

STATE OF SOUTH DAKOTA  
CONSULTANT CONTRACT  
BETWEEN

Tamera Weis  
27705 460<sup>th</sup> Ave.  
Chancellor, SD 57015

Referred to as “Consultant”

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

Referred to as “State”

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

**1. SCOPE OF SERVICES**

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

Consultant will perform the following services:

Serve as the Executive Secretary to the Board, which includes but is not limited to the following:

- A. Oversee the day-to-day administration of the Board’s office which includes processing and maintaining the Board’s documents, overseeing and coordinating the Board’s communications, providing assistance to the Board, applicants, licensees, and the public;
- B. Assisting the Board with the interpretation and implementation of state statutes and administrative rules as well as applicable provisions of federal law;
- C. Coordinate and attend all Board meetings as necessary;
- D. Oversee, at the direction of the Board, the licensing and disciplinary process;
- E. Provide the Board with pertinent information regarding any change to state law or rules, and assist the Board with the drafting of proposed law or rule changes;
- F. Employ proper fiscal controls over Board revenues and expenditures, and oversee all fiscal activities of the Board at the Board’s direction; and
- G. Other duties or work as assigned.

**2. PERIOD OF PERFORMANCE**

This Agreement shall be effective on June 1, 2024 and will end on May 31, 2025, unless sooner terminated pursuant to the terms of this Agreement.

### **3. PURCHASE OF CAPITAL ASSETS OR EQUIPMENT**

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

### **4. CONSULTANT IDENTIFICATION**

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

### **5. CONTRACT AMOUNT AND PAYMENT**

The State will make payment for services upon satisfactory completion of services. The TOTAL CONTRACT AMOUNT is an amount not to exceed \$14,662.00. The State will not pay Consultant's expenses, including but not limited to travel, lodging and meals, as a separate item. Payment will be made pursuant to itemized invoices submitted with a signed state voucher. Payment will be made consistent with SDCL ch. 5-26. Any overpayment of this Agreement shall be returned to the State within thirty (30) days after written notification to Consultant.

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

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

### **6. INDEMNIFICATION**

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

## **7. INSURANCE**

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

Professional Liability Insurance or Miscellaneous Professional Liability Insurance:

Consultant 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).

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

## **8. TERMINATION**

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

## **9. SURVIVAL FOLLOWING TERMINATION**

The following terms of this agreement survive termination; paragraphs 7, 17, 29, 33, 34 and 39.

## **10. AVAILABILITY OF FUNDING**

This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State upon five (5) business days written notice. Consultant 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 Consultant waives any claim against the same.

## **11. COMPLIANCE WITH EXECUTIVE ORDER 2020-01**

Executive Order 2020-01 provides that for contractors, vendors, suppliers or subcontractors with five (5) or more employees who enter into a contract with the State that involves the expenditure of one hundred thousand dollars (\$100,000) or more, by signing this Agreement Consultant 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. Consultant further agrees to provide immediate written notice to the State if during the term of this Agreement it no longer complies with this certification and agrees such noncompliance may be grounds for termination of this Agreement.

## **12. COMPLIANCE WITH SDCL CH. 5-18A AND EXECUTIVE ORDER 2023-02**

Consultant certifies and agrees that the following information is correct:

Consultant 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 national, 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, as defined by either SDCL ch. 5-18A-19(A) or Executive Order 2023-02.

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.

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

### **13. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION**

By signing this Agreement, Consultant certifies that neither Consultant 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. Consultant further agrees that it will immediately notify the State if during the term of this Agreement Consultant 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.

### **14. COMPLIANCE WITH EXECUTIVE ORDER 2023-13**

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

### **15. 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 State Contact Person on behalf of the State, and by and to Consultant Contact Person, on behalf of Consultant, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

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

### **16. CONTROLLING LAW AND VENUE**

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

## **17. INDEPENDENT CONTRACTOR**

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

Consultant, as an independent contractor, is solely responsible for the withholding and payment of applicable income and Social Security taxes due and owing from money received under this contract.

## **18. THIRD PARTY BENEFICIARIES**

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

## **19. ASSIGNMENT AND AMENDMENT**

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

## **20. COMPLIANCE**

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

Consultant agrees to abide by all applicable provisions of the following: Byrd Anti Lobbying Amendment (31 U.S.C. 1352), Debarment and Suspension (Executive Orders 12549 and 12689 and 2 C.F.R. 180), Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity as amended by Executive Order 11375 and implementing regulations at 41 C.F.R. part 60, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996 as amended, Clean Air Act, Federal Water Pollution Control Act, Charitable Choice Provisions and Regulations, Equal Treatment for Faith-Based Religions at Title 28 C.F.R. Part 38, the Violence Against Women Reauthorization Act of 2013 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 contract.

## **21. REPORTING**

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

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

## **22. SUBCONTRACTING**

Consultant may not use subcontractors to perform the services described herein without the express prior written consent of the State. Consultant will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage in a manner consistent with this Agreement. Consultant will cause its subcontractors, agents, and employees to comply with applicable federal, tribal, state, and local laws, regulations, ordinances, guidelines, permits and other standards and will adopt such review and inspection procedures as are necessary to assure such compliance. The State, at its option, may require the vetting of any subcontractors. Consultant 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. 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.

## **25. SUPERCESSION**

All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically

provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.



## **26. FORCE MAJEURE**

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

## **27. WAIVER OF BREACH**

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

## **28. 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.

## **29. 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.

## **30. AUTHORITY TO EXECUTE**

Consultant represents and warrants that:

- A. The execution, delivery and performance of this Agreement has been duly authorized by Consultant and no approval, authorization or consent of any governmental or regulatory agency is required to be obtained in order for Consultant to enter into this Agreement and perform its obligations under this Agreement;
- B. Consultant is duly authorized to conduct business in and is in good standing in each jurisdiction in which Consultant will conduct business in connection with this Agreement; and
- C. Consultant 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 Consultant's performance of the services. Consultant will maintain all required certifications, licenses, permits, and authorizations during the term of this Agreement at its own expense.

### **31. DISCLOSURE OF THE CONTRACT**

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

### **32. RECORD RETENTION**

Consultant agrees to maintain all records that are pertinent to this contract and retain them for a period of six (6) years following final payment against the contract. State agrees to assume responsibility for these items after that time period. These records shall be subject at all reasonable times for inspection, review or audit by State, other personnel duly authorized by State, and federal officials so authorized by law.

### **33. CONFIDENTIALITY**

For the purpose of this Agreement, "Confidential Information" shall include all information, regardless of its format, disclosed to Consultant by the State and all information, regardless of its format, obtained by Consultant through the provisions of services as contemplated by this Agreement. Consultant, and any person or entity affiliated with Consultant 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. Consultant, and any person or entity affiliated with Consultant 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 contractorss 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. Consultant, and any person or entity affiliated with Consultant 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. Consultant, and any person or entity affiliated with Consultant 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 Consultant or to any person or entity affiliated with Consultant; (ii) was known to Consultant, or to any person or entity affiliated with Consultant, 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 Consultant, or by any person or entity affiliated with Consultant, without the benefit or influence of the State's information; or (v) becomes known to Consultant, or to any person or entity affiliated with Consultant, 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. Consultant understands that this information may be confidential and protected under state or federal law. Consultant 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, Consultant 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.

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

Consultant 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.

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

### **34. WORK PRODUCT**

Consultant 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 Consultant 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 Consultant 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.

### **35. INTEGRATION**

This contract is a complete version of the entire agreement between the parties with respect to the subject matter within this contract and supersedes all prior or contemporaneous written or oral understandings, agreements and communications between them with respect to such subject matter. This contract may be modified or amended only by a writing signed by both parties.

### **36. 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.

### **37. CRIMINAL BACKGROUND CHECKS**

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

### **38. TRANSFER OF INFORMATION**

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

### **39. DILIGENCE AND SKILL**

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

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

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

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

### **40. INTELLECTUAL PROPERTY**

In connection with the performance of this Agreement and the provision of services and deliverables under this Agreement, Consultant will not infringe any patent, copyright, trademark, trade secret or other proprietary right of any person. Consultant will not improperly use any trade secrets or confidential or proprietary information owned by any third party in performing this Agreement or the services related to this Agreement. Consultant shall

indemnify the State, the State of South Dakota, its officers, agents and employees (hereinafter collectively “the State”) from and against all claims or proceedings for actions, suits, damages, liabilities, other losses or equitable relief (collectively, a “Claim”) to the extent such Claim alleges improper use of, or infringement or misappropriation by, the State or Consultant of any patent, copyright or federally registered trademark or trade secret in connection with the performance of this Agreement and the provision of services and deliverables under this Agreement.

#### **41. THIRD PARTY RIGHTS**

Consultant represents and warrants that it has the full power and authority to grant the rights described in this Agreement without violating any rights of any third party, and that there is currently no actual or, to Consultant’s knowledge, threatened suit by any such third party based on an alleged violation of such rights by Consultant.

#### **42. PUBLICITY**

The award of this Agreement to Consultant is not in any way an endorsement of Consultant or Consultant’s services by the State and may not be so represented by Consultant in any advertising or publicity materials. Consultant agrees to submit to the State all advertising, sales promotion, and other publicity relating to this Agreement wherein the State’s name is mentioned, or language is used from which the connection of the State’s name therewith may, in the State’s judgment, be inferred or implied. Consultant further agrees not to publish or use such advertising, sales promotion, or publicity without the prior written consent of the State. Consultant may not in any way contract on behalf of or in the name of the State, nor may release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning this Agreement without obtaining the prior written approval of the State.

#### **43. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**

This contract does not require Consultant to engage in a function or activity involving the use or disclosure of State’s Protected Health Information (PHI), as defined in the Health Insurance Portability and Accountability Act (HIPAA), 45 CFR § 160.103.

The parties signify their agreement by signing below.

_____ Lynne Valenti, Deputy Secretary South Dakota Department of Health	_____ Date	_____ Board President SD Board of Certified Professional Midwives	_____ Date
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_____ Darcy McGuigan, Director Division of Finance Department of Health	_____ Date	_____ Consultant Signature Tamera Weis, Consultant _____ Print or Type Consultant Name	_____ Date
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State Contact Person:     Mariah Pokorny     Phone:     605.773.3933    

Consultant Contact Person:     Tamera Weis     Phone:     605.743.4451    

**The following shall be completed by the Consultant:**

Nonprofit  Profit   
Consultant fiscal year beginning \_\_\_\_\_ and ending \_\_\_\_\_