

STATE OF SOUTH DAKOTA  
DEPARTMENT OF SOCIAL SERVICES  
700 GOVERNORS DRIVE  
PIERRE, SD 57501

**Intensive Treatment Foster Homes**

PROPOSALS ARE DUE NO LATER THAN SEPTEMBER 11<sup>th</sup>, 2024 BY 5PM CST

RFP11090

State POC: Kirsten Blachford

EMAIL: [Kirsten.Blachford@state.sd.us](mailto:Kirsten.Blachford@state.sd.us)

**READ CAREFULLY**

FIRM NAME: \_\_\_\_\_ AUTHORIZED SIGNATURE: \_\_\_\_\_

ADDRESS: \_\_\_\_\_ TYPE OR PRINT NAME: \_\_\_\_\_

CITY/STATE: \_\_\_\_\_ TELEPHONE NO: \_\_\_\_\_

ZIP (9 DIGIT): \_\_\_\_\_ FAX NO: \_\_\_\_\_

E-MAIL: \_\_\_\_\_

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PRIMARY CONTACT INFORMATION

CONTACT NAME: \_\_\_\_\_ TELEPHONE NO: \_\_\_\_\_

FAX NO: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

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## **1.0 GENERAL INFORMATION**

### **1.1 PURPOSE OF REQUEST FOR PROPOSAL (RFP)**

The purpose of this request is to select a licensed child welfare agency that can provide Intensive Family Treatment Foster Care (TFC) for youth ages 0-21 with extensive medical, developmental, or mental health needs in the care and custody of the South Dakota Department of Social Services, Child Protection Services. The Offer would provide behavioral, educational, and mental health treatment services in a family-like setting, for youth who would not be successful in basic foster care. The Offer would provide enhanced case management services and crisis intervention by utilizing additional resources to meet the needs of the youth.

### **1.2 ISSUING OFFICE AND RFP REFERENCE NUMBER**

The Division of Child Protection Services is the issuing office for this document and all subsequent addenda relating to it, on behalf of the State of South Dakota, Department of Social Services. The reference number for the transaction is RFP11090. This number must be referred to on all proposals, correspondence, and documentation relating to the RFP.

### **1.3 LETTER OF INTENT**

All interested offerors are requested to submit a non-binding Letter of Intent to respond to this RFP. While preferred, a Letter of Intent is not mandatory to submit a proposal.

Be sure to reference the RFP number in your letter.

The Letter of Intent may be submitted to Kirsten Blachford via email at [Kirsten.Blachford@state.sd.us](mailto:Kirsten.Blachford@state.sd.us) no later than August 20<sup>th</sup>, 2024. Please place the following in the subject line of your email: Letter of Intent for RFP11090.

### **1.4 SCHEDULE OF ACTIVITIES (SUBJECT TO CHANGE)**

RFP Publication	<u>08/13/2024</u>
Letter of Intent to Respond Due	<u>08/20/2024</u>
Offeror Questions Due	<u>08/27/2024</u>
Responses to Offeror Questions	<u>09/03/2024</u>
Request for SFTP folder	<u>09/10/2024</u>
Proposal Submission	<u>09/11/2024</u>
Oral Presentations/Discussions (if required)	<u>N/A</u>
Proposal Revisions (if required)	<u>09/18/2024</u>
Anticipated Award Decision/Contract Negotiation	<u>10/08/2024</u>

### **1.5 SUBMITTING YOUR PROPOSAL**

All proposals must be completed and received in the Department of Social Services by the date and time indicated in the Schedule of Activities.

Proposals received after the deadline will be late and ineligible for consideration.

Proposals must be submitted as PDFs via Secured File Transfer Protocol (SFTP). Offerors must request an SFTP folder no later than the date indicated in the Schedule of Activities by emailing Kirsten Blachford at [Kirsten.Blachford@state.sd.us](mailto:Kirsten.Blachford@state.sd.us).

The subject line should read: RFP11090 SFTP Request. The email should contain the name and the email of the person who will be responsible for uploading the document(s).

Please note, offeror will need to work with their own technical support staff to set up an SFTP compatible software on offeror's end. While the State of South Dakota can answer questions, State of South Dakota is not responsible for the software required.

All proposals must be signed, in ink, by an officer of the responder, legally authorized to bind the responder to the proposal, and sealed in the form intended by the respondent. Proposals that are not properly signed may be rejected.

No proposal shall be accepted from, or no contract or purchase order shall be awarded to any person, firm or corporation that is in arrears upon any obligations to the State of South Dakota, or that otherwise may be deemed irresponsible or unreliable by the State of South Dakota.

**1.6 CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS**

By signing and submitting this proposal, the offeror certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation, by any Federal department or agency, from transactions involving the use of Federal funds. Where the offeror is unable to certify to any of the statements in this certification, the bidder shall attach an explanation to their offer.

**1.7 NON-DISCRIMINATION STATEMENT**

The State of South Dakota requires that all contractors, vendors, and suppliers doing business with any State agency, department, or institution, provide a statement of non-discrimination. By signing and submitting their proposal, the offeror certifies they do not discriminate in their employment practices with regard to race, color, creed, religion, age, sex, ancestry, national origin or disability.

**1.8 CERTIFICATION RELATING TO PROHIBITED ENTITY**

For contractors, vendors, suppliers, or subcontractors who enter into a contract with the State of South Dakota by submitting a response to this solicitation or agreeing to contract with the State, the bidder or offeror certifies and agrees that the following information is correct:

The bidder or offeror, in preparing its response or offer or in considering proposals submitted from qualified, potential vendors, suppliers, and subcontractors, or in the solicitation, selection, or commercial treatment of any vendor, supplier, or subcontractor, is not an entity, regardless of its principal place of business, that is ultimately owned or controlled, directly or indirectly, by a foreign national, a foreign parent entity, or foreign government from China, Iran, North Korea, Russia, Cuba, or Venezuela, as defined by SDCL 5-18A. It is understood and agreed that, if this certification is false, such false certification will constitute grounds for the State 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. The successful bidder or offeror further agrees to provide immediate written notice to the contracting executive branch 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.

**1.9 RESTRICTION OF BOYCOTT OF ISRAEL**

For contractors, vendors, suppliers, or subcontractors with five (5) or more employees who enter into a contract with the State of South Dakota that involves the expenditure of one hundred thousand dollars (\$100,000) or more, by submitting a response to this solicitation or agreeing to contract with the State, the bidder or offeror certifies and agrees that the following information is correct:

The bidder or offeror, in preparing its response or offer or in considering proposals submitted from qualified, potential vendors, suppliers, and subcontractors, or in the solicitation, selection, or commercial treatment of any vendor, supplier, or subcontractor, 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 the bid or offer, with a person or entity on the basis of Israeli national origin, or residence or incorporation in Israel or its territories, 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 the State 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. The successful bidder or offeror further agrees to provide immediate written notice to the contracting executive branch 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.

**1.10 CERTIFICATION OF NO STATE LEGISLATOR INTEREST**

Offeror (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 any Agreement entered into as a result of this RFP. By signing an Agreement pursuant to this RFP, Offeror hereby certifies that the Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.

**1.11 MODIFICATION OR WITHDRAWAL OF PROPOSALS**

Proposals may be modified or withdrawn by the offeror prior to the established due date and time.

No oral, telephonic, telegraphic, or facsimile responses or modifications to informal, formal bids, or Request for Proposals will be considered.

**1.12 OFFEROR INQUIRIES**

Offerors may email inquiries concerning this RFP to obtain clarification of requirements. No inquiries will be accepted after the date and time indicated in the Schedule of Activities. Inquiries must be emailed to Kirsten Blachford at [Kirsten.Blachford@state.sd.us](mailto:Kirsten.Blachford@state.sd.us) with the subject line: RFP11090 Inquiries.

The State will respond to offeror's inquiries (if required) via e-mail. In addition, all inquiries and the State's response will be posted on the state's e-procurement system and the DSS website at <https://dss.sd.gov/keyresources/rfp.aspx>. Offerors may not rely on any other statements, either of a written or oral nature, that alter any specification or other term or condition of this RFP. Offerors will be notified in the same manner as indicated above regarding any modifications to this RFP.

**1.13 PROPRIETARY INFORMATION**

The proposal of the successful offeror(s) becomes public information.

Proprietary information can be protected under limited circumstances such as client lists and non-public financial statements. An entire proposal may not be marked as proprietary. Offerors must clearly identify in the Executive Summary and mark in the body of the proposal any specific proprietary information they are requesting to be protected. The Executive Summary must contain specific justification explaining why the

information is to be protected. Proposals may be reviewed and evaluated by any person at the discretion of the State. All materials submitted become the property of the State of South Dakota and may be returned only at the State's option.

Offerors may submit a redacted copy of their proposal when they respond though this is optional.

**1.14 LENGTH OF CONTRACT**

The contract resulting from this RFP will be issued for the period of one (1) year ending May 31, 2025, with the option for renewal for up to three (3), one (1) year contracts at the discretion of the State based on performance and/or the continued availability of funds. Contracts will be negotiated on an annual basis.

**1.15 GOVERNING LAW**

Venue for any and all legal action regarding or arising out of the transaction covered herein shall be solely in the State of South Dakota. The laws of South Dakota shall govern this transaction.

**1.16 DISCUSSIONS WITH OFFERORS (ORAL PRESENTATION/NEGOTIATIONS)**

An oral presentation by an offeror to clarify a proposal may be required at the sole discretion of the State. However, the State may award a contract based on the initial proposals received without discussion with the Offeror. If oral presentations are required, they will be scheduled after the submission of proposals. Oral presentations will be made at the offeror's expense.

This process is a Request for Proposal/Competitive Negotiation process. Each Proposal shall be evaluated, and each respondent shall be available for negotiation meetings at the State's request. The State reserves the right to negotiate on any and/or all components of every proposal submitted. From the time the proposals are submitted until the formal award of a contract, each proposal is considered a working document and as such, will be kept confidential. The negotiation discussions will also be held as confidential until such time as the award is completed.

**2.0 STANDARD CONTRACT TERMS AND CONDITIONS**

Any contract or agreement resulting from this RFP will include the State's standard terms and conditions as listed below and as seen in **Attachment A**, along with any additional terms and conditions that may be necessary to the performance of the scope of work. The Business Associates Agreement is included as **Attachment B**, and the IT Clauses are included as **Attachment C**.

- 2.1** The Contractor will perform those services described in the Scope of Work, attached hereto as Section 3 of the RFP and by this reference incorporated herein.
- 2.2** The Contractor's services under this Agreement shall commence on   \_TBD\_   and end on May 31, 2025, unless sooner terminated pursuant to the terms hereof.
- 2.3** The Contractor will use State equipment, supplies or facilities. **YES ( ) NO ( X )**
- 2.4** The Contractor will provide the State with its Employer Identification Number, Federal Tax Identification Number or Social Security Number upon execution of this Agreement.
- 2.5** The State will make payment for services upon satisfactory completion of the services. The TOTAL CONTRACT AMOUNT is an amount not to exceed \$\_\_\_\_\_. The State will not pay Contractor's expenses as a separate item. Payment will be made pursuant to itemized invoices submitted with a signed state voucher. Payment will be made consistent with SDCL ch. 5-26.

- 2.6** The Contractor agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require the Contractor to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.
- 2.7** The Contractor, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits as follows:
- A. Commercial General Liability Insurance:**  
The Contractor shall maintain occurrence based commercial general liability insurance or equivalent form with a limit of not less than \$1,000,000.00 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.
  - B. Professional Liability Insurance or Miscellaneous Professional Liability Insurance:**  
The Contractor agrees to procure and maintain professional liability insurance or miscellaneous professional liability insurance with a limit not less than \$1,000,000.00.
  - C. Business Automobile Liability Insurance:**  
The Contractor shall maintain business automobile liability insurance or equivalent form with a limit of not less than \$1,000,000.00 for each accident. Such insurance shall include coverage for owned, hired and non-owned vehicles.
  - D. Worker's Compensation Insurance:**  
The Contractor shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota 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. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Contractor agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Contractor shall furnish copies of insurance policies if requested by the State.

- 2.8** While performing services hereunder, the Contractor is an independent contractor and not an officer, agent, or employee of the State of South Dakota.
- 2.9** Contractor agrees to report to the State any event encountered in the course of performance of this Agreement which results in injury to the person or property of third parties, or which may otherwise subject Contractor or the State to liability. Contractor shall report any such event to the State immediately upon discovery.

Contractor's obligation under this section shall only be to report the occurrence of any event to the State and to make any other report provided for by their duties or applicable law. Contractor's obligation to report shall not require disclosure of any information subject to privilege or confidentiality under law (e.g., attorney-client communications). Reporting to the State under this section shall not excuse or satisfy any obligation of

Contractor to report any event to law enforcement or other entities under the requirements of any applicable law.

- 2.10** This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Contractor breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time with or without notice. If termination for such a default is effected 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 default. Upon termination the State may take over the work and may award another party an agreement to complete the work under this Agreement. If after the State terminates for a default by Contractor it is determined that Contractor was not at fault, then the Contractor shall be paid for eligible services rendered and expenses incurred up to the date of termination.
- 2.11** This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.
- 2.12** This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof and be signed by an authorized representative of each of the parties hereto.
- 2.13** This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.
- 2.14** The Contractor will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.
- 2.15** The Contractor may not use subcontractors to perform the services described herein without the express prior written consent of the State. The 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 for the benefit of the State in a manner consistent with this Agreement. The Contractor will cause its subcontractors, agents, and employees to comply, with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance.
- 2.16** Contractor hereby acknowledges and agrees that all reports, plans, specifications, technical data, miscellaneous drawings, software system programs and documentation, procedures, or files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, and all information contained therein provided to the State by the Contractor in connection with its 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 the 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.

- 2.17** The 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.
- 2.18** 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 \_\_\_\_\_ on behalf of the State, and by \_\_\_\_\_, on behalf of the 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.
- 2.19** 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.
- 2.20** 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.

### **3.0 SCOPE OF WORK**

The Department of Social Services vision is Strong Families – South Dakota’s Foundation and Our Future. The purpose of the Division of Child Protection Services is to assure children’s safety, permanency, and well-being. The goal of Child Protection Services is to maintain children’s safety in their homes and when not possible, children may need either a temporary or permanent alternative family setting.

When children are removed from their home by law enforcement or through a court order to ensure their safety, the Department of Social Services is granted custody of the children and they are placed with a safe and stable resource. The Division of Child Protection Services works with the family to resolve the issues resulting in their children being unsafe while providing supervision and support to the children and their placement resource.

Intensive Treatment Family Foster Care (TFC) is a protective service provided by the Division of Child Protection Services for youth and families who must be separated from one another because of safety threats related to abuse or neglect. Youth in this level of care need a special form of foster care that provides a temporary home and support for youth with extensive emotional, behavioral, or mental health needs. Intensive TFC aims to provide a safe and a supportive environment to meet the needs of the child. Youth referred to the provider may include one or more of the following:

- Aggressive behaviors such as cruelty to animals, verbal or physical assaults or destruction of property;
- A history of chemical dependence that results in a pattern of interference in the youth’s behavior in normal day to day activities.
- A history of mental health treatment for issues such as separation and attachment, grieving and loss, depression, withdrawal, and other psychiatric diagnosis;
- A developmental delay or significant medical need, that requires outpatient treatment more frequently than once a week;
- Suicidal gestures or attempts;
- Inappropriate sexual behaviors due to victimization and or perpetration;



- Chronic truancy which results in functional illiteracy because of non-attendance at school; or
- Running away behaviors; or
- Youth stepping down from Group or Residential Treatment

Intensive TFC is 24/7 out of home care for a child that provides treatment services and constant supervision in a family environment by a well-trained, licensed foster parent. Placement in an Intensive TFC home provides residential/psychiatric services in a family-like setting. Intensive TFC allows a child to step down from a residential setting and provides enhanced emotional, social, and physical supports. Intensive case management services and crisis intervention is provided by the child placement agency by utilizing additional resources to meet the needs of the child. Enhanced case management includes 24/7 crisis management, person centered treatment planning, therapeutic and skill building groups, community resources to include mental health counseling, ongoing evidence-based assessments, trauma informed response and interventions, 24/7 foster home support and consultation, and educational and extra circular activities. Intensive TFC foster homes partner with a treatment team including the child's parents, Specialist, therapist, school, and medical providers to provide appropriate services to the child.

In South Dakota Intensive TFC is provided by private child placement agencies. The South Dakota Department of Social Services, Child Protection Services is seeking child placement agencies who can provide case planning and services which meets the child's placement and treatment needs, increase stability for youth in placement, maintain sibling and family connections, reduce the length of time a youth spends in care, and enhance reunification and permanency options and outcomes for youth in foster care.

- 3.1** The Offeror must provide information regarding their status as a licensed child placement agency and ability to license families for Intensive Treatment Foster Care (TFC).
- 3.1.1** Provide a copy of their license as a child placement agency in South Dakota or their current efforts to become a licensed child placement agency.
  - 3.1.2** Manage and retain qualified employees to license Intensive TFC families.
  - 3.1.3** Recruit and license Intensive TFC families equipped to provide care and supervision in a family setting 24/7 and demonstrate adequate skill and trauma-informed knowledge in working with youth who are in foster care.
  - 3.1.4** Provide advanced training to Intensive TFC families so they are equipped to manage youth with extensive medical conditions, developmental disabilities, conduct disorders, and/or mental health diagnosis.
  - 3.1.5** Ensure Intensive TFC families are adequately prepared, supported to meet the care needs of youth, and provide respite care opportunities within the agency.
  - 3.1.6** Submit required data and demographics to the CPS Family and Children Information System (FACIS) timely and accurately regarding Intensive TFC families.
  - 3.1.7** Describe how significant changes within the agency will be communicated to the Permanency Program Specialist and the Office of Licensing and Accreditation.
  - 3.1.8** Agree to share foster parent files (including home study, background checks, and a description of other children or adults in the home) with the Department of Social Services prior to placement of a youth into the Intensive TFC.
  - 3.1.9** Ensure TFC families licensed by the agency meet all applicable licensing regulations to provide Family Foster Care in SD and monitor compliance.
  - 3.1.10** Explain how the agency will provide respite care to the TFC families within their agency, if needed.
  - 3.1.11** Describe how the agency will notify Child Protection Services immediately regarding any significant incidents or changes to the foster family's home that may either temporarily or permanently affect the family's ability to provide care (new children/adults in the home, physical/ mental health issues, marital problems, divorce, moves, pregnancy, legal/criminal issues, job changes, family closing license, etc.).

**3.2** The Offeror must describe how they will respond to referrals for Intensive Family Treatment Foster Care (TFC) within their child placement agency.

**3.2.1** Describe the written criteria for intake including age, race, legal status, needs of the youth, permanency goals, etc.

**3.2.2** Provide a referral response time and the offeror's plan to track referrals or maintain a waiting list.

**3.2.3** Keep data regarding the number of current foster homes, location of the homes, and number of openings and report this weekly to the Department of Social Services.

**3.2.4** Ensure that youth are placed in close proximity to identified community, school, social and family supports whenever possible.

**3.3** The Offeror must explain how they will provide comprehensive and individualized treatment services to the youth accepted into the Offeror's Intensive Family Treatment Foster Care (TFC) program.

**3.3.1** Provide a detailed description of the agency's current curriculum/treatment modalities.

**3.3.2** Describe the enhanced case management services and supports available for the youth and the Intensive TFC family.

**3.3.3** Provide a written individualized treatment plan within 30 days of admission into the program and renew the plan every 90 days.

**3.3.4** Describe the therapeutic services provided to maintain the youth in the family home and prevent placement in a psychiatric or residential placement.

**3.3.5** Describe the crisis management services and ability to provide a 24/7 crisis response and alternate crisis placement.

**3.3.6** Describe the community and/or agency resources available to provide consistent outpatient medical or mental health treatment two or more times per week.

**3.3.7** Describe partnerships with any school or educational program to support the educational needs of all youth.

**3.3.8** Describe the community and/ or agency resources available to ensure the social and cultural needs of the youth.

**3.3.9** Describe what services can be funded through Medicaid to meet the treatment needs of the youth.

**3.3.10** Explain how the agency will provide transportation to needed services for education, health care, and treatment.

**3.3.11** Describe how the agency will prevent or reduce the number of disruptions in foster care and ensure services and supports are in place to maintain and preserve stability of placements.

**3.4** The Offeror must explain how they will be involved in the development, implementation, and review of the child case plan to ensure permanency is achieved timely.

**3.4.1** Allow for CPS to complete at least monthly in person home visits in the family home to assess the safety and stability of the Intensive TFC placement.

**3.4.2** Identify and assess strengths and needs of the youth related to medical, educational/developmental, mental health, social, connection, and permanency needs and then provide everyday services to meet both basic and complex needs.

**3.4.3** Develop a family time plan regarding how face to face contacts and activities with the youth's parents, siblings, and other kin or fictive kin will be facilitated to ensure the youth stays connected to important life-long connections.

**3.4.4** Provide culturally competent activities and support the cultural identity of youth who are enrolled or eligible for enrollment in a Native American tribe.

- 3.4.5 Provide the opportunity for youth to develop independent living skills including but not limited to personal care, health/medical, food/nutrition, household chores, money management, social skills, and employment skills.
  - 3.4.6 Implement “Reasonable and Prudent Parent” Standards, which states children/youth in care will be given the opportunity for normal growth and development which includes participating in age-appropriate activities, responsibilities, and life skills.
  - 3.4.7 Utilize backup emergency care in the event a youth’s placement in the home becomes disruptive and cannot be maintained. This will be discussed with the Family Services Specialist and agreed upon prior to occurring.
- 3.5 The Offeror must explain how they will work with the SD Department of Social Services, Child Protection Services (CPS) and plan for the youth’s discharge from the agency to the least restrictive setting.
- 3.5.1 Describe the agency’s aftercare planning methods to ease transitions of youth into lower levels of care.
  - 3.5.2 Describe how the agency will work with CPS to reduce the length of time in care and support efforts towards reunification, guardianship, or adoption.
  - 3.5.3 Describe how the agency will work with CPS to prepare youth 16 years of age and older to transition into adulthood.
  - 3.5.4 Provide data on the following: average length of stay for each youth, average age of youth at discharge, where youth were discharged (family, adoption, guardianship, disruption to higher or lower level of care), and number of placement disruptions and reason for disruption.
- 3.6 The Offeror must submit monthly billing by the 10<sup>th</sup> of each month to the SD Department of Social Services, Child Protection Services.
- 3.7 Offeror must provide assurances of the following program responsibilities and expectations in the proposal.
- 3.7.1 Confidentiality of Child Protection Services information.
  - 3.7.2 Financial management, including management of multiple funding sources, separate from all other agency funding - an outside accounting firm may be used to meet this requirement.
  - 3.7.3 Allow Child Protection Services to review all financial records related to the contract upon request.
  - 3.7.4 Sound personnel and administrative policies and practices are in place for employees that include an employee manual addressing policies such as sick and annual leave, work adjust hours, overtime, employee review process and expense reimbursement requests.
  - 3.7.5 Each employee is aware of mandatory child abuse and neglect reporting requirements;
  - 3.7.6 Communicate with Child Protection Services on an ongoing basis regarding any concerns regarding the services required under the contract.
  - 3.7.7 Provide Child Protection Services with drafts of press releases, reports, brochures, and other materials related to the contract for approval.
  - 3.7.8 Give credit to Child Protection Services for its funding support on all press releases, reports, brochures, and other materials related to the contract.
  - 3.7.9 Provide telephone service, voice messaging service, email access, internet access, and a general agency email address.
- 3.8 The successful Offeror will describe how they meet or exceed the following organization qualities and characteristics.

- 3.8.1 A history of providing high quality training and consultation at the community level.
- 3.8.2 Demonstrated experience in collaboration and partnership with DSS.
- 3.8.3 An administrative structure capable of efficiently managing statewide consultant staff as well as subcontracts where necessary.
- 3.8.4 Demonstrated leadership capability to develop services in collaboration with DSS and/or other provider agencies as well as evaluate services provided as the needs of the State continue to change.
- 3.8.5 A strong commitment to address cultural diversity.
- 3.8.6 A history of demonstrated effectiveness in subcontract management and/or lead agency coordination of multiple providers and ability to provide stability for these projects. As well as a description of how challenging issues were addressed within those subcontracts; and
- 3.8.7 A description of resources, both personnel and non-personnel required to perform all activities of the RFP.

**3.9** The Offeror must meet the requirements from the Bureau of Information and Telecommunications Required IT Contract Terms (**Attachment C**):

- 3.9.1 Confidentiality of Information
- 3.9.2 Rejection or Election of Vendor
- 3.9.3 Non-Disclosure and Separation of Duties
- 3.9.4 Audit Requirements
- 3.9.5 Threat Notification
- 3.9.6 Adverse Event
- 3.9.7 Background Investigations
- 3.9.8 Data Location and Offshore Services
- 3.9.9 Vendor Training Requirements
- 3.9.10 Use of Portable Devices
- 3.9.11 Remote Access
- 3.9.12 Rights Use and License of and to State Dat

**4.0 PROPOSAL REQUIREMENTS AND COMPANY QUALIFICATIONS**

- 4.1 The offeror is cautioned that it is the offeror's sole responsibility to submit information related to the evaluation categories and that the State of South Dakota is under no obligation to solicit such information if it is not included with the proposal. The offeror's failure to submit such information may cause an adverse impact on the evaluation of the proposal.
- 4.2 **Offeror's Contacts:** Offerors and their agents (including subcontractors, employees, consultants, or anyone else acting on their behalf) must direct all of their questions or comments regarding the RFP, the evaluation, etc. to the buyer of record indicated on the first page of this RFP. Offerors and their agents may not contact any state employee other than the buyer of record regarding any of these matters during the solicitation and evaluation process. Inappropriate contacts are grounds for suspension and/or exclusion from specific procurements. Offerors and their agents who have questions regarding this matter should contact the buyer of record.
- 4.3 Provide the following information related to at least three previous or current service/contracts, performed by the offeror's organization, which are similar to the requirements of this RFP:
  - 4.3.1 Name, address and telephone number of client/contracting agency and a representative of that agency who may be contacted for verification of all information submitted;

4.3.2 Dates of the service/contract; and

4.3.3 A brief, written description of the specific prior services performed and requirements thereof.

4.4 The offeror may be required to submit a copy of their most recent independently audited financial statements.

4.5 If an offeror's proposal is not accepted by the State, the proposal will not be reviewed/evaluated. Examples include: Proposal was not received on time. Proposal was not signed. Electronic file was not provided.

:  
**5.0 PROPOSAL RESPONSE FORMAT**

5.1 Only a PDF copy shall be submitted via SFTP folder.

5.1.1 The proposal should be page numbered and should have an index and/or a table of contents referencing the appropriate page number.

5.2 All proposals must be organized and tabbed with labels for the following headings:

5.2.1 **RFP Form.** The State's Request for Proposal form (1<sup>st</sup> page of RFP) completed and signed.

5.2.2 **Executive Summary.** The one-to-two-page executive summary is to briefly describe the offeror's proposal. This summary should highlight the major features of the proposal. It must indicate any requirements that cannot be met by the offeror. The reader should be able to determine the essence of the proposal by reading the executive summary. Proprietary information requests should be identified in this section.

5.2.3 **Detailed Response.** This section should constitute the major portion of the proposal and must contain at least the following information:

5.2.3.1 A complete narrative of the offeror's assessment of the work to be performed, the offeror's ability and approach, and the resources necessary to fulfill the requirements. This should demonstrate the offeror's understanding of the desired overall performance expectations.

5.2.3.2 A specific point-by-point response, in the order listed, to each requirement in the RFP. The response should identify each requirement being addressed as enumerated in the RFP.

5.2.3.3 A clear description of any options or alternatives proposed.

5.2.4 **Cost Proposal.** Cost will be evaluated independently from the technical proposal. Offerors may submit multiple cost proposals. All costs related to the provision of the required services must be included in each cost proposal offered.

See section 7.0 for more information related to the cost proposal.

## **6.0 PROPOSAL EVALUATION AND AWARD PROCESS**

- 6.1** After determining that a proposal satisfies the mandatory requirements stated in the Request for Proposal, the evaluator(s) shall use subjective judgment in conducting a comparative assessment of the proposal by considering each of the following criteria:
- 6.1.1** Specialized expertise, capabilities, and technical competence as demonstrated by the proposed approach and methodology to meet the project requirements;
  - 6.1.2** Resources available to perform the work, including any specialized services, within the specified time limits for the project;
  - 6.1.3** Record of past performance, including price and cost data from previous projects, quality of work, ability to meet schedules, cost control, and contract administration;
  - 6.1.4** Availability to the project locale;
  - 6.1.5** Familiarity with the project locale;
  - 6.1.6** Proposed project management techniques; and
  - 6.1.7** Ability and proven history in handling special project constraints;
  - 6.1.8** Cost proposal.
- 6.2** Experience and reliability of the offeror's organization are considered subjectively in the evaluation process. Therefore, the offeror is advised to submit any information which documents successful and reliable experience in past performances, especially those performances related to the requirements of this RFP.
- 6.3** The qualifications of the personnel proposed by the offeror to perform the requirements of this RFP, whether from the offeror's organization or from a proposed subcontractor, will be subjectively evaluated. Therefore, the offeror should submit detailed information related to the experience and qualifications, including education and training, of proposed personnel.
- 6.4** The State reserves the right to reject any or all proposals, waive technicalities, and make award(s) as deemed to be in the best interest of the State of South Dakota.
- 6.5 Award:** The requesting agency and the highest ranked offeror shall mutually discuss and refine the scope of services for the project and shall negotiate terms, including compensation and performance schedule.
- 6.5.1** If the agency and the highest ranked offeror are unable for any reason to negotiate a contract at a compensation level that is reasonable and fair to the agency, the agency shall, either orally or in writing, terminate negotiations with the contractor. The agency may then negotiate with the next highest ranked contractor.
  - 6.5.2** The negotiation process may continue through successive offerors, according to agency ranking, until an agreement is reached, or the agency terminates the contracting process.

- 6.5.3** Only the response of the vendor awarded work becomes public. Responses to work orders for vendors not selected and the evaluation criteria and scoring for all proposals are not public. Vendors may submit a redacted copy with the full proposal as stated in Section 1.12 Proprietary Information. SDCL 1-27-1.5 and See SDCL 1-27-1.5 and 1-27-1.6

## **7.0 COST PROPOSAL**

The daily rate provided to child placement agencies for Intensive Treatment Foster Care is \$214.36. This includes the foster care reimbursement and administrative costs of the placement. Please provide an explanation in the RFP regarding the expected capacity of the Offeror and the total number of ongoing placements, to help provide a projection of the fiscal impact and total contract amount.

The Offeror must agree to submit a cost report in the format required by the State and is due four months following the end of the Provider's fiscal year.

**STATE OF SOUTH DAKOTA  
DEPARTMENT OF SOCIAL SERVICES  
DIVISION OF CHILD PROTECTION**

**Purchase of Services Agreement  
For Provider Services  
Between**

State of South Dakota  
Department of Social Services  
DIVISION OF CHILD PROTECTION  
700 Governors Drive  
Pierre, SD 57501-2291

\_\_\_\_\_  
Referred to as Provider

\_\_\_\_\_  
Referred to as State

The State hereby enters into a contract (the “Agreement” hereinafter) for procurement of goods or services. While performing services hereunder, Provider is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

1. PROVIDER’S South Dakota Vendor Number is \_\_\_\_\_. Upon execution of agreement, Provider will provide the State with Provider’s Employer Identification Number or Federal Tax Identification Number.
2. PERIOD OF PERFORMANCE:
  - A. This Agreement shall be effective as of November 1, 2024 and shall end on May 31, 2025, unless sooner terminated pursuant to the terms hereof.
  - B. Agreement is the result of request for proposal process, RFP11090.
3. PROVISIONS:
  - A. The Purpose of this Provider contract:
    - 1.
    2. Does this Agreement involve Protected Health Information (PHI)? YES ( X ) NO ( )  
If PHI is involved, a Business Associate Agreement must be attached and is fully incorporated herein as part of **Attachment B**.
    3. The Provider WILL ( ) WILL NOT ( X ) use state equipment, supplies or facilities.
    4. If WILL is indicated above, the following state equipment, supplies or facilities will be used:
  - B. The Provider agrees to perform the following services (add an attachment if needed):
    - 1.
  - C. The TOTAL CONTRACT AMOUNT will not exceed \$ \_\_\_\_\_.  
Payment will be in accordance with SDCL 5-26-2.



4. **BILLING:**

Provider agrees to submit a bill for services within (30) days following the month in which services were provided. Provider will prepare and submit a monthly bill for services. Provider agrees to submit a final bill within 30 days of the Agreement end date to receive payment for completed services. If a final bill cannot be submitted in 30 days, then a written request for extension of time and explanation must be provided to the State.

5. **TECHNICAL ASSISTANCE:**

The State agrees to provide technical assistance regarding Department of Social Services rules, regulations and policies to the Provider and to assist in the correction of problem areas identified by the State's monitoring activities.

6. **LICENSING AND STANDARD COMPLIANCE:**

The Provider agrees to comply in full with all licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance in which the service and/or care is provided for the duration of this Agreement. The Provider will maintain effective internal controls in managing the federal award. Liability resulting from noncompliance with licensing and other standards required by Federal, State, County, City or Tribal statute, regulation or ordinance or through the Provider's failure to ensure the safety of all individuals served is assumed entirely by the Provider.

7. **ASSURANCE REQUIREMENTS:**

(For Federally funded contracts only). The Provider agrees to abide by all applicable provisions of the following: Byrd Anti Lobbying Amendment (31 USC 1352), Executive orders 12549 and 12689 (Debarment and Suspension), Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996 as amended, Clean Air Act, Federal Water Pollution Control Act, Charitable Choice Provisions and Regulations, Equal Treatment for Faith-Based Religions at Title 28 Code of Federal Regulations Part 38, the Violence Against Women Reauthorization Act of 2013 and 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 award.

8. **COMPLIANCE WITH EXECUTIVE ORDER 2020-01:**

Executive Order 2020-01 provides that for providers, 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 Provider 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 the State to terminate this Agreement. Provider further agrees to provide immediate written notice to the State if during the term of this Agreement it no longer complies with this certification and agrees such noncompliance may be grounds for termination of this Agreement.

9. **COMPLIANCE WITH SDCL ch 5-18A:**

Provider 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.

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

Provider (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, Provider hereby certifies that this Agreement is not made in violation of the South Dakota Constitution Article 3, Section 12.

**11. RETENTION AND INSPECTION OF RECORDS:**

The Provider agrees to maintain or supervise the maintenance of records necessary for the proper and efficient operation of the program, including records and documents regarding applications, determination of eligibility (when applicable), the provision of services, administrative costs, statistical, fiscal, other records, and information necessary for reporting and accountability required by the State. The Provider shall retain such records for a period of six years from the date of submission of the final expenditure report. If such records are under pending audit, the Provider agrees to hold such records for a longer period upon notification from the State. The State, through any authorized representative, will have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement. State Proprietary Information retained in Provider's secondary and backup systems will remain fully subject to the obligations of confidentiality stated herein until such information is erased or destroyed in accordance with Provider's established record retention policies.

All payments to the Provider by the State are subject to site review and audit as prescribed and carried out by the State. Any over payment of this Agreement shall be returned to the State within thirty days after written notification to the Provider.

**12. WORK PRODUCT:**

Provider hereby acknowledges and agrees that all reports, plans, specifications, technical data, miscellaneous drawings, software system programs and documentation, procedures, or files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, and all information contained therein provided to the State by Provider 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 Provider 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.

**13. TERMINATION:**

This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Provider breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time, with or without notice. Upon termination of this Agreement, all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination. If termination for breach is effected by the State, any payments due to Provider at the time of termination may be adjusted to cover any additional costs to the State as a result of Provider'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 the State terminates for a breach by Provider and it is determined that the Provider was not at fault, then Provider shall be paid for eligible services rendered and expenses incurred up to the date of 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 sections 10, 11, 15, 23, 24, and 27.

14. FUNDING:

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

15. ASSIGNMENT AND AMENDMENTS:

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

16. CONTROLLING LAW:

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

17. 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 in any matters, civil or criminal.

18. SUPERSESSION:

All 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.

19. IT STANDARDS:

Any service, software or hardware provided under this Agreement will comply with state standards which can be found at [https://bit.sd.gov/bit?id=bit\\_standards\\_overview](https://bit.sd.gov/bit?id=bit_standards_overview).

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. 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 Division being contracted with on behalf of the State, and by the Provider, 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.

22. SUBCONTRACTORS:

Provider may not use subcontractors to perform the services described herein without the express prior written consent of the State. Provider 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. Provider 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 subconsultants. Provider shall assist in the vetting process.

**23. 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.

**24. INDEMNIFICATION:**

Provider agrees to indemnify the State of South Dakota, its officers, agents, and employees, from and against all claims or proceedings for actions, suits, damages, liabilities, other lossess or equitable releif that may arise at least in part as a result of an act or omission in performing services under this Agreement. Provider 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. Provider’s obligation to idemnify includes the payment of attorney fees and other costs of defense. In defending the State of South Dakota, its officers, agents, and employees, Provider 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 Provider, engage attorneys and other professionals to defend the State of South Dakota, its officers, agents, and employees, or to assist Provider in the defense. This section does not require Provider to be responsible for or defend against claims or proceedings for damages, liabilities, lossess or equitable relief arising solely from errors or omissions of the State, its officers, agents, or employees.

**25. INSURANCE:**

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

**A. Commercial General Liability Insurance:**

Provider shall maintain occurrence-based commercial general liability insurance or an equivalent form with a limit of not less than \$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:**

Provider agrees to procure and maintain professional liability insurance or miscellaneous professional liability insurance with a limit not less than one million dollars \$1,000,000.

**C. Business Automobile Liability Insurance:**

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

**D. Worker’s Compensation Insurance:**

Provider shall procure and maintain Workers’ Compensation and employers’ liability insurance as required by South Dakota or federal law.

**26. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:**

Provider certifies, by signing this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by the

federal government or any state or local government department or agency. Provider further agrees that it will immediately notify the State if during the term of this Agreement either it 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.

27. CONFLICT OF INTEREST:

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

28. CONFIDENTIALITY OF INFORMATION:

For the purpose of this Agreement, "Confidential Information" shall include all information, regardless of its format, disclosed to Provider by the State and all information, regardless of its format, obtained by Provider through the provisions of services as contemplated by this Agreement. Provider, and any person or entity affiliated with Provider 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. Provider, and any person or entity affiliated with Provider shall not: (i) disclose any Confidential Information to any third person unless otherwise specifically allowed under this Agreement; (ii) make any use of Confidential Information except to exercise rights and perform obligations under this Agreement; (iii) make Confidential Information available to any of its employees, officers, agents or providers 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. Provider, and any person or entity affiliated with Provider 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. Provider, and any person or entity affiliated with Provider shall protect the confidentiality of the State's information from the time of receipt to the time that such information is either returned to the State or destroyed to the extent that it cannot be recalled or reproduced.

Confidential Information shall not include information that: (i) was in the public domain at the time it was disclosed to Provider or to any person or entity affiliated with Provider; (ii) was known to Provider, or to any person or entity affiliated with Provider, without restriction at the time of disclosure from the State; (iii) was disclosed with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by Provider, or by any person or entity affiliated with Provider, without the benefit or influence of the State's information; or (v) becomes known to Provider, or to any person or entity affiliated with Provider, 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. Provider understands that this information may be confidential and protected under state or federal law. Provider 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, Provider agrees that its officers, agents and employees may be required to undergo investigation or may be required to sign separate confidentiality agreements, and it will limit access to the confidential information and related work activities to employees that have executed such agreements.

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

Provider 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.

Provider 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, Provider agrees to return to the State, at Provider's cost, any Confidential Information or documentation maintained by Provider regarding the services provided hereunder in a format readily useable by the State as mutually agreed by Provider and State.

29. REPORTING PROVISION:

Provider agrees to report to the 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 Provider, or the State of South Dakota or its officers, agents or employees to liability. Provider shall report any such event to the State immediately upon discovery.

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

30. COST REPORTING REQUIREMENTS:

The Provider agrees to submit a cost report in the format required by the State and is due four months following the end of the Provider's fiscal year.

or

No reporting is required.

31. DAVIS-BACON ACT:

When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").

32. COMPLIANCE WITH 40 U.S.C. 3702 AND 3704:

Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).

33. FUNDING AGREEMENT AND "RIGHTS TO INVENTION":

If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the Provider wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the Provider must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

34. 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, earthquake or any act of God, or any 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.

35. **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 provisions in this Agreement.

36. **HEADINGS:**

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

37. **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.

38. **AUTHORITY TO EXECUTE:**

Provider represents and warrants that:

A. Provider 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 Provider and no approval, authorization or consent of any governmental or regulatory agency is required to be obtained in order for Grantee to enter into this Agreement and perform its obligations under this Agreement;

C. Provider is duly authorized to conduct business in and is in good standing in each jurisdiction in which Grantee will conduct business in connection with this Agreement; and

D. Provider 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 Provider's performance of the services. Provider will maintain all required certifications, licenses, permits, and authorizations during the term of this Agreement at its own expense.

39. AUTHORIZED SIGNATURES:

In witness hereto, the parties signify their agreement by affixing their signatures hereto.

NO SIGNATURE REQUIRED AT THIS TIME

---

Provider Signature

Date

---

Provider Printed Name

---

State - DSS Division Director

Date

---

State - DSS Chief Financial Officer Jason Simmons

Date

---

State – DSS Cabinet Secretary Matthew K. Althoff

Date



State Agency Coding:

ALN #	_____	_____	_____	_____
Company	_____	_____	_____	_____
Account	_____	_____	_____	_____
Center Req	_____	_____	_____	_____
Center User	_____	_____	_____	_____
Dollar Total	_____	_____	_____	_____

DSS Program Contact Person \_\_\_\_\_  
Phone \_\_\_\_\_

DSS Fiscal Contact Person Contract Accountant  
Phone 605 773-3586

Provider Program Contact Person \_\_\_\_\_  
Phone \_\_\_\_\_  
Provider Program Email Address \_\_\_\_\_

Provider Fiscal Contact Person \_\_\_\_\_  
Phone \_\_\_\_\_  
Provider Fiscal Email Address \_\_\_\_\_

**CERTIFICATION REQUIRED BY SDCL ch 5-18A**

**Section 1 Definitions.** The words used in this Certification shall mean:

1.1. "Prohibited Entity," 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;

1.2. "Purchasing agency," any governmental body or officer authorized by law, administrative rule, or delegated authority, to enter into contracts;

1.3. "Contract," any type of agreement, regardless of what the agreement may be called, for the procurement of supplies, services, or construction;

**Section 2. Certification.** The undersigned hereby certifies to the State of South Dakota that:

2.1. The undersigned is not a Prohibited Entity.

2.2 If at any time after making this certification the undersigned becomes a Prohibited Entity, the undersigned will provide immediate written notice to all purchasing agencies with whom the undersigned has a Contract. The undersigned understands and agrees that if the undersigned becomes a Prohibited Entity, agencies may terminate any Contract with the undersigned.

2.3 The undersigned acknowledges and agrees that agencies have the right to terminate a Contract with any entity that submits a false certification, and that a false certification or failure to provide written notification to purchasing agencies that an entity has become a prohibited entity is cause to suspend or debar a business under SDCL § 5-18D-12.

\_\_\_\_\_  
Company

NO SIGNATURE REQUIRED AT THIS TIME

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

# Attachment B

## STATE OF SOUTH DAKOTA DEPARTMENT OF SOCIAL SERVICES

### Business Associate Agreement

#### 1. Definitions

##### General definition:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

##### Specific definitions:

- (a) Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the Provider, Consultant or entity contracting with the State of South Dakota as set forth more fully in the Agreement this Business Associate Agreement is attached.
- (b) CFR. “CFR” shall mean the Code of Federal Regulations.
- (c) Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean South Dakota Department of Social Services.
- (d) Designated Record Set. “Designated Record Set” shall have the meaning given to such term in 45 CFR 164.501.
- (e) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164 (Subparts A, C, D and E). More specifically, the “Privacy Rule” shall mean the regulations codified at 45 CFR Part 160 and Part 164 (Subparts A and E), and the “Security Rule” shall mean the regulations codified at 45 CFR Part 160 and Part 164 (Subparts A and C).
- (f) Protected Health Information. “Protected Health Information” or “PHI” shall mean the term as defined in 45 C.F.R. §160.103, and is limited to the Protected Health Information received from, or received or created on behalf of Covered Entity by Business Associate pursuant to performance of the Services under the Agreement.

#### 2. Obligations and Activities of Business Associate

Business Associate agrees to:

- (a) Not Use or Disclose Protected Health Information other than as permitted or required by the Agreement or as Required by Law;
- (b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent Use or Disclosure of Protected Health Information other than as provided for by the Agreement;
- (c) Report to covered entity any Use or Disclosure of Protected Health Information not provided for by the Agreement of which it becomes aware, including Breaches of Unsecured Protected Health Information as required at 45 CFR 164.410, and any Security Incident of which it becomes aware within five (5) business days of receiving knowledge of such Use, Disclosure, Breach, or Security Incident;
- (d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;
- (e) Make available Protected Health Information in a designated record set to the covered entity as necessary to satisfy covered entity’s obligations under 45 CFR 164.524. Business associate shall cooperate with covered entity to fulfill all requests by Individuals for access to the Individual’s Protected Health Information that are approved by covered entity.

If business associate receives a request from an Individual for access to Protected Health Information, business associate shall forward such request to covered entity within ten (10) business days. Covered entity shall be solely responsible for determining the scope of Protected Health Information and Designated Record Set with respect to each request by an Individual for access to Protected Health Information;

- (f) Make any amendment(s) to Protected Health Information in a designated record set as directed or agreed to by the covered entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy covered entity's obligations under 45 CFR 164.526. Within ten (10) business days following any such amendment or other measure, business associate shall provide written notice to covered entity confirming that business associate has made such amendments or other measures and containing any such information as may be necessary for covered entity to provide adequate notice to the Individual in accordance with 45 CFR 164.526. Should business associate receive requests to amend Protected Health Information from an Individual, Business associate shall cooperate with covered entity to fulfill all requests by Individuals for such amendments to the Individual's Protected Health Information that are approved by covered entity. If business associate receives a request from an Individual to amend Protected Health Information, business associate shall forward such request to covered entity within ten (10) business days. Covered entity shall be solely responsible for determining whether to amend any Protected Health Information with respect to each request by an Individual for access to Protected Health Information;
- (g) Maintain and make available the information required to provide an accounting of Disclosures to the covered entities necessary to satisfy covered entity's obligations under 45 CFR 164.528. Business associate shall cooperate with covered entity to fulfill all requests by Individuals for access to an accounting of Disclosures that are approved by covered entity. If business associate receives a request from an Individual for an accounting of Disclosures, business associate shall immediately forward such request to covered entity. Covered entity shall be solely responsible for determining whether to release any account of Disclosures;
- (h) To the extent the business associate is to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s); and
- (i) Make its internal practices, books, and records available to the covered entity and / or the Secretary of the United States Department of Health and Human Services for purposes of determining compliance with the HIPAA Rules.

### **3. Permitted Uses and Disclosures by Business Associate**

- (a) Except as otherwise limited by this Agreement, Business Associate may make any uses and Disclosures of Protected Health Information necessary to perform its services to Covered Entity and otherwise meet its obligations under this Agreement, if such Use or Disclosure would not violate the Privacy Rule if done by the covered entity. All other Uses or Disclosure by Business Associate not authorized by this Agreement or by specific instruction of Covered Entity are prohibited.
- (b) The business associate is authorized to use Protected Health Information if the business associate de-identifies the information in accordance with 45 CFR 164.514(a)-(c). In order to de-identify any information, Business Associate must remove all information identifying the Individual including, but not limited to, the following: names, geographic subdivisions smaller than a state, all dates related to an Individual, all ages over the age of 89 (except such ages may be aggregated into a single category of age 90 or older), telephone numbers, fax numbers, electronic mail (email) addresses, medical record numbers, account numbers, certificate/ license numbers, vehicle identifiers and serial numbers (including license plate numbers, device identifiers and serial numbers), web universal resource locators (URLs), internet protocol (IP) address number, biometric identifiers (including finger and voice prints), full face photographic images (and any comparable images), any other unique identifying number, and any other characteristic or code.
- (c) Business associate may Use or Disclose Protected Health Information as Required by Law.
- (d) Business associate agrees to make Uses and Disclosures and requests for Protected Health Information consistent with covered entity's Minimum Necessary policies and procedures.
- (e) Business associate may not Use or Disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by covered entity except for the specific Uses and Disclosures set forth in (f) and (g).
- (f) Business associate may Disclose Protected Health Information for the proper management and administration of business associate or to carry out the legal responsibilities of the business associate, provided the Disclosures are Required by Law.
- (g) Business associate may provide Data Aggregation services relating to the Health Care Operations of the covered entity.

#### 4. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

- (a) Covered entity shall notify business associate of any limitation(s) in the Notice of Privacy Practices of covered entity under 45 CFR 164.520, to the extent that such limitation may affect business associate's Use or Disclosure of Protected Health Information.
- (b) Covered entity shall notify business associate of any changes in, or revocation of, the permission by an Individual to Use or Disclose his or her Protected Health Information, to the extent that such changes may affect business associate's Use or Disclosure of Protected Health Information.
- (c) Covered entity shall notify business associate of any restriction on the Use or Disclosure of Protected Health Information that covered entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect business associate's Use or Disclosure of Protected Health Information.

#### 5. Term and Termination

- (a) Term. The Term of this Agreement shall be effective as of and shall terminate on the dates set forth in the primary Agreement this Business Associate Agreement is attached to or on the date the primary Agreement terminates, whichever is sooner.
- (b) Termination for Cause. Business associate authorizes termination of this Agreement by covered entity, if covered entity determines business associate has violated a material term of the Agreement.
- (c) Obligations of Business Associate Upon Termination.
  - 1. Except as provided in paragraph (2) of this section, upon termination of this agreement for any reason, business associate shall return or destroy all Protected Health Information received from, or created or received by business associate on behalf of covered entity. This provision shall apply to Protected Health Information that is in the possession of Subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
  - 2. If business associate determines that returning or destroying the Protected Health Information is infeasible, business associate shall provide to covered entity, within ten (10) business days, notification of the conditions that make return or destruction infeasible. Upon such determination, business associate shall extend the protections of this agreement to such Protected Health Information and limit further Uses and Disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as business associate maintains such Protected Health Information.
- (d) Survival. The obligations of business associate under this Section shall survive the termination of this Agreement.

#### 6. Miscellaneous

- (a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- (b) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
- (c) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.
- (d) Conflicts. In the event of a conflict in between the terms of this Business Associate Agreement and the Agreement to which it is attached, the terms of this Business Associate Agreement shall prevail to the extent such an interpretation ensures compliance with the HIPAA Rules.

# Attachment C

## Bureau of Information and Telecommunications Required IT Contract Terms

Pursuant to South Dakota Codified Law § 1-33-44, the Bureau of Information and Telecommunications ("BIT") oversees the acquisition of office systems technology, software, and services; telecommunication equipment, software, and services; and data processing equipment, software, and services for departments, agencies, commissions, institutions, and other units of state government. As part of its duties as the Executive Branch's centralized IT agency, BIT requires the contract terms and conditions of this Exhibit. For purposes of this Exhibit, [Vendor Name], will be referred to as the "Vendor."

It is understood and agreed to by all parties that BIT has reviewed and approved only this Exhibit. Due to the ever-changing security and regulatory landscape in IT and data privacy, before renewal of this Agreement BIT must review and approve the clauses found in this Exhibit as being the then current version of the clauses and if any additional required clauses are needed. Changes to clauses in this Exhibit must be approved in writing by all parties before they go into effect and a renewal of this Agreement is possible.

In the event of any inconsistency or conflict between the terms of this Exhibit and the terms of the main body of the Agreement or any other exhibit or attachment to the Agreement, the terms of this Exhibit will take precedence.

The Parties agree, when used in this Exhibit, the term "Vendor" will mean the Vendor and the Vendor's employees, subcontractors, agents, assigns, and affiliated entities.

### **Section I. Confidentiality of Information**

For purposes of this paragraph, "State Proprietary Information" will include all information disclosed to the Vendor by the State. The Vendor will not disclose any State Proprietary Information to any third person for any reason without the express written permission of a State officer or employee with authority to authorize the disclosure. The Vendor must not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this Agreement; (ii) make any use of State Proprietary Information except to exercise rights and perform obligations under this Agreement; (iii) make State Proprietary Information available to any of its employees, officers, agents, or third party consultants except those who have a need to access such information and who have agreed to obligations of confidentiality at least as strict as those set out in this Agreement. The Vendor is held to the same standard of care in guarding State Proprietary Information as it applies to its own confidential or proprietary information and materials of a similar nature, and no less than holding State Proprietary Information in the strictest confidence. The Vendor must 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. The Vendor agrees to return all information received from the State to the State's custody upon the end of the term of this Agreement, unless otherwise agreed in a writing signed by both parties. State Proprietary Information will not include information that:

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

State's Proprietary Information can include names, social security numbers, employer numbers, addresses and other data about applicants, employers or other clients to whom the State provides services of any kind. The Vendor understands that this information is confidential and protected under State law. The Parties mutually agree that neither of them nor any subcontractors, agents, assigns, or affiliated entities will

disclose the contents of this 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 Vendor acknowledges that the State and its agencies are public entities and thus may be 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 South Dakota open records or open meetings laws.

## **Section II. Rejection or Ejection of Vendor**

The State, at its option, may require the vetting of any of the Vendor, and the Vendor's subcontractors, agents, Assigns, or affiliated entities. The Vendor is required to assist in this process as needed.

The State reserves the right to reject any person from participating in the project or require the Vendor to remove from the project any person the State believes is detrimental to the project or is considered by the State to be a security risk. The State will provide the Vendor with notice of its determination, and the reasons for the rejection or removal if requested by the Vendor. If the State signifies that a potential security violation exists with respect to the request, the Vendor must immediately remove the individual from the project.

## **Section III. Non-Disclosure and Separation of Duties**

The Vendor will enforce separation of job duties and require non-disclosure agreements of all staff that have or can have access to State Data or the hardware that State Data resides on. The Vendor will limit staff knowledge to those staff whose duties that require them to have access to the State Data or the hardware the State Data resides on.

## **Section IV. Audit Requirements**

The Vendor warrants and agrees it is aware of and complies with all audit requirements relating to the classification of State Data the Vendor stores, processes, and accesses.

## **Section V. Threat Notification**

A credible security threat consists of the discovery of an exploit that a person considered an expert on Information Technology security believes could be used to breach any aspect of a system that is holding State Data or a product provided by the Vendor. Upon becoming aware of a credible security threat with the Vendor's product(s) and or service(s) being used by the State, the Vendor or any subcontractor supplying product(s) or service(s) to the Vendor needed to fulfill the terms of this Agreement will notify the State within two business days of any such threat. If the State requests, the Vendor will provide the State with information on the threat.

## **Section VI. Adverse Event**

The Vendor must notify the State contact within three days if the Vendor becomes aware that an Adverse Event has occurred. An Adverse Event is the unauthorized use of system privileges, unauthorized access to State Data, execution of malware, physical intrusions and electronic intrusions that may include network, applications, servers, workstations, and social engineering of staff. If the Adverse Event was the result of the Vendor's actions or inactions, the State can require a risk assessment of the Vendor the State mandating the methodology to be used as well as the scope. At the State's discretion a risk assessment may be performed by a third party at the Vendor's expense. State Data is any data produced or provided by the State as well as any data produced or provided for the State by a third-party.

## **Section VII. Background Investigations**

The State requires any person who writes or modifies State-owned software, alters hardware, configures software of State-owned technology resources, has access to source code or protected Personally Identifiable Information (PII) or other confidential information, or has access to secure areas to undergo fingerprint-based background investigations. These fingerprints will be used to check the criminal history records of both the State of South Dakota and the Federal Bureau of Investigation. These background investigations must be performed by the State with support from the State's law enforcement resources.

The State will supply the fingerprint cards and prescribe the procedure to be used to process the fingerprint cards. Project plans should allow 2-4 weeks to complete this process.

If work assignments change after the initiation of the project covered by this Agreement so that a new person will be writing or modifying State-owned software, altering hardware, configuring software of State-owned technology resources, have access to source code or protected PII or other confidential information, or have access to secure areas, background investigations must be performed on the individual who will complete any of the referenced tasks. The State reserves the right to require the Vendor to prohibit any person from performing work under this Agreement whenever the State believes that having the person performing work under this Agreement is detrimental to the project or is considered by the State to be a security risk, based on the results of the background investigation. The State will provide the Vendor with notice of this determination.

**Section VIII. Data Location and Offshore Services**

The Vendor must provide its services to the State as well as storage of State Data solely from data centers located in the continental United States. The Vendor will not provide access to State Data to any entity or person(s) located outside the continental United States that are not named in this Agreement without prior written permission from the State. This restriction also applies to disaster recovery; any disaster recovery plan must provide for data storage entirely within the continental United States.

**Section IX. Vendor Training Requirements**

The Vendor, Vendor's employee(s), and Vendor's subcontractors, agents, assigns, affiliated entities and their employee(s), must successfully complete, at the time of hire a cyber-security training program. The training must include but is not limited to:

- A. legal requirements for handling data,
- B. media sanitation,
- C. strong password protection,
- D. social engineering, or the psychological manipulation of persons into performing actions that are inconsistent with security practices or that cause the divulging of confidential information, and
- E. security incident response.

**Section X. Use of Portable Devices**

The Vendor must prohibit its employees, agents, affiliates, and subcontractors from storing State Data on portable devices, including personal computers, except for devices that are used and kept only at the Vendor's data center(s). All portable devices used for storing State Data must be password protected and encrypted.

**Section XI. Remote Access**

The Vendor will prohibit its employees, agents, affiliates, and subcontractors from accessing State Data remotely except as necessary to provide the services under this Agreement and consistent with all contractual and legal requirements. The accounts used for remote access cannot be shared accounts and must include multifactor authentication. If the State Data that is being remotely accessed is legally protected data or considered sensitive by the State, then:

- A. The device used must be password protected,
- B. The data is not put onto mobile media (such as flash drives),
- C. No non-electronic copies are made of the data, and
- D. A log must be maintained by the Vendor detailing the data which was accessed, when it was accessed, and by whom it was accessed.

The Vendor must follow the State's data sanitization standards, as outlined in this Agreement's Data Sanitization clause, when the remotely accessed data is no longer needed on the device used to access the data.

**Section XII. Rights, Use, and License of and to State Data**

The parties agree that all rights, including all intellectual property rights, in and to State Data will remain the exclusive property of the State. The State grants the Vendor a limited, nonexclusive license to use the State Data solely for the purpose of performing its obligations under this Agreement. This Agreement does not



give a party any rights, implied or otherwise, to the other's data, content, or intellectual property, except as expressly stated in the Agreement.

Protection of personal privacy and State Data must be an integral part of the business activities of the Vendor to ensure there is no inappropriate or unauthorized use of State Data at any time. To this end, the Vendor must safeguard the confidentiality, integrity, and availability of State Data and comply with the following conditions:

- A. The Vendor will implement and maintain appropriate administrative, technical, and organizational security measures to safeguard against unauthorized access, disclosure, use, or theft of Personally Identifiable Information (PII), data protected under the Family Educational Rights and Privacy Act (FERPA), Protected Health Information (PHI), Federal Tax Information (FTI), or any information that is confidential under applicable federal, state, or international law, rule, regulation, or ordinance. Such security measures will be in accordance with recognized industry practice and not less protective than the measures the Vendor applies to its own non-public data.
- B. The Vendor will not copy, disclose, retain, or use State Data for any purpose other than to fulfill its obligations under this Agreement.
- C. The Vendor will not use State Data for the Vendor's own benefit and will not engage in data mining of State Data or communications, whether through automated or manual means, except as specifically and expressly required by law or authorized in writing by the State through a State employee or officer specifically authorized to grant such use of State Data.