# INTRODUCTION

The following contract template and supporting documents (terms and conditions) include all potential clauses for State of Montana contracts. The template should be used until further notice from the State Procurement Bureau.

This template includes required clauses, terms and conditions, and optional language and provides a framework for agency contract needs. Please note that some sections and clauses may not be necessary and will need to be removed, depending on the project.

The different sections do include some guidance; however, staff should discuss necessary changes or alterations with their legal staff.

The State Procurement Bureau is working with our legal staff to finalize a complete contract guide to offer more insight and education regarding the proper use of clauses, terms, and conditions.

For any questions, please contact the State Procurement Bureau at (406) 444-2575.

**INTRODUCTION**

This template agreement contains standard terms that should be included in most contracts, but it is not intended to be used as a standalone document. This template includes key information about the contract, such as identification of the parties, contact information, contract period, and cost.

Agency contract officers and attorneys should add other terms and conditions, including required terms not included in this contract, by identifying and adding exhibits pertaining to a particular purchase. In most cases, it will be necessary to include, at minimum: (i) Exhibit A: State Standard Terms and Conditions; and (ii) a Statement of Work Exhibit describing the specific goods or services the contractor is providing. In addition, as appropriate, an agency may add an approved template defining agency standard terms and conditions, State of Montana Information Technology Terms and Conditions, federal terms if a project is subject to federal contracting requirements or is federally funded. In some cases, the state may agree to add and incorporate by reference vendor terms and conditions describing how services will be delivered.

This template is intended to be a starting point that includes terms that should or must appear in all State contracts. In consultation with agency legal counsel, you will likely need to add terms and customize the agreement for your project.

Please consult guidance documents for optional provisions, alternative language, notes, applicable law, and other information. Notes and alternatives that appeared within the text of the previous template have been moved to the guidance documents.

Before sharing with a potential contractor, you must:

* Consult the Contract Guide for optional provisions, alternative language, notes, applicable law, and other information;
* Tailor the contract for your specific purpose and do not blindly rely on the standardized contract clauses;
* Properly manage the risk associated with contracting for services:
  + Identify the risk. Ask “what could go wrong and how?”
  + Manage the risk by: 1) assuming the risk, 2) eliminating the risk, or 3) mitigating the risk. Careful drafting of the contract terms is a powerful tool for managing risk; however, appropriate performance obligations can also help manage risk effectively.
* Complete all custom/optional information (shown in red). The text should be entered in the standard font in **black.** Be sure to remove any unused options;
* Clean up the contract to remove the introduction page, unused options, and comments;
* Confirm that all internal references refer to the correct section; and
* **Have the draft reviewed by your agency’s legal counsel**. When sending a draft, you can expedite review by providing counsel the following: (1) a description of the product/service; (2) an indication whether an ITPR is required and confirmation it has

been accepted; (3) identification of the procurement method used to purchase the product/service; (4) explanation of any federal partnership, role, or funding; (5) advice on the timing of the contract.

**NOTE:**

* The updated Contract Guide is being finalized and will be released soon.

AGREEMENT TEMPLATE EFFECTIVE DATE: February, 6, 2024.

REMOVE THIS LINE AND EVERYTHING ABOVE IT

**Contract No. [Enter Contract Number]**

This Contract is between

and

## State of Montana

**[Enter Agency Information]**

## (State)

The parties agree as follows:

1. **GENERAL PURPOSE OF CONTRACT**

**[Enter Contractor Information].**

## (Contractor)

The general purpose of this Contract is to [Enter contract purpose].

1. **SERVICES AND/OR SUPPLIES**

[Option One] 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].

[Option Two] Contractor shall provide State [insert brief description of goods or services] (the “Services”), as more particularly described in Exhibit [Enter Exhibit Identifier], Statement of Work, and the Contractor's response to the RFP.

1. **CONTRACT TERM**

## Initial Term

The initial term is for a period of [Enter initial term] years. The effective date is **[Enter Date]**, and the termination date is **[Enter End Date]**, unless terminated earlier or extended in accordance with this Contract.

## Contract Renewal

State may renew this Contract for one-year intervals, or any interval that is advantageous to State. This Contract, including any renewals, may not exceed the total duration specified in Section 3.3-Total Duration of Contract.

## Total Duration of Contract

This Contract, including renewals, may not exceed a total of  7 years 10 years.

1. **PROCUREMENT**

The procurement mechanism is:

|  |  |  |  |
| --- | --- | --- | --- |
|  | Request for Proposal # [Enter RFP #] |  | Invitation for Bid |
|  | Cooperative Contract [Enter description and Master Contract #] |  | Sole Source |
|  | Limited Solicitation |  |  |

1. **CONTRACT VALUE FOR INITIAL TERM**

The contract value for the initial term is for estimation purposes only. [Enter appropriate Exhibit (SOW, Pricing, etc.)] determines the actual pricing of the Contractor Offerings provided under this Contract. The Contract value for the initial term is:

|  |  |  |
| --- | --- | --- |
| **Description** | **Unit** | **Cost** |
|  |  |  |
|  |  |  |
| **Total** |  |  |
|  |  |  |

**5.1 Cost Adjustments**

**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. **OR**

**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**

**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.

1. **CONTRACT MANAGERS AND NOTICES**

## Contract Managers

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. The listed Contract Managers serve as primary contacts between the parties regarding compliance with or other issues arising under this Contract. Written notices, reports and other information required to be exchanged between the parties must be directed to the appropriate Contract Manager.

|  |  |  |  |
| --- | --- | --- | --- |
|  | **State Contract Manager** |  | **Contractor’s Contract Manager** |
| (Name) (Address)  (City, State, ZIP) | | (Name) (Address)  (City, State, ZIP) | |
| (t) | (Telephone Number) | (t) | (Telephone Number) |
| (c) | (Cell Number) | (c) | (Cell Number) |
| (e) | (E-mail address) | (e) | (E-mail address) |

A party may change its Contract Manager’s information listed in this section by providing notice to the other party’s Contract Manager.

## Notice

Any notices or communications required or permitted to be given by this Contract must be provided in writing to the recipient in the manner required by this Contract in one of the following ways: personal delivery; prepaid, certified mail; overnight courier; or electronic mail.

## Receipt of Notice

Notice is deemed given on the day it is personally delivered or delivered by overnight courier or on the day the recipient confirmed receipt if delivered by certified mail. If notice is provided by email, notice is deemed given on the date the email was sent. If the sender receives a message that delivery was unsuccessful, the sender must use another means of notice allowed by Section 6.2-Notice.

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

## Contract

The following are incorporated by reference into this Contract.

* + 1. This Contract
    2. Exhibit A: State Terms and Conditions
    3. Exhibit B: Federal Terms and Conditions
    4. Exhibit C: State of Montana Information Technology Terms and Conditions
    5. Exhibit D: Statement of Work
    6. [Request for Proposal] or [Invitation for Bids]
    7. Response to [Request for Proposal] or [Invitation for Bids]
    8. [Vendor Service Agreements]

## Order of Precedence

The documents referenced in Section 7.1-Contract will be read to be consistent and complementary. Any conflict among these documents will be resolved by giving priority to these documents in the order listed above. Only those Contractor terms and conditions that are expressly accepted by the State and included in this Contract or that are listed as an Exhibit or Attachment in Section

7.1 will apply to this Contract.

## 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.

(The remainder of this page is intentionally left blank.)

1. **SIGNATURES**

The parties through their authorized agents signed this Contract on the dates set out below. The undersigned are authorized to bind their respective parties.

|  |  |
| --- | --- |
| **STATE OF MONTANA**  **(Insert Agency Name)** | **(Insert Contractor’s Name)** |
| **(Insert Address)** | **(Insert Address)** |
| **(Insert City, State, Zip)** | **(Insert City, State, Zip)** |
| By: | By: |
| (Insert Name) | (Insert Name) |
| (Insert Title) | (Insert Title) |
|  | (Optional: Insert email) |
| Date: | Date: |
| **Approved as to Legal Content for the State** |  |
| By: |  |
| Attorney |  |
| Date: |  |
| **Approved as to Form for the State** |  |
| By: |  |
| Procurement Officer  State Procurement Bureau |  |
| Date: |  |

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

## Exhibit A

**State’s Terms and Conditions**

The following terms and conditions govern this Contract.

# STANDARD OF CARE

Contractor shall perform (or cause to be performed) its duties in this Contract in a competent manner.

# CONSIDERATION/PAYMENT

* 1. **[Fee/Payment] Schedule**

**[Option One Payment Schedule]** State shall pay Contractor as follows: [insert payment schedule].

**[Option Two Fee Schedule]** State shall pay Contractor the [insert fee description] fee(s) in Exhibit [insert exhibit identifier].

## Withholding Payments

If Contractor fails to comply with its duties in this Contract, State may, with a 30- day written notice, withhold all or a portion of payment related to Contractor’s non-compliance without penalty or work stoppage by Contractor, until Contractor cures its noncompliance and performs to State’s satisfaction.

## Payment Terms

Invoices are due the first business day of each month. Contractor shall provide banking information within 10 business days after the Effective Date to facilitate State’s electronic funds transfer payments of fees.

## 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.

# TAXES

Contractor shall pay all property and sales taxes, if any.

1. **WARRANTIES – The following two options are applicable to NON-IT contracts.**
   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**

**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.

# RECORD ACCESS AND RETENTION

## Access to Records

Contractor shall provide State, Legislative Auditor, or their authorized agents access to any records necessary to audit for Contract compliance. State may terminate this Contract, without incurring liability, for Contractor’s refusal to allow access. (18-1-118, MCA.)

## Retention Period

Contractor shall retain all records related to this Contract for 8 years following the termination or expiration of this Contract.

# ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

## Consent Required to Assign, Transfer or Subcontract

Contractor may not assign, transfer, or subcontract any portion of this Contract without State's prior written consent. (18-4-141, MCA.) Any assignment, transfer, or subcontracting of Contractor’s rights or duties does not relieve Contractor from compliance with its duties in this Contract.

## Contractor Responsible for Subcontractors

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.

# COMPLIANCE WITH LAWS

## Contractor Lawful

In performing its duties in this Contract, Contractor shall comply with all applicable federal, state, or local laws, rules, ordinances, and executive orders.

## Contractor is Employer

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).

## Nondiscriminatory Practices

In accordance with 49-3-207, MCA, and Executive Order No. 04-2016, Contractor agrees that:

* + 1. the hiring of persons to fulfill Contractor’s duties in this Contract will be made based on merit and qualifications;
    2. 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; and
    3. any subcontracting is subject to this section.

## 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).

Section 15-50-206, MCA, requires the state agency or department for whom a public works construction contract over $80,000 is being performed, to withhold 1% of all payments and to transmit such monies to the Department of Revenue.

# DISABILITY ACCOMODATIONS

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.

# REGISTRATION WITH 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.

* 1. **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.

# PREVAILING WAGE REQUIREMENTS

* 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.

* 1. **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.

**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.

* 1. **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.
  2. **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: 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)**.

# INTELLECTUAL PROPERTY/OWNERSHIP

* 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".

* 1. **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.
  2. **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.
  3. **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.
  4. **Ownership of Contractor Pre-Existing Materials.** Contractor retains ownership of all literary 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**,** 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.

# CHOICE OF LAW, VENUE, AND SOVEREIGNTY

This Contract will be governed and interpreted according to Montana law. The parties agree that any litigation concerning this Contract will be brought only in the First Judicial District in and for the County of Lewis and Clark, State of Montana. Each party shall pay its own costs and attorney fees, except as otherwise stated in this Contract. Nothing in this Contract will be construed as a waiver by State of its sovereignty or governmental immunity.

# DEFENSE, INDEMNIFICATION / HOLD HARMLESS

## Indemnities by Contractor

Contractor, at its sole cost and expense, shall defend, indemnify and hold harmless State, the contracting agency, and their officers, officials, directors, agents, employees, volunteers, successors, assignees, or designees from any and all liability, actions, claims, demands, causes of actions, judgments, suits, settlements, penalties, and fines (Claims), and all related costs, court costs, attorney fees, expert fees, and other expenses, arising out of, resulting from, or related to:

* + 1. Any acts or omissions of Contractor, its employees, subcontractors, assignees, or third-party providers in or in connection with the execution or performance of the Contract and any statement of work or purchase order issued under the Contract, except when the sole negligence is that of State;
    2. Any and all third-party Claims involving infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in or in connection with the execution or performance of the Contract and any statement of work or purchase orders issued under the Contract; and
    3. Tax liability, unemployment insurance, workers’ compensation, or expectations of benefits owed by Contractor, its employees, representatives, agents, or subcontractors in or in connection with the execution or performance of the Contract and any statement of work or purchase orders issued under the Contract.

## Coordination of Defense

State shall give Contractor prompt notice of any Claim, and at Contractor’s expense, State shall cooperate in the defense of the Claim. Contractor acknowledges that under Montana law, the Montana Attorney General may participate in an action involving State.

## State Reimbursement

If Contractor fails to comply with its defense obligations under this section, State may undertake its own defense. If State undertakes its own defense, Contractor shall reimburse State for all costs to State resulting from: (A) settlements, judgments, losses, damages, liabilities, and penalties, fines; and (B) defense of any Claim, including but not limited to attorney fees, court costs, and the costs of investigation, discovery, and experts.

# REQUIRED INSURANCE

## General Insurance Requirements

Contractor shall maintain for the duration of this Contract, at its cost and expense, insurance protecting State, its elected and appointed officials, agents, and employees against claims for bodily injury, death, personal injury, property damage, and contractual liability, which may arise from or in connection with the negligence of Contractor, its employees, agents, representatives, assigns, or

subcontractors. This insurance must include coverage of claims that may be caused by any negligent act or omission. If Contractor maintains higher limits than the minimums required in this Contract, State is entitled to coverage up to the higher limits maintained by Contractor.

## Primary Insurance

All insurance maintained by Contractor, or any subcontractor as required by this Contract will be primary insurance for Contractor’s negligence for State its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by State, its officers, officials, employees, or volunteers will be in excess of Contractor’s insurance and will not contribute with it.

## 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 will reduce or eliminate such deductibles or self-insured retentions for State, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor will procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

## 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, or changes in status of policy. State reserves the right to require complete copies of insurance policies at all times.

## Commercial General Liability

Contractor shall purchase and maintain coverage at least as broad as Insurance Services Form CG 00 01 covering commercial general liability on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits of at least

$2,000,000 per occurrence and $2,000,000 in the aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor or its employees, officers, officials, agents, representatives, assigns, or subcontractors.

Contractor grants to State a waiver of any right to subrogation that any insurer of Contractor may acquire against State by virtue of the payment of any loss under insurance. Contractor shall obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether State has received a waiver of subrogation endorsement from Contractor’s insurer.

State, its employees, officers, officials, agents, and volunteers are to be covered and listed as additional insureds for liability arising out of services performed by or on behalf of Contractor, including materials, parts, or equipment furnished in connection with such services.

## Compliance With Workers' Compensation Act

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.

# 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**

**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.

# CONTRACT TERMINATION

## Termination for Cause with Notice to Cure Requirement

Either party may terminate this Contract for the other’s failure to perform any of its duties under this Contract after giving written notice of the failure to the other. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

## 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 30 days before the effective date of termination. State will 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 is not 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.

## 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 State’s 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 will take effect. State is 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 is not liable to Contractor for any

other payments or damages arising from termination, including but not limited to general, special, or consequential damages such as lost profits or revenues.

## Terrorism, Suspension or Debarment, or Otherwise Ineligible

State has the absolute right to terminate the Contract, with 3 days written notice, and without recourse in the following circumstances:

* + 1. Contractor is listed on the prohibited vendors list authorized by Executive Order #13224, “Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism,” published by the United States Department of the Treasury, Office of Foreign Assets Control;
    2. Contractor is suspended or debarred from doing business with the federal government as listed in the System for Award Management maintained by the General Services Administration;
    3. Contractor violates a state or federal law or local ordinance applicable to Contractor’s duties in this Contract;
    4. Contractor is the subject of voluntary or involuntary bankruptcy or receivership proceedings; or
    5. Contractor is found to be ineligible to hold the Contract under the laws of State.

# TRANSITION ASSISTANCE

## Transfer of Duties

Upon Contract termination or nonrenewal at the end of the term, Contractor shall work cooperatively with its successor, State or other third party to facilitate an orderly transfer of Contractor’s duties and obligations.

## Transfer Period

Contractor shall assist State with the transfer of its duties for a [choose either: reasonable, mutually agreed OR 1-year] transition period following termination or expiration of this Contract.

## Payment

State shall pay [choose either: for any resources utilized in performing such transition assistance at the most current Contract rates OR the fees specified in Section 2] for transition assistance. Such fees are State’s sole obligation to Contractor for transition assistance.

## Records

Upon request and at no cost to State, Contractor shall deliver to State copies of procedures, processes, data files, and other work product developed by Contractor to support delivery of services under this Contract. Documentation must be provided in the format requested by State (hard copy or electronic).

## 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.

## Event of Breach by State

State’s failure to perform any material terms or conditions of this Contract constitutes an event of breach.

## Action 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.

## Offset of Costs

If State terminates this Contract for breach, State may offset the cost of Contractor’s transition assistance with any amounts paid by State to mitigate damages resulting from Contractor’s breach.

# FORCE MAJEURE

Neither party will be liable for any failure or delay in performing its duties in this Contract due to a Force Majeure Event. “Force Majeure Event” includes events or circumstances that prevent or delay a party’s performance and that are beyond a party’s reasonable control, such as natural catastrophes and acts of terrorism or war, and the consequences of that event or circumstance. A Force Majeure Event does not include labor unrest, price increases, or changes in general economic conditions. If a Force Majeure Event continues for 30 days, the other party may terminate this Contract or suspend payment while the event continues.

# WAIVER

State’s failure to complain of any act or omission on the part of Contractor, no matter how long the same may continue, may not be deemed to be a waiver by State of any of its rights hereunder.

No waiver by State of satisfaction of condition or nonperformance of an obligation under this Contract will be effective unless it is in writing and signed by State’s authorized representative.

# CONTRACT MANAGEMENT

At no additional cost to State, Contractor shall meet with State representatives to resolve technical or Contract problems occurring during the Contract term or to discuss the progress made by Contractor and State in compliance with their respective obligations. State may request the meetings as problems arise, and State will coordinate the meetings. State shall provide Contractor prior notice of meeting date, time, and location.

# SEVERABILITY

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

# 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.

# AUTHORITY

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

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**MONTANA INFORMATION TECHNOLOGY TERMS AND CONDITIONS**

**State of Montana Contract #**

**Contract Description**

These State Terms and Conditions are between the and

**State of Montana Contractor**

## (State) (Contractor)

The services provided by the Contractor involve information technology resources.

*(Check the box of the highest classification of public and non-public data owned by the State)*

|  |
| --- |
| Public Data – Level 1 mapped to Federal Information Processing Standards (FIPS) 199 LOW |
| Non-public Data – Level 2 mapped to FIPS 199 MODERATE |
| Non-public Data – Level 3 mapped to FIPS 199 HIGH |
| No Data |

These services are for:

|  |  |  |  |
| --- | --- | --- | --- |
| On premise system | | | |
| Cloud system | SaaS | PaaS | IaaS |
| Other: (describe) |  |  |  |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **No Data** | **Public Data** | **Non Public Data** | **Heading** | **IT Terms and Conditions** |
| **√** | **√** | **√** | **1.** **IT Oversight** | ***CIO Oversight***  The Chief Information Officer (CIO) for the State of Montana, or designee, may perform oversight activities. Such activities may include the identification, analysis, resolution, and prevention of deficiencies that may occur while performing services. The CIO may require the issuance of a right to assurance or may issue a stop work order.  ***CIO 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 |

**MONTANA INFORMATION TECHNOLOGY TERMS AND CONDITIONS**

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| **No Data** | **Public Data** | **Non Public Data** | **Heading** | **IT Terms and Conditions** |
|  |  |  |  | statewide IT policy or standard.  ***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 these Terms and Conditions, 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 termination and pursuing the rights and remedies available to State.  ***Stop Work Order***  State may, at any time, by written order to Contractor require Contractor to stop any or all parts of the required work 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 these terms and conditions. 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 these terms and conditions is canceled or the period of the order or any extension expires, Contractor shall resume work. The State Contract Manager shall make the necessary adjustment in  the delivery schedule or price, or both, and the services shall be amended in writing accordingly. |
| **√** | **√** | **√** | **2.** **Data**  **Classification** | The following definitions are used to classify State data.  ***Level 1 Data Mapped to FIPS 199 LOW (Public Data)***  “Level 1 Data” means information available to the general public and eligible for public access. Data that is classified as State of Montana Level 1 would reside in information systems that are categorized as Low.  ***Level 2 Data Mapped to FIPS 199 MODERATE (Non-Public Data)*** |

**MONTANA INFORMATION TECHNOLOGY TERMS AND CONDITIONS**

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| --- | --- | --- | --- | --- |
| **No Public Non Data Data Public**  **Data** | | | **Heading** | **IT Terms and Conditions** |
|  |  |  |  | “Level 2 Data” means information that disclosure to third parties or the public is governed by specific laws that determine and protect confidentiality. Data that is classified as State of Montana Level 2 would reside in information systems that are categorized as medium.  ***Level 3 Data Mapped to FIPS 199 HIGH (Non-public Data)***  “Level 3 Data” means information that, if divulged, could compromise or endanger citizens, employees, or safety assets of State. Data that is classified as  State of Montana Level 3 would reside in information systems that are categorized as high. |
|  | **√** | **√** | **3.** **Data**  **Ownership** | ***Data Ownership***  State owns all right, title and interest in its data that is related to the services provided. State data may also include data from a third-party.  ***Data Access***  Contractor shall not access State of Montana user accounts, or State data, except: (i) in response to service or technical issues; (ii) as required by the  express terms of services engagement document; or  (iii) at State’s written request. |
|  | **√** | **√** | **4.** **Data Usage** | ***Data Disclosure - Prohibition***  At no time will any information, belonging to or intended for State, be copied, disclosed, or retained by Contractor or any party related to Contractor for subsequent use in any transaction.  ***Confidential Data - Usage***  Contractor will take reasonable steps to limit the use of, or disclosure of, and requests for, confidential State data to the minimum degree necessary to accomplish the services. Protection of personally identifiable information privacy, and sensitive data shall be an integral part of the business activities of Contractor to ensure that there is no inappropriate or unauthorized use of State information at any time.  ***Limitation on Usage to Purpose of Services*** Contractor may not use any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the  service. |

**MONTANA INFORMATION TECHNOLOGY TERMS AND CONDITIONS**

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| **No Data** | **Public Data** | **Non Public Data** | **Heading** | **IT Terms and Conditions** |
|  |  |  |  | ***Data Safeguards***  Contractor shall safeguard the confidentiality, integrity, and availability of State information.  ***Authorized Personnel***  Only duly authorized personnel will have access to State data and may be required to obtain security clearance from State.  ***Subsequent Use***  Contractor shall not use any data for subsequent use that has not been expressly authorized by State. |
|  |  | **√** | **5.** **Data**  **Location** | ***Data Location***  Contractor shall not store, process, or transfer any non-public State data outside of the United States, including for back-up and disaster recovery purposes. |
| **√** | **√** | **√** | **6.** **Remote Access** | ***Remote Access***  Montana information technology resources cannot be accessed by contractors or sub-contractors located outside of the legal jurisdictional boundary of the United States (outside of the United States, its  territories, embassies, or military installations). |
|  |  | **√** | **7.** **Breach and Notification** | ***Notification to State***  Contractor must notify the State of Montana Chief Information Security Officer immediately of any incident resulting in the destruction, loss, unauthorized disclosure, or alteration of State of Montana data.  ***Notification to Person***  Contractor shall comply with 2-6-1503, MCA, including if the data is unencrypted, Contractor shall make reasonable efforts upon discovery or notification of a breach to notify any person whose personal information is reasonably believed to have been acquired by an unauthorized person. This notification may be delayed at the request of law enforcement.  ***No Limitation of Liability for Contractor Negligence***  Contractor cannot limit its liability to relieve Contractor or its subcontractors from its own negligence, or to  the extent that it creates an obligation on the part of |

**MONTANA INFORMATION TECHNOLOGY TERMS AND CONDITIONS**

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| **No Data** | **Public Data** | **Non Public Data** | **Heading** | **IT Terms and Conditions** |
|  |  |  |  | State to indemnify or hold a Contractor harmless. |
|  | **√** | **√** | **8.** **Termination and Suspension of Service** | ***Suspension of services***  During any period of suspension, negotiation, or disputes, Contractor shall not take any action to intentionally alter, erase, or otherwise render inaccessible any State data.  ***Termination of a portion or of the entire services provided***  In the event of termination of any services or Contract in entirety, Contractor shall not take any action to intentionally alter, erase, or otherwise render inaccessible any State data for a period of 90 days after the effective date of the termination.  Within this 90-day timeframe, Contractor will continue to secure and back up State data covered under the provided services. After such 90-day period, Contractor shall have no obligation to maintain or provide any State data. Thereafter, unless legally prohibited, Contractor shall dispose securely of all State data in its systems or otherwise in its possession or control, as specified herein.  ***Post-Termination Assistance***  State shall be entitled to any post-termination assistance generally made available with respect to the Services unless a unique data retrieval  arrangement has been established as part of the Contract or Service Level Agreement. |
|  |  | **√** | **9.** **Data**  **Disposition** | State’s data may be disposed at the termination of services using one of the following methods:   1. ***State Removal with Contractor’s Tools*** State may remove or destroy State’s data using Contractor’s tools. 2. ***Contractor to Return State Data***   Contractor will account for and return all State data in all of its forms. The data shall be returned in a format acceptable to State. At no time shall any data or processes that either belong to or are intended for the use of State or its officers, agents, or employees, be copied, disclosed, or retained by Contractor.   1. ***Contractor to Destroy State Data***   When required by State, Contractor shall destroy all |

**MONTANA INFORMATION TECHNOLOGY TERMS AND CONDITIONS**

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| **No Data** | **Public Data** | **Non Public Data** | **Heading** | **IT Terms and Conditions** |
|  |  |  |  | requested data in all of its forms Data shall be permanently deleted, and shall not be recoverable, in accordance with National Institute of Standards and Technology (NIST) SP 800-88 “Media Sanitization Guidelines.”  ***4.*** ***Certificate of Destruction***  In all cases, Contractor will certify that all State information processed during the performance of the services will be completely purged from all physical and electronic data storage with no output to be retained by Contractor at the time the work is completed, the Contract is terminated, or upon  written request of State. |
| **√** | **√** | **√** | **10.** **Subcontract or** | Contractor shall be responsible for ensuring its subcontractors’ compliance with these terms and conditions. |
|  | **√** | **√** | **11.** **Notification of Legal Requests** | ***Notification of Requirement to Access State Data*** Contractor shall contact the State upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonies related to, or which in any way might reasonably require access to the data of State.  ***Legal Request for State Data***  Regarding State of Montana data and processes, Contractor shall not respond to subpoenas, service of  process, and other legal requests without first notifying State unless prohibited by law from providing such notice. |
|  |  | **√** | **12.** **Data**  **Encryption** | ***In Transit and At Rest***  Contractor shall encrypt all data in transit, regardless of transit mechanism, and at rest.  ***Encryption Standards***  Contractor’s encryption shall meet validated cryptography standards as specified by the National Institute of Standards and Technology in FIPS 140-2 and subsequent security requirements guidelines.  Contractor and State will negotiate mutually acceptable key location and key management details. |
|  | **√** | **√** | **13.** **System**  **Security** | ***Contractor Responsibility***  Contractor shall ensure systems delivered are adequately secure. Adequate security is defined to require compliance with federal and State of Montana security requirements and to ensure |

**MONTANA INFORMATION TECHNOLOGY TERMS AND CONDITIONS**

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| **No Data** | **Public Data** | **Non Public Data** | **Heading** | **IT Terms and Conditions** |
|  |  |  |  | freedom from those conditions that may impair State's use of its data and information technology or permit unauthorized access to State's data or information technology.  ***State Security Policy, Framework, Standards, and Controls***  State has established security policy, framework, standards, and controls 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.  ***Managerial, Operational, and Technical Controls*** All computer systems receiving, processing, storing, or transmitting State data must meet the control requirements for the associated security categorization within NIST SP 800-53 (latest revision). To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to State data.  ***Independent Security Audits***  Contractor shall provide reasonable proof, through independent audit reports, that the system specified in delivering the services meets or exceeds federal and State security requirements to ensure adequate security and privacy, confidentiality, integrity, and availability of State's data and information technology.  ***Annual Assurance***  Annual assurance statements shall be delivered to the Contract Manager. Annual assurance statements must contain a detailed accounting of the  security controls implemented. |
|  | **√** | **√** | **14.** **Security Standard Compliance Certificate** | ***Security Certification***  Contractor shall meet, and provide proof of, one or more of the following Security Certifications.   * StateRAMP – Authorized Product Certification * FedRAMP - Federal Risk and Authorization |

**MONTANA INFORMATION TECHNOLOGY TERMS AND CONDITIONS**

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| **No Data** | **Public Data** | **Non Public Data** | **Heading** | **IT Terms and Conditions** |
|  |  |  |  | Management Program   * ISO 27001:2013 * Or other industry recognized certification, as approved by State, only if Contractor cannot provide one of the above certifications. |
|  |  | **√** | **15.** **Background Check** | ***State-Approved Criminal Background Checks***  Contractor warrants that they will only assign employees and subcontractors who have passed a state-approved criminal background check. |
| **√** | **√** | **√** | **16.** **Security Awareness** | ***Security Training***  Contractor shall demonstrate that: Contractor’s officers, employees, agents, subcontractors, and affiliated users, have completed security awareness training within the past 12 months before gaining access to State information technology resources or may complete state-approved annual security  awareness training. |
| **√** | **√** | **√** | **17.** **Physical Activities and Spoofing** | ***Prohibited Activities***  Contractor and its officers, employees, agents, subcontractors, and affiliated users shall not violate or attempt to violate the security of State’s network or interfere or attempt to interfere with State’s systems, networks, authentication measures, servers or equipment, or with the use of or access to State’s network by any other user.  Such prohibited activity includes:   1. accessing or logging into a server where access is not authorized; 2. unauthorized probing, scanning, or testing the security or vulnerability of State’s network or other systems; and 3. attempting to portray itself as State or an affiliate of State or otherwise attempting to gain access, without authorization, via State’s network or systems to any account or information technology resource not belonging to Contractor or its officers, employees, agents, subcontractors, and affiliated users (“Spoofing”).   Contractor shall not perform unauthorized Spoofing or scanning of any kind, including user account |

**MONTANA INFORMATION TECHNOLOGY TERMS AND CONDITIONS**

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| **No Data** | **Public Data** | **Non Public Data** | **Heading** | **IT Terms and Conditions** |
|  |  |  |  | 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 State’s domain. |
| **√** | **√** | **√** | **18.** **Blind or Visually Impaired** | ***Blind or Visually Impaired Access***  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. |
| **√** | **√** | **√** | **19.** **Sanction** | ***Violation of Terms and Conditions***  Violation of these terms and conditions may also be a violation of state and federal law and include both civil and criminal penalties. Depending on the offense, if the offender is an employee of State, the offender may be dismissed from employment and may not be allowed to hold a public office or public  employment in the state for a period of one year from the date of dismissal. |
| **√** | **√** | **√** | **20.** **Linked**  **Terms and Conditions** | ***Terms & Conditions***  The parties specifically agree that any language or provisions contained on either party’s website or product schedule, or contained in any “shrinkwrap” or "clickwrap" agreement, shall be of no force and  effect and shall not in any way supersede, modify or amend these Terms and Conditions. |
| **√** | **√** | **√** | **21.** **Indemnifica- tion** | ***Indemnification***  State shall not indemnify Contractor or sub- contractors under any circumstance. |

(The remainder of this page is intentionally left blank)

**Exhibit C**

**Federal Terms and Conditions (Non-Construction)**

# NOTE: NO EXCEPTIONS TO THE LISTED FEDERAL TERMS AND CONDITIONS WILL BE CONSIDERED. STATE IS NOT PERMITTED TO ALTER THESE TERMS AND CONDITIONS THROUGH OUR FEDERAL PARTNER.

**By submitting a response to this invitation for bid, request for proposal, limited solicitation, or by accepting a contract, Contractor/Vendor agrees and acknowledges the following Federal Terms and Conditions along with all other provisions that are specific to this solicitation or contract as applicable.**

## Nondiscrimination

Contractor/Vendor agrees that no person shall be denied benefits of, or otherwise be subjected to discrimination in connection with Contractor/Vendor's performance under this Contract, on the ground of race, religion, color, national origin, sex or handicap. Accordingly and to the extent applicable, Contractor/Vendor shall comply with the following:

* 1. On the basis of race, color or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d, et seq.), as implemented by Department of Defense (DOD) regulations at 32 CFR part 195.
  2. On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 {3 CFR, 1964-1965 Comp. pg. 339}, as implemented by Department of Labor regulations at 41 CFR part 60.
  3. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by DoD regulations at 32 CFR part 196.
  4. On the basis of age, in The Age Discrimination Act of 1975 (42 U.S.C. Section 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.
  5. On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56.

## Lobbying

Contractor/Vendor shall not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; and, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

The Final Rule, New Restrictions on Lobbying, issued by the Office of Management and Budget and the DOD (32 CFR Part 28) to implement the provisions of Section 319 of Public Law 101-121 (31 U.S.C. Section 1352) is incorporated by reference and the parties to this Contract agree to comply with all the provisions thereof, including any amendments to the Interim Final Rule that may hereafter be issued.

## Drug-Free Work Place

Contractor/Vendor shall comply with the requirements regarding drug-free workplace requirements in Subpart B of 32 CFR part 26, which implements Sections 5151-5160 of the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

## Environmental Protection

* 1. Contractor/Vendor agrees that its performance under this Contract shall comply with:
     1. Section 114 of the Clean Air Act (42 U.S.C. Section 7414);
     2. Section 308 of the Federal Water Pollution Control Act (33 U.S.C. Section 1318), that specifies inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued therein;
     3. The Resources Conservation and Recovery Act (RCRA);
     4. The Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA);
     5. The National Environmental Policy Act (NEPA);
     6. The Solid Waste Disposal Act (SWDA); and
     7. The applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.), as implemented by Executive Order 11738 and Environmental Protection Agency (EPA) rules at 40 CFR Part 31.
  2. In accordance with the EPA rules, Contractor/Vendor shall identify to State any impact this Contract may have on:
     1. The quality of the human environment and provide help the Agency may need to comply with the NEPA (42 U.S.C 4321, et seq.), and to Preparing Environment Impact Statements or other required environmental documentation. In such cases, the Contractor/Vendor shall take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until State provides written notification of compliance with the environmental impact analysis process.
     2. Flood-prone areas, and provide assistance when State may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et seq.), which require flood insurance, when available, for federally assisted construction or acquisitions in flood-prone areas.
     3. Coastal zones, and provide assistance when State may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.), concerning protection of U.S. coastal resources.
     4. Coastal barriers, and provide assistance when State may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501, et seq.), concerning preservation of barrier resources.
     5. Any existing or proposed component of the National Wild and Scenic Rivers System, and provide assistance when State may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271, et seq.).
     6. Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide assistance when State may need to comply with the Safe Drinking Water Act (42 U.S.C 300H-3).

## Use of United States Flag Vessels/Cargo Preference

Contactor/Vendor agrees that travel under this Contract shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the inter-operative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.

Contactor/Vendor agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. Chapter 553), as implemented by Department of Transportation regulation at 46 CFR 381.7, and 46 CFR 381.7(b).

## Debarment and Suspension

Contractor/Vendor is subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR Part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

Contractor/Vendor agrees to comply with the DOD implementation of 2 CFR part 180 (at 2 CFR 1125) by checking the Excluded Parties List System (EPLS) at the current OMB website to verify (sub)contractor eligibility to receive contracts and subcontracts resulting from this Contract. Contractor/Vendor shall not solicit offers from, nor award contracts to contractor or vendors listed in EPLS. This verification shall be documented in Contractor/Vendor’s contract files and shall be subject to audit by Federal and State auditing.

## Buy American Act

Contractor/Vendor agrees that it will not expend any funds appropriated by Congress without complying with The Buy American Act (41 U.S.C. 10a, et seq.). The Buy American Act gives preference to domestic end products and domestic construction material. In addition, the Memorandum of Understanding between the United States of America, and the European Economic Community (EEC) on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide that EEC and NAFTA

end products and construction materials are exempted from application of the Buy American Act.

## Uniform Relocation Assistance and Real Property Acquisition Polices

Contractor/Vendor agrees that it will comply with CFR 49 part 24, which implements the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.), and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

## Copeland "Anti-Kickback" Act

Contractor/Vendor agrees that it will comply with the Copeland "AntiKickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). As applied to this Contract, the Copeland "AntiKickback" Act makes it unlawful to induce, by force, intimidation, threat or procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

## Contract Work Hours and Safety Standards Act

Contractor/Vendor agrees that it will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), as supplemented by Department of Labor regulations (29 CFR Part 5). As applied to this Contract, the Contract Work Hours and Safety Standards Act specifies that no laborer or mechanic doing any part of the work contemplated by this Contract shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1.5 times the basic rate of pay.

## Rights to Inventions Made Under a Contract or Agreement

Any discovery or invention that arises during performance of the Contract shall be reported to the non-Federal entity. Contractor/Vendor must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by State.

## Clean Air Act and Federal Water Pollution Control Act (

Any Contract or subcontract in excess of $150,000 must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401- 7671q) and the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251-1387). Violations must be reported to State who in turn will report to the Federal awarding agency and the EPA Regional Office.

## Byrd Anti-Lobbying Amendment

Contractor/Vendors that bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal

appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

## System For Award Management and Unique Entity Identification Number

Contractor/Vendor shall comply with the System for Award Management (Sam.gov) maintained by the General Services Administration. Contractor/Vendor shall provide a Unique Entity Identification Number assigned to it.

## Procurement of Recovered Materials

Contractor/Vendor must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](https://www.law.cornell.edu/cfr/text/40/part-247) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

## 2 C.F.R. 200.326, Appendix II, Required Contract Clauses

2 C.F.R. 200.326, Appendix II, Required Contract Clauses are incorporated by reference as if set forth in full text and are made part of this Contract as applicable. Contractor/Vendor shall comply with all applicable contract clauses and provide the same clauses in any subcontracts or purchase orders issued in support of this Contract with State.

## Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

Contractor/Vendor agrees it will not provide or use covered telecommunications equipment or services in the performance of this Contract in compliance with 2 CFR

200.216. Covered telecommunications equipment or services has the meaning provided in Public Law 115-232, Section 889.

The National Defense Authorization Act of 2019 (Section 889) requires federal government purchase cardholders to obtain assurance from merchants that merchants are not using telecommunications equipment, systems, or services produced by Huawei Technologies Company or ZTE Corporation, (or any subsidiary or affiliate of these companies); or video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company,

or Dahua Technology Company (or any subsidiary or affiliate of such entities). The merchant assurance is provided as a “representation” signed by the merchant’s authorized representative.