

(INSERT PROJECT TITLE)
(INSERT CONTRACT NUMBER)

THIS CONTRACT is entered into by and between the State of Montana, (insert agency name), (State), whose address and phone number are (insert address), (insert phone number) and (insert name of contractor), (Contractor), whose address and phone number are (insert address) and (insert phone number).

1. EFFECTIVE DATE, DURATION, AND RENEWAL

- 1.1. Contract Term. The Contract's initial term is (insert date), 20(), (or upon contract execution), through (insert date), 20(), unless terminated earlier as provided in this Contract. In no event is this Contract binding on State unless State's authorized representative has signed it. The legal counsel signature approving legal content of the Contract and the procurement officer signature approving the form of the Contract do not constitute an authorized signature.
- 1.2. Contract Renewal. State may renew this Contract under its then-existing terms and conditions (subject to potential cost adjustments described below in section 2) in (insert number)-year intervals, or any interval that is advantageous to State. This Contract, including any renewals, may not exceed a total of (insert number) years. NOTE TO AGENCIES State contracts generally may not exceed a total of seven years, IT contracts for 10 years.

2. COST ADJUSTMENTS

- 2.1. Cost Increase by Mutual Agreement. After the Contract's initial term and if State agrees to a renewal, the parties may agree upon a cost increase. State is not obligated to agree upon a renewal or a cost increase. Any cost increases must be based on demonstrated industry-wide or regional increases in Contractor's costs. Publications such as the Federal Bureau of Labor Statistics and the Consumer Price Index (CPI) for all Urban Consumers may be used to determine the increased value.

3. SERVICES AND/OR SUPPLIES

- 3.1. Contractor shall provide State the following (insert a detailed description of the supplies, services, etc., to be provided to correspond to the requirements specified in the Scope of Project as listed in the solicitation).

4. WARRANTIES

- 4.1. Warranty for Services. Contractor warrants that it performs all services using reasonable care and skill and according to its current description (including any completion criteria) contained in this Contract. State agrees to provide timely written notice of any failure to comply with this warranty so that Contractor can take corrective action.
- 4.2. The parties agree that the warranties set forth above do not require uninterrupted or error-free operation of hardware or services unless otherwise stated in the specifications.
- 4.3. These warranties are State's exclusive warranties and replace all other warranties or conditions, express or implied, including, but not limited to, the implied warranties or conditions of merchantability and fitness for a particular purpose.

5. CONSIDERATION/PAYMENT

- 5.1. Payment Schedule. In consideration of the (insert supplies or services) to be provided, State shall pay Contractor according to the following schedule:

Subject to the payment terms provided in section 5.2.:

- (1) upon execution of the contract and receipt of an invoice, the State shall pay 25% of the total contract price;
- (2) upon receipt of an invoice and a mid-point progress report prepared by the contractor and upon approval by the State that the mid-point progress report is satisfactory, the State shall pay 25% of the total price of the contract; and
- (3) upon receipt of an invoice and a final progress report prepared by the contractor and upon approval by the State that the tasks required under the contract have been completed, including receipt of any finalized data or analysis required under the scope of work, the State shall pay the remaining funds due to the contractor under the contract.

- 5.2. Payment Terms. Unless otherwise noted in the solicitation document, State has thirty (30) days to pay invoices, as allowed by 17-8-242, MCA. Contractor shall provide banking information at the time of Contract execution in order to facilitate State's electronic funds transfer payments.
- 5.3. Reference to Contract. The Contract number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the Contract. If the number is not provided, State is not obligated to pay the invoice.

6. ACCESS AND RETENTION OF RECORDS

- 6.1. Access to Records. Contractor shall provide State, Legislative Auditor, or their authorized agents access to any records necessary to determine Contract compliance. State may terminate this Contract under section 26, Contract Termination, without incurring liability, for Contractor's refusal to allow access as required by this section. (18-1-118, MCA.)
- 6.2. Retention Period. Contractor shall create and retain all records supporting the (insert services rendered or supplies provided) for a period of eight years after either the completion date of this Contract or termination of the Contract.

7. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

- 7.1. Contractor may not assign, transfer, or subcontract any portion of this Contract without State's prior written consent. (18-4-141, MCA) Contractor is responsible to State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and State under this Contract.

8. DEFENSE, INDEMNIFICATION / HOLD HARMLESS

- 8.1. Contractor shall defend, indemnify and hold harmless the State of Montana and the contracting agency hereunder and their elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims, demands, causes of action, liabilities, damages, judgments, expenses or fees, including the reasonable cost of defense thereof and attorney fees, arising or awarded in favor of Contractor's or its subcontractor's employees or agents or third parties for bodily or personal injuries, death, damage to property, or financial or other loss resulting or allegedly resulting in whole or part from (i) the services performed or products provided or (ii) other acts or omissions of Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of State.

9. LIMITATION OF LIABILITY

- 9.1. Contractor's liability for Contract damages is limited to direct damages and further to no more than twice the Contract amount. Contractor shall not be liable for special, incidental, consequential, punitive, or indirect damages. Damages caused by injury to persons or tangible property, or related to intellectual property indemnification, are not subject to a cap on the amount or type of damages.

10. REQUIRED INSURANCE

- 10.1. Primary Insurance. Contractor's insurance coverage shall be primary insurance with respect to State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by State, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.
- 10.2. Specific Requirements for Commercial General Liability. Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$250,000 per occurrence and \$500,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.
- 10.3. State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor, products, and completed operations, and the premises owned, leased, occupied, or used.
- 10.4. Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by State. At the request of State either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects State, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.
- 10.5. Certificate of Insurance/Endorsements. A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages has been received by State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. The certificates must name the State of Montana as certificate holder and Contractor shall provide copies of additional insured endorsements required by Contractor's commercial general liability and automobile liability policies. Contractor must notify State immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. State reserves the right to require complete copies of insurance policies at all times.

11. COMPLIANCE WITH LAWS

- 11.1. Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016. Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

12. REGISTRATION WITH THE SECRETARY OF STATE

- 12.1. Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are domiciled in another state or country, but which are conducting activity in

Montana, must determine whether they are transacting business in Montana in accordance with 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

- 12.2. If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sos.mt.gov>.

13. CONTRACT TERMINATION

- 13.1. Termination for Cause with Notice to Cure Requirement. State may terminate this Contract in whole or in part for Contractor's failure to materially perform any of the services, duties, terms, or conditions contained in this Contract after giving Contractor written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than (insert number of days) days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.
- 13.2. Termination for Cause with Notice to Cure Requirement. Contractor may terminate this Contract for State's failure to perform any of its duties under this Contract after giving State written notice of the failure. The written notice must demand performance of the stated failure within a specified period of time of not less than (insert number of days) days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.
- 13.3. Reduction of Funding. State must, by law, terminate this Contract if funds are not appropriated or otherwise made available to support State's continuation of performance of this Contract in a current or subsequent fiscal period. (18-4-313(4), MCA) If state or federal government funds are not appropriated, approved for spending by the Montana Districting and Apportionment Commission, or otherwise made available through the state budgeting process to support continued performance of this Contract (whether at an initial contract payment level or any contract increases to that initial level) in the current or subsequent fiscal periods, State shall terminate this Contract as required by law. State shall provide Contractor the date State's termination shall take effect. State shall not be liable to Contractor for any payment that would have been payable had the Contract not been terminated under this provision. As stated above, State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date State's termination takes effect. This is Contractor's sole remedy. State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

14. EVENT OF BREACH – REMEDIES

- 14.1. Event of Breach by Contractor. Any one or more of the following Contractor acts or omissions constitute an event of material breach under this Contract:
- 14.1.1. Products or services furnished fail to conform to any requirement;
 - 14.1.2. Failure to submit any report required by this Contract;
 - 14.1.3. Failure to perform any of the other terms and conditions of this Contract, including but not limited to beginning work under this Contract without prior State approval or breaching section 32.1, Technical or Contractual Problems, obligations; or
 - 14.1.4. Voluntary or involuntary bankruptcy or receivership.
- 14.2. Event of Breach by State. State's failure to perform any material terms or conditions of this Contract constitutes an event of breach.
- 14.2.1. Actions in Event of Breach. Upon Contractor's material breach, State may:
 - 14.2.2. Terminate this Contract under Section 26.1, Termination for [Cause or Convenience] and pursue any of its remedies under this Contract, at law, or in equity; or

14.2.3. Treat this Contract as materially breached and pursue any of its remedies under this Contract, at law, or in equity.

14.3. Upon State's material breach, Contractor may:

14.3.1. Terminate this Contract under section 26.2, Termination for Cause with Notice to Cure, and pursue any of its remedies under this Contract, at law, or in equity; or

14.3.2. Treat this Contract as materially breached and, except as the remedy is limited in this Contract, pursue any of its remedies under this Contract, at law, or in equity.

15. FORCE MAJEURE

15.1. Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition shall provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, shall the notice be provided later than five working days after the onset. If the notice is not provided within the five-day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this Contract, unless the parties mutually agree that the obligation is excused because of the condition.

16. WAIVER OF BREACH

16.1. Either party's failure to enforce any contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

17. CONFORMANCE WITH CONTRACT

17.1. No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the Contract shall be granted without the State Procurement Bureau's prior written consent. Product or services provided that do not conform to the Contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

18. LIAISONS AND SERVICE OF NOTICES

18.1. Contract Liaisons. All project management and coordination on State's behalf must be through a single point of contact designated as State's liaison. Contractor shall designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed under this Contract must be coordinated between State's liaison and Contractor's liaison.

is State's liaison

(Address):

(City, State, ZIP):

Telephone:

Cell Phone:

Fax:

E-mail:

is Contractor's liaison

(Address):

(City, State, ZIP):

Telephone:

Cell Phone:

Fax:

E-mail:

18.2. Notifications. State's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the liaison. Notice may be provided by personal service, mail, or facsimile. If notice is provided by personal service or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective within three business days of mailing.

19. TRANSITION ASSISTANCE

19.1. If this Contract is not renewed at the end of this term, if the Contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor shall provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of this Contract or particular work under this Contract. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to State or its designees. The parties agree that such transition assistance is governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to such transition assistance. State shall pay Contractor for any resources utilized in performing such transition assistance at the most current Contract rates. If State terminates a project or this Contract for cause, then State may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages State may have sustained as a result of Contractor's breach.

20. CHOICE OF LAW AND VENUE

20.1. Montana law governs this Contract. The parties agree that any litigation concerning this bid, proposal, or this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees, except as provided in Section 13, Defense, Indemnification/Hold Harmless.

21. TAX EXEMPTION

21.1. State of Montana is exempt from Federal Excise Taxes (#81-0302402) except as otherwise provided in the federal Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119].

22. PERSONAL PROPERTY TAX

22.1. All personal property taxes will be paid by Contractor.

23. AUTHORITY

23.1. This Contract is issued under authority of Title 18, Montana Code Annotated, and the Administrative Rules of Montana, Title 2, chapter 5.

24. SEVERABILITY

24.1. A declaration by any court or any other binding legal source that any provision of the Contract is illegal and void shall not affect the legality and enforceability of any other provision of the Contract, unless the provisions are mutually and materially dependent.

25. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT

25.1. Contract. This Contract consists of (insert number) numbered pages, any Attachments as required, Solicitation # (insert solicitation number), as amended, and Contractor's response, as amended. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

25.2. Entire Agreement. These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment or modification must be in a written agreement signed by the parties.

26. WAIVER

26.1. State's waiver of any Contractor obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Contractor obligation or responsibility.

27. EXECUTION

The parties through their authorized agents have executed this Contract on the dates set out below.

STATE OF MONTANA
(Insert Agency Name)
(Insert Address)
(Insert City, State, Zip)

(INSERT CONTRACTOR'S NAME)
(Insert Address)
(Insert City, State, Zip)
FEDERAL ID #

BY:
(Name/Title)

BY:
(Name/Title)

(Signature)

(Signature)

DATE:

DATE:

Approved as to Legal Content:

Legal Counsel (Date)

Approved as to Form:

Procurement Officer (Date)
State Procurement Bureau

NOTE TO AGENCIES: The CIO Approval below is applicable to IT Contract only.
Chief Information Officer Approval:

Contractor is notified that, under the provisions of 2-17-514, MCA, the Department of Administration retains the right to cancel or modify any contract, project, or activity that is not in compliance with the Agency's Plan for Information Technology, the State Strategic Plan for Information Technology, or any statewide IT policy or standard.

Chief Information Officer (Date)
Department of Administration