

**STATE OF SOUTH DAKOTA
DEPARTMENT OF SOCIAL SERVICES
BOARD OF ADDICTION AND PREVENTION PROFESSIONALS**

**Agreement for Legal Services
Between**

Jeff L. Bratkiewicz
Special Assistant Attorney General for the
State of South Dakota
515 South Cliff Avenue, Suite 104
Sioux Falls, SD 57101
Referred to as Attorney

State of South Dakota
Department of Social Services
BOARD OF ADDICTION
AND PREVENTION PROFESSIONALS
700 Governors Drive
Pierre, SD 57501-2290
Referred to as DSS

Attorney agrees to provide legal services and represent DSS as needed. While performing services hereunder, Attorney is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

1. ATTORNEY'S South Dakota Vendor number is . 12030196
2. PERIOD OF PERFORMANCE:
This agreement shall be effective as of January 26, 2015 and shall end on May 31, 2015, unless sooner terminated pursuant to the terms hereof. Agreement is exempt from the request for proposal process.
3. PROVISIONS:
 - A. The Attorney agrees to perform the following services:
 1. Represent the South Dakota Board of Addiction and Prevention Professionals. Advise the Board in legal matters arising out of the Board's exercise of its duties as provided in SDCL 36-34-12.
 2. This agreement will not involve Protected Health Information (PHI).
If PHI is involved, a Business Associate Agreement is attached and fully incorporated herein as part of the agreement.
 3. The attorney will not use state equipment, supplies or facilities.
 - B. The State agrees to:
 1. Make payment for services upon satisfactory completion of services and receipt of a bill. Payment will be made at the rate of \$89.00 per hour. Invoices must include the total number of hours worked. Payments made to Attorney as specified herein shall be deemed to include all taxes of any description, federal, state, or municipal assessed against the Attorney by reason of this agreement.
 2. The State will not pay Attorney expenses as a separate item.
If YES, expenses submitted will be reimbursed at state rates as established by the State Board of Finance, and receipts will be provided. Total amount for such expenses may not exceed \$0.00.
 - C. The TOTAL CONTRACT AMOUNT will not exceed \$19,000.00.
Payment will be in accordance with SDCL 5-26.

4. BILLING:

Attorney agrees to prepare and submit a bill for services within (30) days following the month in which services were provided. Attorney agrees to submit a final bill within 45 days of the contract end date to receive payment for completed services. If a final bill cannot be submitted in 45 days, then a written request for extension of time and explanation must be provided to the State.

5. TECHNICAL ASSISTANCE:

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

6. LICENSING AND STANDARD COMPLIANCE:

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

7. ASSURANCE REQUIREMENTS:

The Attorney agrees to abide by all applicable provisions of the following assurances: Lobbying Activity, Debarment and Suspension, Drug-Free Workplace, Executive Order 11246 Equal Employment Opportunity, Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, Drug Abuse Office and Treatment Act of 1972, Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, Age Discrimination Act of 1975, Americans with Disabilities Act of 1990, Pro-Children Act of 1994, Hatch Act, Health Insurance Portability and Accountability Act (HIPAA) of 1996, Charitable Choice Provisions and Regulations, and American Recovery and Reinvestment Act of 2009 as applicable.

8. RETENTION AND INSPECTION OF RECORDS:

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

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

9. WORK PRODUCT:

Attorney 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, and all information contained therein provided to the State by the Attorney in connection with its performance of service under this Agreement shall belong to and is the property of the State and will not be used in any way by the Attorney without the written consent of the State.

Paper, reports, forms software programs, source code(s) and other materials 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 none the less 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.

Attorney 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.

10. TERMINATION:

This Agreement may be terminated by either party hereto upon thirty (30) days written notice, and may be terminated by the State for cause at any time, with or without notice. Upon termination of this agreement, all accounts and payments shall be processed according to financial arrangements set forth herein for services rendered to date of termination.

11. FUNDING:

This contract depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of the law or federal funds reduction, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

12. AMENDMENTS:

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

13. CONTROLLING LAW:

This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

14. 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.

15. 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 hereof.

16. IT STANDARDS:

Attorney warrants that the software and hardware developed or purchased for the state will be in compliance with the BIT Standards including but not limited to the standards for security, file naming conventions, executable module names, Job Control Language, systems software, and systems software release levels, temporary work areas, executable program size, forms management, network access, tape management, hosting requirements, administrative controls, and job stream procedures prior to the installation and acceptance of the final project. BIT standards can be found at <http://bit.sd.gov/standards/>.

17. 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 Attorney, 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.

18. SUBCONTRACTORS:

The Attorney may not use subcontractors to perform the services described herein without express prior written consent from the State. The State reserves the right to reject any person from the contract presenting insufficient skills or inappropriate behavior.

The Attorney will include provisions in its subcontracts requiring its subcontractors to comply with the applicable provisions of this Agreement, to indemnify the State, and to provide insurance coverage for the benefit of the State in a manner consistent with this Agreement. The Attorney will cause its subcontractors, agents, and employees to comply with applicable federal, state and local laws, regulations, ordinances, guidelines, permits and requirements and will adopt such review and inspection procedures as are necessary to assure such compliance. The State, at its option, may require the vetting of any subcontractors. The Attorney is required to assist in the process as needed.

19. HOLD HARMLESS:

The Attorney agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require the Attorney to be responsible for or defend against claims or damages arising from errors or omissions of the State, its officers, agents or employees or from the errors or omissions of third parties that are not officers, employees or agents of the Attorney, unless such errors or omissions resulted from the acts or omissions of the Attorney. Nothing in this contract is intended to impair the insurance coverage of Attorney or any subrogation rights of Attorney's insurers.

20. INSURANCE:

Before beginning work under this Agreement, Attorney shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement. The Attorney, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits listed below. In the event a substantial change in insurance, issuance of a new policy, cancellation or nonrenewal of the policy, the Attorney agrees to provide immediate notice to the State and provide a new certificate of insurance showing continuous coverage in the amounts required. Attorney shall furnish copies of insurance policies if requested by the State.

A. Commercial General Liability Insurance:

Attorney 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.

B. Business Automobile Liability Insurance:

Attorney 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.

C. Worker's Compensation Insurance:

Attorney shall procure and maintain Workers' Compensation and employers' liability insurance as required by South Dakota law.

D. Professional Liability Insurance:

Attorney agrees to procure and maintain professional liability insurance with a limit not less than \$1,000,000.

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

21. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY, AND VOLUNTARY EXCLUSION:
Attorney certifies, by signing this agreement, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal government or any state or local government department or agency. Attorney further agrees that it will immediately notify the State if during the term of this Contract 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.
22. CONFLICT OF INTEREST:
Attorney agrees not to participate as Counsel, in person or his law firm, in opposition to the interests of the State of South Dakota or any of its departments, bureaus, boards or commissions consistent with the policy attached hereto and labeled Exhibit A.
23. LIMITATIONS UPON LEGAL REPRESENTATION:
Is the Attorney/Firm representing the State of South Dakota? Yes No
- If Yes, then it is agreed and acknowledged by the Attorney in order for the Attorney to represent the State of South Dakota or the interests of DSS in any court of law, they must receive an appointment as an Assistant Attorney General from the Attorney General of the State.
24. CONFIDENTIALITY OF INFORMATION:
For the purpose of the sub-paragraph, "State Proprietary Information" shall include all information disclosed to the Attorney by the State. Attorney 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. Attorney shall not: (i) disclose any State Proprietary Information to any third person unless otherwise specifically allowed under this contract; (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 contract and who have a need to know such information. Attorney 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. Attorney shall protect 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. State Proprietary Information shall not include information that (i) was in the public domain at the time it was disclosed to Attorney; (ii) was known to Attorney 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 Attorney without the benefit or influence of the State's information; (v) becomes known to Attorney without restriction from a source not connected to the State of South Dakota. State's Proprietary Information shall 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. Attorney understands that this information is confidential and protected under applicable State law at SDCL 1-27-1.5, modified by SDCL 1-27-1.6, SDCL 28-1-29, SDCL 28-1-32, and SDCL 28-1-68. as applicable federal regulation and agrees to immediately notify the State, either intentionally or inadvertently. The parties mutually agree that neither of them 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. Attorney 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. . If work assignments performed in the course of this Agreement require additional security requirements or clearance, the Attorney will be required to undergo investigation.

25. AUTHORIZED SIGNATURES:

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

<u>Jeff Bratkiewicz</u> Attorney Signature	<u>3/3/2015</u> Date
<u>Birch Reitz</u> Board of Addiction and Prevention Professionals	<u>3-5-15</u> Date
<u>Amy Iversen-Pollreis</u> State- DSS Deputy Secretary Amy Iversen-Pollreis	<u>2/4/15</u> Date
<u>Brenda Tidball-Zeltinger</u> State - DSS Deputy Secretary Brenda Tidball-Zeltinger	<u>2/4/15</u> Date
<u>Lynne A. Valent</u> State - DSS Cabinet Secretary Lynne A. Valent	<u>2/5/15</u> Date
<u>Craig Ambach</u> Litigation and Legal Services Manager for the Governor - Craig Ambach	<u>3/5/15</u> Date
<u>Marty J. Jackley</u> Attorney General - Marty J. Jackley	<u>3/17/15</u> Date

State Agency Coding:

CFDA#	_____	_____	_____	_____
Company	<u>6503</u>	_____	_____	_____
Account	<u>520408000</u>	_____	_____	_____
Center Req	<u>0894000</u>	_____	_____	_____
Center User	<u>721</u>	_____	_____	_____
Dollar Total	<u>\$19,000.00</u>	_____	_____	_____

DSS Program Contact Person Amy Iversen-Pollreis
 Phone (605) 773-3165

DSS Fiscal Contact Person Patty Hanson
 Phone 605 773-3586

Attorney Program Contact Person Jeff L. Bratkiewicz
 Phone (605) 335-6250
 Attorney Email Address jbratkiewicz@sbslaw.net

Attorney Fiscal Contact Person _____
 Phone _____
 Attorney Fiscal Email Address _____

SDCL 1-24A-1 states that a copy of all consulting contracts shall be filed by the State agency with the State Auditor within five days after such contract is entered into and finally approved by the contracting parties. For further information about consulting contracts, see the State Auditor's policy handbook.

Exhibit A

POLICY CONCERNING CONFLICTS OF INTEREST

This policy is adopted to address the issue of potential conflicts of interest with regard to the State of South Dakota and attorneys contracting with the State of South Dakota ("State") to perform legal services. This policy will be attached as an addendum to any contract for legal services entered into between the State and any attorney contracting to perform those legal services and shall become a part of that contract.

A. Except as provided in paragraph B of this policy, if an attorney contracting to perform legal services with the State has a pending claim against the State or its employees on behalf of a client; or in the event an attorney with an existing contract for legal services with the State is approached by a client seeking to file a lawsuit against the State or its employees, the contracting attorney shall notify the Attorney General and the manager of the state PEPL Fund in writing of that conflict of interest prior to the time a contract is signed or prior to undertaking representation of the adverse client. The Attorney General shall personally decide within ten working days whether or not the State will waive any conflict of interest created by that claim. The Attorney General will consider the magnitude of the claim against the State, the appearance of impropriety which could adversely affect the interests of the State, the degree, if any, to which the contracting attorney has or will gain access to information which would give him an undue advantage in representing a client whose interests are adverse to the State, whether the department or agency against which the claim is made is also a department or agency that will be represented by the contracting attorney, and any other factor which the Attorney General may deem pertinent in his discretion.

Notification of the Attorney General under this paragraph, prior to the commencement of an action is not required if the contracting attorney is approached by a client to commence an action against the State and the contracting attorney has a good faith belief that absent immediately filing, the action would be barred by a statute of limitations or comparable provision. Under these circumstances, the contracting attorney shall, as soon as practical, contact the Attorney General regarding the conflict and agrees that if the conflict of interest is not waived, to withdraw from representing the client in the pending action.

B. Any conflict of interest which may be created by the following situations will automatically be deemed to be waived by the Attorney General and will not be subject to the notification requirements of this policy statement:

1. Any action where the contracting attorney represents a codefendant with the State in a claim or lawsuit, regardless of any cross-claim or third-party claim which the State and the attorney's non-State client may have against each other; unless the cross-claim or third-party claim was readily apparent at the time of contracting with the non-State client and seeks significant monetary consequences; the cross-claim is against a state agency which the contracting attorney represents; or by virtue of representation of the State under contract the attorney had access to information which would give the non-State client an unfair advantage.
2. Any condemnation action in which the contracting attorney represents a condemnee.
3. Any administrative licensing proceeding in which the contracting attorney appears representing a client, regardless of the fact that the client may make a claim which would be adverse to a position taken by a department or agency of state government; unless the claims, if successful, will have significant monetary consequences to the State; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.
4. Any administrative proceeding before the Department of Revenue in which the contracting attorney's client may have a claim which would create a potential liability for the State of South Dakota; unless the claim, if

successful, will have significant monetary consequences to the State; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.

5. Any bankruptcy proceeding in which the contracting attorney represents a client other than the State of South Dakota and in which the State of South Dakota has a secured or unsecured claim.
6. Any activity relating to the negotiation of a contract with the State of South Dakota and another client represented by the contracting attorney; unless the contracting attorney is actively representing the department or agency of state government with which the contract is being negotiated; or by virtue of representation of the State under contract the contracting attorney had access to information which would give the non-State client an unfair advantage.
7. The defense of any criminal action; unless the attorney has an existing contract as a special prosecutor in criminal actions for the State of South Dakota; or if, in representation of the State under contract, the contracting attorney had access to information which would give the non-State client an unfair advantage in the criminal action.
8. Any small claims action in which the contracting attorney represents any plaintiff or defendant with interests adverse to those of the State.
9. Any action brought through representation under a long-term contract or appointment of any other governmental entity, whether or not that governmental entity has interests that are adverse to those of the State; unless the claim, if successful, will have significant monetary consequences against the State of South Dakota.
10. Any action in which the State is a named party but has only a nominal interest, as in mortgage foreclosures and quiet title actions.
11. Any lobbying activity by the contracting attorney
12. Any worker's compensation case in which the contracting attorney represents a claimant; unless the contracting attorney represents the South Dakota Department of Labor in matters relating to worker's compensation claims or benefits.

C. The Attorney General reserves the right to raise a conflict of interest, notwithstanding the automatic waiver provisions of paragraph B of this policy, where a conflict of interest covered by the South Dakota Rules of Professional Conduct exists and in the discretion of the Attorney General, is it determined to be in the State's best interest to raise the conflict. The Attorney General shall notify the contracting attorney of the existence of the conflict and the delineation of waiver within seven days of the Attorney General's actual notice of the contracting attorney's action against the State.

D. For purposes of this policy: 1) the term "contracting attorney" means the attorney actually signing the agreement and his entire law firm; 2) the term "State" means the State of South Dakota and any branch, constitutional office, department, agency, institution, board, commission, authority, or other entity by state government; and 3) the term "significant monetary consequences" means that the suit, claim, action or other proceeding against the State, if successful, could reasonably result in the State making payments to the contracting attorney, the client or the class the client represents in excess of \$50,000 or in the case of the proceeding against the Department of Revenue, or other state taxing entity payments or lost revenue in excess of \$50,000.

E. This guideline shall not be construed as altering or reducing an attorney's obligations to his client under the South Dakota Rules of Professional Conduct specifically stated herein.