

Brown County Therapeutic Services Facility Support Grant

Proposal deadline: Friday May 8, 2026

All proposals must be electronically submitted, as a single PDF document and excel document of budget, via attachment to Rochelle.kenzy@state.sd.us

Scope: Grant award will be \$2,000,000

Award notification: May 22, 2026

Project Start Date: Projects may begin March 27, 2026

Project End Date: Funds must be expended prior to June 30, 2030

Project Completion: Projects must be completed including final report and claim by June 30, 2030.

This grant is being funded with state general fund dollars appropriated to the Department of Education through HB 1262.

Purpose and Priorities

The Brown County Therapeutic Services Facility Support Grant is provided to a nonprofit organization to acquire, renovate, and equip a facility in which the organization may offer non-residential, school based, therapeutic services for students receiving instruction in an alternative setting.

Proposals will be scored based on alignment with the following priorities:

1. **Experience: History of Operating programs that offer integrated educational and therapeutic services.**
2. **Partnership support: Strong partnerships with school districts and community systems.**

Eligibility

Applications may be submitted by nonprofit organizations located within the state of South Dakota.

Contact

Direct questions to Rochelle Kenzy (Rochelle.kenzy@state.sd.us or 605-773-8063)

Use of Funds

The awarded funds may only be used to acquire, renovate, and equip a facility in which the organization may offer non-residential, school based, therapeutic services for students receiving instruction in an alternative setting.

Allowable uses of the grant funds include but are not limited to:

- Purchase of a facility
- Renovation costs to the facility
- Equipment purchases

Grant funds cannot be used for:

- Expenditures made prior to March 27, 2026, or expenditures not contained in original grant application
- Purchases or services beyond the project outcomes or activities

Grant Terms and Conditions

Any agreement resulting from this proposal will include the State’s standard terms and conditions as set for in Exhibit A.
– Standard Grant Terms and Conditions.

Additional Terms and Conditions not in the State’s standard terms and conditions

- **Asset Disposition and Return of Funds:** Any asset acquired in whole or in part with State funds shall remain subject to this provision for the duration of its useful life. In the event the non-profit sells, transfers, disposes of, or otherwise relinquishes ownership or control of such asset, the non-profit shall remit to the State an amount equal to the remaining undepreciated value of the asset at the time of disposition. The undepreciated value shall be calculated using generally accepted accounting principles (GAAP) or another depreciation method approved by the State. Payment to the State shall be made within thirty (30) days of the sale or disposition of the asset.
The State reserves the right to review and audit asset records to verify compliance with this provision. Failure to comply with this requirement may result in repayment obligations, recovery of funds, or other remedies available to the State under applicable law or the terms of this agreement.

Application Deadline and Award Process

Proposals must be electronically submitted as a single PDF document and Excel document of budget, via attachment, to Rochelle.kenzy@state.sd.us by May 8, 2026.

Award notifications will be announced by May 22, 2026. Projects may begin March 27, 2026, and funds must be obligated prior to June 15, 2030. Projects must be completed by June 30, 2030.

The Brown County Therapeutic Services Facility Support Grant will be awarded through a competitive process. All proposals will be read and judged by a review committee. The review committee will determine the award winner based on the grant priorities and criteria using a scoring rubric.

Both successful and unsuccessful applicants will be notified. Award decisions made by the review committee are final.

Brown County Therapeutic Services Facility Support Grant

Proposal Submissions

A single .pdf document **and** excel document of budget must be emailed to rochelle.kenzy@state.sd.us by 5pm on May 8, 2026.

Complete proposals will include the following elements:

- Cover Page
- Description of proposed project: Overview/Rationale, Plan, Outcomes
- Budget should be clearly outlined in the proposal

General Assurances

This applicant certifies to the South Dakota Department of Education that:

1. By accepting state funds, the recipient hereby agrees to repay any funds that have been finally determined through the State audit resolution process to have been misspent, misapplied or otherwise not properly accounted for.
2. Equipment purchased with state funds remains the property of the State of South Dakota.
3. The local applicant agrees to comply with all state and federal rules and regulations regarding nondiscrimination based on disability, race, color, national origin and sex.
4. The state may terminate this grant within 30 days notice or immediately for violation of this agreement or applicable regulations.
5. Funds expended under this award will not be used to acquire goods or services in any instance in which such acquisition results in a direct financial benefit to the applicant or any member or employee of the applicant.
6. Applicant will provide annual, or as requested, progress monitoring to ensure compliance with this agreement.
7. If grant funds were used for purchasing or renovating the facility, if the grantee sells the facility, grantee agrees to pay the State the undepreciated amount of the grant amount that was used for the facility.

Grant Assurances

ASSURANCES AND CERTIFICATION STATEMENT: The applicant assures the South Dakota Department of Education that this grant funding will be administered in compliance with the assurances contained in this application, with state laws and regulations applicable to the use of these funds, that the information contained in this application is accurate and complete, and that the board of directors of the named applicant has authorized me, _____, (insert name) as its representative to file this application.

I have reviewed the grant deadlines and am prepared to begin using grant funds immediately upon award and will submit reimbursement claims as soon as possible.

Authorized Representative Signature:

Title:

Nonprofit organization:

Email:

Phone Number:

Exhibit A - Standard Grant Terms and Conditions

Any agreement resulting from this proposal will include the State's standard terms and conditions as listed below, along with any additional terms and conditions negotiated by the parties:

1. The Sub-Recipient will perform the activities described in the proposal, which will be attached to the agreement as Exhibit A and incorporated by reference. The Sub-Recipient's response to this proposal shall be considered part of the Work Plan.

2. CONSIDERATION

The State will pay for all services performed by the Sub-Recipient under this Agreement as follows:

- a. Total Obligations: The total obligation of the State for all compensation and reimbursements to the Sub-Recipient under this Agreement will not exceed \$_____.
- b. Compensation: The Sub-Recipient will be paid using the cost reimbursement method of payment. Invoices will state the period for which reimbursement is being requested, and will itemize the cost by budget category per the budget summary. All deliverables and reports are to be submitted to the State for the compensation defined herein. *If applicable, travel expenses shall be in accordance with the Sub-Recipient's travel reimbursement policy.* Sub-Recipient shall not be entitled to receive any additional or separate compensation from the State in connection with the project without prior written approval of the State.
- c. Budget Modifications: Modifications greater than 10 percent of any budget line item in the most recently approved budget, Attachment A, requires prior written approval from the State and must be indicated in submitted reports. Failure to obtain prior written approval for modifications greater than 10 percent of any budget line item may result in denial of modification request and/or loss of funds. Modifications equal to or less than 10 percent of any budget line item are permitted without prior approval from the State provided that such modification is indicated on submitted reports and that the total obligation of the state for all compensation and reimbursements to the Sub-Recipient shall not exceed the total obligation.

3. TERMS OF PAYMENT

- a. Invoices: The State will pay the Sub-Recipient after the Sub-Recipient presents an itemized invoice for the services actually performed and the State accepts the invoiced services. Each invoice must reference the Agreement number and follow the budget provided. Payment will be made consistent with SDCL Ch. 5-26. Sub-Recipient acknowledges that it would be difficult or impracticable for the State to provide the notice disagreement provided for by SDCL 5-26-5 within the thirty (30) days provided by that section. Accordingly, Sub-Recipient hereby waives the application of that section to this Agreement.

Upon submitting each invoice, pursuant to 2 CFR 200.415 of the Uniform Grant Guidance, the Sub-Recipient is required to certify the following:

"By signing this report, I certify to the best of my knowledge and belief that the report is true, complete, and accurate, and the expenditures, disbursements, and cash receipts are for the purposes and objectives set forth in the terms and conditions of the State award. I am aware that any false, fictitious, or fraudulent information or the omission of any material fact, may subject me to criminal, civil, or administrative penalties for fraud, false statements, false claims or otherwise. (U.S. Code Title 18, Section 1001 and Title 31, Sections 3729-3730 and 3801-3812)."

- b. Matching Requirements: Sub-Recipient certifies the following matching requirement, for the grant will be met by Sub-Recipient:
- c. The payment of any invoice by the State will not prejudice the State's right to object to or question that or any other invoice or matter in relation thereto. The Sub-Recipient shall promptly, but in all cases within thirty (30) days of notification, pay to the State the full amount of any erroneous payment or overpayment upon notice of an erroneous payment or overpayment to which Sub-Recipient is not entitled. If Sub-Recipient fails to make such a timely refund, the State shall charge Sub-Recipient one percent (1%) per month on the amount due until paid in full.
- d. Claims for payment must be submitted on an invoice within forty-five (45) days of the date upon which the Sub-Recipient knew or should have known of the claim or forty-five (45) days after the termination or expiration of this Agreement, whichever is earlier. If an invoice cannot be submitted within forty-five (45) days, then written notice and explanation of need must be provided to the State for consideration of an extension, which shall be in the sole discretion of the State. Failure of the Sub-Recipient to abide by this paragraph shall relieve the State of any obligation to pay for such claim.

4. RISK ASSESSMENTS, MONITORING AND REMEDIES

The State has conducted a risk assessment and determined the subrecipient level of risk as low, moderate, or high. Risk assessments will be ongoing throughout the project period after scheduled reports, audits, unanticipated issues or other adverse circumstances that may arise. Sub-Recipient agrees to allow the State to monitor Sub-Recipient to ensure compliance with program requirements, to identify any deficiencies in the administration and performance of the award and to facilitate the same. At the discretion of the State, monitoring may include but is not limited to the following: On-site visits, follow-up, document and/or desk review, third-party evaluations, virtual monitoring, technical assistance and informal monitoring such as email and telephone interviews. As appropriate, the cooperative audit resolution process may be applied. Because the level of risk was evaluated as moderate, high at the time of award, the State requires specific conditions to be noted in the subaward agreement, including but not limited to: correction of prior audit findings by date, monthly reporting, prior approvals for purchases, subgrants, contracts or other specific condition until the subrecipient is eligible for a low risk rating, at which time the specific conditions will be removed and the subaward amended.

Sub-Recipient agrees to comply with ongoing risk assessments, to facilitate the monitoring process, and further, Sub-Recipient understands and agrees that the requirements and conditions under the grant award may change as a result of the risk assessment/monitoring process.

The State shall evaluate each Sub-Recipient's fraud risk and risk of noncompliance with State statutes, regulations, and terms and conditions of the subaward for purposes of determining the appropriate Sub-Recipient monitoring.

In the event of noncompliance or failure to perform, the State has the authority to apply remedies, including but not limited to: temporary withholding payments, disallowances, suspension or termination of the award, suspension of other awards received by Sub-Recipient, debarment, or other remedies including civil and/or criminal penalties as appropriate.

5. MONITORING PLAN AND REPORTING

The State will monitor Sub-Recipient to ensure compliance with program requirements and identify any failures in the administration and performance of the award. The monitoring plan will also serve to identify whether the Sub-Recipient needs technical assistance. In addition to program performance, the State will monitor financial performance. Monitoring will be used to document allowable and unallowable costs, time and effort reporting and travel. Monitoring also will be used to follow up on findings identified in an earlier monitoring visit, from document reviews or after an audit to ensure that subrecipient took corrective action. As appropriate, the cooperative audit resolution process may be applied. The monitor plan may include on-site

visits, follow-up, document and/or desk reviews, third-party evaluations, virtual monitoring, technical assistance and informal monitoring such as email and telephone interviews. For reporting, the uniform guidance requires the State and Sub-Recipient use OMB-approved government-wide standard information collections when providing performance and data in reports.

6. AUDIT AND COMPLIANCE

A local government and non profit organization must comply with all state audit requirements, including: 2 CFR Part 200 Subpart F – Audit Requirements; and any other application law or regulation,

- a. *Audit required.* A non-Federal entity that expends \$1,000,000 or more during the non-Federal entity's fiscal year (\$750,000 for fiscal years on or before September 30, 2024), in Federal awards must have a single or program-specific audit conducted for that year in accordance with the provisions of this part by an auditor approved by the Auditor General to perform the audit. On continuing audit engagements, the Auditor General's approval should be obtained annually. Approval of an auditor must be obtained by forwarding a copy of the audit engagement letter to:

Department of Legislative Audit
A-133 Coordinator
427 South Chapelle
% 500 East Capitol
Pierre, SD 57501-5070

- b. *Single audit.* A non-Federal entity that expends \$1,000,000 or more in Federal awards during the non-Federal entity's fiscal year must have a single audit conducted in accordance with § 200.514 except when it elects to have a program-specific audit conducted in accordance with paragraph (c) of this section.
- c. *Program-specific audit election.* When an auditee expends Federal awards under only one Federal program (excluding R&D) and the Federal program's statutes, or regulations, or terms and conditions of the Federal award do not require a financial statement audit of the non-Federal entity, the auditee may elect to have a program-specific audit conducted in accordance with § 200.507 Program-specific audits. A program-specific audit may not be elected for R&D unless all of the Federal awards expended were received from the same Federal agency, or the same Federal agency and the same pass-through entity, and that Federal agency, or pass-through entity in the case of a Sub-Recipient, approves a program-specific audit in advance.
- d. *Exemption when Federal awards expended are less than \$1,000,000.00 (\$750,000.00 for fiscal years on or before September 30, 2024).* A non-Federal entity that expends less than \$1,000,000 (\$750,000 for fiscal years on or before September 30, 2024) in Federal awards during the non-Federal entity's fiscal year is exempt from Federal audit requirements for that year, except as noted in § 200.503. However, in all instances, the records of the non-Federal entity must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and Government Accountability Office (GAO).
- e. *Federally Funded Research and Development Centers (FFRDC).* Management of an auditee that owns or operates a FFRDC may elect to treat the FFRDC as a separate entity for purposes of this part.
- f. *Sub-Recipients and contractors.* An auditee may simultaneously be a recipient, a sub-recipient, and a contractor. Unless a program is exempt by Federal statute, Federal awards expended as a recipient or a sub-recipient are subject to audit under this part. Payments received for goods or services provided as a contractor under a Federal award (§200.331) are not subject to audit under this part.
- g. *Compliance responsibility for contractors.* In most cases, the auditee's compliance responsibility for contractors is to ensure that the procurement, receipt, and payment for goods and services comply with Federal statutes, regulations, and the terms and conditions of a Federal award. Federal award compliance requirements normally do not flow down to contractors. However, for procurement transactions in which the contractor is made responsible for meeting program requirements, the

auditee must ensure those requirements are met, including by clearly stating the contractor's responsibilities within the contract and reviewing the contractor's records to determine compliance. Also, when these procurement transactions relate to a major program, the scope of the audit must include a determination of whether these transactions comply with Federal statutes, regulations, and the terms and conditions of a Federal award. §200.318(b).

After completion of the audit, the State requires that Sub-Recipient to send a copy of the audit to the State within thirty (30) calendar days.

Audits shall be completed and filed with the Department of legislative Audit by the end of the ninth month following the end of the fiscal year being audited.

For either an entity-wide, independent financial audit or an audit under 2 CFR Part 200 Subpart F, the Sub-Recipient shall resolve all interim audit findings to the satisfaction of the auditor. The Sub-Recipient shall facilitate and aid any such reviews, examinations, agreed upon procedures, etc., the State or its contractor(s) may perform.

Failure to complete audit(s) as required, including resolving interim audit findings, will result in the disallowance of audit costs as direct or indirect charges to programs. Additionally, a percentage of awards may be withheld, overhead costs may be disallowed, and/or awards may be suspended, until the audit is completely resolved.

The Sub-Recipient shall be responsible for payment of any and all audit exceptions which are identified by the State. The State may conduct an agreed upon procedures engagement as an audit strategy. The Sub-Recipient may be responsible for payment of any and all questioned costs, as defined in 2 C.F.R. 200.84, at the discretion of the State.

Notwithstanding any other condition of the Agreement, the cooperative audit resolution process applies, as appropriate. The books and records of the Sub-Recipient must be made available if needed and upon request at the Sub-Recipient's regular place of business, for audit by personnel authorized by the State.

The State has the right to return to audit the program during performance under the grant or after close-out, and at any time during the record retention period, and to conduct recovery audits including the recovery of funds, as appropriate.

If applicable, Sub-Recipient agrees to comply in full with the administrative requirements and cost principles as outlined in OMB uniform administrative requirements, cost principles, and audit requirements for federal awards – 2 CFR Part 200 (Uniform Administrative Requirements).

7. RECORDS ACCESS AND RETENTION

The Sub-Recipient 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, and statistical, fiscal, and other information records necessary for reporting and accountability required by the State. The Sub-Recipient shall retain such records for a period of three years after the date of the submission of the final expenditure report. The State, and its auditors will be provided access to the Sub-Recipient's programmatic and financial records.

The Sub-Recipient programmatic and financial records shall include but are not limited to:

- Records providing a full description of each activity undertaken
- Records demonstrating that each activity undertaken meets the objectives of the program;
- Records required to determine the eligibility of activities;

- Records required to document the acquisition, improvement, use or disposition of real property acquired or improved with the award assistance;
- Records documenting compliance with state and local laws; and

The Sub-Recipient shall retain all records pertinent to program activities and financial expenditures incurred under this Agreement for a period of three years after the date of submission of the final expenditure and program report under this Agreement.

Notwithstanding the above, if any litigation, claim or audit is started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken. The three-year retention period may be extended upon written notice by the State. Records for real property and equipment acquired with Federal funds must be retained for three years after final disposition. When records are transferred to or maintained by the Federal awarding agency or the State, the three-year retention requirement is not applicable to the Sub-Recipient. In the event Sub-Recipient must report program income after the period of performance, the retention period for the records the earning of the program income starts from the end of Sub-Recipient's fiscal year in which the program income is earned. In the event the documents and their supporting records consist of indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable, the following applies: (1) If submitted for negotiation - If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the State) to form the basis for negotiation of the rate, then the three-year retention period for its supporting records starts from the date of such submission. (2) If not submitted for negotiation - If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the State) for negotiation purposes, then the three-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the Sub-Recipient's fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

The State, through any authorized representative, shall have access to and the right to examine and copy all records, books, papers or documents related to services rendered under this Agreement and shall have access to personnel of the Sub-Recipient for purposes of interview and discussion related to the records, books, papers, and documents. State Proprietary Information, which shall include all information disclosed to the Sub-Recipient by the State, shall be retained in Sub-Recipient's secondary and backup systems and shall remain fully subject to the obligation of confidentiality stated herein until such information is erased or destroyed in accordance with Sub-Recipient's established record retention policies.

All payments to the Sub-Recipient by the State are subject to site review and audit as prescribed and carried out by the State. Any overpayment under this Agreement shall be returned to the State within thirty (30) days after written notification to the Sub-Recipient.

8. SUB-RECIPIENT ATTESTATION

By signing this Agreement, Sub-Recipient attests to the following requirements as set forth in SDCL §1-56-10:

- (D) A conflict-of-interest policy is enforced within the recipient's or sub-recipient's organization.
- (D) The Internal Revenue Service Form 990 has been filed, if applicable, in compliance with federal law, and is displayed immediately after filing on the recipient's or sub-recipient's website.
- (D) An effective internal control system is employed by the recipient's or sub-recipient's organization; and

- (D) If applicable, the recipient or sub-recipient is in compliance with the federal Single Audit Act, in compliance with § 401102.1, and audits are displayed on the recipient's or sub-recipient's website.

Sub-Recipient certifies that its internal control system includes cybersecurity and other measures to safeguard information.

Sub-Recipient certifies that it will take reasonable cybersecurity and other measures to safeguard information including protected personally identifiable information (PII) and other types of information.

Whenever applying for funds, requesting payment, and submitting financial reports, Sub-Recipient asserts the following:

I certify to the best of my knowledge and belief that the information provided herein is true, complete, and accurate. I am aware that the provision of false, fictitious, or fraudulent information, or the omission of any material fact, may subject me to criminal, civil, or administrative consequences including, but not limited to violations of U.S. Code Title 18, Sections 2, 1001, 1343 and Title 31, Sections 3729-3730 and 3801-3812.

Sub-Recipient further represents that any and all concerns or issues it had in complying with the foregoing attestations were provided to the State and resolved to their satisfaction prior to signing this Agreement.

If Sub-Recipient is a non-state agency they agree to disclose to the State, in writing, any conflicts-of-interest that exist under the Sub-Recipient's conflict-of-interest policy, Sub-Recipient agrees to provide immediate notice of such change to the State and provide a copy of the new conflict-of-interest policy. Sub-Recipient understands that any change in the conflict-of-interest policy may result in a change in their monitoring or other performance requirements under the grant and expressly agrees to comply with those changes and to facilitate any additional monitoring as required by the State.

9. CLOSEOUT

For purposes of this Agreement, "Date of Completion" shall mean the date when the Agreement expires pursuant to its terms or is terminated.

The Sub-Recipient shall submit a final financial report to the State. Within the limits of the Agreement amount, the State may make upward or downward cost adjustments on the basis of the information contained in the report. Agreement obligations will remain in force until all final reports are reviewed and approved by the State.

The Sub-Recipient, along with the final financial report, will refund to the State any unexpended funds or unobligated (unencumbered) cash advances.

All outstanding obligations (encumbered funds) which have not been paid out as of the Date of Completion must be liquidated prior to the submission of the final report.

Whether or not audits were conducted during the Agreement term, a final financial and compliance audit may be initiated up to three years after the State approves the final financial report.

If either the final financial report or the final audit discloses an overpayment to the Sub-Recipient, the State may, at its option, either require the Sub-Recipient to repay the overpayment by the State or deduct the amount of overpayment from monies due the Sub-Recipient under this Grant Agreement or under any other agreement between the Sub-Recipient and the State. Any overpayments will be paid back in accordance with paragraph 5.d.

The Sub-Recipient shall provide, along with the final financial report, a written accounting of property acquired with Agreement funds or received from the State.

10. ASSURANCE REQUIREMENTS

The Sub-Recipient agrees to abide by all applicable provisions of the following: Byrd Anti Lobbying Amendment (31 USC 1352), Debarment and Suspension (Executive Orders 12549 and 12689 and 2 C.F.R. 180), Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity as amended by Executive Order 11375 and 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 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.

Sub-Recipient will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction sub agreements.

Sub-Recipient will comply with the Elementary and Secondary Education Act of 1965 Section 8546 (20 U.S.C § 7926) prohibiting the aiding and abetting of sexual abuse.

11. SUB-RECIPIENT IDENTIFICATION

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

12. USE OF EQUIPMENT, SUPPLIES AND FACILITIES

Sub-Recipient will not use State equipment, supplies or facilities.

Except as to the following, Sub-Recipient will not use State equipment, supplies or facilities: Identify any equipment, supplies or facilities to be used by Sub-Recipient.

13. 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.

14. COST PRINCIPLES

If applicable, Sub-Recipient agrees to comply in full with the administrative requirements and cost principles as outlined in OMB uniform administrative requirements, cost principles, and audit requirements for federal awards – 2CFR Part 200 (Uniform Administrative Requirements).

15. TERMINATION

This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Sub-Recipient breaches any of the terms or conditions hereof, this Agreement may be terminated by the State for cause at any time, with or without notice. Upon termination of this Agreement, all accounts and payment shall be processed according to financial arrangements set forth herein for services rendered to 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 indemnification, controlling law and venue, and sovereign immunity provisions.

16. 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, 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.

17. ASSIGNMENT, AMENDMENTS, AND WAIVER

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 shall be expressly identified as a part hereof and be signed by an authorized representative of each of the parties hereto.

18. 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 venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

19. MERGER

All other prior discussions, communications, and representations concerning the subject matter of the Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

20. SEVERABILITY

In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision of this Agreement, which shall remain in full force and effect.

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 Sub-Recipient, 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/SUB-RECIPIENTS

The Sub-Recipient will not use subcontractors or other sub-recipients to perform work under this Agreement without the express prior written consent of the State. The State reserves the right to complete a risk assessment on any proposed subcontractor or sub-recipient and to reject any person or entity presenting insufficient skills or inappropriate behavior.

The Sub-Recipient will include provisions in its subcontracts or sub-grants requiring its subcontractors and sub-recipients 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 Sub-Recipient will cause its subcontractors, sub-recipients, 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. The State, at its option, may require the vetting of any subcontracts and sub-recipients. The Sub-Recipient is required to assist in this process as needed.

23. STATES RIGHT TO REJECT

The State reserves the right to reject any person or entity from performing the work or services contemplated by this Agreement, who present insufficient skills or inappropriate behavior.

24. CONFLICT-OF-INTEREST

Sub-Recipient agrees to establish safeguards to prohibit any employee or other person from using their position 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 and approved, in writing, by the State. In the event of a conflict of interest, the Sub-Recipient expressly agrees to be bound by the conflict-of-interest resolution process set forth in SDCL § 5-18A-17 through 5-18A-17.6.

25. TERMS

By accepting this Agreement, the Sub-Recipient assumes certain administrative and financial responsibilities. Failure to adhere to these responsibilities without prior written approval by the State shall be a violation of the terms of this Agreement, and the Agreement shall be subject to termination.

26. CERTIFICATIONS

A. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION

The Sub-Recipient certifies that neither Sub-Recipient nor its principals, nor its sub-recipients or consultants 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. The Sub-Recipient further agrees that it will immediately notify the State if during the term of this Agreement Sub-Recipient or its principals, or its sub-recipient or consultants 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. The Sub-Recipient further certifies that neither it nor its principals, nor its sub-recipients or consultants have, within a three (3) year period preceding the awarding of this Agreement, been convicted of or had a civil judgment rendered against it for commission of fraud or been convicted of a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local transaction or contract or been convicted of a violation of federal or state antitrust statutes, embezzlement, theft, forgery, bribery, falsifications, destruction of records, making false statements, or receiving stolen property. Sub-Recipient further certifies that neither it nor its principals, nor its sub-recipients or consultants, have within a three (3) year period preceding this Agreement, had a federal, state, or local transaction terminated for cause or default.

B. COMPLIANCE WITH EXECUTIVE ORDER 2020-01

By entering into this Agreement, Sub-Recipient certifies that it has not refused to transact business activities, have not terminated business activities, and has not taken other similar actions intended to limit its commercial relations, related to the subject matter of the 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. The Provider further agrees to provide immediate written notice to the State if during the term of the agreement it no longer complies with this certification and agrees such noncompliance may be grounds for contract termination.

C. COMPLIANCE WITH SDCL CH. 5-18A

Sub-Recipient 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 caused 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 Agreement it no longer complies with this certification and agrees such noncompliance may be grounds for Agreement termination and would be caused to suspend and debar a business under SDCL § 5-18D-12.

D. PROHIBIT "INHERENTLY DIVISIVE CONCEPTS"

Pursuant to Executive Order 2022-02, Consultant certifies and agrees that all actions taken in performance with this agreement will not promote inherently divisive concepts or direct or compel any department employees, students, teachers, or school district employees to personally affirm, adopt, or adhere to inherently divisive concepts. "Inherently divisive concepts," means advancing any ideas in violation of the Civil Rights Act of 1964, including, but not limited to, any of the following concepts:

- (vi) that one race, color, religion, sex, ethnicity, or national origin is inherently superior to another race, color, religion, sex, ethnicity, or national origin;
- (vi) that an individual should be discriminated against or adversely treated solely or partly on the basis of his or her race, color, religion, sex, ethnicity, or national origin,
- (vi) that an individual's moral character is inherently determined by his or her race, color, religion, sex, ethnicity, or national origin,
- (vi) that an individual, by virtue of the individual's race, color, religion, sex, ethnicity, or national origin, is inherently racist, sexist, or oppressive, whether consciously or subconsciously,
- (vi) that an individual, by virtue of the individual's race, color, religion, sex, ethnicity, or national origin, is responsible for actions committed in the past by other members of the same race, color, religion, sex, ethnicity, or national origin, or
- (vi) that meritocracy or traits, such as a strong work ethic, are racist or sexist, or were created by a particular race or sex to oppress members of another race or sex.

Sub-Recipient's noncompliance with the requirements of this section may be grounds for termination of this agreement. Sub-Recipient shall include the provisions of this section in each subcontract, so that the provisions shall be binding upon each sub-recipient.

27. INDEMNIFICATION

Sub-Recipient agrees to hold harmless and indemnify the State of South Dakota, its officers, agents and employees, from and against any and 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. Sub-Recipient 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. Sub-Recipient'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, Sub-Recipient 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 the Sub-Recipient, engage attorneys and other professionals to defend the State of South Dakota, its officers, agents, and employees, or to assist Sub-Recipient in the defense. This section does not require the Sub-Recipient 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.

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. TECHNICAL ASSISTANCE

The State agrees to provide technical assistance regarding the State's rules, regulations, and policies to the Sub-Recipient and to assist in the correction of problem areas identified by the State's monitoring activities.

31. LICENSING AND STANDARD COMPLIANCE

The Sub-Recipient agrees to comply in full with all federal, state, tribal and local statutes, regulations, ordinances, guidelines, permits, requirements and other standards applicable to the service provided under this Agreement and will be solely responsible for obtaining information regarding the foregoing. The Sub-Recipient will maintain effective internal controls in managing the federal award. Liability resulting from the failure to comply with all federal, state, tribal and local statutes, regulations, ordinances, guidelines, permits, requirements and standards is assumed entirely by the Sub-Recipient.

32. IT STANDARDS

Any software or hardware provided under this Agreement will comply with State standards which can be found at https://www.sd.gov/bit?id=bit_standards_overview.

33. INSURANCE

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

A. COMMERCIAL GENERAL LIABILITY INSURANCE:

The Sub-Recipient 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. BUSINESS AUTOMOBILE LIABILITY:

The Sub-Recipient shall maintain business automobile liability insurance or an equivalent form with a limit of not less than \$500,000 for each accident. Such insurance shall include coverage for owned, hired, and non-owned vehicles. The insurance policy shall name the State of South Dakota, its officers and employees, as additional insured 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.

C. WORKER'S COMPENSATION INSURANCE:

The Sub-Recipient shall procure and maintain Workers' Compensation and employers' liability insurance as required by South Dakota law.

D. PROFESSIONAL LIABILITY INSURANCE:

Sub-Recipient 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, Sub-Recipient shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement including naming the State of South Dakota, 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, Sub-Recipient agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Sub-Recipient shall furnish copies of insurance policies if requested by the State.

34. WORK PRODUCT

The Sub-Recipient hereby acknowledges and agrees that all reports, plans, specifications, technical data, drawings, software system programs and documentation, procedures, files, operating instructions and procedures, source code(s) and documentation, including those necessary to upgrade and maintain the software program, state proprietary information, state data, end user data, Personal Health Information as defined in 45 CFR 160.103, and all information contained therein provided to the State by the Sub-Recipient 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 Sub-Recipient 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. In the unlikely event that any copyright does not fully belong to the State, the State nonetheless reserves a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, and otherwise use, and to authorize others to use, any such work for government purposes.

Sub-Recipient agrees to return all information received from the State to State's custody upon the end of the term of this Agreement, unless otherwise agreed in a writing signed by both parties.

35. PUBLICITY

The Sub-Recipient shall not without the written consent of the State advertise, publicly announce or provide to any other person information relating to the existence or details of the Agreement or use the State's name in any format for any promotion, publicity, marketing or advertising purpose. The Sub-Recipient with written consent of the State when issuing statements, press releases, request for proposals, bid solicitations, and other documents describing projects or programs funded, pursuant to this Agreement, in who or in part with State funds, the Sub-Recipient shall, state:

- the percentage of the total cost of the program or project which is financed with State funds;
- the dollar amount of State funds for the project or program; and
- the percentage and dollar amount of the total costs of the project or program that will be funded by non-government sources.

36. STANDARDS OF WORK

Sub-Recipient agrees to implement the subaward and perform pursuant to the requirements of the Agreement in a manner consistent with that level of care and skill ordinarily exercised by sub-recipients currently practicing under similar conditions, particularly in reference to restricted or sponsored programs.

37. ADMINISTRATIVE CONSIDERATIONS

Where policies of Sub-Recipient differ from those of the State, such as travel reimbursement, fringe benefits, indirect costs, etc., the policies of the Sub-Recipient shall be applicable to cost incurrences under the Agreement provided such policies comply with awarding agency regulations.

38. DISCLOSURE OF INFORMATION

Any confidential information or personally identifiable information (PII) acquired by Sub-Recipient during the course of the subaward shall not be disclosed by Sub-Recipient to any person, firm, corporation, association, or other entity for any reason or purpose whatsoever without the prior written consent of the State, either during the term of the Agreement or in the event of termination of the Agreement for any reasons whatsoever. Sub-Recipient agrees to abide by applicable state regulations regarding confidential information and research standards, as appropriate.

39. INDEPENDENT CONTRACTOR/SUB-RECIPIENT

While performing services hereunder, the Sub-Recipient is an independent and not an officer, agent or employee of the State of South Dakota. The Sub-Recipient will provide the State with its Employer Identification Number, Federal Tax Identification Number or Social Security Number; UEI Number; and SAM registration number upon execution of this Agreement.

40. CONFIDENTIALITY OF INFORMATION

For the purpose of this paragraph, "State Proprietary Information" shall include all information, regardless of its format, disclosed to the Sub-Recipient by the State. Sub-Recipient acknowledges that it shall have a duty to 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. Sub-Recipient shall 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 contract; (iii) make State Proprietary Information available to any of its employees, officers, agents or consultants except those who have agreed 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. Sub-Recipient 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. Sub-Recipient shall protect confidentiality of State Proprietary 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. State Proprietary Information shall not include information that (i) was in the public domain at the time it was disclosed to Sub-Recipient; (ii) was known to Sub-Recipient without restriction at the time of disclosure from the State; (iii) that is disclosed with the prior written approval of State's officers or employees having authority to disclose such information; (iv) was independently developed by Sub-Recipient without the benefit or influence of the State's information; or (v) becomes known to Sub-Recipient without restriction from a source not connected to the State of South Dakota. State

Proprietary Information may include names, social security numbers, employer numbers, addresses and all other data about applicants, employers or other clients to whom the State provides services of any kind. Sub-Recipient understands that State Proprietary Information may be confidential and protected under applicable state or federal law and agrees to immediately notify the State if the Information is disclosed, either intentionally or inadvertently. Sub-Recipient acknowledges that the State 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 but not limited to posting this Agreement on the State of South Dakota's website. If work assignment performed in the course of this Agreement require additional security requirements or clearance, Sub-Recipient 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.

Sub-Recipient 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 paragraph and to immediately notify the State of such matter.

Sub-Recipient will comply with any other confidentiality measures and terms included in this Agreement.

Upon termination of this Agreement, if not already done so as part of the services performed under this Agreement, Sub-Recipient agrees to return to the State, at Sub-Recipient's cost, any State Proprietary Information or documentation maintained by Sub-Recipient regarding the services provided hereunder in a format readily useable by the State as mutually agreed by Sub-Recipient and State.

Sub-Recipient acknowledges that the State shares general information, including performance information, about Sub-Recipient among and between other State Agencies upon request of such Agencies for the purpose of making determinations of the risk involved with potential, subsequent grant awards and for other purposes. Sub-Recipient expressly consents and agrees to such uses by the State.

41. 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).