EXHIBIT A – STATE TERMS AND CONDITIONS

The following terms and conditions govern this Contract.

1. STANDARDS AND WARRANTIES
   1. Standard of Care

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

* 1. Warranty

INSERT FROM GUIDE IF APPLICABLE

1. CONSIDERATION, PAYMENT, AND TAXES
   1. [Pay/Fee] Schedule

**Option 1**

**Pay Schedule:** State shall pay Contractor as follows: [insert payment schedule].

**Option 2**

**Fee Schedule:** State shall pay Contractor the [Insert fee description] fee(s) set forth in Exhibit [insert exhibit identifier].

* 1. U.S. Funds

All prices and payments must be in U.S. dollars.

* 1. Withholding Payments

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

* 1. Payment Terms
     1. Invoices are due the first business day of each month. Contractor shall provide banking information within 10 business days after the [Insert deadline: Effective Date or date of Contract execution] to facilitate State’s electronic funds transfer payment of fees.
     2. All payment terms are computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. State is allowed 30 days to pay such invoices. All contractors are required to provide banking information at the time of Contract execution in order to facilitate State electronic funds transfer payments.
  2. 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.

* 1. Taxes

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

1. RECORD ACCESS AND RETENTION
   1. Access to Records

Contractor shall provide State, Legislative Auditor, or its 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.)

* 1. Retention Period

Contractor shall retain all records related to this Contract for 6 years following the termination or expiration of this Contract.

1. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING
   1. 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.

* 1. 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 Contractor and any 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.

1. COMPLIANCE WITH LAWS
   1. Contractor Lawful

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

* 1. 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).

* 1. Nondiscriminatory Practices

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

* + 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 conditions, 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;
    3. 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 this contract against a firearm entity or firearm trade association. This section shall be construed in accordance with 30-20-301, MCA; and
    4. any subcontracting is subject to this section.

1. 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.

1. DEFENSE AND INDEMNIFICATION / HOLD HARMLESS
   1. 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, or its employees, subcontractors, assignees, or third-party provider 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.
  1. 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.

* 1. 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.

1. REQUIRED INSURANCE
   1. 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 a 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.

* 1. 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 to it.

* 1. 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.

* 1. Certificate of Insurance/Endorsements

State requires Contractor to provide a certificate of insurance from an insurer with a Best’s rating of no less than A- indicating compliance with the required coverages. Certificates shall be submitted to the State Procurement Services Division, P.O. Box 200135, Helena, MT 59620-0135. The certificate must name the State of Montana as a certificate holder and Contractor shall provide copies of additional insured endorsements to State. 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.

* 1. 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 waive subrogation, and 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 insured for liability arising out of services performed by or on behalf of Contractor, including materials, parts, or equipment furnished in connection with such services.

* 1. Compliance With Workers’ Compensation Act

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for the 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, 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 Services Division, P.O. Box 200135, Helena, MT 59620-0135.

* 1. OTHER TYPES OF INSURANCE, SEE GUIDE (e.g., Auto, Professional Liability, Cyberliability, Crime, etc.)

1. CONTRACT TERMINATION
   1. 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. This 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 a specified period, the termination is effective at the end of the specified period.

* 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 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.

* 1. 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 payment level or any increases to that 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.

* 1. 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.

1. TRANSITION ASSISTANCE
   1. Transfer of Duties

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

* 1. Transfer Period

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

* 1. Payment

Unless the parties agree to a flat transition assistance fee, State shall pay for any resources utilized in performing transition assistance at the most current Contract rate. This is State’s sole obligation to Contractor for transition assistance.

* 1. 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).

* 1. 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.

1. 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 nonbreaching party may terminate this Contract or suspend payment while the event continues.

1. 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.

1. 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 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.

1. SEVERABILITY

A declaration by a court or any other binding legal source that any provision of this 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.

1. COOPERATIVE PURCHASING

Under Montana law, public procurement units, as defined in 18-4-401, MCA, have the option of cooperatively purchasing with State. 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 Services Division prior to the award of this Contract, the prices, terms and conditions of this Contract will be offered to these public procurement units. State Procurement Services Division does not guarantee any public procurement unit participation in this Contract.

1. OTHER OPTIONS

*See Guide for other provisions, including prevailing wage, intellectual property, performance security, and contract authority.*

REMOVE THIS LINE AND EVERYTHING BELOW IT

CONTRACT GUIDE

**INTRODUCTION**

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 contract for your project.

This template 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, and 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.

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 guide. The alternatives in the guide are not listed in order of preference or priority. They are numbered for reference only.

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 rely on the standardized contract clauses without critically thinking about how they would apply;
* 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). After completing the optional information, remove any brackets and change the text color from red to black. Be sure to remove any unused options;
* Clean up the contract to remove the Guide 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 approved; (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.

**TIPS:**

* When you delete this Guide, the page numbering in the footer should automatically update to accurately reflect both the actual page number and the total number of pages in this Exhibit.
* When searching for internal references, run a Find (from the editing box on the ribbon) on words like section, paragraph, exhibit, schedule, and attachment.
* You can also run a Find to look for brackets [ which may indicate that an option needs to be chosen or removed.
* To remove all comments:
  + Select the “Review” tab
  + Select “Comments” in the ribbon
  + Select the drop down on “Delete”
  + Select “Delete all comments in the document”

Graphical user interface, application, Word

Description automatically generated



TEMPLATE REVISION DATE: (SEPTEMBER 2025)

The contract language options provided in this section should be tailored to the unique requirements of the contract. There is no single, one-size-fits-all paragraph for any topic (indemnity, warranty, insurance, etc.) that can be used to address every type of contract (goods, services, information technology, construction, lease, etc.). In many cases, contracts of the same type require different clauses based on the specific item or service being procured, risks to the state and the public, the nature of the vendor, etc. Below are sample clauses that may be used and some narrative identifying factors that should be considered when choosing the appropriate clause for a base. In some cases, it may not be necessary to modify the language further. In others, the clause may need to be altered to address specific needs. Consultation with agency legal counsel is always recommended and should be required whenever a sample clause needs to be modified.

1. SECTION 1: STANDARDS AND WARRANTIES

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| **Standard of Care Alternatives** |
| **Option 1 (Standard of Care for professionals, such as physicians, engineers, accountants, etc.)** |
| Standard of Care  Contractor shall perform its services in a manner consistent with the level of care and skill ordinarily exercised by members of Contractor’s profession currently practicing in the same locality under similar conditions and with reasonable diligence and expediency consistent with sound professional practices. |
| **Option 2 (Alternative Standard of Care for IT Contracts)** |
| Standard of Care  Contractor shall perform the services using reasonable care and skill and according to its current description (including any completion criteria) in this Contract. State shall provide timely written notice of Contractor’s failure to comply with its duty of care so that Contractor may take corrective action. |
| **Option 3 (Alternative Standard for Goods)** |
| Conformance With Contract  No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the agreement may be granted without State’s prior written consent. Products that do not conform to the agreement terms, conditions, and specifications may be rejected and returned at Contractor’s expense. |

## **Standard of Care Guidance:**

The service contract template uses a standard of care. A standard of care may be used to establish expectations about the quality of the services to be provided. Some standards of care are specific to professionals (like physicians, engineers, architects, accountants, attorneys, etc.) or even specific to a particular profession.

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| **Warranty Alternatives (non-IT Contracts)** |
| **Option 1** |
| Warranty of Title  Contractor warrants all Goods are free and clear of any liens or encumbrances, Contractor has full legal title to the Goods, and that no other person or entity has any right, title, or interest in the Goods. |
| **Option 2** |
| Warranty on Safety and Health Requirements  Contractor warrants that all Goods comply with all applicable health and safety standards, including Occupational Safety and Health Administration (OSHA) health and safety standards. |
| **Option 3** |
| Manufacturer Warranties  Contractor shall transfer all manufacturer warranties covering the Goods, if any, to the State at time of delivery at no charge. |
| **Option 4** |
| 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 manufacturer unless State specifies otherwise. Contractor acknowledges that exceptions will be rejected. |
| **Option 5** |
| 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. |
| **Option 6** |
| Warranty For Services  A. 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.  B. State agrees to provide timely written notice of any failure to comply with this warranty so that Contractor can take corrective action.  C. Contractor has acquired any and all rights, grants, assignments, conveyances, licenses, permissions, and authorization for Contractor to provide the Services described in this Contract.  D. Contractor will not interfere with State’s access to and use of the Services it acquires from this Contract.  E. The Services provided by Contractor are compatible with and will operate successfully with any environment (including web browser and operating system) specified by Contractor.  F. Contractor warrants that the products it provides under this Contract are free of malware. Contractor must use industry-leading technology to detect and remove worms, Trojans, rootkits, rogues, dialers, spyware, etc.  G. 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. |
| **Option 7** |
| Warranties Cumulative  The warranties in this Section are in addition to any other warranties provided in this Contract. All warranties are cumulative and are intended to afford the State the broadest warranty protection available. |

## **Warranty Guidance:**

Warranties should be used primarily in contracts to purchase supplies or goods, or for IT contracts. Representations are more appropriate in a services contract. A warranty is a promise that a condition or statement of fact is true and supported by an implied promise of indemnity if that condition or statement is false. A representation is a statement of fact by one party to induce the other party into entering into the contract.

Related clauses include the indemnification clause that creates an express obligation of one party to reimburse the other party or to pay for certain costs and expenses that arise from the indemnifying party’s inaccurate representation, breach of warranty or breach of one or more covenants. Another related clause is the limitation of liability clause, which restricts the amount and kind of damages for which a party to an agreement may be held liable.

We recommend agencies consult with agency counsel and/or SPSD for use of warranty or representation sections.

Example of a warranty:

A party may warrant that a purchased product will be free from defects in materials and workmanship, under normal use and service, for a specified period of time.

Examples of a representation:

A party represents it has the authority to enter into the agreement.

A party represents it is appropriately licensed and bonded to perform the services at time of execution of the contract.

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| **Representations** |
| **Option 1 (for goods or products)** |
| Contractor’s Representations for Products  Contractor represents that the products conform to the specifications requested; are fit for the purpose manufactured; are of good material and workmanship; and will be free from defect for a period of [insert number of days] days from the date of shipment. Contractor further represents 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. |
| **Option 2 (software)** |
| Software  Upon initial installation of the software, Contractor represents that: (i) the unmodified software will provide the features and functions and will otherwise conform to all published documentation including documentation 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. If the software does not function as represented during the 90-day period and Contractor is unable to either make it do so or replace it with software that is at least functionally equivalent, State may return it to Contractor for a full refund. |
| **Option 3 (software)** |
| Software  For a period of ninety (90) days from the date of receipt of software, Contractor represents that: (i) the unmodified software will provide the features and functions and will otherwise conform to all published documentation including documentation 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. If the software does not function as represented during the 90-day period and Contractor is unable to either make it do so or replace it with software that is at least functionally equivalent, State may return it to Contractor for a full refund. |
| **Option 4 (hardware)** |
| Hardware  Contractor represents that hardware provided is free from defects in materials and workmanship and conforms to the specifications. This representation applies for [enter period] commencing on the date specified in a statement of work or applicable agreement. If the hardware does not function as represented during the period and Contractor is unable to either make it do so or replace it with one that is at least functionally equivalent, State may return it to Contractor for a full refund. |

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| **Delivery of Goods (if relevant)** |
| **Option 1** |
| **Delivery**  Weekends and holidays excepted, deliveries shall be F.O.B. DESTINATION, to the location shown below. The term "F.O.B. destination" as used in this clause, means free of expense to the State or contracting agency and delivered to the location specified. The Contractor shall:  • Pack and mark the shipment to comply with specifications; or if the specifications do not contain specific packing or marking instructions, pack and mark the shipment in accordance with prevailing commercial practices and in such a manner as to ensure delivery in good condition and as required by this IFB;  • Prepare and distribute commercial bills of lading and Material Safety Data Sheets (MSDS) as appropriate;  • Deliver the shipment in good order and condition to the point of delivery specified in the IFB;  • Be responsible for any loss of and/or damage to the goods occurring before receipt of the shipment by the State or contracting agency at the delivery point specified in the IFB;  • Furnish a delivery schedule and designate the mode of delivering carrier; and  • Pay and bear all charges to the specified points of delivery. |
| **Option 2** |
| **Delivery**  Contractor shall:  • Prepare and distribute commercial bills of lading and Material Safety Data Sheets (MSDS) as appropriate; and  • Furnish a delivery schedule and designate the mode of delivery carrier. |

## **Delivery Guidance:**

This optional language tells Contractor what is expected in terms of product delivery.

1. SECTION 2: CONSIDERATION, PAYMENT AND TAXES

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| **Template** |
| **Option 1** |
| Pay Schedule  State shall pay Contractor as follows: [insert payment schedule]. |
| **Option 2** |
| Fee Schedule  State shall pay Contractor the [Insert fee description] fee(s) in Exhibit [insert exhibit identifier]. |

## **Pay Schedule/Fee Schedule Guidance**

Option Onedescribes the fee or payment schedule for the service or supply in the base contract.

Option Two references a separate attachment or exhibit to describe the fees or payment schedule. If the contract is renewed and the parties agree to a fee adjustment, the exhibit can be amended or a new exhibit with adjusted fees can be added (in lieu of amending the base contract).

As always, choose the option that best meets the needs of your agency/project.

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| **Alternatives** |
| **Option 1 (withholding)** |
| Withholding Payments  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. |
| **Option 2** |
| Timely Notice of Disputed Fees  State may object to any amount(s) on Contractor’s invoices that State reasonably believes do not comport with the terms of this agreement. State shall notify Contractor of any disputed invoiced amount within 30 days of the applicable invoice date. If State fails to object within the 30-day period, State shall be deemed to have accepted the invoiced amount(s) as correct. Non-payment of any disputed portion of an invoice is not considered past due until 30 days following resolution of the dispute. |
| **Option 3** |
| Fuel Surcharge  If, during the agreement 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. |

## **COST ADJUSTMENTS**

## **Cost Adjustment Guidance**

Cost adjustment provisions are optional. Contracts in which the term is or will likely be greater than one year should include a cost adjustment section to allow the parties to renegotiate fees to cover new/additional costs to Contractor. If a CPI is used, agencies should include a reference to the category within the CPI 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. An agency should also consider providing an alternative index if the one selected ceases to exist or is merged into another index. Reference: Drafting Effective Contracts, Feldman and Nimmer (2016)

A fee schedule is an alternative for a contract for services, such as consulting services or other administrative service arrangement. The service provider fee may be a monthly amount per individual served (e.g. “per employee per month”) or a fixed fee(s) for a specific service offering.

**NOTES on CPI Cost Adjustment**: The Bureau of Labor Statistics indexes is one method to determine price adjustments and may not fit each contract situation. Each agency should determine the best method to ensure the agency receives fair and justifiable price adjustment requests.

SPSD does not recommend that agencies agree to cost adjustments on goods or services commonly available in the market. Agencies should seek firm fixed pricing with expected outcomes for a base period and any optional renewal periods. If the agency believes a contractor cannot provide firm fixed pricing beyond the base year, then the following information provides some basic guidance on how to incorporate price adjustments into the contract.

Price or cost adjustment clauses should be based on objective criteria and not subject to negotiation, except for unique circumstances. Most price or cost adjustments should be applied on an annual basis, or at the beginning of each renewal period if possible.

The use of a price adjustment clause is recommended for contracts if there is a possibility of significant economic fluctuation during the contract term. Price adjustment clauses generally encourage companies to participate in the state procurement process. The use of a price adjustment clause allows companies to submit bid prices free of the contingencies that would otherwise be included to compensate for potential economic fluctuations.

Not all contracts require a contract price adjustment clause. In general, short-term contracts for one year or less should not include a price adjustment clause. Long-term contracts should not include a price adjustment clause unless it is unreasonable for the contractor to maintain firm pricing over the term of the contract, including any renewals. This may require the need to obtain pricing for option periods and include those in the contract to be used at renewal.

Under some circumstances it may be appropriate to consider price decreases in the contract. Potential price decreases may be addressed by adding the following language to the price adjustment clause in the solicitation; “Price decreases will be handled in the same manner as price increase adjustments.”

The dates within this clause will need to be adjusted based on the period(s) of performance for any given contract.

Clause is negotiable based on circumstances that may require more ridged increase structure based on budget constraints i.e., fixed percentage of annual increase or more flexibility based on volatility of certain market conditions I.e., fuel, or other commodities driven by national or global indices.

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| **Cost/Fee Adjustment Alternatives** |
| **Option 1** |
| Fee Adjustments  At agreement renewal, the parties may, but are not obligated to, agree upon a fee adjustment.  Fee adjustments are:  (i) based on the cost of living as reflected in Table 1, Consumer Price Index for All Urban Consumers (CPI-U), [insert name of service category], and  (ii) calculated by application of the unadjusted percent change for the prior 12-month period, as published in the most recent monthly report, to Contractor's fee for the prior agreement year. In no event may a fee adjustment exceed [insert percentage] per year. |
| **Option 2** |
| Fee Adjustments  Effective [insert date], State shall pay the adjusted fees set forth in Exhibit [X]. |
| **Option 3** |
| Fee Adjustments  Effective [insert date], State shall pay the adjusted fees set forth as follows: [insert new fees]. |
| **Option 4** |
| Cost Adjustments  At Contract renewal, the parties may negotiate a cost adjustment. If the parties are unable to reach agreement, the Contract will not be renewed. |
| **Option 5** |
| Cost Increases  #.#.1 CPI Cost Based Adjustment. Contractor may request a cost increase with justification for the requested increase. If State agrees to a cost increase, the cost increase will be effective (insert date). Cost increases shall be the current CPI or 2%, whichever is less. CPI is defined as the Consumer Price Index (CPI) for all Urban Consumers (CPI-U; see http://www.bls.gov/cpi/ for reference). For the first cost adjustment, the new CPI base is the CPI for the prior 12-month period announced for the month of the cost adjustment request and the original CPI base is the CPI announced for the month of agreement execution. The allowable percentage change must be calculated as follows:  New CPI Base - Original CPI Base  Original CPI Base  Agreement costs are adjusted according to this formula. With each subsequent cost adjustment request, the original CPI base will be replaced by the adjusted CPI base from the prior calculation. The percentage of adjustment to agreement prices shall not exceed the percentage change in the CPI.  #.#.2 Cost Increase Approval. Contractor acknowledges that any proposed cost adjustment is subject to the state of Montana’s budgeting process and that Contractor’s proposed cost adjustment may be approved in full or reduced if funds are not appropriated by the Legislature or otherwise made available for the proposed increase. If Contractor does not agree to a reduction in the proposed cost adjustment and the parties cannot agree to a cost adjustment, Contractor may terminate the agreement upon a 180-day notice to State. |
| **Option 6** |
| Cost Increase  Contractor may request a cost increase 90 days prior to the expiration of the current term. Contractor must provide justification for a requested cost increases such as 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. State may negotiate a cost increase with Contractor, not to exceed [insert percentage]. If State agrees to a cost increase, the cost increase will be effective [insert date]. State is not obligated to agree to a cost increase. |
| **Option 7** |
| Cost Increase  Contractor may request a cost increase of [insert percentage], up to a maximum of [insert maximum percentage/cap] 90 days prior to the expiration of the current term. Contractor must provide justification for the requested cost increase, such as such as 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. State may negotiate a cost increase with Contractor. If State agrees to a cost increase, the cost increase will be effective [insert date]. State is not obligated to agree to a cost increase. |
| **Option 8** |
| Cost Adjustments Based on CPI Index  Contractor costs shall be adjusted by the lesser of the following calculation for the cost of living adjustment, using the Federal Bureau of Labor Statistics, Consumer Price Index (CPI) for all Urban Consumers (see http://www.bls.gov/cpi/ for reference), or [insert percentage]. The cost adjustment will be effective [insert date]. 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  Each time an adjustment is made, the original CPI base must be replaced by the adjusted CPI base. |
| **Option 9** |
| Price Adjustments Negotiated Based on Changes in Contractor's Actual Costs or CPI  Contractor shall submit a request for price adjustments no later than 90 days prior to the end of each Contract term. Requests received after this date will not be considered unless written approval from the Contracts Officer is given to submit at a later date. In no event will price adjustment requests be allowed beyond [DATE]. All requests that are approved will be incorporated by contract amendment and made effective [DATE] of the next approved Contract performance period.  Any price increase request must be based on provided evidence that justifies the need for a price increase or Contractor can submit a price increase request based on the Consumer Price Index (CPI-U) Midwest Region https://www.bls.gov/regions/mountain-plains/news-release/home.htm showing previous year over year increase percentage. A price increase request not based on the CPI-U must provide clear and convincing evidence that all the following conditions exist:  1. Increase incurred is specifically to provide the Services for this Contract;  2. The increase is the result of increased costs at the manufacturer's level or costs not under the Contractor's control;  3. The increase will not produce a higher profit margin for the Contractor beyond that on the original contract; and  4. Price Increases are reasonable for the services rendered and are consistently applied to both state and non-state contracts. Price increase evidence provided may be independently verified and confirmed by the procurement officer prior to the effective date of an approved price increase.  Even if Contractor establishes the basis for a price increase as described above, State is not obligated to agree upon a renewal or a price increase.  **No retroactive contract price adjustments will be allowed.** |
| **Option 10** |
| Non-reimbursable Expenses  Contractor is responsible for arranging and paying for associated expenses such as travel, lodging, meals, and supplies. The Contractor is solely responsible for these expenses and the State cannot reimburse these expenses. |
| **Option 11** |
| Travel Reimbursement  Subject to State’s prior written approval, State may reimburse Contractor for incidental expenses to include but not are limited to general office supplies, copying costs, and travel/mileage and meals at the State employee rate. All reimbursement for travel by Contractor is subject to State travel policies. |
| **Option 12** |
| Travel Reimbursement  All costs incurred must be reasonable and necessary. In the event travel is necessary and approved by the Liaison, State will reimburse Contractor for necessary and reasonable lodging and meal expenses incurred while Contractor is engaged in necessary travel. As a government agency expending funds from the public treasury, State expects Contractor to incur expenses in a financially conservative way. Contractor must secure lodging at the lowest rates reasonably available for suitable lodging and use the allowances for reimbursement for meals for state employees in travel status, Mont. Code Ann. § 2-18-501(1)(b), as a guideline in submitting meals expenses for reimbursement. Significant deviations from the meal allowances set in the statutes should be explained in the billing. The Liaison will audit expense claims submitted for reimbursement, and State will disallow for reimbursement as unreasonable any expense claims which are found to be excessive given the facilities for meals and lodging available in the locales in which Contractor are traveling. |
| **Option 13** |
| Travel Cost Adjustment  An increase request for travel expenses is permitted if directly attributable to specific work scope in the Contract and receives State’s prior written approval. Any increase consideration will be based on direct comparison from travel rates at the time of Contract award and travel rates at time of cost increase request. All rates will be reviewed and approved based on 2-18-501, MCA, for lodging and meals and 2-18-503, MCA, for mileage rates. Labor rate for travel time will not be considered for an increase. If travel cost has decreased from Contract award or last approved increase, the State will seek a credit in the Contract value. |

1. SECTION 3: RECORD ACCESS AND RETENTION

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| **Alternatives** |
| **Option 1 – Access to Records (Option when records include health information or other personally identifiable information)** |
| Access to Records  Contractor shall provide State, the Montana legislative auditor, or their authorized agents sufficient access to Contractor’s records to determine if the parties have complied with the terms of the agreement. Health information or other personally identifiable information may be accessed or disclosed, subject to state and federal law governing the privacy of such information. State may terminate this agreement, without incurring liability, for Contractor’s refusal to allow access to these records. (18-1-118, MCA.)  Contractor shall provide, in compliance with federal laws, for the security of paper and electronic records. Contractor shall defend and indemnify the State of Montana, the contracting agency and their employees, officers, and officials against any claims, allegations (whether proven or not), suits, liabilities, damages, penalties, fines, costs, and fees (including but not limited to any State-incurred legal fees, court costs, or notification costs), arising from any unauthorized use or disclosure of, or a breach of the privacy or security of these records. |
| **Option 2 – Retention Period (Option when records include health information or other personally identifiable information)** |
| Retention Period  Contractor shall maintain all records (written or electronic) related to this agreement for 6 years following the termination or expiration of this agreement.  Contractor shall maintain health records, any logs maintained to document an accounting of disclosures of such records, and any other records related to maintenance and storage of the health records for a minimum of 6 years. |

## **Access and Retention of Records Guidance:**

The Access and Retention of Records clauses are required in all contracts to ensure full access to publicly procured solicitations, contracts, and related records by the State, and specifically, the Legislative Audit Division. Procurement information is a public record and must be made available as provided in statute (18-4-126, MCA). All procurement records must be retained, managed, and disposed of in accordance with Title 2, chapter 6, parts 10 and 11, MCA. The substance of this clause is non-negotiable. The 6-year statute of limitations, pursuant to 27-2-202, MCA, requires “the commencement of an action upon any contract, obligation, or liability founded upon an instrument in writing is within 6 years.” This statutory period may be negotiable in certain instances as there may be records related to the contract with differing retention requirements under other laws (e.g. protected health information). And, in certain cases, a potential contractor will not agree to a 6-year period.

Medical records and health plan records are subject to state and federal privacy laws. The minimum amount necessary standard under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, and implementing regulations and guidance of the U.S. Department of Health and Human Services at 45 C.F.R. Part 160 and Part 164, Subparts A & E apply and wherever possible, disclosure must be a limited data set (names, street address, and all contact information of an individual removed). Other privacy laws include the Gramm-Leach-Bliley Act and implementing regulations, the Insurance Information and Privacy Protection Act in Title 33, Chapter 19, MCA.

1. SECTION 4: ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

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| **Assignment Alternatives** |
| **Option 1** |
| **ASSIGNMENT, TRANSFER, AND SUBCONTRACTING** Contractor may not assign this agreement or otherwise transfer any right or duty arising under this agreement without State’s prior written approval. Any assignment, transfer, or subcontracting of Contractor’s rights or duties under this agreement does not relieve Contractor from its obligations under this agreement. Contractor is responsible to State for the acts and omissions of Contractor’s employees, subcontractors, and agents. |
| **Option 2** |
| **ASSIGNMENT, TRANSFER, AND SUBCONTRACTING** Contractor may not assign this agreement or otherwise transfer any right or duty arising under this Contract without State’s prior written approval. (18-4-141, MCA). Any purported assignment or transfer without State’s prior written approval will be void in each instance. |
| **Option 3** |
| **ASSIGNMENT, TRANSFER, AND SUBCONTRACTING** Any assignment or transfer of Contractor’s rights or duties under this agreement does not relieve Contractor from its responsibility and liability for performance of all Contractor obligations under this agreement. Contractor shall be as responsible for the acts or omissions of its subcontractors as it is for its own acts or omissions. Any purported assignment or transfer without State’s prior written approval will be void in each instance. |

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| **Subcontracting Alternative** |
| **Option 1** |
| **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. |

## **Guidance:**

Assignment - An assignment of contract occurs when Contractor transfers all the contract's rights and duties to another party (the "assignee"). Ideally, the assignee would assume all the contractual obligations and rights. Under Montana law, an assignment must be in writing and signed by all parties for the assignor’s rights and obligations to transfer to the assignee. If the contractor requests language that State’s consent will not be unreasonably held, this language is fine.

Novation – A novation and an assignment are both transfers of all contractual rights and obligations of a party to a third party. The difference is that an assignment is an agreement between the assignor (Contractor) and the assignee (subcontractor) to assign the agreement, but Contractor remains on the hook for the performance by the subcontractor. The original contract continues in effect. A novation is different, because consent by all 3 parties is required (Contractor, State and subcontractor). A new or “substituted” contract results and the original contract is terminated. As a result, the assignor (Contractor) is no longer responsible or liable for the duties in the original, novated contract.

NOTE: SPSD recommends that agencies obtain a signed novation agreement, so the agency will have updated information on the new contractor responsible to perform the work that was previously the responsibility of the old contractor.

Name change. A change in name is the change in the formal legal name of the Contractor and may be result of a merger between Contractor and another company. Agencies and/or the SPSD should research and confirm there is no other assignment, change in control, change in entity, or other transaction associated with the name change (sale of all or part of Contractor).

Subcontract – (see description of transfer and assign above) means a contract between a party to an original contract and a third party to provide all or a specified part of the obligations and duties required in the original contract.

Written approval means signed digitally (by electronic signature) or on paper.  Approval means to give formal or official authorization; consent.

SPSD recommends consultation with agency legal counsel to research the transaction involving the contractor and whether in the best interests of the state to approve the assignment.

## **Reference:**

[18-4-141 Contract transfers and collusion prohibited -- violations and penalty](https://leg.mt.gov/bills/mca/title_0180/chapter_0040/part_0010/section_0410/0180-0040-0010-0410.html)

1. SECTION 5: COMPLIANCE WITH LAWS

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| **Alternatives** |
| **Option 1** |
| Reporting Requirements for Food Products Procured by Governmental Bodies  Pursuant to 2025 Senate Bill 246, vendors who contract to provide over $100,000 of food products to a government body must submit annual reports. The Annual Reporting Period is defined as the twelve-month period of the Contract Term between October 1 and September 30. Starting November 1, 2025, Contractor shall annually report to State: (1) total dollar value of food products purchased by State during the previous Annual Reporting Period; (2) total dollar value of Montana-produced food products purchased by State during the previous Annual Reporting Period; and (3) to the extent possible, the total dollar value of Montana-produced food products purchased by State during the previous Annual Reporting Period in each of the following categories:  1. meat, including but not limited to beef, poultry, pork, fish, sheep, and goat;  2. produce as defined in 80-3-302, MCA;  3. alcoholic beverages, as defined in 16-1-106, MCA;  4. Nonalcoholic beverages and drinks;  5. dairy products and eggs;  6. pulse crops as defined in 15-6-220, MCA; and grain as defined in 80-4-402, MCA. |
| **Option 2** |
| 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 and conducting activity in Montana must determine whether they are transacting business in accordance with 35-8-1001, 35-12-1309, and 35-14-1505, MCA. Such businesses should obtain the guidance of an attorney or accountant to determine whether their activity is considered transacting business.  Businesses determined to be transacting business in Montana 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, Contractor can call the Secretary of State at (406) 444-3665, or visit their website. |
| **Option 3** |
| 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 State. Interested parties should provide as much advance notice as possible. |
| **Option 4** |
| Public Information  This Contract and all related documents are subject to disclosure pursuant to Montana public information laws. Under Montana public information laws, unless information meets an exception to the public’s right to know, this Contract, referenced documents, including pricing documents, are all deemed public information. |
| **Option 5** |
| Public Disclosure  Contractor may publicize the Contract term, scope, and price without prior written approval. However, Contractor may not use the State seal, any State logo, or claim any State endorsement as to the Contract without prior written approval by the State. |
| **Option 6** |
| Contractor Registration (for construction)  Contractor will be registered with the Department of Labor and Industry under 39-9-201 and 39-9-204, MCA, prior to contract execution and acknowledges State cannot execute a contract for construction to a Contractor who is not registered (39-9-401, MCA). |
| **Option 7** |
| PREVAILING WAGE: SEE GUIDE SECTION 16 |
| **Option 8** |
| Changes of Law  #.#.1 A “Change of Law” means:   * + - * 1. one or more federal or state statutes, laws, rules, regulations, policies, standards, guidelines or decisions;         2. are adopted, promulgated, judicially interpreted, or changed;         3. by a government entity, other than the [Agency that is entering into the Contract], that is authorized to do so; and         4. the effect of which is to alter the ability of either party to fulfill its obligations under this Contract.   #.#.2 In the event of one or more Changes of Law, the parties will promptly negotiate in good faith appropriate modifications or alterations to the Contract and any appropriate change orders.  #.#.3 In the event of a Change of Law or other authority, the State may present to Contractor notice of the Change of Law along with a change request or an amendment or amendments to bring contractual terms and performance into compliance with the Change of Law. If the State submits to Contractor a change request or such an amendment to comply with a Change of Law and if the parties are unable to reach an agreement in writing within 15 days of Contractor’s response to such a change request, the State may modify the change request or amendment or issue a change order or the amendment as is. Subject to the rights and remedies available under subsection (d) hereof, the Contractor may then be obligated to undertake performance as specified in the change order or amendment and the Contractor is to receive payment for that performance in accordance with the reimbursement specified in the change order, as constituting an amendment to the Contract.  #.#.4 If the parties cannot agree on the terms of a change order, the parties will pursue the dispute resolution process under Section ##-Contract Management. Nothing in this Section excuses Contractor, in any manner, from proceeding diligently with the Contract as changed by the change order, while reserving all rights and claims.  #.#.5 If Contractor fails or refuses to perform its Services pursuant to a change order resulting from a Change of Law, Contractor shall be in material breach of this Contract, and the State has the right to terminate the Contract for such a breach in accordance with Section ##.#-Termination for Cause with Notice to Cure Requirement. |

1. SECTION 6: CHOICE OF LAW, VENUE, AND SOVEREIGNTY

## **Guidance:**

Per 18-1-401, MCA, Montana district courts have exclusive original jurisdiction to hear and render judgment on any claim or dispute that arises out of an express contract between the state of Montana or a state agency and a contactor. Venue in Lewis & Clark County is not required by statute but is the preference of the State of Montana. This section may need to be addressed in intergovernmental agreements (e.g. agreement between the state of Montana and a Montana county) when the parties have conflicting requirements. If a contractor does not agree to this provision, consult agency legal counsel.

1. SECTION 7: DEFENSE AND INDEMNIFICATION / HOLD HARMLESS

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| **Indemnification/Hold Harmless Alternatives** |
| **Option 1 (may be used as an alternative to standard language in architecture, engineering, and environmental service contracts)** |
| Indemnification / Hold Harmless  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. |

## **Indemnification Guidance:**

**We recommend that agencies consult agency counsel on all indemnification language. Never accept a requirement to indemnify the Contractor, except in rare instances and with approval by legal counsel.**

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| **Limitation of Liability** |
| **Option 1** |
| * 1. Limited Liability   7.2.1 General Limitation. Except as provided in Section 7.2.2 – Exceptions, Contractor shall not be liable for special, incidental, consequential, punitive, or indirect damages, and Contractor’s liability for contract damages is limited to direct damages and further to no more than twice the Contract amount.  7.2.2 Exceptions. Contractor's liability for damage or loss caused by injury to persons or tangible property, or related to intellectual property indemnification or State notification requirements in connection with a breach of system security is not subject to a cap on the amount of damages. Contractor’s liability for a breach of system security or a breach of confidentiality rights and obligations is not limited to direct damages and may include special, incidental, consequential, or indirect damages, and Contractor’s liability for such damages is limited to the lesser of (i) four times the Contract amount or (ii) the total amount of coverage available pursuant to Contractor’s insurance coverage. If Contractor fails to maintain the contractually required insurance, in no event shall Contractor be liable for an amount less than the coverage amount that would have been provided if Contractor had maintained such insurance. |
| **Option 2** |
| * 1. Limited Liability   7.2.1 General Limitation. Except as provided in Section 7.2.2 – Exceptions, Contractor shall not be liable for special, incidental, consequential, punitive, or indirect damages, and Contractor’s liability for contract damages is limited to direct damages and further to no more than twice the Contract amount.  7.2.2 Exceptions. The foregoing limitations shall not apply to:  7.2.2.1 liability for damage or loss caused by injury to persons or tangible property;  7.2.2.2 amounts due or obligations under a clause imposing a duty to defend or indemnify;  7.2.2.3 any loss or claim to the extent the loss or claim is covered by a policy of insurance maintained by Contractor or required by this agreement to be maintained by Contractor; or  7.2.2.4 matters for which liability cannot be excluded or limited under applicable law. |
| **Option 3** |
| 7.2 Limited 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. |
| **Option 4** |
| 7.2 Limited Liability  Neither party shall be liable to the other party for lost profits, business interruption, incidental, consequential, or punitive damages. |

## **Guidance for Limitation of Liability Options:**

A limitation of liability is an attempt by one party to reduce its financial exposure if something goes wrong and shift the costs of fixing the problem to the other party. Does that limit adequately reimburse the state for costs associated with an identified risk?

In general, we do not recommend using a limitation of liability clause in state procurement contracts, unless you are certain limiting Contractor’s liability provides a benefit to the state. If you do agree to a limitation of liability, consider making it mutual. However, keep in mind that state tort liability is already limited by statute. Do not agree to set the state’s cap higher than the statutory amount (see § 2-9-108, MCA). Also, bear in mind that other limitations may apply under the principle of sovereign immunity (to the extent the state has not waived it).

If you do agree to a limitation of liability provision, do not use the vendor’s language. Use the option(s) above. Always have legal counsel review the limitation of liability to ensure it is appropriate for the contract and associated risks. Limitations must always be considered in light of other contract provisions such as the indemnity and insurance requirements.

1. SECTION 8: REQUIRED INSURANCE

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| **Insurance Alternatives** |
| **Option 1** |
| * 1. 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. |
| **Option 2** |
| 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 of 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. |
| **Option 3** |
| Specific Requirements for Crime and Fidelity Insurance  Contractor shall purchase and maintain Crime and Fiduciary Insurance coverage in the amount of $1,000,000 per occurrence and $2,000,000 aggregate that provides coverage for fraud, theft, embezzlement, 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 insurance coverage 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 Crime and Fiduciary coverage must remain in effect for the entire contract period. |
| **Option 4 (if appropriate and not included in IT Terms)** |
| Cyber Security Insurance  Contractor shall purchase and maintain cyber/information security insurance coverage with combined single limits for each wrongful act of $6,000,000 in the aggregate to cover unauthorized acquisitions 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 2-6-1501-1503, MCA. If Contractor maintains higher limits than the minimums shown above, State requires and shall be entitled to coverage for the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to 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 judgments as may be caused by any act, omission, or negligence of Contractor’s officers, agents, representatives, assigns or subcontractors.  Note: if occurrence coverage is unavailable or cost-prohibited, 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 the 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 cancelled or non-renewed and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, Contractor must purchase “extended reporting” coverage for a minimum of three (3) years after completion of work. |
| **Option 5 – Alternative Cyber Security Insurance Provision** |
| Cyber Security Insurance  Contractor must maintain cyber-security insurance, with coverage of not less than $6 million per claim/$6 million general aggregate, that includes but is not limited to coverage for first-party costs and third-party claims from: (i) failure to protect data, including unauthorized disclosure, use or access, (ii) security failure or privacy breach, (iii) failure to disclose such breaches as required by law, regulation or contract, (iv) notifications, public relations, credit monitoring, postage, advertising, and other services to assist in managing and mitigating a cyber-incident, (v) interruptions of business operations, (vi) network security failure, (vii) cyber-extortion, (viii) cyber-terrorism, (ix) communications and media liability (e.g., infringement of copyright, title, slogan, trademark, trade name, trade dress, service mark or service name in the policyholder's covered material), (x) EFT, computer, and electronic transmissions fraud and theft, and (xi) other related cyber-liability and cyber-crime expenses. The insurance policy will be maintained for a period of five (5) years after the termination or expiration of this agreement or a comparable extended reporting period will be arranged. This coverage may be provided within professional/errors and omissions liability insurance. |
| **Option 6 (Real Property)** |
| Property Insurance  Contractor shall purchase and maintain builder’s risk (course of construction) coverage for all new structures and buildings, materials, supplies, and equipment and the value of improvements to any existing structures and buildings, on and off of the premises and include coverage for property damage for any building, structure, machinery or equipment damaged, impaired, broke or destroyed during the performance of Contractor’s duties under this agreement, including during transit, installation and testing at the worksite. The builder’s risk policy shall conform to the following:  1. Limit of insurance shall be the full contract amount with no co-insurance penalty provisions.  2. Term of coverage shall be from notice to proceed until completion and acceptance by the state.  3. Loss settlement valuation for all risks shall be 100% of replacement cost.  4. Coverage shall be “special form” (“All Risk) and include coverage for structure, supplies, materials, and all other improvement on and off the premises while in temporary storage and while in transit  5. Earthquake coverage will be included if the shaking level is 10g or above as provided for in the Montana Seismic Hazard map at http://rmtd.mt.gov/aboutus/publications.mcpx.  6. Flood coverage is not required unless so noted.  7. Water damage coverage is required including damage caused by water which backs up from sewer or drain and by rain, snow, sleet or ice whether driven by wind or not.  8. Protected interests shall be those of the owner, contractor, sub-contractors, architect and engineer. The State shall be named as loss payee.  9. Coverage for property at temporary storage locations shall be provided.  10. Coverage for property in transit shall be provided.  11. Coverage shall include boiler & machinery/mechanical breakdowns.  12. Coverage shall allow for partial utilization and occupancy by the owner.  13. Contractor hereby agrees to waive rights of subrogation which any insurer of Contractor may acquire from Contractor by virtue of the payment of any loss. Contractor shall obtain any endorsement that may be necessary to effect this waiver of subrogation.  14. Contractor shall pay any deductible. |

## **General Insurance Guidance**

We recommend that agencies consult with the Risk Management and Tort Defense division for assistance with the insurance coverages in the template and guide.

Limits for political subdivisions (cities, counties, school districts) are capped at $750,000 per occurrence and $1,500,000 in the aggregate.

## **Auto Liability Guidance**

Agencies should require automobile liability any time a Contractor may be required to use a motor vehicle while performing the Contractor's obligations under the agreement. Limits for political subdivisions (cities, counties, school districts) are capped at $750,000 per occurrence and $1,500,000 in the aggregate. Political subdivisions cannot list the state as an additional insured on the auto liability insurance for the political subdivision.

## **Professional Liability Guidance**

Professional liability insurance is required for any service agreement in which contractor will have technical or industry specific knowledge or skills. Examples are healthcare providers, attorneys, accountants, consultants, architects, engineers, and claims administrators. Amounts may change depending on the risk and type of professional; agencies should consult with agency counsel.

## **Fidelity Bond and Crime Insurance Guidance**

Fidelity bonds may be used to bond individuals who handle cash, such as those with authority to transfer funds, negotiate funds, authorize payment from funds, sign checks or other negotiable instruments, and/or anyone who supervises those individuals.

Crime insurance covers employee dishonesty/theft, forgery or alteration, robbery or burglary on premises or in transit, money orders or counterfeit currency, computer fraud and funds transfer fraud, credit card coverage and claims expense. For example, crime insurance is appropriate when an entity contracts with a third party to handle cash or other forms of payment such as credit card transactions.

Note: Certain sole proprietors may be unable to obtain crime insurance for only one employee. If that is the case, the state may allow the contractor to obtain a letter of credit or other financial guarantee with prior approval.

## **Cyberliability Insurance Guidance**

### What is cyberliability insurance?

Cyberliability insurance, also known as cybersecurity insurance or cyber risk insurance, protects against financial losses due to cyberattacks, data breaches, and other cybersecurity issues. A vendor’s cyberliability insurance policy should cover both the direct losses to the state, e.g., the cost to repair damage to information technology systems caused by an intrusion, and third party claims, e.g., credit monitoring for individuals whose records may have been accessed. It can help cover a variety of costs, including:

* Legal fees: Legal services to help meet state and federal regulations, as well as litigation defense costs;
* Notification costs: Notifying customers about a data breach and restoring their personal identities. Note: section 2-6-1503, MCA, mandates contractors notify persons affected by a security incident when personally identifiable information may have been accessed without authorization;
* Lost income: Lost revenue from a network outage or business interruption;
* Regulatory fines: Regulatory fines and penalties from state and federal agencies;
* Damaged computer systems: Recovery and replacement of lost or stolen data, and repairing damaged computer systems;
* Extortion: Extortion paid to recover locked files in a ransomware attack; and
* Credit monitoring: Customers' credit monitoring services.

### What are the impacts of a data breach?

In 2024, the global average cost of a data breach was $4.88 million. According to IBM, the per-record cost of a data breach averaged $183 in 2023. Breaches involving more sensitive information, such as protected health information, can be even more costly.

### Notes on default provision

The default cyberliability provision is included as part of the State IT Terms and Conditions. It is not included in the State Standard Terms and Conditions but may be added when necessary and appropriate.

Our default language is occurrence-based, which means it covers an incident happening during the policy period, regardless of when the claim is actually filed. In other words, if a data breach occurs while the policy is active, it will be covered even a person brings a claim against the state or contractor after the period of the policy. This is important because data breaches often are not discovered until years after they occur.

While not preferred, the state will accept contractor’s claims-made insurance policy as stated in the note we typically include in our cyberliability insurance provision, provided that the contractor’s insurance offers similar protection to the occurrence-based standard. Claims-made policies provide coverage only for claims made during the policy period. Therefore, it is important to include a long “tail” period which provides coverage for claims outside the primary policy period as long as the claim is made during the policy’s tail period. Typically, we ask for a five-year tail.

### Establishing minimum limits for a contract

One of the main considerations when drafting the cyberliability insurance provision is the minimum amount of coverage the State should require. If a serious event occurs and the Contractor has multiple customers who are affected, the Contractor could face so many claims that the Contractor becomes insolvent or bankrupt. If that happens, the State may have to pay the claims of third parties (our members, employees, or users) who suffer loss as a result and may be required to make a claim against the State’s own cyberliability policy. This is why it is critical to set the minimum coverage high enough to cover the state’s anticipated losses resulting from an incident.

The default minimum used in our template contract is $6,000,000, given that liability for a single incident is currently averaging several million dollars. The cost of cyberliability premiums is rising rapidly, which may cause some contractors to push back when the State requires high minimum coverage. But not every breach will trigger such significant losses. Factors that may affect the limit we require contractors to cover are shown in the table below.

|  |  |
| --- | --- |
| **Factors that warrant higher**  **(or default) limits.** | **Factors that warrant**  **lower limits** |
| **The IT resource:** | |
| -is an enterprise system. | -is only used by a small number of users (although there could still be a big impact). |
| -interfaces with critical enterprise systems. | -is isolated and not connected to the state network or enterprise systems. |
| -is a critical system (major or multiple dependencies on the system means an outage will cause significant impacts on the agency). | -is not mission critical and/or does not touch any other mission critical systems. |
| - collects, stores, or transmits sensitive or confidential information. | -does not collect, store or transmit sensitive or confidential information. |
| -collects, stores, or transmits thousands of records. | -collects, stores, or transmits under 500 records. |
| **The records are or contain:** | |
| -sensitive security information and unauthorized access may compromise individual or public safety | -only non-sensitive information. |
| -protected health information (PHI) | -only public information. |
| -federal tax information (FTI) |  |
| -social security numbers (SSNs) |  |
| -personally identifiable information (PII) |  |
| -financial information |  |
| -other information deemed confidential by law (which could result in financial losses to individuals and organizations or fines from regulatory agencies). |  |
| **The service or activity:** | |
| -collects, transmits, or stores confidential or sensitive information in a new system. | -uses only enterprise systems to transmit information. These systems are already subject to a cyberliability insurance requirement. |

Note: Although the total contract value (the amount we are obligated to pay a contractor) may be small, the potential liability from a data breach could be large. It is not generally helpful to consider the contract value when establishing the minimum coverage. Instead, analyze the risk to the state if the system cannot perform or personal information is compromised.

### Resources

<https://www.ibm.com/reports/data-breach>

<https://www.upguard.com/blog/cost-of-a-data-breach-2024>

<https://www.syteca.com/en/blog/cost-of-a-data-breach#:~:text=According%20to%20the%202023%20Cost%20of%20a%20Data%20Breach%20Report,and%20%24181%20per%20record%20respectively>

<https://rmtd.mt.gov/insurance/cyberdatainformationsecurityprotection>

## **General Insurance Resources**

<https://rmtd.mt.gov/_docs/aboutus/publications/files/RiskManagementManual05172021.pdf>

<https://rmtd.mt.gov/aboutus/publications/AlliantInsuranceReferenceManual.pdf>

1. SECTION 9: CONTRACT TERMINATION

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| **Contract Termination Alternatives** |
| **Option 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  • Voluntary or involuntary bankruptcy or receivership. |
| **Option 2** |
| Event of Breach by State  State’s failure to perform any material terms or conditions of this Contract constitutes an event of breach. |
| **Option 3** |
| Action in Event of Material Breach  Upon Contractor’s material breach, State may:  • Terminate this Contract 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 and pursue any of its remedies under this Contract, at law, or in equity; or  • Treat this Contract as materially breached and to the extent the remedy is limited in this Contract, pursue any of its remedies under this Contact, at law, or in equity. |
| **Option 4** |
| Termination Due to Bid Protest under 18-4-242, MCA.  This Contract may be cancelled, revised, or terminated in whole or in part pursuant to the remedies set forth in 18-4-242, MCA. If the Contract is terminated as the result of 18-4-242, MCA, the Department shall provide written notice to Contractor, and the Department may terminate this Contract without incurring liability to Contractor. State shall pay Contractor only for actual expenses reasonably incurred under the Contract up to the date termination takes effect and a reasonable profit proportionate to the expenses incurred. 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. |

1. SECTION 10: TRANSITION ASSISTANCE
2. SECTION 11: FORCE MAJEURE
3. SECTION 12: WAIVER
4. SECTION 13: CONTRACT MANAGEMENT

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| **Contract Management Alternatives** |
| **Option 1** |
| 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. |
| **Option 2** |
| 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. |
| **Option 3** |
| 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. |
| **Option 4** |
| 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. |
| **Option 5** |
| 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. |
| **Option 6** |
| 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. |

1. SECTION 14: SEVERABILITY
2. SECTION 15: COOPERATIVE PURCHASING

# **ADDITIONAL/OPTIONAL PROVISIONS**

The following sections are not included in the base template but may be required or added optionally as appropriate due to the nature of the specific contract.

Please add these sections at the end of the contract to retain the template section numbering and make it easier for other reviewers to find information.

1. SECTION 16: PREVAILING WAGE

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 construction or non-construction public works services contract in excess of $25,000. Contractor shall abide by the requirements set out in 18-2-401 and 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 requirement in accordance with 18-2-403 and 18-2-406, 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 Rates 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 contractors, subcontractors, and employers shall pay during the public works contract

* 1. Notice of Wages and Benefits

Pursuant to 18-2-406, MCA, all contractors, subcontractors, and employees who are performing work or providing services under a public works contract must 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.

* 1. 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 18-4-423, MCA, for not less than three years after contractor’s, subcontractor’s, or employer’s completion of work on the public works contract.

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-

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 Wage Rates for [insert type of service and year].

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

Adjustment

The standard prevailing rate of wages paid to workers under this Contract must be adjusted 12 months after the date of award of the public works contract (18-2-417, MCA.) The adjustment amount 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 other adjustment in this Contract will be allowed to fulfill this requirement.

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

Adjustment

This public works Contract has an initial term of 12 months with optional renewals and 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 other cost adjustment in this Contract will be allowed to fulfill this requirement.

1. SECTION 17: INTELLECTUAL PROPERTY/OWNERSHIP

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 “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 (“Content”), and grants Contractor the right to access and use the Content for the purpose of complying with its obligations under this Contract and any applicable statement of work.

* 1. 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.

* 1. 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 on the date of State’s request, or such expiration or termination.

* 1. 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 (“Contractor Pre-Existing Materials”). Contractor’s Pre-Existing Materials are not Work Product.

1. SECTION 18: CONTRACT PERFORMANCE SECURITY

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| **Contract Performance Security Alternatives** |
| **Option 1** |
| 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 of the Request for Documents Notice.  Only the following types of security are acceptable and must be in original form. Facsimile of 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 “Contractor Performance Bond,” available on the State Procurement Services Division website.  • 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 on the State Procurement Services Division website.  • A cashier 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 to Contractor and not State.  See Title 18, chapter 4, part 3, MCA; Title 30, chapter 5, MCA; and ARM 2.5.502.  The 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 Services Division. |
| **Option 2** |
| 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 “Contractor Performance Bond” is available on the State Procurement Services Division website.  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 Services Division. |

1. SECTION 19: AUTHORITY

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