



South Dakota Board of Physical Therapy

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

Phone: (605) 642-1600
E-Mail: office@sdlicensing.com

Draft-Video Conference **BOARD MEETING AGENDA**

TO: All Board Members

FROM: Brooke Tellinghuisen Geddes

MEETING DATE: January 6, 2026

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

LOCATION: Video Conference

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

https://teams.microsoft.com/l/meetup-join/19%3ameeting_OWM5ZGUyZWItNzMzNS00MmYzLTg2ZDItdMDY1YjBiN2YxOTVh%40thread.v2/0?context=%7b%22id%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: 739188495#

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. If you are having issues accessing the link, please contact the board office at 605-642-1600.

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.

Agenda Item Number:

1. Call to Order/Welcome
2. Roll Call
3. Approval of the Agenda
4. Public Comment

5. Approval of the Minutes from November 4, 2025
6. Financial Update
7. Midwest Health Management Services- Health Professionals Assistance Program (HPAP)
8. Renewal Update
9. Cross Profession Data Collection Discussion
10. Legislative Updates- if any
11. Healthy Practice Resource Tool
12. Schedule Next Meeting(s)
13. Executive Session pursuant to SDCL 1-25-2
 - a. Complaints/Investigations- if any
 - b. Re-Entry Applications-if any
 - c. Executive Secretary Contract Renewal
14. Ratification on Re-Entry Applications-if any
15. Vote on Executive Secretary Contract Renewal
16. Any other Business
17. Adjourn

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OFFICIAL BOARD MINUTES FOR NOVEMBER 4, 2025 VIDEO CONFERENCE

MEMBERS PRESENT: Patti Berg-Poppe, President
Leonard Suel, Vice-President
Matthew Weigel, Member
Brad Thuringer, Member
Linda Ahrendt, Lay Member
Janelle Toman, Lay Member

MEMBERS ABSENT: Rebeca Schmitz, Secretary

OTHERS PRESENT: Brooke Tellinghuisen Geddes, Executive Director
Katie Funke, Executive Assistant
Howard Pallotta, SD Dept. of Health, General Counsel

CALL TO ORDER: Berg-Poppe called the meeting to order at 12:01 PM CST.

ROLL CALL: Tellinghuisen Geddes called the roll. Berg-Poppe, yes; Suel, yes; Schmitz, absent; Thuringer, yes; Toman, yes; Ahrendt, yes; Weigel, yes. A quorum was present.

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

PUBLIC COMMENT PERIOD: None.

APPROVAL OF THE MINUTES FROM AUGUST 19, 2025: Ahrendt made a motion to approve the minutes from August 19, 2025. Toman seconded the motion. **MOTION PASSED** by unanimous voice vote.

FINANCIAL UPDATE: Tellinghuisen-Geddes reported year-end financials as of September 30, 2025: revenue of \$38,640.00, expenses of \$47,821.24 and a cash balance of \$1,187,797.33.

WAIVER OF CONTINUING EDUCATION PROCESS UPDATE: The board discussed adding an exception to the current process of how requests for waivers of continuing education are reviewed and

approved. The exception would allow the executive director to review and approve waiver requests from new graduates licensed within the initial two-year licensure period, and to be granted a standard partial waiver of 15 hours if the applicant was unable to comply for a reason stated in SDCL 36-10-51. Suel made a motion to adopt the exception to the policy as stated. Ahrendt seconded the motion. **MOTION PASSED** by unanimous voice vote.

FSBPT ANNUAL EDUCATION MEETING REPORT: Suel reported that he, along with Tellinghuisen Geddes, attended the FSBPT Annual Education meeting in Spokane, Washington in October. Topics discussed included the Exam Licensure and Disciplinary Database (ELDD), Cross-Profession Data Set collection, informed consent, the Healthy Practice Resource tool developed by FSBPT, and providing value in regulation. Suel expressed appreciation for the event and encouraged all Board members to attend if they get the chance.

SCHEDULE NEXT MEETING(S): The next meeting is scheduled for: January 6, 2026, at 11AM MST/12 PM CST via Microsoft Teams. The following meeting is scheduled for April 14, 2026, at 11AM MST/12 PM CST via Microsoft Teams.

EXECUTIVE SESSION PURSUANT TO SDCL 1-25-2: The Board did not have a need to enter executive session.

COMPLAINTS/INVESTIGATIONS: None to report.

RATIFICATION ON RE-ENTRY APPLICATIONS: None to report.

ANY OTHER BUSINESS: Weigel reminded the board that there should be representation at the SD-APTA meetings to stay aware of upcoming issues or potential legislation. Berg-Poppe reported she attended the last business meeting and there may be potential legislation on the horizon that may have an impact the profession and public protection.

Thuringer made a motion to adjourn at 12:25 PM CST. Suel seconded the motion. **MOTION PASSED** by unanimous voice vote.



Respectfully submitted,
Brooke Tellinghuisen Geddes
Executive Director

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	BUDGET UNIT	09	HEALTH	BOARD OF PHYSICAL THERAPY - INFO	REVENUE SUMMARY BY BUDGET UNIT FOR PERIOD ENDING: 11/30/2025
CENTER	COMP	ACCT	DESCRIPTION	CURRENT MONTH	YEAR-TO-DATE
COMPANY NO 6503					
COMPANY NAME PROFESSIONAL & LICENSING BOARDS					
092140066701	6503	4293881	PT APPLICATION	240.00	4,200.00
092140066701	6503	4293882	PTA APPLICATION	120.00	1,680.00
092140066701	6503	4293883	PT RENEWAL	33,480.00	89,520.00
092140066701	6503	4293884	PTA RENEWAL	2,880.00	3,120.00
092140066701	6503	4293886	COMPACT CHECKS	.00	6,000.00
ACCT: 4293	BUSINESS & OCCUP LICENSING (NON-GOVERNMENTAL)			36,720.00	104,520.00
ACCT: 42	LICENSES, PERMITS & FEES			36,720.00	104,520.00
CNTR: 092140066701				36,720.00	104,520.00
CNTR: 092140066				36,720.00	104,520.00
CNTR: 0921400				36,720.00	104,520.00
COMP: 6503				36,720.00	104,520.00
B UNIT: 09214				36,720.00	104,520.00
AGENCY: 09				9,770,279.19	57,396,601.69

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

AGENCY	09	HEALTH							
BUDGET UNIT	09214	BOARD OF PHYSICAL THERAPY - INFO							
CENTER-5	09214	BOARD OF PHYSICAL THERAPY - INFO							
CENTER	COMP	ACCOUNT	DESCRIPTION	CURRENT MONTH	YEAR-TO-DATE				
COMPANY NO	6503								
COMPANY NAME	PROFESSIONAL & LICENSING BOARDS								
092140066701	6503	510103000000000000	BOARD & COMM MBRS FEES	996.00	2,158.00				
ACCT: 5101		EMPLOYEE SALARIES		996.00	2,158.00	*			
092140066701	6503	510201000000000000	OASI-EMPLOYER'S SHARE	76.19	165.10				
ACCT: 5102		EMPLOYEE BENEFITS		76.19	165.10	*			
ACCT: 51		PERSONAL SERVICES		1,072.19	2,323.10	**			
092140066701	6503	520402000000000000	DUES & MEMBERSHIP FEES	.00	1,832.00				
092140066701	6503	520405000000000000	COMPUTER CONSULTANT	767.50	3,857.75				
092140066701	6503	520409000000000000	MANAGEMENT CONSULTANT	10,425.00	64,817.20				
092140066701	6503	520420000000000000	CENTRAL SERVICES	.00	299.46				
092140066701	6503	520420700000000000	HUMAN RESOURCES SERVICES	.00	210.02				
092140066701	6503	520496000000000000	OTHER CONTRACTUAL SERVICE	512.61	1,144.37				
ACCT: 5204		CONTRACTUAL SERVICES		11,705.11	72,160.80	*			
092140066701	6503	520531000000000000	PRINTING-STATE	.00	131.40				
ACCT: 5205		SUPPLIES & MATERIALS		.00	131.40	*			
ACCT: 52		OPERATING EXPENSES		11,705.11	72,292.20	**			
COMP: 6503	PROFESSIONAL & LICENSING BOARDS			12,777.30	74,615.30	***			
CENTER: 092140066701				12,777.30	74,615.30	****			
B UNIT: 09214				12,777.30	74,615.30	*****			
AGENCY: 09				9,582,160.43	63,934,029.46	*****			

STATE OF SOUTH DAKOTA
CASH CENTER BALANCES
AS OF: 11/30/2025AGENCY: 09 HEALTH
BUDGET UNIT: 09210 BOARD OF PODIATRY EXAMINERS - INFO

COMPANY	CENTER	ACCOUNT	BALANCE	DR/CR	CENTER DESCRIPTION
6503	092100061821	1140000	32,946.83	DR	BOARD OF PODIATRY EXAMINERS
COMPANY/SOURCE TOTAL 6503 618			32,946.83	DR *	
6503	092100066701	1140000	1,226,450.48	DR	PHYSICAL THERAPY BOARD
COMPANY/SOURCE TOTAL 6503 667			1,226,450.48	DR *	
COMP/BUDG UNIT TOTAL 6503 09210			1,259,397.31	DR **	
BUDGET UNIT TOTAL 09210			1,259,397.31	DR ***	

LETTER OF AGREEMENT
BETWEEN
MIDWEST HEALTH MANAGEMENT SERVICES, LLC
SD HPAP
AND
South Dakota Board of Social Physical Therapy

This will serve as a Letter of Agreement between *Midwest Health Management Services, LLC* and *SD Board of Physical Therapy* for the provision of managed recovery services, as authorized per SDCL 36-2A.

EFFECTIVE: 1/1/2026

This Letter of Agreement will be automatically renewed every year on January 1. If either party wishes to discontinue services, 30-day advanced notice is required.

Midwest Health Management Services LLC will:

1. Provide monitoring and case management for the SD Social Physical Therapy;
2. Provide services at no cost to the SD Social Physical Therapy Board, participation fees will be paid by the participant;
3. In accordance with SDCL 36 2-A, MWHMS will provide documentation to the SD Physical Therapy Board for individuals who have been mandated by the SD Physical Therapy Board to participate in services with MWHMS;
4. For SD Physical Therapy members who voluntarily access the program, aggregate data will be provided to the SD Physical Therapy Board on an annual basis. If a voluntary participant is unable to successfully complete the program, MWHMS will provide a report to the SD Physical Therapy Board.

Amanda McKnelly, Executive Director
Midwest Health Management Services, LLC

SD Physical Therapy

Date:_____

Date:_____

Why We Are Needed

We expect a lot from our health professionals. They have demanding positions, and when making decisions that will affect the health and well-being of their patients, there is no room for error. However, they are human, and can succumb to stress and burnout, emotional or mental illness, and behavioral issues and addictions like everyone else. The difference is, healthcare occupations are considered “safety sensitive” positions, and if health professionals are experiencing potentially impairing illnesses, it may directly impact the safety of the patients they care for.

Who We Serve

Health professionals who are experiencing symptoms of mental health or substance use illnesses are individuals who have dedicated their lives to helping others and are now in need of care themselves. If left untreated or under-treated, these illnesses can place even the finest clinicians and their patients at risk. SD regulatory boards acknowledge a primary concern for public safety. Each Health Board may conduct a HPAP in accordance with SDCL 36-2A.

Regulated health professionals who hold or are eligible to hold SD licensure as a health professional may be eligible to participate. Most referrals come from employers and licensing boards; however, in an effort to encourage early intervention and improved outcomes, MWHMS encourages self-referrals, referrals from families or peers, or referrals from medical or treatment agencies. If you call MWHMS about a colleague, your contact will be held in the strictest confidence. We can serve as a resource to help determine appropriate next steps.

In addition to voluntary participation, HPAP also provides a track for mandatory disciplinary participation when a health professional's mental health or substance use disorder requires recovery management and/or practice limitations.

What HPAP Provides

- Access to early intervention, which increases the likelihood of successful treatment and decreases the likelihood of clinical skills being compromised.
- Assistance with obtaining the appropriate level of treatment and continued care.

- Enhanced public safety by reducing the risk associated with potentially impairing health conditions.
- Access to qualified licensed professionals who provide case management with compassion and dignity.
- Intervention and recovery management that can save a career, a reputation, or even a life.
- Access to education on health and wellbeing for professionals in safety sensitive positions
- Case Management includes: Monthly/quarterly meetings with the participant, random toxicology, managing therapy and physician appointments along with worksite liaison reporting.

CHAPTER [36-2A](#)
HEALTH PROFESSIONALS ASSISTANCE PROGRAM

- [36-2A-1](#) Definitions.
- [36-2A-1.1](#) Health professional assistance program--Relation to sanctions.
- [36-2A-2](#) Health professional assistance program--Standards.
- [36-2A-3](#) Repealed
- [36-2A-4](#) Repealed
- [36-2A-5](#) Repealed
- [36-2A-6](#) Application to program--Admission evaluation.
- [36-2A-7](#) Eligibility.
- [36-2A-8](#) Denial of admission.
- [36-2A-9](#) Participation components.
- [36-2A-10](#) Repealed
- [36-2A-11](#) Repealed
- [36-2A-12](#) Confidentiality of participants' records.
- [36-2A-13](#) Immunity for reports and actions related to duties.
- [36-2A-14](#) Promulgation of rules.
- [36-2A-15](#) Repealed
- [36-2A-16](#) Physician wellness program defined--Students eligible.
- [36-2A-17](#) Physician wellness program--Confidentiality--Exemption.
- [36-2A-18](#) Physician wellness program--Statewide association.
- [36-2A-19](#) Physician wellness program--Civil liability.

[36-2A-1](#). Definitions.

Terms used in this chapter mean:

- (1) "Board," a licensing board authorized in title 36;
- (2) "Health professionals assistance program," or "program," a confidential program designed to monitor and manage the treatment and continuing care of a health professional who may be unable to practice with reasonable skill or safety, or whose practice poses a risk to the public, if the professional's mental health or substance use related issue or disorder is not appropriately managed;
- (3) "Impaired," the inability of a licensee to practice with reasonable skill or safety, or whose practice poses a risk to the public as a result of unmanaged or undermanaged mental health or substance use related issue or disorder;
- (4) "Program personnel," persons or entities providing services for or on behalf of a licensing board's health professionals assistance program.

Source: SL 1996, ch 227, § 1; SL 2013, ch 171, § 1; SL 2021, ch 170, § 1.

[36-2A-1.1](#). Health professional assistance program--Relation to sanctions.

A board may use the program as an alternative to, or in conjunction with, other sanctions that may be imposed by the board.

Source: SL 2021, ch 170, § 2.

[36-2A-2](#). Health professional assistance program--Standards.

A board may conduct, or contract for services with an entity to conduct, a health professionals assistance program to protect the public from impaired persons regulated by the board. The program does not affect a board's authority to discipline violators of a board's practice act.

A health professionals assistance program shall include the following standards:

- (1) Program personnel qualified to manage mental health and substance use related issues and disorders;
- (2) Admission criteria;
- (3) Criteria for denial of admission pursuant to § [36-2A-8](#);
- (4) Program participation components;
- (5) Termination criteria; and
- (6) Successful discharge criteria.

Source: SL 1996, ch 227, § 2; SL 2013, ch 171, § 2; SL 2021, ch 170, § 3.

[36-2A-3](#). Repealed.

Source: SL 1996, ch 227, § 3; SL 2013, ch 171, § 3; SL 2021, ch 170, § 4.

[36-2A-4](#). Repealed.

Source: SL 1996, ch 227, § 4; SL 2013, ch 171, § 4; SL 2021, ch 170, § 5.

[36-2A-5](#). Repealed.

Source: SL 1996, ch 227, § 5; SL 2013, ch 171, § 5; SL 2021, ch 170, § 6.

[36-2A-6](#). Application to program--Admission evaluation.

An applicant that meets admission criteria shall be allowed access to the program by self-referral, board referral, or referral from another person or agency. Program personnel shall advise the applicant of the program requirements and the implications of noncompliance and shall secure an agreement with the applicant that includes participation components before the applicant enters the program. An applicant who refuses to cooperate with the program admission process may be reported to the applicable board.

Source: SL 1996, ch 227, § 6; SL 2013, ch 171, § 6; SL 2021, ch 170, § 7.

[36-2A-7](#). Eligibility.

Admission to the program is available to any person who meets the admission criteria and:

- (1) Holds licensure as a health care professional in this state;
- (2) Is eligible for and in the process of applying for licensure as a health care professional in this state; or
- (3) Is enrolled as a student in a program leading to licensure as a health care professional.

Source: SL 1996, ch 227, § 7; SL 2013, ch 171, § 7; SL 2021, ch 170, § 8.

[36-2A-8](#). Denial of admission.

Admission to the program may be denied if the applicant:

- (1) Is not eligible for licensure in this state;
- (2) Diverted controlled substances for other than personal use;

- (3) Creates too great a risk to the public by participating in the program as determined by program personnel; or
- (4) Has engaged in sexual misconduct that meets the criteria for denial of admission.

Source: SL 1996, ch 227, § 8; SL 2013, ch 171, § 8; SL 2021, ch 170, § 9.

36-2A-9. Participation components.

The program participation components may include requirements for treatment and continuing care, work-site monitoring, practice restrictions, random drug screening, support group participation, filing of reports, compliance documentation, and other requirements as necessary to manage mental health or substance use related issues or disorders and for successful completion of the program.

Source: SL 1996, ch 227, § 9; SL 2013, ch 171, § 9; SL 2021, ch 170, § 10.

36-2A-10. Repealed.

Source: SL 1996, ch 227, § 10; SL 2013, ch 171, § 10; SL 2021, ch 170, § 11.

36-2A-11. Repealed.

Source: SL 1996, ch 227, § 11; SL 2013, ch 171, § 11; SL 2021, ch 170, § 12.

36-2A-12. Confidentiality of participants' records.

All records of program participants are confidential and are not subject to discovery or subpoena. Only authorized program personnel may have access to participant records unless the participant voluntarily provides for written release of the information. A board may only have access to records of participants who were referred by the board, who refused to cooperate with the program, or who have been terminated by the program.

Source: SL 1996, ch 227, § 12; SL 2013, ch 171, § 12; SL 2021, ch 170, § 13.

36-2A-13. Immunity for reports and actions related to duties.

Any person, agency, institution, facility, or organization making reports to the board or health professionals assistance program regarding an individual suspected of practicing while impaired or reports of a participant's progress or lack of progress in the program is immune from civil liability for submitting a report in good faith to the program. Members, agents, and staff of the board and program personnel acting in good faith are immune from civil liability for any actions related to their duties under this chapter.

Source: SL 1996, ch 227, § 13; SL 2013, ch 171, § 13; SL 2021, ch 170, § 14.

36-2A-14. Promulgation of rules.

Each board conducting a health professionals assistance program may promulgate rules, pursuant to chapter [1-26](#), pertaining to:

- (1) Program structure;
- (2) Admission criteria;

- (3) Criteria for denial of admission;
- (4) Required participation components;
- (5) Termination of participation and discharge criteria;
- (6) Confidentiality and retention of program records;
- (7) Program evaluation criteria; and
- (8) Participation fees.

Source: SL 1996, ch 227, § 14; SL 2013, ch 171, § 14; SL 2021, ch 170, § 15.

36-2A-15. Repealed.

Source: SL 1996, ch 227, § 15; SL 2013, ch 171, § 15; SL 2021, ch 170, § 16.

36-2A-16. Physician wellness program defined--Students eligible.

The term, "physician wellness program," as used in §§ [36-2A-16](#) to [36-2A-19](#), inclusive, means a program of evaluation, counseling, or other modality to address an issue related to career fatigue or wellness in a person licensed to practice medicine or osteopathy under chapter [36-4](#) or a physician assistant licensed under chapter [36-4A](#).

A student enrolled at the school of medicine at the University of South Dakota is eligible to participate in a physician wellness program.

Source: SL 2021, ch 171, § 1; SL 2024, ch 151, § 1, eff. Mar. 18, 2024.

36-2A-17. Physician wellness program--Confidentiality--Exemption.

Any record of a person's participation in a physician wellness program is confidential and not subject to discovery, subpoena, or a reporting requirement to the applicable board, unless the person voluntarily provides for written release of the information or the disclosure is required to meet the licensee's obligation to report a criminal charge or action, or unprofessional or dishonorable conduct, as defined in §§ [36-4-30](#), [36-4-30.1](#), and [36-4A-38](#).

Source: SL 2021, ch 171, § 2.

36-2A-18. Physician wellness program--Statewide association.

Any statewide association, exempt from taxation under 26 U.S.C. § 501(c)(6) and that primarily represents health care professionals licensed to practice medicine or osteopathy under chapter [36-4](#), may establish a physician wellness program.

Source: SL 2021, ch 171, § 3.

36-2A-19. Physician wellness program--Civil liability.

Any person, agency, institution, facility, or organization employed by, contracting with, or operating a physician wellness program, when acting in good faith, is immune from civil liability for any action related to their duties in connection with a physician wellness program.

Source: SL 2021, ch 171, § 4.

STATE OF SOUTH DAKOTA CONTRACT
AGREEMENT
BETWEEN

26SC090510

Professional Licensing, LLC
810 N. Main Street #298
Pierre, SD 57501

South Dakota Department of Health
Licensure & Accreditation
Board of Physical Therapy
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 Physical Therapy.*

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 Physical Therapy 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 Physical Therapy 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 121,500.00.

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

The total amount for such expenses will not exceed \$15,000.00.

The TOTAL CONTRACT AMOUNT is an amount not to exceed \$136,500.00.

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.

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

6/9/2025 10:00:49 AM

Pattie Berg-Poppe

6/5/2025 6:51:10 P

Director
South Dakota Department of Health

Date

Board President
Board of Physical Therapy

Date

Darcy McGuigan

6/9/2025 10:04:15 AM

Brooke Tellinghuisen Geddes

6/5/2025 4:12:1

Darcy McGuigan, Director
Division of Finance
Department of Health

Date

Consultant Signature

Date

Print or Type Consultant Name

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

Consultant Contact Person: Brooke Tellinghuisen Geddes Phone: 605-642-1600

The following shall be completed by the Consultant:

Nonprofit ☐ Profit ☐

Consultant fiscal year beginning _____ and ending _____