

**ECONOMIC DEVELOPMENT FINANCE AUTHORITY  
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD  
WEDNESDAY, JUNE 11, 2025, 9:45 A.M., CT**

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Notice is further given to persons with disabilities that this meeting is being held in a physical accessible place. Please notify the above-mentioned office within 48 hours of the public hearing if you have special needs for which this agency will make the necessary arrangements.

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WEDNESDAY, JUNE 11 2025, 9:45 A.M., CT**

**Motion Sheet**

Board  
Members

Jeff Erickson

Don  
Kettering

Sharon  
Casey

Tom Jones

Mike Luken

Jim Schmidt

Matt Judson

EDFA Meeting: Please note times:

Call To Order: \_\_\_\_\_

Executive Session: \_\_\_\_\_

Regular Session: \_\_\_\_\_

Adjournment: \_\_\_\_\_

**Agenda**

Motion to approve the agenda as presented.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_

**Minutes**

Motion to approve the minutes of April 9, 2025, as presented.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**Public Comments**

**Casey Peterson, LTD Accounting Contract**

Motion to approve the Casey Peterson, LTD accounting contract as presented.

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

**Adjourn**

Motion made by \_\_\_\_\_ and seconded by \_\_\_\_\_.

A

**ECONOMIC DEVELOPMENT FINANCE AUTHORITY  
GOED CONFERENCE ROOM, 711 E WELLS AVE, PIERRE, SD  
WEDNESDAY, JUNE 11, 2025, 9:45 A.M., CT**

**The public may participate by the following:**

*Call In Number: (669) 900-9128 Meeting ID: 96677988449 Participant Id: # Passcode: 421401*  
[www.zoom.com](https://www.zoom.com) Meeting ID: 96677988449 Passcode: 421401

**REGULAR SESSION AGENDA**

9:45 A.M. Call To Order, Chairman, Jeff Erickson

9:50 A.M. **Approve Agenda**  
RECOMMENDED ACTION: Motion to approve Agenda as provided or amended.

**Approve Minutes**  
RECOMMENDED ACTION: Motion to approve Minutes as provided or amended.

**Public Comments**

**Approve Casey Peterson, LTD Accounting Contract**  
RECOMMENDED ACTION: Motion to approve the Casey Peterson, LTD accounting contract as presented.

**Adjournment**

Notice is further given to persons with disabilities that this meeting is being held in a physically accessible place. Please notify the above-mentioned office within 48 hours of the public hearing if you have special needs for which this agency will make the necessary arrangements.

B

**Economic Development Finance Authority  
GOED Conference Room, 711 E Wells Ave, Pierre, SD  
Wednesday, April 9, 2025, 9:30 a.m. CT**

Members Present

Chairman Jeff Erickson, Don Kettering, Mike Luken and Matt Judson

Staff Present

Commissioner Joe Fiala, Ashley Moore, Jack Valentine, Stephanie Deyo, Lexxy Phillips, Nick Rabern, Nadine Agneau, Dale Knapp and Alex Kahnke

Call to Order

Chairman Erickson called the meeting to order at 9:31 a.m.

Agenda

A motion was made by Matt Judson and seconded by Don Kettering to approve the agenda as presented.

Motion passed by a voice vote.

Minutes

A motion was made by Mike Luken and seconded by Don Kettering to approve the minutes of March 13, 2025 and March 12, 2025 public hearings, as presented.

Motion passed by a voice vote.

Public Comment Period – none

Donation of Monies

A motion was made by Mike Luken and seconded by Don Kettering to approve the Authority donates \$432,489, or the entire cash balance residing in the sunset VAARP program to the REDI Fund. Furthermore, staff recommends the Authority donates up to \$2,500,000.00 from the EDFA Capital Reserve Fund to the REDI Fund. Staff requests the Authority promote and acknowledge at its discretion that the donation of these monies to the REDI Fund is in furtherance of economic development and requests itself that these monies reside in and are retained in the REDI Fund for the purpose of the Board of Economic Development to make loans and grants from these monies.

Motion passed by a voice vote

EDFA Rules

A motion was made by Don Kettering and seconded by Mike Luken to approve entering the rulemaking procedures allowed by SDCL for the Board's promulgation of rules in Chapter 68:01; Article 12:22; and Chapter 68:01:02 of Administrative Rules South Dakota.

Motion passed by a voice vote

Adjourn

A motion was made by Mike Luken and seconded by Don Kettering to adjourn the meeting at 9:37 a.m.

Motion passed by a voice vote.

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Matt Judson, Secretary/Treasurer

C

May 20, 2025

To Management  
South Dakota Economic Development Finance Authority  
711 East Wells Avenue  
Pierre, South Dakota 57501

You have requested that we prepare the quarterly financial statements of the South Dakota Economic Development Finance Authority (the Organization) during the year ended **June 30, 2026**, which comprise the statements of net position and the related statements of revenues, expenses, and changes in net position and cash flows. As you have requested, the quarterly financial statements will not include the related notes to the financial statements as required by accounting principles generally accepted in the United States of America.

You have requested that we prepare the annual financial statements of the Organization which comprise the statement of net position as of **June 30, 2025** and the related statements of revenues, expenses, and changes in net position, and cash flows and the related notes to the financial statements for the year then ended as required by accounting principles generally accepted in the United States of America.

We are pleased to confirm our acceptance and our understanding of this engagement by means of this letter.

### **Our Responsibilities**

The objective of our engagement is to prepare financial statements in accordance with accounting principles generally accepted in the United States of America based on information provided by you. We will conduct our engagement in accordance with Statements on Standards for Accounting and Review Services (SSARs) promulgated by the Accounting and Review Services Committee of the AICPA and comply with the AICPA's *Code of Professional Conduct*, including the ethical principles of integrity, objectivity, professional competence, and due care.

We are not required to, and will not, verify the accuracy or completeness of the information you will provide to us for the engagement or otherwise gather evidence for the purpose of expressing an opinion or a conclusion. Accordingly, we will not express an opinion or a conclusion nor provide any assurance on the financial statements.

Our engagement cannot be relied upon to identify or disclose any financial statement misstatements, including those caused by fraud or error, or to identify or disclose any wrongdoing within the entity or noncompliance with laws and regulations.

### **Management Responsibilities**

The engagement to be performed is conducted on the basis that management acknowledges and understands that our role is to prepare financial statements in accordance with accounting principles generally accepted in the United States of America. Management has the following overall responsibilities that are fundamental to our undertaking the engagement to prepare your financial statements in accordance with SSARs:

- a) The selection of accounting principles generally accepted in the United States of America as the financial reporting framework to be applied in the preparation of the financial statements.



- b) The design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.
- c) The prevention and detection of fraud.
- d) To ensure that the entity complies with the laws and regulations applicable to its activities.
- e) The accuracy and completeness of the records, documents, explanations, and other information, including significant judgments, you provide to us for the engagement to prepare financial statements.
- f) To provide us with:
  - i. Access to all information of which you are aware that is relevant to the preparation and presentation of the financial statements, such as records, documentation, and other matters;
  - ii. Additional information that may be requested for the purpose of the preparation of the financial statements; and
  - iii. Unrestricted access to persons within the Organization with whom we determine necessary to communicate.

The financial statements will not be accompanied by a report. However, you agree that the financial statements will clearly indicate that no assurance is provided on them.

#### **Other Relevant Information**

As part of our engagement, we will also:

- Propose adjusting or correcting journal entries to be reviewed and approved by the Organization's management
- Consult management on the implementation of new accounting standards

With respect to any nonattest services we perform:

- We will not assume management responsibilities on behalf of the Organization. However, we will provide advice and recommendations to assist management in performing its responsibilities.
- The Organization's management is responsible for (a) making all management decisions and performing all management functions; (b) assigning a competent individual to oversee the services; (c) evaluating the adequacy of the services performed; (d) evaluating and accepting responsibility for the results of the services performed; and (e) establishing and maintaining internal controls, including monitoring ongoing activities.
- Our responsibilities and limitations of the engagement are as follows:
  - We will perform the services in accordance with applicable professional standards.
  - This engagement is limited to the services previously outlined. Our firm, in its sole professional judgment, reserves the right to refuse to do any procedure or take any action that could be construed as making management decisions or assuming management responsibilities.

Deidre Budahl, CPA is the engagement partner for the services specified in this letter. Her responsibilities include supervising Casey Peterson, LTD's services performed as part of this engagement.

This engagement will be effective upon signing and will end on **June 30, 2026**, unless sooner terminated pursuant to the terms herein. Our fee for these services will be based on the number of hours required by the staff assigned to complete the engagement. The firm's partners will bill at a rate of \$300 per hour; non-partner staff will bill at a rate of \$185 per hour. The total contract amount for this engagement will not exceed \$28,500 for the year ended **June 30, 2026**. Our invoices for these services will be rendered as work progresses and are payable consistent with SDCL ch. 5-26 (the "Prompt Payment Act"). The fee estimate is based on anticipated cooperation from your personnel and the assumption that unexpected circumstances will not be encountered during our engagement. If significant additional time is necessary, we will discuss it with you before we incur the additional costs.

Professional standards prohibit us from being the sole host and/or the sole storage for your financial and non-financial data. As such, it is your responsibility to maintain your original data and records and we cannot be responsible for maintaining such original information. By signing this engagement letter, you affirm that you have all the data and records required to make your books and records complete.

In connection with this engagement, we may communicate with you or others via personal fax or email transmission. As emails can be intercepted and read, disclosed, or otherwise used or communicated by an unintended third party, or may not be delivered to each of the parties to whom they are directed and only to such parties, we cannot guarantee or warrant that e-mails from us will be properly delivered and read only by the addressee. Therefore, we specifically disclaim and waive any liability or responsibility whatsoever for the interception or unintentional disclosure or communication of e-mail transmissions, or for the unauthorized use or failed delivery of e-mails transmitted by us in connection with the performance of this engagement. In that regard, you agree that we shall have no liability for any loss or damage to any person or entity resulting from the use of e-mail transmissions, including any consequential, incidental, direct, indirect, or special damages, such as loss of revenues or anticipated profits, or disclosure or communication of confidential or proprietary information.

We want you to be aware of our record retention policy with respect to your files and related documentation. Based on our present policies, we will maintain this information in electronic format for seven years after which it will be destroyed. We may modify our record retention policies from time to time in accordance with our professional obligations. It is, therefore, important for you to keep copies of your reports and related supporting data in your files.

We will be pleased to discuss this letter with you at any time. If you request us to perform additional services not contemplated or described in this engagement letter, we will provide you with a separate agreement describing those additional services and fees.

Please sign and return this letter and addendum to indicate your acknowledgement of, and agreement with, the arrangements for our engagement to prepare the financial statements described herein, and our respective responsibilities.

Respectfully,



Diedre Budahl, CPA  
Authorized Signer for Casey Peterson, LTD  
Rapid City, South Dakota

RESPONSE:

This letter correctly sets forth our understanding.

Acknowledged and agreed on behalf of the South Dakota Economic Development Finance Authority by:

Signature\_\_\_\_\_

Title\_\_\_\_\_

Date\_\_\_\_\_

## **ADDENDUM TO ENGAGEMENT LETTER**

For purposes of this Addendum “Contractor” refers to Casey Peterson, LTD; “State” refers to the Governor’s Office of Economic Development, an agency of the State of South Dakota. In the event of a conflict between the terms of this Addendum and the Engagement Letter, this Addendum shall control.

1. **USE OF EQUIPMENT, SUPPLIES AND FACILITIES:** Contractor will not use State equipment, supplies or facilities.

2. **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.

3. **INDEMNIFICATION:**

Contractor agrees to indemnify the State of South Dakota, its officers, agents, and employees, from and against all claims or proceedings for actions, suits, damages, liabilities, other losses or equitable relief that may arise at least in part as a result of an act or omission in performing services under this Agreement. 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 Contractor 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.

4. **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. **Commercial General Liability Insurance:**

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

- B. **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 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.

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 the State.

5. 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 or conditions hereof, this Agreement may be terminated by the 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.

6. FUNDING:

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of 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 the State nor does it give rise to a claim against the State or any officer, agent or employee of the State, and Contractor waives any claim against the same.

7. COMPLIANCE WITH EXECUTIVE ORDERS 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.

8. 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 Katlyn Svenden, on behalf of the State, and by and to Katie Murphy, 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.

9. 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 would 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.

10. INDEPENDENT CONTRACTOR:

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

11. 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.

12. ASSIGNMENT AND AMENDMENT:

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

13. COMPLIANCE:

Contractor will comply in full 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.

14. REPORTING:

Contractor agrees to report to the State any event encountered in the course of performance of this Agreement which results in an 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 the 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.

15. SUBCONTRACTING:

Contractor may not use subcontractors to perform the services described herein without the express prior written consent of the 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.

**16. 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.

**17. 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.

**18. 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.

**19. 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.

**20. 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.

**21. 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.

**22. 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.

**23. HEADINGS:**

The headings in this Addendum 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 Addendum.

24. AUTHORITY TO EXECUTE:

Contractor represents and warrants that:

- A. 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;
- B. 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
- C. Contractor and its personnel have obtained all licenses, certifications, permits, and authorizations necessary to perform the services under this Agreement and currently are 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.

25. 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.

26. SURVIVAL FOLLOWING TERMINATION:

Any terms of this Agreement that would, by their nature or through the express terms of this Agreement, survive the expiration or termination of this Agreement shall so survive.

27. CONFIDENTIALITY:

For the purpose of this Agreement, "Confidential Information" shall include all information, regardless of its format, disclosed to Contractor by the State and all information, regardless of its format, obtained by Contractor through the provisions 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: (i) disclose any Confidential Information to any third person unless otherwise specifically allowed under this Agreement; (ii) make any use of Confidential Information except to exercise rights and perform obligations under this Agreement; (iii) 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: (i) was in the public domain at the time it was disclosed to Contractor or to any person or entity affiliated with Contractor; (ii) was known to Contractor, or to any person or entity affiliated with Contractor, without restriction at the time of disclosure from the State; (iii) was disclosed with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by Contractor, or by any person or entity affiliated with Contractor, without the benefit or influence of the State's information; or (v) becomes known to Contractor, or to 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 state or federal law. Contractor agrees to immediately notify the State if the information is disclosed, 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 it will limit access to the confidential information and related work activities to employees that 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.

## 28. WORK PRODUCTS:

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 procedures, 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.

29. 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.

30. 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.

31. 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.

32. 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.

**33. CERTIFICATION OF NO STATE LEGISLATOR INTEREST:**

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