**CHECKLIST FOR AGENCIES**

**🗹 Signed By Appropriate Executors:**

* **Order of Contract signing:**

1. **Legal Counsel**
2. **State Procurement Bureau**
3. **CIO (if applicable)**
4. **Contractor**
5. **State Agency**

***The last signature to be placed on a contract should always be the department's representative (typically the department director)***

**🗹 Consistent formatting throughout the contract:**

* **Font Type and Sizing is uniform**
* **Font Color is black throughout**
* **Section Numbering is accurate (NOTE: Section Numbers DO NOT ONLY appear at the beginning of each clause, but often within the clauses themselves – agencies should run a search for “section” and update each reference accordingly)**

**🗹 Attachment References are accurate and the documents attached (NOTE: attachment references often appear within the clauses as titles only and may not include ‘Attachment X’ reference – agencies should run a search for “attachment and attached” to be sure all referenced documents have been addressed and attached appropriately.)**

* **Optional Clauses that were not used have been removed**
* **Any instructional (blue) wording has been removed**
* **All agency-determined terms have been inserted into the appropriate (insert) field**
* **All applicable agency-specific contracting policies have been addressed**
* **“The Master Agreement and the Participating Addendum contain detailed terms and conditions that address, among other things, requirements of Montana law. Please do not attach a purchase order or task order containing terms and conditions that conflict with those in the Master Agreement and Participating Addendum. If a purchase order or task order has terms and conditions that conflict with either the Master Agreement or Participating Addendum’s terms and conditions, the Master Agreement or Participating Addendum terms and conditions govern.”**

**INSERT IN PA**

If a purchase order or task order has terms and conditions that conflict with the Master Agreement or Participating Addendum terms and conditions, the Master Agreement or Participating Addendum terms and conditions govern.

**(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.**

**NOTE TO AGENCIES: Section 2 is optional depending on the project. Contracts in which the term is or will likely be greater than one year should include Section 2 to prevent confusion and to allow for renegotiations to cover new/additional costs to Contractor. If a CPI clause is used, agencies should include a reference to which category within the Index they intend to use for their adjustments. If the specific item or service is not listed as a category within the CPI, agencies should specify the “All Items” category as the category of choice. Contact the SPB for assistance at (406) 444-2575.**

**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 UrbanConsumers may be used to determine the increased value.

**OR**

**2.1 Cost Increase by Fixed Amount.** After the Contract's initial term and if State agrees to a renewal, the parties may agree upon a cost increase of **(insert %)**%, not to exceed **(insert %)**%. Contractor shall request the increase and shall provide justification for the increase. State is not obligated to agree upon a renewal or a cost increase.

**OR**

**2.1 Cost Adjustments per Increase in CPI.** After the Contract’s initial term and if State agrees to a renewal, the parties may agree upon annual pricing adjustments during a renewal based on the cost of living as reflected in the Federal Bureau of Labor Statistics, Consumer Price Index (CPI) for all Urban Consumers (see <http://www.bls.gov/cpi/> for reference) or any other index that may be substituted in the future. The CPI for the last 12-month period of the Contract shall be the CPI base on which later adjustments are computed, and the original CPI base shall be the index announced for the month in which the Contract was signed. The allowable percentage change shall be calculated as follows:

New CPI Base - Original CPI Base

Original CPI Base

The original Contract costs shall be adjusted according to this percentage change. Each time an adjustment is made, the original CPI base shall be replaced by the adjusted CPI base. The percentage of adjustment to Contract prices shall in no event exceed the percentage change in the index. State is not obligated to agree upon a renewal or a cost increase.

**OR**

**2.1 Cost Adjustments Negotiated Based on Changes in Contractor's Costs. *After the Contract’s initial term and if State agrees to a renewal***, the parties may negotiate cost adjustments at the time of Contract renewal. Any cost increases must be based on demonstrated industrywide or regional increases in Contractor's costs. State is not obligated to agree upon a renewal or a cost increase.

**3. SERVICES AND/OR SUPPLIES**

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)**.

**NOTE TO AGENCIES: Section 4 should be tailored to the type of contract being sought.**

**4. WARRANTIES**

**NOTE TO AGENCIES: The following two options are applicable to NON-IT CONTRACTS ONLY.**

**4.1 Warranty of Products.** Contractor warrants that the products supplied conform to the specifications requested, are fit and sufficient for the purpose manufactured, are of good material and workmanship, and are free from defect for a period of **(insert number of days)** days from the date of shipment. The length of warranty may vary by product. Contractor further warrants that the products are new and unused and of the latest model or manufacture, unless State specifies otherwise. Contractor acknowledges that exceptions will be rejected.

**AND/OR**

**4.2 Warranty of Services.** Contractor warrants that the services provided conform to the Contract requirements, including all descriptions, specifications and attachments made a part of this Contract. State’s acceptance of services provided by Contractor shall not relieve Contractor from its obligations under this warranty. In addition to its other remedies under this Contract, at law, or in equity, State may require Contractor to promptly correct, at Contractor's expense, any services failing to meet Contractor's warranty herein. Services corrected by Contractor shall be subject to all the provisions of this Contract in the manner and to the same extent as services originally furnished.

**NOTE TO AGENCIES: The following options are for IT CONTRACTS ONLY.**

**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.

**AND/OR**

**NOTE TO AGENCIES: Depending on whether you are purchasing custom software or COTS, choose the applicable phrase.**

**4.2 Warranty for Software.** Upon initial installation of the software Contractor warrants that: (i) the unmodified software will provide the features and functions and will otherwise conform to all published documentation including on Contractor's website; and (ii) the media upon which the software is furnished will be free from defects in materials and workmanship under normal use and service.

**OR**

**4.2 Warranty for Software.** For a period of ninety (90) days from the date of receipt of software, Contractor warrants that: (i) the unmodified software will provide the features and functions and will otherwise conform to all published documentation including on Contractor's website; and (ii) the media upon which the software is furnished will be free from defects in materials and workmanship under normal use and service.

**OR**

**4.2 Warranty for Hardware.** Contractor warrants that hardware provided is free from defects in materials and workmanship and conforms to the specifications. The warranty period for provided hardware is a **(enter warranty period)** commencing on the date specified in a statement of work or applicable Contract. If the hardware does not function as warranted during the warranty period and Contractor is unable to either: i) make it do so; or ii) replace it with one that is at least functionally equivalent, State may return it to Contractor for a full refund.

**NOTE TO AGENCIES: All IT contracts must include the following two clauses.**

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.

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: **(insert pay schedule)**.

**NOTE TO AGENCIES: Section 5.2 has two options: the first option is a general clause and should be included in all non-IT contracts; the second option is an IT-specific clause and should be included in ALL IT contracts.**

**5.2 Withholding of Payment.** In addition to its other remedies under this Contract, at law, or in equity, State may withhold payments to Contractor if Contractor has breached this Contract. Such withholding may not be greater than, in the aggregate, **(insert %)**% of the total value of the subject statement of work or applicable contract.

**OR**

**5.2 Withholding of Payment.** State may withhold disputed payments to Contractor under the subject statement of work (or where no statement of work exists, the applicable contract). The withholding may not be greater than, in the aggregate, fifteen percent (15%) of the total value of the subject statement of work or applicable contract. With respect to payments subject to milestone acceptance criteria, State may withhold payment only for such specific milestone if and until the subject milestone criteria are met. Contractor is not relieved of its performance obligation if such payment(s) is withheld.

**5.3 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.

**5.4 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.

**NOTE TO AGENCIES: Section 5.5 is optional depending on the project.**

**5.5 Fuel Surcharge.** If, during the Contract period, the price of fuel increases 20% over the price of fuel in effect at the time Contractor submitted its bid, Contractor may add a fuel surcharge to the billing invoice. The fuel surcharge will be calculated based on the U.S. Energy Information Administration’s (EIA) index for fuel prices in the Rocky Mountain area. This information may be found at <http://www.eia.gov/petroleum/gasdiesel/>. The fuel surcharge adjustment will be factored on a Base Price of **(insert fuel price listed with the EIA for the week the bid was submitted)**. The surcharge is for actual miles driven. Vehicle mileage allowance is **(insert fuel economy of vehicle)** miles per gallon of fuel. The formula for determining the surcharge is:

Number of Miles x (Weekly Price – Base Price)

**(Insert fuel economy of vehicle)** miles per gallon

State may in its sole discretion audit invoices, and Contractor shall promptly provide information as requested to verify mileage. If the price of fuel returns to or below the price as set in Contractor’s original bid, the surcharge shall be eliminated.

**NOTE TO AGENCIES: Section 6 is applicable ONLY to term contracts. Contact the SPB for assistance at (406) 444-2575.**

**6. COOPERATIVE PURCHASING**

Under Montana law, public procurement units, as defined in 18-4-401, MCA, have the option of cooperatively purchasing with State of Montana. Public procurement units are defined as local or state public procurement units of this or any other state, including an agency of the United States, or a tribal procurement unit. Unless the bidder/offeror objects, in writing, to State Procurement Bureau prior to the award of this Contract, the prices, terms, and conditions of this Contract will be offered to these public procurement units. However, State Procurement Bureau makes no guarantee of any public procurement unit participation in this Contract.

**NOTE TO AGENCIES: Section 7 is optional, depending upon the project. The first option should only be used when contract-use by state agencies is "mandatory." The second option should be used only when contract-use by state agencies is “optional.” Contact the SPB for assistance at (406) 444-2575.**

**7. EXCLUSIVE CONTRACT**

The intent of this Contract is to provide state agencies with an expedited means of procuring supplies and/or services. This Contract is considered to be an "Exclusive" use contract and state agencies must obtain the specified product/service from the Contract holder(s), unless the Contract allows otherwise. However, State does not guarantee any minimum usage totals and it is the individual agency's responsibility to comply with the terms of the Contract.

**OR**

**NON-EXCLUSIVE CONTRACT**

The intent of this Contract is to provide state agencies with an expedited means of procuring supplies and/or services. This Contract is for the convenience of state agencies and is considered by State to be a "Non-exclusive" use contract. Therefore, agencies may obtain this product/service from sources other than the Contract holder(s) as long as they comply with Title 18, MCA, and their delegation agreement. State does not guarantee any usage.

**NOTE TO AGENCIES: Section 8 is to be used as needed depending on the project. Call SPB for assistance at (406) 444-2575.**

**8. CONTRACTOR REGISTRATION (for construction)**

The Contractor will be registered with the Department of Labor and Industry under sections 39-9-201 and 39-9-204, MCA, *prior* to contract execution. The State cannot execute a contract for construction to a Contractor who is not registered (39-9-401, MCA).

**NOTE TO AGENCIES: Section 9 is to be used as needed depending on the project. Call SPB for assistance at (406) 444-2575.**

**9. CONTRACTOR WITHHOLDING (for construction)**

Section 15-50-206, MCA, requires the state agency or department for whom a public works construction contract over $5,000 is being performed, to withhold 1% of all payments and to transmit such monies to the Department of Revenue.

**NOTE TO AGENCIES: Section 10 is to be used as needed depending on the project. Call SPB for assistance at (406) 444-2575.**

**10. PREVAILING WAGE REQUIREMENTS**

**10.1 Montana Resident Preference.** The nature of the work performed, or services provided, under this Contract meets the statutory definition of a "public works contract" in 18-2-401, MCA. Unless superseded by federal law, Montana law requires that contractors and subcontractors give preference to the employment of Montana residents for any public works contract in excess of $25,000 for construction or non-construction services. Contractor shall abide by the requirements set out in 18-2-401 through 18-2-432, MCA, and all administrative rules adopted under these statutes.

The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with 18-2-403 and 18-2-409, MCA. Any and all questions concerning prevailing wage and Montana resident issues should be directed to the Montana Department of Labor and Industry.

**10.2 Standard Prevailing Rate of Wages.** In addition, unless superseded by federal law, all employees working on a public works contract must be paid prevailing wage rates in accordance with 18-2-401 through 18-2-432, MCA, and all associated administrative rules. Montana law requires that all public works contracts, as defined in 18-2-401, MCA, in which the total cost of the contract is greater than $25,000, contain a provision stating for each job classification the standard prevailing wage rate, including fringe benefits, travel, per diem, and zone pay that the contractors, subcontractors, and employers shall pay during the public works contract.

**NOTE TO AGENCIES: Per** [**18-2-417, MCA**](http://data.opi.mt.gov/bills/mca/18/2/18-2-417.htm)**, any public works contract that has a potential term of 30 months or more to perform must include one of the following provisions. The applicability of the 3% adjustment varies according to the situation. For more information, contact SPB** [**spb@mt.gov**](mailto:spb@mt.gov) **or call the Labor Standards Bureau Wage and Hour Unit at (406) 444-5600 to speak to a Prevailing Wage Compliance Specialist.**

**For a public works contract with an *initial* term of 30 months or longer, insert the following:**

The standard prevailing rate of wages paid to workers under this Contract must be adjusted 12 months after the date of the award of the public works contract per 18-2-417, MCA. The amount of the adjustment must be a 3% increase. The adjustment must be made and applied every 12 months for the term of the Contract. This adjustment is the sole responsibility of Contractor and no cost adjustment in this Contract will be allowed to fulfill this requirement.

**For a public works contract with an *initial* term of 12 months with one-year renewals, insert the following:**

Because this Contract has an initial term of 12 months with optional renewals, this Contract is subject to the 3% adjustment when the Contract length becomes more than 30 months. The 3% rate increase becomes effective upon the second renewal, and the 3% is paid starting in the third year of the Contract beginning with the 25th month. The adjustment must be made and applied every 12 months for the term of the Contract. This adjustment is the sole responsibility of Contractor and no cost adjustment in this Contract will be allowed to fulfill this requirement.

**10.3 Notice of Wages and Benefits.** Furthermore, 18-2-406, MCA, requires that all contractors, subcontractors, and employers who are performing work or providing services under a public works contract post in a prominent and accessible site on the project staging area or work area, no later than the first day of work and continuing for the entire duration of the contract, a legible statement of all wages and fringe benefits to be paid to the employees in compliance with 18-2-423, MCA.

**10.4 Wage Rates, Pay Schedule, and Records.** 18-2-423, MCA, requires that employees receiving an hourly wage must be paid on a weekly basis. Each contractor, subcontractor, and employer shall maintain payroll records in a manner readily capable of being certified for submission under 18-2-423, MCA, for not less than three years after the contractor's, subcontractor's, or employer's completion of work on the public works contract.

**NOTE TO AGENCIES: If this contract is to be performed in more than one district, the highest rate for the craft, classification, or type of worker must be included in the bid specifications and contract provision per** [**ARM 24.17.144**](http://www.mtrules.org/gateway/ruleno.asp?RN=24%2E17%2E144)**. In this case, complete and include the following statement.** The Commissioner of the Montana Department of Labor and Industry has established the standard prevailing rate of wages in accordance with 18-2-401 and 18-2-402, MCA, for \_\_\_\_\_\_\_\_\_\_ to be $\_\_\_\_\_\_\_\_\_ per hour, plus a benefit rate of $\_\_\_\_\_\_\_\_\_\_.

**OR**

**If more than one craft, classification, or type of worker is included in the contract, use the following statement instead:**

All contractors and employers shall classify each employee who performs labor on a public works project according to the applicable standard prevailing rate of wages for such craft, classification, or type of employee established by the Commissioner of the Montana Department of Labor and Industry, and shall pay each such employee a rate of wages not less than the standard prevailing rate as specified in the Montana Prevailing Wages Rates for **(insert type of service)** **(insert year)**.

**NOTE TO AGENCIES: An appropriate wage rate booklet is attached to the original solicitation, and as such, is part of the contract.**

**11. ACCESS AND RETENTION OF RECORDS**

**11.1 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.)

**11.2 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.

**12. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING**

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.

**NOTE TO AGENCIES: Section 13 has two options: the first option is applicable to most contracts, and must be included when the second option does not apply; the second option is applicable ONLY to architecture, engineering, and environmental service contracts.**

**13. DEFENSE, INDEMNIFICATION / HOLD HARMLESS**

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.

**OR**

To the fullest extent permitted by law, Contractor shall indemnify and hold harmless State, its elected and appointed officials, officers, agents, directors, and employees from and against all claims, damages, losses and expenses, including the cost of defense thereof, to the extent caused by or arising out of Contractor’s negligent acts, errors, or omissions in work or services performed under this Contract, including but not limited to, the negligent acts, errors, or omissions of any Subcontractor or anyone directly or indirectly employed by any Subcontractor for whose acts Subcontractor may be liable.

**NOTE TO AGENCIES: Section 14 is applicable ONLY to IT contracts.**

**14. LIMITATION OF LIABILITY**

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.

**NOTE TO AGENCIES: Section 15 needs to be tailored to the project. Call SPB for assistance at (406) 444-2575.**

**15. REQUIRED INSURANCE**

**(Insert for commercial general liability and automobile liability only)**

**15.1 General Requirements.** Contractor shall maintain for the duration of this Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission.

**(Insert for all insurance types)**

**15.2 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.

**(Insert for commercial general liability only)**

**15.3 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 **(insert dollar amount)** per occurrence and **(insert dollar amount)** 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.

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.

**(Insert for automobile liability only)**

**15.4 Specific Requirements for Automobile Liability.** Contractor shall purchase and maintain coverage with split limits of $500,000 per person (personal injury), $1,000,000 per accident occurrence (personal injury), and $100,000 per accident occurrence (property damage), OR combined single limits of $1,000,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for automobiles leased, owned, or borrowed by Contractor.

**(Insert for professional liability only)**

**15.5 Specific Requirements for Professional Liability.** Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act of **(insert dollar amount)** per occurrence and **(insert dollar amount)** aggregate per year to cover such claims as may be caused by any act, omission, negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors. Note: If "occurrence" coverage is unavailable or cost prohibitive, Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of this Contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three-year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

**(Insert for all insurance types)**

**15.6 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.

**(Insert for all insurance types) NOTE TO AGENCIES: If you are not using eMACS, insert your agency information for receiving certificates.**

**15.7** **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.

**(Optional for financial transactions. Contact the SPB at 444-2575 for more information.)**

**15.8 Fidelity Bond.** Contractor shall purchase and maintain a fidelity bond in the amount of $1,000,000 per occurrence and $2,000,000 aggregate that provides coverage for fraud, theft, embezzlement, failure to faithfully perform duties, **burglary and theft of cash by employees or third parties other than employees,** **forgery/alteration,** **computer fraud,** and other dishonest acts of any employee, **agent, or independent contractor** whose duties are to receive, handle, or have custody of money, checks, securities, electronic funds, or account for supplies or other property. The bond must apply to any individual that certifies, signs, or countersigns checks, drafts, warrants, vouchers, orders, electronic documents, or other documents and who provides for the disbursement or delivery (including electronic transmission) of money, funds, securities, supplies, or other property. The fidelity bond must remain in effect for the entire Contract period

The contract performance security must be provided to State of Montana within 10 working days from the Request for Documents Notice.

**(Optional for personal identification information (PII) security. Contact the SPB at 444-2575 for more information.)**

**15.9 Specific Requirements for Cyber/Data Information Security Insurance.** The Contractor shall purchase and maintain cyber/information security insurance coverage with combined single limits for each wrongful act of $2,000,000 per occurrence to cover the unauthorized acquisition of personal information such as social security numbers, credit card numbers, financial account information, or other information that uniquely identifies an individual and may be of a sensitive nature in accordance with §2-6-1501, MCA through §2-6-1503, MCA. If the Contractor maintains higher limits than the minimums shown above, the State requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the State. Such insurance must cover, at a minimum, privacy notification costs, credit monitoring, forensics investigations, legal fees/costs, regulatory fines and penalties, and third party liability settlements or judgements as may be caused by any act, omission, or negligence of the Contractor’s officers, agents, representatives, assigns or subcontractors. Note: If occurrence coverage is unavailable or cost-prohibitive, the State will accept ‘claims made’ coverage provided the following conditions are met: 1) the retroactive date must be shown, and must be before the date of the contract or the beginning of contract work; 2) insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work; and 3) if coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase “extended reporting” coverage for a minimum of three (3) years after completion of work.

**16. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

**NOTE TO AGENCIES: If you are not using eMACS, insert your agency information for receiving certificate.**

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for State of Montana in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are State employees. This insurance/exemption must be valid for the entire Contract term and any renewal. Upon expiration, a renewal document must be sent to State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135.

**17. COMPLIANCE WITH LAWS**

**NOTE TO AGENCIES: If your project is subject to federal regulations other than those listed here, you may want to include them in this section.**

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.

**Nondiscrimination Against Firearms Entities/Trade Associations**. Contractor shall not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and Contractor shall not discriminate during the term of the contract against a firearm entity or firearm trade association. This section shall be construed in accordance with 30-20-301, MCA.

**NOTE TO AGENCIES: To be included in all contracts with terms 24 months or longer (or have potential terms of 24 months or longer) with a Total Contract Value over $25,000 for services and $50,000 for goods.**

**18. DISABILITY ACCOMMODATIONS**

State does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

**NOTE TO AGENCIES: Section 20 is optional depending on project.**

**19. TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED**

Contractor acknowledges that no state funds may be expended for the purchase of information technology equipment and software for use by employees, program participants, or members of the public unless it provides blind or visually impaired individuals with access, including interactive use of the equipment and services, that is equivalent to that provided to individuals who are not blind or visually impaired. (18-5-603, MCA) Contact the State Procurement Bureau at (406) 444-2575 for more information concerning nonvisual access standards.

**20. REGISTRATION WITH THE SECRETARY OF STATE**

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 §§ 35-14-1505, 35-8-1001, and 35-12-1309 MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

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. §§ 35-8-1001, 35-12-1302, and 35-14-1502, MCA. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sosmt.gov>.

**NOTE TO AGENCIES: Section 22 is optional depending on project. The option to make ownership exclusive to the State may be considered in certain circumstances. Call SPB for assistance at (406) 444-2575.**

**21. INTELLECTUAL PROPERTY/OWNERSHIP**

**21.1 Mutual Use.** Contractor shall make available to State, on a royalty-free, non-exclusive basis, all patent and other legal rights in or to inventions first conceived and reduced to practice or created in whole or in part under this Contract, if such availability is necessary for State to receive the benefits of this Contract. Unless otherwise specified in a statement of work, both parties shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use copyrightable property created under this Contract. This mutual right includes (i) all deliverables and other materials, products, modifications that Contractor has developed or prepared for State under this Contract; (ii) any program code, or site-related program code that Contractor has created, developed, or prepared under or primarily in support of the performance of its specific obligations under this Contract; and (iii) manuals, training materials, and documentation. All information described in (i), (ii), and (iii) is collectively called the "Work Product".

**21.2 Title and Ownership Rights.** State retains title to and all ownership rights in all data and content, including but not limited to multimedia or images (graphics, audio, and video), text, and the like provided by State (the "Content"), but grants Contractor the right to access and use Content for the purpose of complying with its obligations under this Contract and any applicable statement of work.

**21.3 Ownership of Work Product.** Contractor shall execute any documents or take any other actions as may reasonably be necessary, or as State may reasonably request, to perfect State's ownership of any Work Product.

**21.4 Copy of Work Product.** Contractor shall, at no cost to State, deliver to State, upon State's request during the term of this Contract or at its expiration or termination, a current copy of all Work Product in the form and on the media in use as of the date of State's request, or such expiration or termination.

**21.5 Ownership of Contractor Pre-Existing Materials.** Contractor retains ownership of allliterary or other works of authorship (such as software programs and code, documentation, reports, and similar works), information, data, intellectual property, techniques, subroutines, algorithms, methods or related rights and derivatives that Contractor owns at the time this Contract is executed or otherwise developed or acquired independent of this Contract and employed by Contractor in connection with the services provided to State (the "Contractor Pre-existing Materials"). Contractor Pre-existing Materials are not Work Product. Contractor shall provide full disclosure of any Contractor Pre-Existing Materials to State before its use and to prove its ownership. If, however, Contractor fails to disclose to State such Contractor Pre-Existing Materials, Contractor shall grant State a nonexclusive, worldwide, paid-up license to use any Contractor Pre-Existing Materials embedded in the Work Product to the extent such Contractor Pre-Existing Materials are necessary for State to receive the intended benefit under this Contract. Such license shall remain in effect for so long as such Pre-Existing Materials remain embedded in the Work Product. Except as otherwise provided for in **Section 21.3, Ownership of Work Product,** or as may be expressly agreed in any statement of work, Contractor shall retain title to and ownership of any hardware it provides under this Contract.

**NOTE TO AGENCIES: Section 23 is optional depending on project.**

**22. PATENT AND COPYRIGHT PROTECTION**

**22.1 Third-Party Claim.** If a third party makes a claim against State that the products furnished under this Contract infringe upon or violate any patent or copyright, State shall promptly notify Contractor. Contractor shall defend such claim in State's name or its own name, as appropriate, but at Contractor's expense. Contractor shall indemnify State against all costs, damages, attorney fees, and all other costs and expenses of litigation that accrue as a result of such claim. If State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

**22.2 Product Subject of Claim.** If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Contractor may, at its option, procure for State the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by State shall be prevented by injunction, State will determine whether the Contract has been breached.

**NOTE TO AGENCIES: Section 24 is optional and if used must be tailored to the specific procurement. The following sample clauses are provided for consideration. Call SPB for assistance at (406) 444-2575.**

**23. CONTRACT PERFORMANCE ASSURANCE**

**NOTE TO AGENCIES: An escrow agreement may be beneficial for some IT projects. Call SPB for assistance at (406) 444-2575.**

**23.1 Milestone Payments.** State shall payContractor based on completion and acceptance of each milestone defined below.

**23.2 Payment Holdbacks. (insert %)**% will be withheld from each milestone payment. The total amount withheld will be paid to Contractor at the completion and acceptance of the final milestone.

|  |  |  |
| --- | --- | --- |
| **Milestone/Deliverable** | **Hold Back** | **Payment % of Total** |
| Milestone 1: | \_\_\_% of approved invoice | % |
| Milestone 2: | \_\_\_% of approved invoice | % |
| Milestone 3: | \_\_\_% of approved invoice | % |
| Milestone 4: | \_\_\_% of approved invoice | % |
| Milestone 5: | \_\_\_% of approved invoice | % |
| Final Acceptance |  | 100% |

**NOTE TO AGENCIES: Contract performance security may be used as a performance assurance tool. If used, an agency may choose to accept all forms of security or limit the security to surety bonds only. Call SPB for assistance at (406) 444-2575.**

**23.3 Contract Performance Security – All Forms Accepted.** Contractor shall provide contract performance security based upon **(insert %)**% of the Contract total.

Contractor shall provide the contract performance security in one of the following forms, within 10 working days from the Request for Documents Notice. ONLY THE FOLLOWING TYPES OF SECURITY ARE ACCEPTABLE AND MUST BE IN ORIGINAL FORM. FACSIMILE OR PHOTOCOPIES ARE NOT ACCEPTABLE. Personal or business checks are not acceptable.

* A sufficient bond from a surety company licensed in Montana with a Best's rating of no less than A- and supplied on State of Montana's designated form entitled "Contract Performance Bond," found at <http://spb.mt.gov/Procurement-Guide>; or
* Lawful money of the United States; or
* An irrevocable letter of credit from a single financial institution and supplied on State of Montana's designated form entitled "Irrevocable Letter of Credit," found at <http://spb.mt.gov/Procurement-Guide>; or
* A cashier's check, certified check, bank money order, bank draft, certificate of deposit, or money market certificate drawn or issued by a federally or state-chartered bank or savings and loan association that is insured by, or for which insurance is administered by the FDIC, or that is drawn and issued by a credit union insured by the National Credit Union Share Insurance Fund. Certificates of deposit or money market certificates will not be accepted as security for bid, proposal, or contract security unless the certificates are assigned only to State. All interest income from these certificates must accrue only to Contractor and not to State.

See Title 18, chapter 4, part 3, MCA; Title 30, chapter 5, MCA; and ARM 2.5.502.

This contract performance security must remain in effect for the entire term of this Contract, including all Contract renewals.

The contract performance security in the form of a **(insert form)** has been provided to the State Procurement Bureau.

**OR**

**23.3 Contract Performance Security – Surety Bonds Only.** Contractor shall provide contract performance security based upon 100% of the Contract total. This security must be in the form of a surety bond licensed in Montana with a Best's rating of no less than A-. The surety bond must be supplied on the form designated by the State of Montana. The required form entitled "Contract Performance Bond" is available at <http://spb.mt.gov/Procurement-Guide>. THE ORIGINAL FORM MUST BE PROVIDED. FACSIMILE OR PHOTOCOPIES ARE NOT ACCEPTABLE.

The contract performance security must be provided to the State of Montana within 10 working days from the Request for Documents Notice. This security must remain in effect for the entire term of the Contract. A new surety bond must be issued to the State of Montana if this Contract is renewed.

The surety bond form has been provided to the State Procurement Bureau.

**NOTE TO AGENCIES: Section 25 is applicable ONLY to IT contracts.**

**24. CONTRACT OVERSIGHT**

**24.1 CIO Oversight.** The Chief Information Officer (CIO) for the State of Montana, or designee, may perform contract oversight activities. Such activities may include the identification, analysis, resolution, and prevention of deficiencies that may occur within the performance of contract obligations. The CIO may require the issuance of a right to assurance or may issue a stop work order.

**24.2 Right to Assurance.** If State, in good faith, has reason to believe that Contractor does not intend to, is unable to, or has refused to perform or continue performing all material obligations under this Contract, State may demand in writing that Contractor give a written assurance of intent to perform. Contractor’s failure to provide written assurance within the number of days specified in the demand (in no event less than five business days may, at State's option, be the basis for terminating this Contract and pursuing the rights and remedies available under this Contract or law.

**24.3 Stop Work Order.** State may, at any time, by written order to Contractor require Contractor to stop any or all parts of the work required by this Contract for the period of days indicated by State after the order is delivered to Contractor. The order must be specifically identified as a stop work order issued under this clause. Upon receipt of the order, Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, Contractor shall resume work. The State Project Manager shall make the necessary adjustment in the delivery schedule or contract price, or both, and this Contract shall be amended in writing accordingly.

**24.4 System Security.** Contractor shall ensure systems delivered under this Agreement are adequately secure. For purposes of this Agreement, adequate security is defined to require compliance with federal and State of Montana security requirements and to ensure freedom from those conditions that may impair the State's use of its data and information technology or permit unauthorized access to the State's data or information technology.  The State of Montana has established control standards and policies that align with the NIST Cybersecurity Framework.  The latest revision of NIST SP 800-53 is used for control adherence evaluation established after developing a security categorization utilizing FIPS PUB 199.  Thus, Contractor shall provide reasonable proof, through independent audit reports, that the system specified under this Agreement meets or exceeds federal and State of Montana security requirements to ensure adequate security and privacy, confidentiality, integrity, and availability of the State's data and information technology.  Annual assurance statements shall be delivered to the Contract Liaison.  Annual assurance statements must contain a detailed accounting of the security controls provided and must be in the form of a NIST Security Assessment Report or FedRAMP Security Assessment Report.

**24.5 Physical Access.** Contractor represents and warrants that it has established and during the Term it will at all times enforce:

(a) Physical protection mechanisms for all information assets and information technology to ensure such assets and technology are stored and protected in appropriate data centers;

(b) Appropriate facility entry controls limiting physical access to systems that store or process data;

(c) Processes to ensure access to facilities is monitored and is restricted on a “need to know” basis;

(d) Controls to physically secure all Confidential Information and to properly destroy such information when it is no longer needed.

**24.6 Prohibited Activities and Spoofing.** Licensor and its officers, employees, agents, subcontractors, and affiliated users, shall not violate or attempt to violate the security of the State’s network or interfere or attempt to interfere with the State’s systems, networks, authentication measures, servers or equipment, or with the use of or access to the State’s network by any other user. Such prohibited activity includes (i) accessing or logging into a server where access is not authorized; (ii) unauthorized probing, scanning, or testing the security or vulnerability of the State’s network or other systems; and (iii) attempting to portray itself as the State or an affiliate of the State or otherwise attempting to gain access, without authorization, via the State’s network or systems to any account or information technology resource not belonging to Licensor or its officers, employees, agents, subcontractors, and affiliated users (“Spoofing”). Licensor shall not perform unauthorized Spoofing or scanning of any kind, including user account identity. Systems shall not Spoof the mt.gov domain or engage in Email Spoofing. Email Spoofing is the creation of email messages with a forged sender address. For example, Email Spoofing includes creating or sending emails using the State’s domain.

**25. CONTRACT TERMINATION**

**NOTE TO AGENCIES: The following termination provisions are presented as options for Section 26.1. In deciding which provision to use, consideration should be given to the circumstances of each individual contract. In any case, all agencies must maintain documentation regarding why a contract is terminated or not renewed.**

**25.1 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.

**OR**

**25.1 Termination for Convenience.** State may, by written notice to Contractor, terminate this Contract without cause and without incurring liability to Contractor. State shall give notice of termination to Contractor at least **(insert numbers of days)** days before the effective date of termination. State shall pay Contractor only that amount, or prorated portion thereof, 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.

**25.2 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.

**25.3 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 subsequent fiscal period. (18-4-313(4), MCA) If state or federal government funds are not appropriated 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 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.

**NOTE TO AGENCIES: Section 26.4 is applicable ONLY to IT contracts.**

**25.4 Noncompliance with Department of Administration Requirements.** The Department of Administration, under the provisions of 2-17-514, MCA, retains the right to cancel or modify any contract, project, or activity that is not in compliance with the Department's Plan for Information Technology, State Strategic Plan for Information Technology, or any Statewide IT policy or standard in effect as of the date of contract execution. In the event of such termination, State will pay for products and services delivered to date and any applicable termination fee specified in the statement of work or work order. Any modifications to this Contract must be mutually agreed to by the parties.

**26. EVENT OF BREACH – REMEDIES**

**26.1 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:

* Products or services furnished fail to conform to any requirement;
* Failure to submit any report required by this Contract;
* 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
* Voluntary or involuntary bankruptcy or receivership.

**26.2 Event of Breach by State.** State’s failure to perform any material terms or conditions of this Contract constitutes an event of breach.

**26.3 Actions in Event of Breach.** Upon Contractor’s material breach, State may:

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

Upon State’s material breach, Contractor may:

* 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
* 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.

**27. FORCE MAJEURE**

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.

**28. WAIVER OF BREACH**

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.

**29. CONFORMANCE WITH CONTRACT**

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.

**30. LIAISONS AND SERVICE OF NOTICES**

**NOTE TO AGENCIES: The following two provisions are presented as options for Section 31.1. In deciding which provision to use, consideration should be given to the circumstances of each individual contract. The second option is generally applicable to IT contracts under the Montana Information Technology Act.**

**30.1 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:

**OR**

**30.1 Contract Manager.** State’s Contract Manager identified below is State's single point of contact and shall perform all contract management under 2-17-512, MCA, on State’s behalf. Written notices, requests, complaints, or any other issues regarding this Contract should be directed to State’s Contract Manager.

is State's Contract Manager

(Address):

(City, State, ZIP):

Telephone:

Cell Phone:

Fax:

E-mail:

is Contractor's Contract Manager

(Address):

(City, State, ZIP):

Telephone:

Cell Phone:

Fax:

E-mail:

**30.2 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.

**NOTE TO AGENCIES: Section 31.3 is optional depending on project.**

**30.3 Identification/Substitution of Personnel.** The personnel identified or described in Contractor's proposal shall perform the services provided for State under this Contract. Contractor agrees that any personnel substituted during the term of this Contract must be able to conduct the required work to industry standards and be equally or better qualified than the personnel originally assigned. State reserves the right to approve Contractor personnel assigned to work under this Contract and any changes or substitutions to such personnel. State's approval of a substitution will not be unreasonably withheld. This approval or disapproval shall not relieve Contractor to perform and be responsible for its obligations under this Contract. State reserves the right to require Contractor personnel replacement. If Contractor personnel become unavailable, Contractor shall provide an equally qualified replacement in time to avoid delays to the work plan.

**31. MEETINGS**

**31.1 Technical or Contractual Problems.** Contractor shall meet with State's personnel, or designated representatives, to resolve technical or contractual problems occurring during the Contract term or to discuss the progress made by Contractor and State in the performance of their respective obligations, at no additional cost to the State. State may request the meetings as problems arise and will be coordinated by State. State shall provide Contractor a minimum of three full working days’ notice of meeting date, time, and location. Face-to-face meetings are desired; however, at Contractor's option and expense, a conference call meeting may be substituted. Contractor’s consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor’s failure to make a good faith effort to resolve problems may result in termination of the Contract.

**NOTE TO AGENCIES: Sections 32.2-32.4 are optional based on project.**

**31.2 Progress Meetings.** During the term of this Contract, State's Project Manager shall plan and schedule progress meetings with Contractor to discuss Contractor’s and State’s progress in the performance of their respective obligations. These progress meetings will include State’s Project Manager, Contractor’s Project Manager, and any other additional personnel involved in the performance of this Contract as required. At each meeting, Contractor shall provide State with a written status report that identifies any problem or circumstance encountered by Contractor, or of which Contractor gained knowledge during the period since the last such status report, which may prevent Contractor from completing any of its obligations or may generate charges in excess of those previously agreed to by the parties. This may include the failure or inadequacy of State to perform its obligation under this Contract. Contractor shall identify the amount of excess charges, if any, and the cause of any identified problem or circumstance and the steps taken to remedy the same.

**31.3 Failure to Notify.** If Contractor fails to specify in writing any problem or circumstance that materially affects the costs of its delivery of services or products, including a material breach by State, about which Contractor knew or reasonably should have known with respect to the period during the term covered by Contractor's status report, Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for an increase in the price for the agreed upon scope.

**31.4 State's Failure or Delay.** For a problem or circumstance identified in Contractor's status report in which Contractor claims was the result of State's failure or delay in discharging any State obligation, State shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If State agrees as to the cause of such problem or circumstance, then the parties shall extend any deadlines or due dates affected thereby and provide for any additional charges by Contractor. This is Contractor’s sole remedy. If State does not agree as to the cause of such problem or circumstance, the parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both parties.

**32. TRANSITION ASSISTANCE**

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.

**33. CHOICE OF LAW AND VENUE**

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**.

**34.** **TAX EXEMPTION**

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].

**35. PERSONAL PROPERTY TAX**

All personal property taxes will be paid by Contractor.

**36. AUTHORITY**

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

**37. SEVERABILITY**

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.

**38. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT**

**38.1 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.

**38.2 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.

**39. WAIVER**

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.

**40. EXECUTION**

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

|  |  |
| --- | --- |
| **STATE OF MONTANA** | **(INSERT CONTRACTOR’S NAME)** |
| **(Insert Agency Name)** | **(Insert Address)** |
| **(Insert Address)** | **(Insert City, State, Zip)** |
| **(Insert City, State, Zip)** | **FEDERAL ID #** |
|  |  |
|  |  |
| BY: | BY: |
| (Name/Title) | (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