000.00
		4.07
		917.39
88.74	48,715.37	

Sum of Amount			Month		
Program	SubObject	Descp	Aug	July	Grand Total
0921300	4293207	BIENNIAL RENEWAL FEE	(1,500.00)	(1,500.00)	(3,000.00)
	4293217	BIRTH DELIVERY FEE	(200.00)	(100.00)	(300.00)
	4920045	NONOPERATING REVENUES	(24.53)		(24.53)
Grand Total			(1,724.53)	(1,600.00)	(3,324.53)

Source: SL 2017, ch 172, § 12.

36-9C-13. Practice in out-of-hospital setting.

For the purposes of this chapter, the practice of a certified professional midwife is the management and care of the low-risk mother-baby unit in an out-of-hospital setting during pregnancy, labor, delivery, and postpartum periods. A certified professional midwife may perform the following scope of practice in an out-of-hospital setting including a licensed birth center:

- (1) Initial and ongoing assessment for suitability of midwifery care including assessment of risk;
- (2) Prenatal care, including the routine monitoring of vital signs, indicators of fetal development, and ordering of routine prenatal laboratory tests;
- (3) Recognizing the limits of knowledge and experience, planning for situations beyond expertise, and consulting with, or referring or transporting clients to other licensed health care providers as appropriate;
- (4) Attending and supporting the natural process of labor and birth;
- (5) Postpartum care of the mother and an initial assessment and screening of the newborn;
- (6) Providing prenatal education, information, and referrals to community resources on childbirth preparation, breastfeeding, exercise, nutrition, parenting, and care of the newborn;
- (7) Limited prescriptive authority to administer:
 - (a) Vitamin K to the baby either orally or through intramuscular injection;
 - (b) Postpartum antihemorrhagic medication in an emergency situation;
 - (c) Local anesthetic for repair of a first or second degree perineal laceration;
 - (d) IV antibiotics for treatment of Group B strep during labor;
 - (e) Oxygen;
 - (f) Eye prophylaxis;
 - (g) RhoGam; and
- (8) Preparing and filing of a birth certificate pursuant to § [34-25-9.1](#).

Source: SL 2017, ch 172, § 13.

36-9C-14. Actions excluded from practice of certified professional midwife.

For the purposes of this chapter, the practice of a certified professional midwife does not include:

- (1) The use of any surgical instrument at a childbirth, except as necessary to sever the umbilical cord or repair a first or second degree perineal laceration;
 - (2) Prescribing prescription medications including controlled drugs, except as permitted pursuant to subdivision 36-9C-13(7);
 - (3) The assisting of childbirth by artificial or mechanical means including forceps, vacuum delivery, or cesarean delivery; or
 - (4) Performing or assisting in an abortion.
-

20:86:03:04. Conditions for which a maternal transport to hospital shall be facilitated. A certified professional midwife shall facilitate the immediate transport of a client to a hospital for emergency care if the client has any of the following disorders, diagnosis, conditions or symptoms:

(1) Infection during labor or immediately postpartum where maternal temperature is above 100.8 degrees Fahrenheit for two consecutive readings in one hour and one or more of the following are present:

- (a) Foul smelling amniotic fluid;
- (b) Shaking;
- (c) Chills; or
- (d) Elevated pulse;

(2) Suggestion of fetal jeopardy, such as any abnormal bleeding (with or without abdominal pain), evidence of placental abruption, thick meconium , or abnormal fetal heart tones with non-reassuring patterns where birth is not imminent;

(3) Inability to obtain fetal heart tones after 20 weeks gestation or anytime later in pregnancy;

(4) Noncephalic presentation at the onset of labor or rupture of membranes, whichever occurs first, unless birth is imminent;

(5) Second stage labor after three hours without adequate progress, and third stage labor after one hour without adequate progress;

- (6) Current spontaneous preterm labor;
- (7) Current preterm premature rupture of membranes;
- (8) Signs of pre-eclampsia or eclampsia;
- (9) Current hypertensive disease of pregnancy;
- (10) Continuous uncontrolled bleeding;
- (11) Suspected placenta accreta;
- (12) Hemorrhage not responsive to treatment;
- (13) Unresolved maternal shock;
- (14) Cord prolapse;
- (15) Active herpes during labor;
- (16) Transverse in labor;
- (17) Excessive antepartum and intrapartum painless vaginal bleeding;
- (18) Cardiac arrest;

(19) Delivery injuries to the bladder or bowel including third and fourth degree lacerations;

- (20) Seizures;
- (21) Uncontrolled vomiting;
- (22) Coughing or vomiting of blood;
- (23) Severe chest pain or cardiac irregularities;
- (24) Apnea;
- (25) Persistent uterine atony;

- (26) Uterine inversion;
- (27) Indications of infection in the immediate postpartum;
- (28) Tremors, hyperactivity, or seizures;
- (29) Declining oxygen stats or tachypnea unable to be resolved; or
- (30) Client desires transport for herself or her newborn.

Source: 45 SDR 31, effective September 10, 2018.

General Authority: SDCL [36-9C-32\(2\)\(6\)](#).

Law Implemented: SDCL 36-9C-36.



SOUTH DAKOTA BOARD OF CERTIFIED PROFESSIONAL MIDWIVES

27705 460th Avenue, Chancellor, SD 57015

Phone: 605-743-4451 Email: cpmsdlicense@gmail.com

Home Page: doh.sd.gov/boards/midwives/

Application for Certified Professional Midwife License Renewal

Licensure renewal information and fees must be received by the South Dakota Board of Certified Professional Midwives office *by your license expiration date* or your license will lapse. **It is illegal to practice professional midwifery in South Dakota without an active CPM license.** You are responsible to maintain licensure whether or not you receive a renewal notice.

All forms and fees must be postmarked on or before your expiration date to avoid lapsing.

Please follow instructions carefully to avoid delays in processing your renewal. If any information is incorrect, incomplete or illegible, processing may be delayed. Upon receipt of all forms and fees at the South Dakota Board of Certified Professional Midwives office your application will be considered for renewal. You will be notified if additional information is required.

To RENEW your CPM license, **submit the following** to the South Dakota Board of Certified Professional Midwives office:

- Completed ***Application for CPM License Renewal Form***
- Completed ***Verification of Experience Form***
- **Fee: \$1500**
 - Payment should be in the form of a money order or personal check payable to South Dakota Board of Certified Professional Midwives. Fees are non-refundable and must accompany form. A \$40 fee will be charged for any insufficient check written.



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Application to Renew CPM License

I request to RENEW:

SD CPM License Number: _____

Name(Last): _____ (First): _____ (Middle): _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone(Home): _____ (Work): _____ (Cell): _____

Date of Birth: _____ / _____ / _____ Email Address: _____

Disciplinary Information

If "YES" is answered to any of the below questions please attach a detailed explanation. You must also submit copies of charges or citations and ALL communication with (to and from) the citing agency AND the court of jurisdiction, including evidence of completion / compliance with court requirements.

Please report all instances not previously reported to the board. Have you ever:

1.	Committed fraud, deceit, or misrepresentation in procuring or attempting to procure a license?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2.	Aided or abetted an unlicensed person to practice as a certified professional midwife in South Dakota?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3.	Engaged in practice as a certified professional midwife under a false or assumed name and failed to register that name pursuant to chapter 37-11 or impersonated a license holder of a like or different name.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
4.	Committed an alcohol or drug related act or offense that interferes with the ability to practice midwifery safely?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
5.	Negligently, willfully, or intentionally acted in a manner inconsistent with the health and safety of those entrusted to your care as a certified professional midwife?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
6.	Had the authorization to practice as a certified professional midwife denied, revoked, or suspended or had other disciplinary action taken in another state?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
7.	Violated any provision of Chapter 36-9C or rule pursuant to 36-9C?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
8.	Been convicted of a misdemeanor and/or felony?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
9.	Engaged in substandard, unprofessional, or dishonorable conduct?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Employment and Education Information:

If you have attained an additional level of education (certifications, degrees) in the last 2 years, please specify:

If you plan to pursue additional education in the next 2 years, please specify:

Are you currently working as a Certified Professional Midwife? ☐Yes ☐No

If yes: What is the average number of births you have done per month in the **last** 12 months?_____

What is the number of births you would like to average per month in the **next** 12 months?_____

If no, are you:

- ☐ Retired
- ☐ Seeking Work as a CPM
- ☐ Inactive
- ☐ Volunteer Only

If other than self-employed, please list name and address of employer(s):

Actively employed in a field other than professional midwifery (select one)

- ☐ No
- ☐ Yes, Full-time
- ☐ Yes, Part-time
- ☐ Yes, Per diem

Do you intend to leave / retire from CPM practice in the next 5 years? ☐Yes☐No

Other states in which you have ever held a license:

Active License: _____

Inactive License: _____

List all states where **currently practicing** professional midwifery:

I, the undersigned, declare and affirm under the penalties of perjury that this application for licensure renewal in the state of South Dakota has been examined by me, and to the best of my knowledge and belief, is in all things true and correct.

Signature of Applicant _____ **Date** _____



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Verification of Experience

Return completed form with your renewal application to the South Dakota Board of Certified Professional Midwives.

To obtain/retain active licensure, a CPM must provide verification of a minimum of 140 hours in a 12-month period OR 480 hours in six years of experience in professional midwifery.

In the last: ☐ 12 months or ☐ 6 years (please specify)

_____ Hours at prenatal appointments

_____ Hours at births

_____ Hours at postpartum visits

_____ Hours spent teaching midwifery

_____ Other CPM related activity (specify) _____

_____ Total

I, the undersigned, declare and affirm under the penalties of perjury that this application for licensure renewal in the state of South Dakota has been examined by me, and to the best of my knowledge and belief, is in all things true and correct.

Signature of Applicant _____ **Date** _____

The board may request a review of your records to verify the hours specified on this form.



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Application to Renew CPM License

I request to RENEW:

SD CPM License Number: _____

Name(Last): _____ (First): _____ (Middle): _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone(Home): _____ (Work): _____ (Cell): _____

Date of Birth: _____ / _____ / _____ Email Address: _____

Disciplinary Information

If "YES" is answered to any of the below questions please attach a detailed explanation. You must also submit copies of charges or citations and ALL communication with (to and from) the citing agency AND the court of jurisdiction, including evidence of completion / compliance with court requirements.

Please report all instances not previously reported to the board. Have you ever:

1.	Committed fraud, deceit, or misrepresentation in procuring or attempting to procure a license?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
2.	Aided or abetted an unlicensed person to practice as a certified professional midwife in South Dakota?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
3.	Engaged in practice as a certified professional midwife under a false or assumed name and failed to register that name pursuant to chapter 37-11 or impersonated a license holder of a like or different name.	<input type="checkbox"/> Yes	<input type="checkbox"/> No
4.	Committed an alcohol or drug related act or offense that interferes with the ability to practice midwifery safely?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
5.	Negligently, willfully, or intentionally acted in a manner inconsistent with the health and safety of those entrusted to your care as a certified professional midwife?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
6.	Had the authorization to practice as a certified professional midwife denied, revoked, or suspended or had other disciplinary action taken in another state?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
7.	Violated any provision of Chapter 36-9C or rule pursuant to 36-9C?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
8.	Been convicted of a misdemeanor and/or felony?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
9.	Engaged in substandard, unprofessional, or dishonorable conduct?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

Verification of Experience Form

NARM CPM certification current: No Yes

Effective Dates : From _____ To _____

Submit copy if renewed during the past licensure period

Are you a NARM CPM approved preceptor? No Yes

Do you have any students? No Yes

Continuing education units taken: _____

Have you obtained a license in another state(s) since previous licensing period? No Yes

If yes: Where _____

Do you have an active license in another state(s)? No Yes

If yes: Where _____

According to SDCL:36-9C-16 (3) Evidence that the license holder has a minimum of 140 hours in the preceding 12-month period, or 480 hours in the preceding 6-year period, of patient care, employment, or volunteer work in midwifery;

Are you currently working as a CPM? No Yes 12-month ____ or 6-year ____

Births attended _____

Average hours of care given _____

Estimated hours served _____

If no, are you:

____ Retired

____ Inactive

____ Volunteer Volunteer hours _____

I, the undersigned, declare and affirm under the penalties or perjury that this application for licensure renewal in the state of South Dakota has been examined by me, and to the best of my knowledge and belief, is in all things correct and true.

Signature of Applicant: _____ Date: _____

The board may request a review of your records to verify the hours specified on this form

36-9C-16. Requirements for license renewal.

To renew the license, the license holder shall, before the expiration date, return to the board:

- (1) The renewal notice;
- (2) Evidence of meeting the re-certification requirements for CPM re-certification by the North American Registry of Midwives;
- (3) Evidence that the license holder has a minimum of one hundred forty hours in the preceding twelve-month period, or four hundred eighty hours in the preceding six-year period, of patient care, employment, or volunteer work in midwifery;
- (4) An affidavit that the licensee has committed no act of misconduct as set forth by § 36-9C-22; and
- (5) The prescribed renewal fee.

Upon receipt of the requirements, and if not otherwise disqualified pursuant to § 36-9C-22, the board shall issue to the license holder a certificate of license renewal. The certificate of renewal shall indicate the expiration date of the license.

1. Executive Secretary Contract Renewal Roadblocks

- a. Last meeting minutes
 - i. *“The Dept. of Health contract for our Exec Sec. and the 7% cost of living increase which was approved by the SD Legislature was discussed. Rooks moved to renew the current contract with the cost of living increase as approved by the SD legislature for state employees. Cavender Wilson second. The board voted unanimously. MOTION PASSED”.*
- b. New DOH attorney and DOH Liaison
- c. Contract changed from FY 2023 board approved Contract (for the past five years)
 - i. Insurance requirements which were previously determined to be unnecessary were added
 - ii. Indemnity clause was changed
 - iii. Was informed that this is the new template for all DOH Health Contracts and there is no negotiation allowed
- d. Communication at DOH was slow. Since May 31st (over 90 days) there has been no contract or payment to Executive Secretary
- e. Weis not comfortable with new template/ possible letter of resignation
- f. Auditor’s Office states they must have a contract to pay bills.
 - i. Old contract could be amended to be extended as written or with change of amount compensation.
 - ii. Usually those have an end date written in but it was suggested by Auditor’s Office that it could be extended until a new person could be contracted and orientated.

The indemnity section went from this:

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.

To this:

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

STATE OF SOUTH DAKOTA
CONSULTANT CONTRACT
BETWEEN

Tammy Weis
27705 460th Ave
Chancellor, SD 57015

South Dakota Department of Health
SD Board of Certified Professional Midwives
27705 460th Avenue
Chancellor, SD 57015
(605) 773-3361

Referred to as "Consultant"

Referred to as "State"

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

I. CONSULTANT

- A. The term of this Contract shall begin June 1, 2022 and end May 31, 2023.
- 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:

This contract is executed to provide an Executive Secretary for the South Dakota Board of Certified Professional Midwives to manage the day to day operation, communication and documents necessary to secure safe, out-of-hospital childbirth attended by licensed and competent midwives. To protect the consumer of midwifery services by holding these midwives accountable to the statutes and rules pertaining to their profession, to update rules as needed to meet current, evidence-based standards of midwifery practice, to license qualified midwives, and to process complaints in a fair and expeditious manner.

- G. **INSURANCE:** Consultant agrees, at its sole cost and expense, to maintain the following insurance:
 - 1. Professional Liability Insurance:
Consultant shall procure and maintain professional liability insurance with a limit of not less than one million dollars.
 - 2. 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 the State's satisfaction that the payments are in accordance with all items of the contract, up to \$13,703.00. Expenditure claims are required prior to the initiation of any and all payments. Expenditure claim documentation may include: invoices for reimbursement; receipts of any goods or services purchased; purchase orders for supplies, equipment, etc.; and/or itemized budget details indicating how and the timeframe in which the funds will be used.
- B. State will not pay Consultant expenses as a separate item.

Travel expenses will be reimbursed at state rates as defined in South Dakota Administrative Rules 05:01:02:14 (In State Per Diem) and 05:01:02:11 (Out of State Per Diem), found at <http://sdlegislature.gov/rules/RulesList.aspx>.

The total amount for such expenses will not exceed \$1,000.00.

- C. TOTAL CONTRACT AMOUNT (Not to Exceed) \$13,703.00. Payment will be made 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 30th, shall be submitted no later than June 9th 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. **ASSURANCES:** The Consultant agrees to abide by all applicable provisions of the following assurances: Lobbying Activity, Byrd Anti Lobbying Amendment (31 USC 1352), Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996, Clean Air Act, Federal Water Pollution Control Act, Charitable Choice Provisions and Regulations, Equal Treatment for Faith-Based Religions at Title 28 Code of Federal Regulations Part 38, the Violence Against Women Reauthorization Act of 2013, American Recovery and Reinvestment Act of 2009, and Section 106 (g) of the Trafficking Victims Protection Act of 2002, as amended (22 U.S.C. 7104) as applicable.
- F. **RESTRICTION OF BOYCOTT OF ISRAEL:** Pursuant Executive Order 2023-01, for contractors, vendors, supplies, or subcontracts with five (5) or more employees who enter into a contract with the State of South Dakota that involves the expenditure of one hundred thousand dollars (\$100,000) or more, by signing this contract Consultant certifies and agrees that it has not refused to transact business activities, have not terminated business activities, and have not taken other similar actions intended to limit its commercial relations, related to the subject matter of the contract, with a person or entity that is either the State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or doing business in the State of Israel, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for State to terminate this contract. Consultant further agrees to provide immediate written notice to State if during the term of the contract it no longer complies with this certification, and agrees such noncompliance may be grounds for contract termination.
- G. **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).
- H. **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.
- I. **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.
- J. **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. §§ 12101-12123, 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.

- K. **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.
- L. **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.
- M. **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.
- N. **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.
- O. **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.
- P. **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.
- Q. **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.
- R. **LICENSING AND COMPLIANCE:** The Consultant agrees to comply in full with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this agreement. The Consultant will maintain effective internal controls in managing the federal award. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Consultant's failure to ensure the safety of all individuals served is assumed entirely by the Consultant.
- S. **CONFIDENTIALITY OF INFORMATION:** For the purpose of the sub-paragraph, "State Proprietary Information" shall include all information disclosed to the Consultant by the State. Consultant acknowledges that it shall have a duty to not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. Consultant shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this contract; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this contract; (iii) make State Proprietary Information available to any of its employees, officers, agents or consultants except those who have agreed to obligations of confidentiality at least as strict as those set out in this contract and who have a need to know such information. Consultant is held to the same standard of care in guarding State Proprietary Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. Consultant shall protect confidentiality of the State's information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced. State Proprietary Information shall not include information that (i) was in the public domain at the time it was disclosed to Consultant; (ii) was known to Consultant without restriction at the time of disclosure from the State; (iii) that is disclosed with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by Consultant without the benefit or influence of the State's information; (v) becomes known to Consultant without restriction from a

source not connected to the State of South Dakota. State's Proprietary Information shall include names, social security numbers, employer numbers, addresses and all other data about applicants, employers or other clients to whom the State provides services of any kind. Consultant understands that this information is confidential and protected under applicable State law at SDCL 1-27-1.5, modified by SDCL 1-27-1.6, SDCL 28-1-29, SDCL 28-1-32, and SDCL 28-1-68 as applicable federal regulation and agrees to immediately notify the State if the information is disclosure, either intentionally or inadvertently. The parties mutually agree that neither of them shall disclose the contents of the contract except as required by applicable law or as necessary to carry out the terms of the contract or to enforce that party's rights under this contract. Consultant acknowledges that the State and its agencies are public entities and thus are bound by South Dakota open meetings and open records laws. It is therefore not a breach of this contract for the State to take any action that the State reasonably believes is necessary to comply with the South Dakota open records or open meetings laws. If work assignments performed in the course of this Agreement require additional security requirements or clearance, the Consultant will be required to undergo investigation.

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

DocuSigned by:

Joan Adam

5/23/2022

EBDF4B567876477...

Joan Adam, Director
Division of Administration
Department of Health

Date

DocuSigned by:

Debbie Pease

5/23/2022

32819D185B304B7...

Board President
SD Board of Certified Professional Midwives

Date

DocuSigned by:

Darcy McGuigan

5/24/2022

81AA60F85BFF428...

Darcy McGuigan, Director
Division of Finance
Department of Health

Date

DocuSigned by:

Tamera Weis

5/23/2022

2CCD8400DE76419...

Consultant Signature
Tamera Weis

Date

Print or Type Consultant Name

State Contact Person: Susan Sporrer Phone: 605-773-4946

Consultant Contact Person: Tamera Weis Phone: 605-743-4451

The following shall be completed by the Consultant:

Nonprofit ☐ Profit ☐ June 1, 2022 and ending May 31, 2023
Consultant fiscal year beginning _____ and ending _____

STATE OF SOUTH DAKOTA
CONSULTANT CONTRACT
BETWEEN

Tamera Weis
27705 460th Avenue
Chancellor, SD 57015

Referred to as “Consultant”

South Dakota Department of Health
SD Board of Certified Professional Midwives
27705 460th Avenue
Chancellor, SD 57015
(605) 773-3361

Referred to as “State”

The State hereby enters into this agreement (Agreement) for services with Contractor in consideration of and pursuant to the terms and conditions set forth herein.

1. SCOPE OF SERVICES

The purpose of this contract is to Provide an Executive Secretary to oversee the South Dakota Board of Certified Professional Midwives. The purpose and activities of the board are to secure safe, out-of-hospital childbirth attended by licensed and competent midwives, to protect the consumer of midwifery services by holding these midwives accountable to the statutes and rules pertaining to their profession, to update rules as needed to meet current, evidence-based standards of midwifery practice, to license qualified midwives, and to process complaints in a fair and expeditious manner.

Contractor will perform the following services:

To serve as Executive Secretary to Board, including, but not limited to, handling routine correspondence, telephone inquiries, printing, maintaining a current roster of administrators, and other duties which may reasonably be expected to be performed. Provide services as outlined in Section 5.2.3 of their response to the Request for Proposal Solicitation #18-0901001-013.

2. PERIOD OF PERFORMANCE

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

3. USE OF EQUIPMENT, SUPPLIES AND FACILITIES

Consultant will not use State equipment, supplies or facilities.

4. CONTRACTOR IDENTIFICATION

Upon execution of this Agreement, Contractor will provide the State with Contractor's Employer Identification Number, Federal Tax Identification Number or Social Security Number.

5. CONTRACT AMOUNT AND PAYMENT

The State will make payment for services upon satisfactory completion of the services. The TOTAL CONTRACT AMOUNT is an amount not to exceed \$14,662.00.

The State will not pay Contractor's expenses, including but not limited to travel, lodging and meals, as a separate item. Payment will be made pursuant to itemized invoices submitted with a signed voucher. Payment will be made consistent with the Prompt Payment Act SDCL §§ 5-26-1 through 5-26-8. Any overpayment of this Agreement shall be returned to the State within thirty (30) days after written notification to Contractor.

The total amount for such expenses will not exceed \$1,000.00.

6. INDEMNIFICATION

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

7. INSURANCE

At all times during the term of this Agreement, Contractor shall obtain and maintain in force insurance coverage of the types and with the limits as follows:

- A. Professional Liability Insurance or Miscellaneous Professional Liability Insurance:
Contractor agrees to procure and maintain professional liability insurance or miscellaneous professional liability insurance with a limit of not less than one million dollars (\$1,000,000). The insurance policy shall name the State of South Dakota, its officers and employees, as additional insureds, but liability coverage is limited to claims not barred by sovereign immunity. The State of South Dakota, its officers and employees do not hereby waive sovereign immunity for discretionary conduct as provided by law.

Before beginning work under this Agreement, Contractor shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement including naming the State, its officers and employees, as additional insureds, as set forth above. In the event of a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, Contractor agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Contractor shall furnish copies of insurance policies if requested by State.

8. TERMINATION

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

9. AVAILABILITY OF FUNDING

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from Congress and or the State Legislature for this purpose. If for any reason the United States Congress or the State Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State upon five (5) business days written notice. Contractor agrees that termination for any of these reasons is not a default by State nor does it give rise to a claim against State or any officer, agent or employee of the State, and Contractor waives any claim against the same.

10. COMPLIANCE WITH EXECUTIVE ORDER 2020-01

Executive Order 2020-01 provides that for contractors, vendors, supplies, or subcontracts with five (5) or more employees who enter into a contract with the State that involves the expenditure of one hundred thousand dollars (\$100,000) or more, by signing this Agreement Contractor certifies and agrees that it has not refused to transact business activities, has not terminated business activities, and has not taken other similar actions intended to limit its commercial relations, related to the subject matter of this Agreement, with a person or entity that is either the State of Israel, or a company doing business in or with Israel or authorized by, licensed by, or organized under the laws of the State of Israel to do business, or doing business in the State of Israel, with the specific intent to accomplish a boycott or divestment of Israel in a discriminatory manner. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for State to terminate this Agreement. Contractor further agrees to provide immediate written notice to State if during the term of the contract it no longer

complies with this certification and agrees such noncompliance may be grounds for contract termination of this Agreement.

11. COMPLIANCE WITH EXECUTIVE ORDER 2023-02

Contractor certifies and agrees that the following information is correct:

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

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

12. NOTICE

Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to the State Contact Person on behalf of State, and by and to the Contractor Contact Person on behalf of Contractor, 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.

13. CONTROLLING LAW AND VENUE

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

14. INDEPENDENT CONTRACTOR

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

15. THIRD PARTY BENEFICIARIES

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

16. ASSIGNMENT AND AMENDMENT

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

17. COMPLIANCE

Contractor will comply with all federal, tribal, state, and local laws, regulations, ordinances, guidelines, permits, requirements and other standards applicable to the services provided under this Agreement and will be solely responsible for obtaining current information regarding the foregoing. Nothing herein shall constitute a waiver by the State to any defense to jurisdiction nor shall anything herein constitute an acknowledgement by the State that any tribe has or exercises any jurisdiction over this Agreement or the parties.

Contractor agrees to abide by all applicable provisions of the following assurances: Byrd Anti Lobbying Amendment (31 USC 1352), Debarment and Suspension (Executive Orders 12549 and 12689 and 2 C.F.R. 180), Drug-Free Workplace, Executive Order 11246, Equal Employment Opportunity as amended by Executive Order 11375 and Equal Employment Opportunity as amended by Executive Order 11375 and implementing regulations at 41 C.F.R. part 60, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996 as amended, Clean Air Act, Federal Water Pollution Control Act, Charitable Choice Provisions and Regulations, Equal Treatment for Faith-Based Religions at Title 28 C.F.R. Part 38, the Violence Against Women Reauthorization Act of 2013, American Recovery and Reinvestment Act of 2009, a applicable; and any other nondiscrimination provision in the specific statute(s) under which application for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply to the contract.

18. REPORTING

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

Contractor's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Contractor's obligation to report shall not require disclosure of any information subject to

privilege or confidentiality under law (e.g., attorney-client communications). Reporting to State under this section shall not excuse or satisfy any obligation of Contractor to report any event to law enforcement or other entities under the requirements of any applicable law.

19. SUBCONTRACTING

Contractor may not use subcontractors to perform the services described herein without the express prior written consent of State. Contractor 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. Contractor will cause its subcontractors, agents, and employees to comply with applicable federal, tribal, state, and local laws, regulations, ordinances, guidelines, permits and other standards and will adopt such review and inspection procedures as are necessary to assure such compliance. The State, at its option, may require the vetting of any subcontractors. Contractor shall assist in the vetting process.

20. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

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

21. STATE'S RIGHT TO REJECT

The State reserves the right to reject any person from performing services under this Agreement who the State believes would be detrimental to the services, presents insufficient skills, presents inappropriate behavior or is considered by the State to be a security risk.

22. SEVERABILITY

In the event that any court of competent jurisdiction shall hold any provision of this Agreement unenforceable or invalid, such holding shall not invalidate or render unenforceable any other provision hereof.

23. SUPERCESSION

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

24. FORCE MAJEURE

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

25. WAIVER OF BREACH

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

26. SOVEREIGN IMMUNITY

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

27. HEADINGS

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

28. AUTHORITY TO EXECUTE

Contractor represents and warrants that:

- A. Contractor is a corporation duly incorporated, validly existing and in good standing under the laws of its state of incorporation and has all requisite corporate power and authority to execute, deliver and perform its obligations under this Agreement;
- B. The execution, delivery and performance of this Agreement has been duly authorized by Contractor and no approval, authorization or consent of any governmental or regulatory agency is required to be obtained in order for Contractor to enter into this Agreement and perform its obligations under this Agreement;
- C. Contractor is duly authorized to conduct business in and is in good standing in each jurisdiction in which Contractor will conduct business in connection with this Agreement;
and

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

29. DISCLOSURE OF THE CONTRACT

Neither party shall disclose the contents of the Agreement except as required by applicable law or as necessary to carry out the terms of the Agreement or to enforce that party's rights under this Agreement. The Contractor acknowledges that the State of South Dakota and its agencies are public entities and thus are bound by South Dakota open meetings and open records laws. It is therefore not a breach of this Agreement for the State to take any action that the State reasonably believes is necessary to comply with the South Dakota open records or open meetings laws, including, without limitation, posting this Agreement on the website pursuant to SDCL 1-27-46. The Contractor agrees that the Agreement and any prices, fees and rates agreed to be paid by the State under the Agreement are not confidential.

30. RECORD RETENTION

Consultant agrees to maintain all records that are pertinent to this contract and retain them for a period of six (6) 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.

31. CONFIDENTIALITY

For the purpose of this Agreement, "Confidential Information" shall include all information, regardless of its format, disclosed to the Contractor by the State and all information, regardless of format, obtained by Contractor through the provision of services as contemplated by this Agreement. Contractor, and any person or entity affiliated with Contractor, shall not disclose any Confidential Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. Contractor, and any person or entity affiliated with Contractor, shall not:

- A. disclose any Confidential Information to any third person unless otherwise specifically allowed under this Agreement;
- B. make any use of Confidential Information except to exercise rights and perform obligations under this Agreement;
- C. make Confidential Information available to any of its employees, officers, agents, or consultants except those who have agreed, by contract, to obligations of confidentiality at least as strict as those set out in this Agreement and who have a need to know such information and who have been instructed that such information is or may be confidential under state or federal law. Contractor, and any person or entity affiliated with Contractor, is held to the same standard of care in guarding Confidential Information as it applies to its

own confidential or proprietary information and materials of a similar nature, and no less than holding Confidential Information in the strictest confidence. Contractor, and any person or entity affiliated with Contractor, shall protect the confidentiality of the State's information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced.

Confidential Information shall not include information that;

- A. was in the public domain at the time it was disclosed to Contractor, and any person or entity affiliated with Contractor;
- B. was known to Contractor, and any person or entity affiliated with Contractor, without restriction at the time of disclosure from the State;
- C. was disclosed with the prior written approval of State's officers or employees having authority to disclose such information;
- D. was independently developed by Contractor, and any person or entity affiliated with Contractor, without the benefit or influence of the State's information; or
- E. becomes known to Contractor, and any person or entity affiliated with Contractor, without restriction, from a source not connected to the State of South Dakota.

Confidential Information can include, but is not limited to, names, social security numbers, employer numbers, addresses and all other data about applicants, participants, employers or other clients to whom the State provides services of any kind. Contractor understands that this information may be confidential and protected under applicable state or federal law. Contractor agrees to immediately notify the State if the information is disclosure, either intentionally or inadvertently.

If work assignments performed in the course of this Agreement require additional security requirements or clearance, Contractor agrees that its officers, agents and employees may be required to undergo investigation or may be required to sign separate confidentiality agreements, and will limit access to the confidential information and related work activities to employees who have executed such agreements.

Contractor will enforce the terms of this Confidentiality Provision to its fullest extent.

Contractor agrees to remove any employee or agent from performing work under this Agreement that has or is suspected to have violated the terms of this Confidentiality Provision and to immediately notify the State of such matter. Contractor will comply with any other confidentiality measures and terms included in the Agreement.

Upon termination of this Agreement, if not already done so as part of the services performed under the Agreement, Contractor agrees to return to the State, at Contractor's cost, any Confidential Information or documentation maintained by Contractor regarding the services provided hereunder in a format readily useable by the State as mutually agreed by Contractor and State.

32. WORK PRODUCT

Contractor hereby acknowledges and agrees that all reports, plans, specifications, technical data, miscellaneous drawings, software system programs and documentation, procedures, or files, operating instructions and procedure, source code(s) and documentation, including those necessary to upgrade and maintain the software program, and all information contained therein provided to the State by Contractor in connection with the performance of services under this Agreement shall belong to and is the property of the State and will not be used in any way by Contractor without the written consent of the State. Papers, reports, forms, software programs, source code(s) and other material which are a part of the work under this Agreement will not be copyrighted without written approval of the State.

33. INDEPENDENT CONTRACTOR

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.

34. PURCHASE OF CAPITAL ASSETS OR EQUIPMENT

Consultant will not purchase capital assets or equipment using State funds.

35. 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.

36. 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, the contractor 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.

37. CONFLICT OF INTEREST

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

38. RECYCLING

State strongly encourages Consultant to establish a recycling program to help preserve our natural resources and reduce the need for additional landfill space.

39. CRIMINAL BACKGROUND CHECKS

Pursuant to SDCL 5-18D-28, Contractor agrees that each person who has access to confidential information obtained from the United States Internal Revenue Service or an authorized secondary source pursuant to this Agreement shall submit to and successfully pass a state and federal criminal background investigation and submit to a fingerprint check by the South Dakota Division of Criminal Investigation and the Federal Bureau of Investigation before being granted access to any Confidential Information. The appointing authority shall submit the completed fingerprint card to the South Dakota Division of Criminal Investigation. Contractor shall be responsible for payment of any fee charged for the cost of fingerprinting and the criminal background investigation. If a disqualifying record is discovered, Contractor agrees that such individual will not have access to the Confidential Information obtained from the United States Internal Revenue Service or an authorized secondary source pursuant to this Agreement. The State shall have the sole discretion to determine whether a record is disqualifying and will immediately notify Contractor.

40. TRANSFER OF INFORMATION

Upon termination of this Agreement (whether initiated by the State or Contractor) and following a written request by the State, Contractor agrees to provide to the State, at Contractor's expense, any data and other pertinent records related to services performed under this Agreement ("Information") to the State or a designee chosen by the State ("Recipient") within thirty (30) days, unless otherwise agreed by the parties. The transfer of Information shall be conducted based upon the State's standards and in accordance with all applicable laws and regulations in a format readily usable by the State or Recipient as mutually agreed by Contractor and State.

41. OTHER METHODS OF NOTICE

The parties consent to the use of electronic means and facsimile transmissions for communications as a signed writing provided that delivery is confirmed.

42. DILIGENCE AND SKILL

In the performance of these services and providing the deliverables under the Agreement, Contractor, and its employees shall exercise the degree of skill and care consistent with customarily accepted practices and procedures for the performance of the type of services required. Contractor shall be responsible for the professional quality, technical accuracy, timely completion, and coordination of all services and deliverables furnished by Contractor and any subcontractors, if applicable, under this Agreement. It shall be the duty of Contractor to assure that its services and deliverables are technically sound and in conformance with all pertinent technical codes and standards. Contractor represents and warrants that: (i) it shall give high priority to the performance of the services; and (ii) the services shall be performed in a timely manner.

Contractor shall be responsible to the State for material deficiencies in the contracted deliverables and services which result from the failure to meet the standard given herein. Contractor shall promptly correct or revise any material errors or omissions in deliverables and re-perform any services which are not in compliance with such representations and warranties at no cost to the State, provided that Contractor's failure to comply is not due solely to the actions, errors, or omissions of the State.

Permitted or required approval by the State of any services or deliverables furnished by Contractor shall not in any way relieve Contractor of its responsibility for the professional quality and technical accuracy and adequacy of its work. The State's review, approval, acceptance, or payment for any of Contractor's services or deliverables herein shall not be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement, and except as provided herein Contractor shall be and remain liable in accordance with the terms of this Agreement and applicable law for all damages to the State caused by Contractor's performance or failure to perform under this Agreement.

In the event of a breach of these representations and warranties, the State shall provide telephonic or electronic notice to Contractor. The State may, in its sole discretion, require Contractor to cure such breaches. If it is necessary for Contractor to send at least one qualified and knowledgeable representative to the State's site where the system is located, this will be done at Contractor's expense. This representative will continue to address and work to remedy the deficiency, failure, malfunction, defect, or problem at the site. The rights and remedies provided in this paragraph are in addition to any other rights or remedies provided in this Agreement or by law.

43. INTELLECTUAL PROPERTY

In connection with the performance of this Agreement and the provision of services and deliverables under this Agreement, Contractor will not infringe any patent, copyright, trademark, trade secret or other proprietary right of any person. Contractor will not improperly use any trade secrets, or confidential or proprietary information owned by any third party in performing this Agreement or the services related to this Agreement. To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold the Department and their employees and agents harmless from against any and all Claims resulting from allegations of infringement of any patents, copyrights, trade secret, or similar intellectual property rights covering the Goods or Services provided, or the use of the Goods or Services under this Contract. If the Department's use of Goods or Services provided by Contractor is enjoined based on an intellectual property infringement Claim, Contractor shall, at its own expense, either procure for Purchaser the right to continue using the Goods or Services or, after consulting with Purchaser and obtaining Purchaser's consent, replace or modify the Goods or Services with substantially similar and functionally equivalent non-infringing Goods or Services.

44. THIRD PARTY RIGHTS

Contractor represents and warrants that it has the full power and authority to grant the rights described in this Agreement without violating any rights of any third party, and that there is currently no actual or, to Contractor's knowledge, threatened suit by any such third party based on an alleged violation of such rights by Contractor. Contractor attests that no access of the State to software or hardware infringes upon the intellectual property rights of a third party.

45. PUBLICITY

The award of this Agreement to Contractor is not in any way an endorsement of Contractor or Contractor's services by the State and may not be so represented by Contractor in any advertising or publicity materials. Contractor agrees to submit to the State all advertising, sales promotion, and other publicity relating to this Agreement wherein the State's name is mentioned, or language is used from which the connection of the State's name therewith may, in the State's judgment, be inferred or implied. Contractor further agrees not to publish or use such advertising, sales promotion, or publicity without the prior written consent of the State. Contractor may not in any way contract on behalf of or in the name of the State, nor may release

any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this Agreement without obtaining the prior written approval of the State.

46. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

☒ 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.

The parties signify their agreement by signing below.

_____ Lynne Valenti, Deputy Secretary South Dakota Department of Health	_____ Date	_____ Tammy Weis SD Board of Certified Professional Midwives	_____ Date
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_____ Darcy McGuigan, Director Division of Finance Department of Health	_____ Date	_____ Consultant Signature _____ Tamera Weis	_____ Date
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State Contact Person: Mariah Porkorny Phone: 605-773-3933

Consultant Contact Person: Tammy Weis Phone: 605-743-4451

The following shall be completed by the Consultant:

Nonprofit Profit x
Consultant fiscal year beginning _____ and ending _____