



Board of Hearing Aid Dispensers and Audiologists

Mailing Address:
810 North Main Street, Suite 298
Spearfish, SD 57783

Phone: (605) 642-1600
E-Mail: office@sdlicensing.com
Home Page: www.doh.sd.gov/boards/audiology

Draft-Video conference BOARD MEETING AGENDA

TO: All Board Members

FROM: Brooke Tellinghuisen Geddes

MEETING DATE: January 12, 2026

LOCATION: Video Conference

Note: Individuals needing assistance, pursuant to the Americans with Disabilities Act, should contact the Board office at office@sdlicensing.com or 605-642-1600 in advance of the meeting to make any necessary arrangements.

MEETING TIME: 12:00 PM CST / 11:00 AM MST

The public is invited to attend the meeting via Microsoft Teams at the following link:

https://teams.microsoft.com/l/meetup-join/19%3ameeting_Mzc3YTA2MDItOTYyZi00YmYyLWI5MWItMTI5ZmExYzhhYTU2%40thread.v2/0?context=%7b%22Tid%22%3a%22e69efb98-56ef-4797-a76b-e1ec658a639c%22%2c%22Oid%22%3a%22ee0a24e7-6d2c-4495-ade5-4377098865d2%22%7d

Or by calling: 1-469-770-0416, Passcode: 366277939#

If members of the public would like to be sent the Microsoft Teams invitation to the meeting instead of using the above link, please contact the Board office prior to the meeting at office@sdlicensing.com.

Agenda Item Number

1. Call to Order
2. Roll Call
3. Corrections or additions to the agenda

4. Approval of the agenda
5. Public comment
6. Approval of the minutes
 - a. July 14, 2025
 - b. November 6, 2025
7. FY financial update
8. Annual Review of Open Meeting Laws (SDCL 1-25-13)
9. Audiology & Speech-Language Pathology Interstate Compact (ASLP-IC)
10. Schedule next meeting(s)
11. Executive Session pursuant to SDCL 1-25-2
 - a. Application Ratification(s)
 - b. Complaints/Investigations
 - c. Executive Secretary Contract Renewal
12. Application Ratification(s)-Vote
13. Complaints Investigations-Vote (if needed)
14. Executive Secretary Contract Renewal- Vote
15. Any other business coming in between date of mailing and date of meeting
16. Adjourn



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DRAFT-OFFICIAL BOARD MINUTES FOR JULY 14, 2025 Video Conference

MEMBERS PRESENT: Norman Sorensen, President
Clint Hinker, Vice-President
Aggie Kennedy, Member
Kari Fieber, Member
Julie Paluch, Lay Member

MEMBERS ABSENT: None.

OTHERS PRESENT: Brooke Tellinghuisen Geddes, Executive Secretary
Katie Funke, Executive Assistant
Kelli Gabriel, Administrative Assistant
Megan Borchert, Legal Counsel- Attorney General's Office

CALL TO ORDER/WELCOME AND INTRODUCTIONS: Sorensen called the meeting to order at 11:00 a.m. MDT.

ROLL CALL: Sorensen asked Tellinghuisen Geddes to call the roll. Sorensen, yes; Fieber, yes; Kennedy, yes; Paluch, yes; Hinker, yes. A quorum was present.

PUBLIC HEARING TO ADOPT PROPOSED RULES: At 11:05 a.m. MDT, the public rules hearing was conducted by Sorensen. Borchert provided a report on the draft rules and recommendations from LRC. One written comment received on July 8, 2025, by the board office, was discussed. No changes were made in response to the written comment. Hinker made a motion to adopt the draft rules with LRC edits for form, style, clarity and legality. Fieber seconded the motion. **MOTION PASSED** by roll call vote: Sorensen, yes; Fieber, yes; Kennedy, yes; Paluch, yes; Hinker, yes.

CORRECTIONS OR ADDITIONS TO THE AGENDA: None.

APPROVAL OF THE AGENDA: Kennedy made a motion to approve the agenda. Paluch seconded the motion. **MOTION PASSED** by unanimous voice vote.

PUBLIC COMMENT: Sorensen called for public comment. There was no public comment.

APPROVAL OF THE MINUTES FROM JANUARY 13, 2025: Paluch made a motion to approve the minutes from January 13, 2025. Fieber seconded the motion. **MOTION PASSED** by unanimous voice vote.

FY FINANCIAL UPDATE: Tellinghuisen Geddes reported fiscal year-to-date financials as of May 31, 2025: expenses of \$38,463.08; revenue of \$28,818.24; and a cash center balance of \$110,020.19.

ELECTION OF OFFICERS: Paluch made a motion to keep the current slate of officers with Sorensen as President and Hinker as Vice-President. Fieber seconded the motion. **MOTION PASSED** by unanimous voice vote.

PROVISIONAL LICENSURE EXTENSION POLICY #2025-01: The board discussed a policy to renew and/or extend provisional licenses pursuant to SDCL 36-24-24.2. Hinker made a motion to issue all provisional licenses for one year and only allow extension/renewals beyond one year for individuals who have passed the written ILE exam and are waiting to take their in-person practicum before the board. Kennedy seconded the motion. **MOTION PASSED** by unanimous voice vote.

IHS TESTING LIMIT POLICY #2025-02: The board discussed a policy for limiting the number of times an individual may be approved to take the written International Licensing Exam administered by the International Hearing Society, which is the written exam required for all Hearing Aid Dispensers. Tellinghuisen Geddes advised that IHS has indicated they leave the testing limit policies up to each individual licensing board. Some states have testing limits, some do not. Following discussion, it was decided to allow unlimited testing attempts during an individual's one-year provisional licensure period. If they cannot pass the exam during that year, the board may approve three additional attempts within one year after the provisional license expires, but the individual must step away from practice once their provisional license is expired. Kennedy made a motion to allow unlimited testing attempts during the provisional licensure period and allow three additional attempts once a provisional license is expired within one year of the provisional license expiring. Hinker seconded the motion. **MOTION PASSED** by unanimous voice vote.

SCHEDULE NEXT MEETING: The next meeting is scheduled for Monday, January 12, 2026, at 11:00 a.m. MST / 12:00 p.m. CST via Microsoft Teams.

EXECUTIVE SESSION PURSUANT TO SDCL 1-25-2: Kennedy made a motion to enter executive session at 11:44 a.m. MDT. Fieber seconded the motion. **MOTION PASSED** by unanimous voice vote. The Board exited executive session at 11:59 a.m. MDT.

APPLICATION RATIFICATION:

Kennedy made a motion to ratify the following application approvals since January 15, 2025. Fieber seconded the motion. **MOTION PASSED** by unanimous voice vote.

Bunnell, L.: Audiologist license issued May 28, 2025;

Cale Jr., R.: Audiologist license issued July 1, 2025;

Cleary, L.: Audiologist license issued April 17, 2025;

Deaton, R.: Provisional Hearing Aid Dispenser license issued April 25, 2025;

Emme, G.: Audiologist license issued June 18, 2025;

Feller, R.: Hearing Aid Dispenser license issued July 1, 2025;

Furler, M.: Provisional Hearing Aid Dispenser license issued February 6, 2025;

Hewitt, C.: Hearing Aid Dispenser license issued July 1, 2025;

Kornmann, J.: Provisional Hearing Aid Dispenser license issued April 24, 2025;

Lane, J.: Audiologist license issued July 8, 2025;

Schock, K.: Provisional Hearing Aid Dispenser license issued March 10, 2025;

Shi, J.: Audiologist license issued July 1, 2025;

Shirley, H.: Audiologist license issued April 29, 2025;

Weis, C.: Provisional Hearing Aid Dispenser license issued April 24, 2025;

Zens, M.: Provisional Hearing Aid Dispenser license issued March 11, 2025.

COMPLAINTS/INVESTIGATION: The board office reported five pending complaints.

CEU QUESTION DISCUSSION: Sorensen reported the board will not take action on continuing education changes at this time.

ANY OTHER BUSINESS COMING IN BETWEEN DATE OF MAILING AND DATE OF MEETING: None.

Hinker made a motion to adjourn the meeting at 12:01 p.m. MDT. Paluch seconded the motion.
MOTION PASSED by unanimous voice vote.

Respectfully submitted,



Brooke Tellinghuisen Geddes
Executive Secretary

1-27-1.17. Draft minutes of public meeting to be available--Exceptions--Violation as misdemeanor. The unapproved, draft minutes of any public meeting held pursuant to § 1-25-1 that are required to be kept by law shall be available for inspection by any person within ten business days after the meeting. However, this section does not apply if an audio or video recording of the meeting is available to the public on the governing body's website within five business days after the meeting. A violation of this section is a Class 2 misdemeanor. However, the provisions of this section do not apply to draft minutes of contested case proceedings held in accordance with the provisions of chapter 1-26.

DRAFT



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DRAFT-OFFICIAL BOARD MINUTES FOR NOVEMBER 6, 2025 Video Conference

MEMBERS PRESENT: Norman Sorensen, President
Clint Hinker, Vice-President
Aggie Kennedy, Member
Kari Fieber, Member
Julie Paluch, Lay Member

MEMBERS ABSENT: None.

OTHERS PRESENT: Brooke Tellinghuisen Geddes, Executive Secretary
Katie Funke, Executive Assistant
Kelli Gabriel, Administrative Assistant
Megan Borchert, Legal Counsel- Attorney General's Office
Tamara Lee, Prosecuting Counsel, Department of Health
Bob Mercer, Keloland

CALL TO ORDER: Sorensen called the meeting to order at 11:07 a.m. MST.

ROLL CALL: Sorensen asked Tellinghuisen Geddes to call the roll. Sorensen, yes; Fieber, yes; Kennedy, yes; Paluch, yes; Hinker, yes. A quorum was present.

CORRECTIONS OR ADDITIONS TO THE AGENDA: None.

APPROVAL OF THE AGENDA: Kennedy made a motion to approve the agenda. Paluch seconded the motion. **MOTION PASSED** by unanimous voice vote.

PUBLIC COMMENT: Sorensen called for public comment. There was no public comment.

CONTESTED CASE DOH 25-012- BOARD DECISION: Attorney Borchert discussed the Amended Proposed Decision for case DOH 25-012 issued by the Office of Hearing Examiners.

Following the discussion, Fieber moved to adopt the proposed decision and the findings of fact and conclusions of law entered by the Office of Hearing Examiners on October 9, 2025, for Contested Case DOH 25-012 revoking the hearing aid dispensing license of Eric Smith, License number 428-H. Further, Fieber moved that costs of \$452.94 be assessed against Eric Smith in

accordance with that proposed decision. Additionally, Fieber moved that an order incorporating the decision be entered, signed by the Board President, and served in accordance with South Dakota law. Hinker seconded the motion. **MOTION PASSED** by roll call vote: Sorensen, yes; Fieber, yes; Kennedy, abstain; Paluch, yes; Hinker, yes.

Hinker made a motion to adjourn the meeting at 11:16 a.m. MST. Paluch seconded the motion. **MOTION PASSED** by unanimous voice vote.

Respectfully submitted,



Brooke Tellinghuisen Geddes
Executive Secretary

1-27-1.17. Draft minutes of public meeting to be available--Exceptions--Violation as misdemeanor. The unapproved, draft minutes of any public meeting held pursuant to § 1-25-1 that are required to be kept by law shall be available for inspection by any person within ten business days after the meeting. However, this section does not apply if an audio or video recording of the meeting is available to the public on the governing body's website within five business days after the meeting. A violation of this section is a Class 2 misdemeanor. However, the provisions of this section do not apply to draft minutes of contested case proceedings held in accordance with the provisions of chapter 1-26.

STATE OF SOUTH DAKOTA
REVENUE SUMMARY BY BUDGET UNIT
FOR PERIOD ENDING: 11/30/2025

AGENCY 09 HEALTH
BUDGET UNIT 09203 BOARD OF HEARING AID DISPENSERS - INFO

CENTER	COMP	ACCOUNT	DESCRIPTION	CURRENT MONTH	YEAR-TO-DATE
COMPANY NO 6503					
COMPANY NAME PROFESSIONAL & LICENSING BOARDS					
092030061811	6503	4293954	HEARING AID DISPENSER	200.00	4,750.00
ACCT: 4293			BUSINESS & OCCUP LICENSING (NON-GOVERNMENTAL)	200.00	4,750.00
ACCT: 42			LICENSES, PERMITS & FEES	200.00	4,750.00
092030061811	6503	4920045	NONOPERATING REVENUES	.00	4,710.78
ACCT: 4920			NONOPERATING REVENUE	.00	4,710.78
ACCT: 49			OTHER REVENUE	.00	4,710.78
CNTR: 092030061811				200.00	9,460.78
CNTR: 092030061				200.00	9,460.78
CNTR: 0920300				200.00	9,460.78
COMP: 6503				200.00	9,460.78
B UNIT: 09203				200.00	9,460.78

STATE OF SOUTH DAKOTA
MONTHLY OBJECT/SUB-OBJECT REPORT BY BUDGET UNIT
FOR PERIOD ENDING: 11/30/2025

AGENCY BUDGET UNIT CENTER-5	09 09203 09203	HEALTH BOARD OF HEARING AID DISPENSERS - INFO BOARD OF HEARING AID DISPENSERS - INFO	CURRENT MONTH	YEAR-TO-DATE
CENTER	COMP	ACCOUNT	DESCRIPTION	
COMPANY NO	6503			
COMPANY NAME	PROFESSIONAL & LICENSING BOARDS			
092030061811	6503	510103000000000000	BOARD & COMM MBRS FEES	664.00
ACCT: 5101		EMPLOYEE SALARIES		664.00
092030061811	6503	510201000000000000	CASI-EMPLOYER'S SHARE	50.82
ACCT: 5102		EMPLOYEE BENEFITS		50.82
ACCT: 51		PERSONAL SERVICES		714.82
092030061811	6503	520302000000000000	AUTO PRIV (IN-ST.) L/RTE	.00
092030061811	6503	520310000000000000	LOGGING/IN-STATE	.00
092030061811	6503	520314000000000000	TAXABLE MEALS/IN-STATE	.00
092030061811	6503	520315000000000000	NON-TAXABLE MEALS/IN-ST	.00
ACCT: 5203		TRAVEL		.00
092030061811	6503	520405000000000000	COMPUTER CONSULTANT	87.00
092030061811	6503	520409000000000000	MANAGEMENT CONSULTANT	2,063.83
092030061811	6503	520420000000000000	CENTRAL SERVICES	.00
092030061811	6503	520420400000000000	RECORDS MGMT SERVICES	.00
092030061811	6503	520420700000000000	HUMAN RESOURCES SERVICES	60.00
092030061811	6503	520451000000000000	RENTS-OTHER	.00
092030061811	6503	520496000000000000	OTHER CONTRACTUAL SERVICE	15.78
ACCT: 5204		CONTRACTUAL SERVICES		2,226.61
ACCT: 52		OPERATING EXPENSES		2,226.61
COMP: 6503		PROFESSIONAL & LICENSING BOARDS		2,941.43
CENTER: 092030061811				2,941.43
B UNIT: 09203				2,941.43

BA1409R1

STATE OF SOUTH DAKOTA
CASH CENTER BALANCES
AS OF: 11/30/2025

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AGENCY: 09 HEALTH
BUDGET UNIT: 09203 BOARD OF HEARING AID DISPENSERS - INFO

COMPANY	CENTER	ACCOUNT	BALANCE	DR/CR	CENTER DESCRIPTION
6503	092000061811	1140000	113,784.00	DR	BOARD OF HEARING AID DISPENSERS
COMPANY/SOURCE TOTAL 6503 618			113,784.00	DR *	
COMP/BUDG UNIT TOTAL 6503 09203			113,784.00	DR **	
BUDGET UNIT TOTAL 09203			113,784.00	DR ***	

1-25-7. REFERRAL TO OMC. Upon receiving a referral from a state's attorney or the attorney general, the South Dakota Open Meetings Commission shall examine the complaint and investigatory file submitted by the state's attorney or the attorney general and shall also consider signed written submissions by the persons or entities that are directly involved. Based on the investigatory file submitted by the state's attorney or the attorney general and any written responses, the commission shall issue a written determination on whether the conduct violates this chapter, including a statement of the reasons therefor and findings of fact on each issue and conclusions of law necessary for the proposed decision. The final decision shall be made by a majority of the commission members, with each member's vote set forth in the written decision. The final decision shall be filed with the attorney general and shall be provided to the public entity and or public officer involved, the state's attorney, and any person that has made a written request for such determinations. If the commission finds a violation of this chapter, the commission shall issue a public reprimand to the offending official or governmental entity. However, no violation found by the commission may be subsequently prosecuted by the state's attorney or the attorney general. All findings and public censures of the commission shall be public records pursuant to § 1-27-1. Sections 1-25-6 to 1-25-9, inclusive, are not subject to the provisions of chapter 1-26.

1-25-8. OMC MEMBERS. The South Dakota Open Meeting Commission shall be comprised of five state's attorneys appointed by the attorney general. Each commissioner shall serve at the pleasure of the attorney general. A chair of the commission shall be chosen annually from the membership of the commission by a majority of its members.

1-25-12. DEFINITIONS. Terms used in this chapter mean:

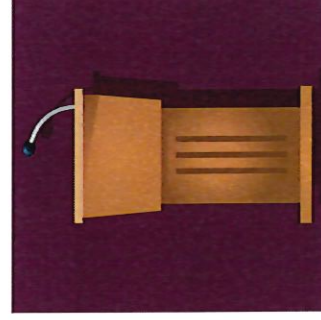
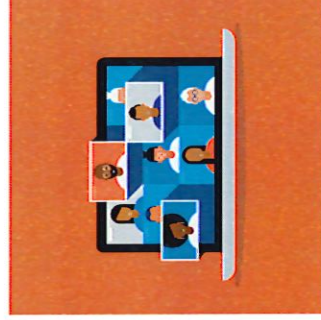
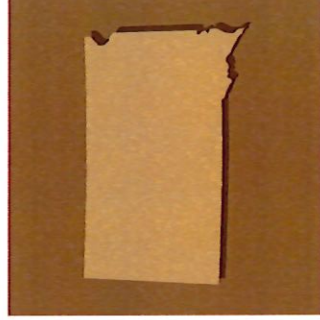
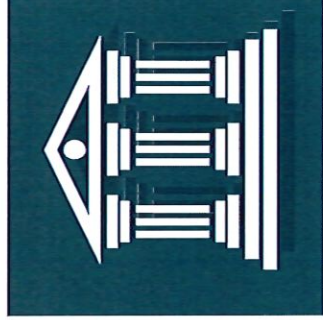
- (1) "Political subdivision," any association, authority, board, commission, committee, council, task force, school district, county, city, town, township, or other local government entity that is created or appointed by statute, ordinance, or resolution and is vested with the authority to exercise any sovereign power derived from state law;
- (2) "Public body," any political subdivision and the state;
- (3) "Official meeting," any meeting of a quorum of a public body at which official business or public policy of that public body is discussed or decided by the public body, whether in person or by means of teleconference;
- (4) "Teleconference," information exchanged by any audio, video, or electronic medium, including the internet;
- (5) "State," each board, commission,

department, or agency of the State of South Dakota. The term, state, does not include the Legislature.

1-27-1-16. MEETING PACKETS AND MATERIALS. If a meeting is required to be open to the public pursuant to § 1-25-1 and if any printed material relating to an agenda item of the meeting is prepared or distributed by or at the direction of the governing body or any of its employees and the printed material is distributed before the meeting to all members of the governing body, the material shall either be posted on the governing body's website or made available at the official business office of the governing body at least twenty-four hours prior to the meeting or at the time the material is distributed to the governing body, whichever is later. If the material is not posted to the governing body's website, at least one copy of the printed material shall be available in the meeting room for inspection by any person while the governing body is considering the printed material. However, the provisions of this section do not apply to any printed material or record that is specifically exempt from disclosure under the provisions of this chapter or to any printed material or record regarding the agenda item of an executive or closed meeting held in accordance with § 1-25-2. A violation of this section is a Class 2 misdemeanor. However, the provisions of this section do not apply to printed material, records, or exhibits involving contested case proceedings held in accordance with the provisions of chapter 1-26.

1-27-1-17. DRAFT MINUTES. The unapproved, draft minutes of any public meeting held pursuant to § 1-25-1 that are required to be kept by law shall be available for inspection by any person within ten business days after the meeting. However, this section does not apply if an audio or video recording of the meeting is available to the public on the governing body's website within five business days after the meeting. A violation of this section is a Class 2 misdemeanor. However, the provisions of this section do not apply to draft minutes of contested case proceedings held in accordance with the provisions of chapter 1-26.

1-27-1-18. WORKING GROUP REPORTS. Any final recommendations, findings, or reports that result from a meeting of a committee, subcommittee, task force, or other working group which does not meet the definition of a political subdivision or public body pursuant to § 1-25-1, but was appointed by the governing body, shall be reported in open meeting to the governing body which appointed the committee, subcommittee, task force, or other working group. The governing body shall delay taking any official action on the recommendations, findings, or reports until the next meeting of the governing body.



Conducting the Public's Business in Public

A guide to South Dakota's
Open Meetings Laws
(Revised 2023)

Prepared by:
S.D. Attorney General's Office
in partnership with the
S.D. NewsMedia Association

Published by:
South Dakota NewsMedia Association
1125 32nd Ave. Brookings, SD 57006

Q: WHAT ARE SOUTH DAKOTA'S OPEN MEETINGS LAWS?

A: South Dakota's open meetings laws embody the principle that the public is entitled to the greatest possible information about public affairs and are intended to encourage public participation in government. SDCL Ch. 1-25 requires that official meetings of public bodies must be public and advance notice is to be given of such meetings. The statutes define an "official meeting" as one where a quorum of the public body is present and at which official business or public policy of the body is discussed or decided. Openness in government is encouraged.

Q: WHO DOES THE OPEN MEETINGS LAWS APPLY TO?

A: The open meetings laws apply to all public bodies "of the state and its political subdivisions." SDCL 1-25-1. This includes cities, counties, school boards and other public bodies created by ordinance or resolution, such as appointed boards, task forces, and committees, so long as they have authority to exercise sovereign power. SDCL 1-25-12(1). Although no court decisions have been issued on the subject, this probably does not include bodies that serve only in an advisory capacity. The State Constitution allows the Legislature and the Unified Judicial System to create rules regarding their own separate functions.

Q: ARE TELECONFERENCES CONSIDERED PUBLIC MEETINGS?

A: Yes. The open meetings laws allow meetings, including executive or closed meetings, to be conducted by teleconference – defined as an exchange of information by audio, video, or electronic means (including the internet) – if a place is provided for the public to participate. In addition,

for teleconferences where less than a quorum of the public body is present at the location open to the public, arrangements must also be made for the public to listen by telephone or internet (except for portions of meetings properly closed for executive sessions). The media and public must be notified of teleconference meetings under the same notice requirements as any other meeting.

Q: HOW ARE THE PUBLIC AND MEDIA NOTIFIED WHEN PUBLIC BUSINESS IS BEING DISCUSSED?

A: SDCL 1-25-11 requires that all state and its boards, commissions, or departments as provided in § 1-25-13) prominently post a notice and copy of the proposed agenda at the political subdivision's principal office. At a minimum, the proposed agenda must include the date, time, and location of the meeting and must be visible, readable, and accessible to the public for 24 continuous hours immediately preceding the meeting. Also, if the political subdivision has its own website, the notice must be posted on the website upon dissemination of the notice. For special or rescheduled meetings, political subdivisions must comply with the regular meeting notice requirements as much as circumstances permit. The notice must be delivered in person, by mail, by email, or by telephone to all local news media who have asked to be notified. It is good practice for local media to renew requests for notification of special or rescheduled meetings at least annually.

SDCL 1-25-13 varies slightly from SDCL 1-25-11 and requires the State and its boards, commissions, or departments to give notice by posting a proposed agenda at least 72 continuous hours before a meeting is scheduled to start (this does not include any weekend or legal holiday). The State is also required to give notice of a public meeting by posting its proposed agenda on <http://boardsandcommissions.sd.gov>.

The requirement to provide one or more places for the public to listen to the teleconference does not apply to official meetings closed to the public pursuant to specific law.

1-25-2. EXECUTIVE SESSION. Executive or closed meetings may be held for the sole purposes of:

(1) Discussing the qualifications, competence, performance, character or fitness of any public officer or employee or prospective public officer or employee. The term, employee, does not include any independent contractor;

(2) Discussing the expulsion, suspension, discipline, assignment of or the educational program of a student or the eligibility of a student to participate in interscholastic activities provided by the South Dakota High School Activities Association;

(3) Consulting with legal counsel or reviewing communications from legal counsel about proposed or pending litigation or contractual matters;

(4) Preparing for contract negotiations or negotiating with employees or employee representatives;

(5) Discussing marketing or pricing strategies by a board or commission of a business owned by the state or any of its political subdivisions, when public discussion may be harmful to the competitive position of the business; or

(6) Discussing information pertaining to the protection of public or private property and any person on or within public or private property specific to:

(a) Any vulnerability assessment or response plan intended to prevent or mitigate criminal acts;

(b) Emergency management or response;

(c) Public safety information that would create a substantial likelihood of endangering public safety or property, if disclosed;

(d) Cyber security plans, computer, communications network schema, passwords, or user identification names;

(e) Guard schedules;

(f) Lock combinations;

(g) Any blueprint, building plan, or infrastructure record regarding any building or facility that would expose or create vulnerability through disclosure of the location, configuration, or security of critical systems of the building or facility; and

(h) Any emergency or disaster response plans or protocols, safety or security audits or reviews, or lists of emergency or disaster response personnel or material; any location or listing of weapons or ammunition; nuclear, chemical, or biological agents; or other military or law enforcement equipment or personnel. However, any official action concerning the matters pursuant to this section shall be made

at an open official meeting. An executive or closed meeting must be held only upon a majority vote of the members of the public body present and voting, and discussion during the closed meeting is restricted to the purpose specified in this section. Nothing in § 1-25-1 or this section prevents an executive or closed meeting if the federal or state Constitution or the federal or state statutes require or permit it. A violation of this section is a class 2 misdemeanor.

9-34-19. EXECUTIVE SESSIONS (MUNICIPAL AND COUNTIES). Any documentary material or data compiled or received by a municipal corporation, county, or an economic development corporation receiving municipal or county funds, for the purpose of furnishing assistance to a business, to the extent that such material or data consists of trade secrets or commercial or financial information regarding the operation of such business, is not a public record. Any discussion or consideration of such trade secrets or commercial or financial information by a municipal corporation or county may be done in executive session closed to the public.

1-25-6. DUTY OF STATE'S ATTORNEY. If a complaint alleging a violation of chapter 1-25 is made pursuant to § 23A-2-1, the state's attorney shall take one of the following actions:

(1) Prosecute the case pursuant to Title 23A;

(2) Determine that there is no merit to prosecuting the case. Upon doing so, the state's attorney shall send a copy of the complaint and any investigation file to the attorney general. The attorney general shall use the information for statistical purposes and may publish abstracts of such information, including the name of the government body involved for purposes of public education; or

(3) Send the complaint and any investigation file to the South Dakota Open Meetings Commission for further action.

1-25-6.1. DUTY OF STATES ATTORNEY (COUNTY COMMISSION ISSUES). If a complaint alleges a violation of this chapter by a board of county commissioners, the state's attorney shall take one of the following actions:

(1) Prosecute the case pursuant to Title 23A;

(2) Determine that there is no merit to prosecuting the case. The attorney general shall use the information for statistical purposes and may publish abstracts of the information as provided by § 1-25-6;

(3) Send the complaint and any investigation file to the South Dakota Open Meetings Commission for further action; or

(4) Refer the complaint to another state's attorney or to the attorney general for action pursuant to § 1-25-6.

PERTINENT S.D. OPEN MEETINGS STATUTES
(other specific provisions may apply depending on the public body involved)

1-25-1. OPEN MEETINGS. The official meetings of the state and its political subdivisions are open to the public unless a specific law is cited by the state or the political subdivision to close the official meeting to the public.

It is not an official meeting of one public body if its members provide information or attend the official meeting of another public body for which the notice requirements of § 1-25-11 or 1-25-13 have been met. It is not an official meeting of a public body if its members attend a press conference called by a representative of the public body.

For any event hosted by a nongovernmental entity to which a quorum of the public body is invited and public policy may be discussed, but the public body does not control the agenda, the political subdivision may post a public notice of a quorum, in lieu of an agenda. The notice of a quorum shall meet the posting requirements of § 1-25-11 or 1-25-13 and shall contain, at a minimum, the date, time, and location of the event.

The public body shall reserve at every official meeting a period for public comment, limited at the public body's discretion as to the time allowed for each topic and the total time allowed for public comment but not so limited as to provide for no public comment.

Public comment is not required at official meetings held solely for the purpose of meeting in executive session, an inauguration, swearing in of newly elected officials, or presentation of an annual report to the governing body regardless of whether or not such activity takes place at the time and place usually reserved for a regularly scheduled meeting.

If a quorum of township supervisors, road district trustees, or trustees for a municipality of the third class meet solely for purposes of implementing previously publicly adopted policy; carrying out ministerial functions of that township, district, or municipality; or undertaking a factual investigation of conditions related to public safety; the meeting is not subject to the provisions of this chapter.

A violation of this section is a Class 2 misdemeanor.

1-25-11. PUBLIC NOTICE OF POLITICAL SUBDIVISIONS. Each political subdivision shall provide public notice, with proposed agenda, that is visible, readable, and accessible for at least an entire, continuous twenty-four hours immediately preceding any official meeting, by posting a copy of the notice, visible to the public, at the principal office of the political subdivision holding the meeting. The proposed agenda shall include the date, time, and location of the meeting. The notice shall also be posted on the political subdivision's website upon dissemination of the notice, if a

website exists. For any special or rescheduled meeting, the information in the notice shall be delivered in person, by mail, by email, or by telephone, to members of the local news media who have requested notice. For any special or rescheduled meeting, each political subdivision shall also comply with the public notice provisions of this section for a regular meeting to the extent that circumstances permit. A violation of this section is a Class 2 misdemeanor.

1-25-13. PUBLIC NOTICE OF STATE. The state shall provide public notice of a meeting by posting a copy of the proposed agenda at the principal office of the board, commission, or department holding the meeting. The proposed agenda shall include the date, time, and location of the meeting, and be visible, readable, and accessible to the public. The agenda shall be posted at least seventy-two hours before the meeting is scheduled to start according to the agenda. The seventy-two hours does not include Saturday, Sunday, or legal holidays. The notice shall also be posted on a state website, designated by the commissioner of the Bureau of Finance and Management. For any special or rescheduled meeting, the information in the notice shall be delivered in person, by mail, by email, or by telephone, to members of the local news media who have requested notice. For any special or rescheduled meeting, the state shall also comply with the public notice provisions of this section for a regular meeting to the extent that circumstances permit. A violation of this section is a Class 2 misdemeanor.

1-25-15. TELECONFERENCE MEETING. Any official meeting may be conducted by teleconference. A teleconference may be used to conduct a hearing or take final disposition regarding an administrative rule pursuant to § 1-26-4. A member is deemed present if the member answers present to the roll call conducted by teleconference for the purpose of determining a quorum. Each vote at an official meeting held by teleconference may be taken by voice vote, if any member votes in the negative, the vote shall proceed to a roll call vote.

1-25-16. TELECONFERENCE PARTICIPATION. At any official meeting conducted by teleconference, there shall be provided one or more places at which the public may listen to and participate in the teleconference meeting. For any official meeting held by teleconference, that has less than a quorum of the members of the public body participating in the meeting who are present at the location open to the public, arrangements shall be provided for the public to listen to the meeting via telephone or internet.

Q: WHO ARE LOCAL NEWS MEDIA?

A: There is no definition of "local news media" in SDCL ch. 1-25. "News media" is defined in SDCL 13-1-57 generally as those personnel of a newspaper, periodical, news service, radio station, or television station regardless of the medium through which their content is delivered. The Attorney General is of the opinion that "local news media" is all news media — broadcast and print — that regularly carry news to the community.

Q: IS A PUBLIC COMMENT PERIOD REQUIRED AT PUBLIC MEETINGS?

A: Yes. Public bodies are required to provide at every official meeting a period of time on their agenda for public comment. Each public body has the discretion to limit public comment as to the time allowed for each topic commented on, and as to the total time allowed for public comment. A public comment period is not required for meetings held solely for the purpose of executive session.

Q: CAN PUBLIC MEETINGS BE RECORDED?

A: Yes. SDCL 1-25-11 requires public bodies to allow recording (audio or video) of their meetings if the recording is reasonable, obvious, and not disruptive. This requirement does not apply to those portions of a meeting confidential or closed to the public.

Q: WHEN CAN A MEETING BE CLOSED TO THE PUBLIC AND MEDIA?

A: SDCL 1-25-2 allows a public body to close a meeting for the following purposes: 1) to discuss personnel issues pertaining to officers or employees; 2) consideration of the performance or discipline of a student, or the student's participation in interscholastic activities; 3) consulting with legal counsel, or reviewing communications from legal counsel

about proposed or pending litigation or contractual matters; 4) employee contract negotiations; 5) to discuss marketing or pricing strategies of a publicly-owned competitive business; or 6) to discuss information related to the protection of public or private property such as emergency management response plans or other public safety information. The statute also recognizes that executive session may be appropriate to comport with other laws that require confidentiality or permit executive or closed meetings. Federal law pertaining to students and medical records will also cause school districts and other entities to conduct executive sessions or conduct meetings to refrain from releasing confidential information. Meetings may also be closed by cities and counties for certain economic development matters. SDCL 9-34-19

Note that SDCL 1-25-2 and SDCL 9-34-19 do not require meetings be closed in any of these circumstances.

Any official action based on discussions in executive session must, however, be made at an open meeting.

Q: WHAT IS THE PROPER PROCEDURE FOR EXECUTIVE SESSIONS?

A: Motions for executive sessions or federal law allowing for the executive session i.e. "pursuant to SDCL 1-25-2(3)." Also, best practice to avoid public confusion would be that public bodies explain the reason for going into executive session. For example, the motion might state "motion to go into executive session pursuant to SDCL 1-25-2(1) for the purposes of discussing a personnel matter" or "motion to go into executive session pursuant to SDCL 1-25-2(3) for the purposes of consulting with legal counsel."

Discussion in the executive session must be strictly limited to the announced subject. No official votes may be taken on any matter during an executive session. The public body must return to open session before any official action can be taken.

Board members could be held personally liable for the results of an official vote

taken illegally during an executive session. For example, a contract approved only during an executive session could be found void and the board members could be required to repay any public funds spent under the contract.

Q: WHAT HAPPENS IF THE MEDIA OR PUBLIC IS IMPROPERLY EXCLUDED FROM A MEETING OR OTHER VIOLATIONS OF THE OPEN MEETING LAWS OCCUR?

A: Excluding the media or public from a meeting that has not been properly closed subjects the public body or the members involved to: (a) prosecution as a Class 2 misdemeanor punishable by a maximum sentence of 30 days in jail, a \$500 fine or both; or (b) a reprimand by the Open Meeting Commission ("OMC"). The same penalties apply if the agenda for the meeting is not properly posted, or other open meeting violations occur.

Also, action taken during any meeting that is not open or has not been properly noticed could, if challenged, be declared null and void. It could even result in personal liability for members of the governing body involved, depending upon the action taken.

Q: HOW ARE ISSUES REFERRED TO THE OPEN MEETINGS COMMISSION ("OMC")?

A: Persons alleging violations of the open meetings laws must make their complaints with law enforcement officials in the county where the offense occurred. After a signed and notarized complaint is made under oath, and any necessary investigation is conducted, the State's Attorney may: (a) prosecute the case as a misdemeanor; (b) find that the matter has no merits and file a report with the Attorney General for statistical purposes; or (c) forward the complaint to the OMC for a determination. The OMC is comprised of five State's Attorneys appointed by the Attorney General. The OMC examines whether a violation has occurred and makes written public findings explaining its reasons. If you have questions on the procedures or status

of a pending case, you may contact the Attorney General's Office at 605-773-3215 to talk to an assistant for the OMC. Procedures for the OMC are posted on the website for the Office of Attorney General. <http://atg.sd.gov/>.

Q: WHAT DOES THE TERM "SOVEREIGN POWER" MEAN?

A: The open meetings laws do not define this term, but it generally means the power to levy taxes, impose penalties, make special assessments, create ordinances, abate nuisances, regulate the conduct of others, or perform other traditional government functions. The term may include the exercise of many other governmental functions. If an entity is unclear whether it is exercising "sovereign power" it should consult with legal counsel.

Q: MAY AGENDA ITEMS BE CONSIDERED IF THEY ARE ADDED LESS THAN 24 HOURS BEFORE A MEETING?

A: Proposed agendas for public meetings must be posted at least 24 hours in advance of the meeting. The purpose of providing advance notice of the topics to be discussed at a meeting is to provide information to interested members of the public concerning the governing body's anticipated business. Typically, the public body adopts the final agenda upon convening the meeting. At the time the final agenda is adopted, the governing body may add or delete agenda items and may also change the order of business. See *In re Yankton County Commission, Open Meetings Commission Decision # 20-03*, December 31, 2020. New items cannot be added after the agenda has been adopted by the governing body. Public bodies are strongly encouraged to provide at least 24 hours' notice of all agenda items so as to be fair to the public and to avoid dispute. For special or rescheduled meetings, public bodies are to comply to the extent circumstances permit. In other words, posting less than 24 hours in advance may be permissible in emergencies.

Q: ARE EMAIL DISCUSSIONS "MEETINGS" FOR PURPOSES OF THE OPEN MEETINGS LAWS?

A: The definition of an "official meeting" in SDCL 1-25-12(3) references teleconferences. The definition of a "teleconference" in SDCL 1-25-12(4) includes the exchange of information via the internet or any other electronic medium. The analysis of these two definitions leads to the conclusion that email discussions that include a quorum of a public body and which discuss the official business of that body could be considered "meetings" for purposes of the open meetings laws. Email participation in scheduling or similar activity would not, under this analysis, constitute a public meeting.

Q: WHAT RECORDS MUST BE AVAILABLE TO THE PUBLIC IN CONJUNCTION WITH PUBLIC MEETINGS?

A: SDCL 1-25-1.4 requires state boards, commissions, or departments to make public meeting materials available on <http://boardsandcommissions.sd.gov>. SDCL 1-27-1.16 requires that any other public body must post meeting materials on the public body's website or make those materials available to the public at least twenty-four hours prior to the hearing or when made available to the members of the public body, whichever is later. Finally, SDCL 1-27-1.17 requires that draft minutes of public meetings must be made available to the public at the principal place of business for the public body within 10 business days after the meeting (or made available on the website for the public body within five business days). These laws are in addition to any specific requirements for public bodies (i.e., pertaining to cities, counties, or school districts). Enforcement of public records laws contained in SDCL Ch. 1-27 are handled by separate procedures found in SDCL 1-27-35, et. seq. rather than the open meeting procedures described above. Violations of SDCL 1-27-1.16 and 1-27-1.17 are also Class 2 misdemeanors.

Q: WHAT REQUIREMENTS APPLY TO TASK FORCES, COMMITTEES AND WORKING GROUPS?

A: Task forces and committees that exercise "sovereign power," and are created by statute, ordinance, or proclamation are required to comply with the open meetings laws, SDCL 1-25-12(1). Task forces, committees, and working groups that are not created by statute, ordinance, or proclamation, or are advisory only, may not be subject to the open meetings laws, but are encouraged to comply to the extent possible when public matters are discussed. Ultimately, if such advisory task forces, committees and working groups present any reports or recommendations to public bodies, the public bodies must wait until the next meeting (or later) before taking final action on the recommendations. SDCL 1-27-1.18.

STATE OF SOUTH DAKOTA CONTRACTOR
AGREEMENT
BETWEEN

26SC090101

Professional Licensing, LLC
810 N. Main Street #298
Spearfish, SD 57783

South Dakota Department of Health
Licensure & Accreditation
Board of Hearing Aid Dispensers
600 E Capitol Ave.
Pierre, SD 57501-2536
605.773.3361

Referred to as "Consultant" or "Contractor"

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 Executive Secretary Services for the SD Board of Hearing Aid & Audiology.*

Contractor will perform the following services:

Administer, under the direction of the Board, the various licensing responsibilities, including such duties as application screening, eligibility determination, service liaison between the Board of Hearing Aid Dispensers and Audiologists and State Agencies, records retention and ADA requirements. Maintain current listings, files and appropriate documentation for all licenses and determine eligibility for and process renewal applications. Serve as state contact for national associations and all other state Hearing Aid and Audiology Boards. Serve as liaison between the Attorney General's office and Complaints Officer on all complaints received by the Board, including contracting with investigators when necessary.

2. PERIOD OF PERFORMANCE

This Agreement shall be effective on June 01, 2025 and will end on May 31, 2026, unless sooner terminated pursuant to the terms of this Agreement.

3. 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.

4. CONTRACT AMOUNT AND PAYMENT

The State will make payment for services upon satisfactory completion of the services, up to 22,065.91.

Consultant will not use State equipment, supplies or facilities.

State will pay the following Consultant expenses as a separate item.

Expenses include but are not limited to: goods or services purchased including but not limited to office rent, data security services, telephone, internet, postage machine lease and copy machine lease. Utility expenses including but not limited to gas, electric, water/sewage and snow removal. Office supplies and equipment including but not limited to printing and postage materials, computers, telephones and miscellaneous office supplies.

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 \$8,900.00.

The TOTAL CONTRACT AMOUNT is an amount not to exceed \$30,965.91.

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.

5. 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 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 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.

6. 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 of not less than one million dollars (\$1,000,000).

C. Business Automobile Liability Insurance:

Contractor shall maintain business automobile liability insurance or equivalent form with a limit of not less than one million dollars (\$1,000,000) for each accident. This insurance shall include coverage for owned, hired and non-owned vehicles.

D. Worker's Compensation Insurance:

Contractor shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota or federal 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.

7. 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.

8. 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 including but not limited to the terms of the following sections:

- Indemnification
- Controlling Law and Venue
- Waiver of Breach
- Sovereign Immunity
- Disclosure of the Contract
- Record Retention
- Work Product
- Transfer of Information

9. 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 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. CERTIFICATIONS

A. COMPLIANCE WITH EXECUTIVE ORDER 2020-01

Executive Order 2020-01 provides that for contractors, vendors, suppliers, or subcontractors 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.

B. COMPLIANCE WITH SDCL ch 5-18A

Contractor certifies and agrees that the following information is correct:

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

It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the purchasing agency to reject the bid or response submitted by the bidder or offeror on this project and terminate any contract awarded based on the bid or response, and further would be cause to suspend and debar a business under SDCL § 5-18D-12.

The successful bidder or offeror further agrees to provide immediate written notice to the purchasing agency if during the term of the contract it no longer complies with this certification and agrees such noncompliance may be grounds for contract termination and would be cause to suspend and debar a business under SDCL § 5-18D-12.

C. 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.

D. CERTIFICATION OF NO STATE LEGISLATOR INTEREST

Contractor (i) understands neither a state legislator nor a business in which a state legislator

has an ownership interest may be directly or indirectly interested in any contract with the State that was authorized by any law passed during the term for which that legislator was elected, or within one year thereafter, and (ii) has read South Dakota Constitution Article 3, Section 12 and has had the opportunity to seek independent legal advice on the applicability of that provision to this Agreement. By signing this Agreement, Contractor hereby certifies that this Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.

11. 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.

12. 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.

13. INDEPENDENT CONTRACTOR

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

14. 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.

15. ASSIGNMENT AND AMENDMENT

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

16. 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, as applicable; and any other nondiscrimination provision in the specific statute(s) under which application for Federal assistance is being made; and the requirements of any other nondiscrimination statute(s) which may apply to the contract.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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 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 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.

29. 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.

30. 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.

31. PURCHASE OF CAPITAL ASSETS OR EQUIPMENT

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

32. 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.

33. 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.

34. 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.

35. 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.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.

41. 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.

Cassie Deffenbaugh

6/5/2025 10:50:28 AM

6/4/2025 4:13:19 PM

Director
South Dakota Department of Health

Date

Thane Thorne

President, Board of Hearing Aid Dispensers

Date

Darcy McGuigan

6/5/2025 4:15:09 PM

Brooke Tellinghuisen Geddes

Darcy McGuigan, Director
Division of Finance
Department of Health

Date

Consultant Signature
Brooke Tellinghuisen Geddes
Print or Type Consultant Name

Date

State Contact Person: Sherer, Kaitlin Phone: 605-367-5043

Consultant Contact Person: Brooke Tellinghuisen Geddes
Professional Licensing, LLC
810 N. Main Street #298

Spearfish, SD 57783 Phone: _____

The following shall be completed by the Consultant:

Nonprofit __ Profit __

Consultant fiscal year beginning _____ and ending _____