

June 11, 2013

STATE OF MONTANA  
REQUEST FOR PROPOSAL ADDENDUM  
RFP NO. MSF 52  
TO BE OPENED: July 1, 2013  
TITLE: Predictive Model Claim Analytic Services

ADDENDUM NO. 1

To All Offerors:

Attached are written questions received in response to this RFP. These questions, along with MSF's response, become an official amendment to this RFP.

All other terms of the subject "Request for Proposal" are to remain as previously stated.

**Acknowledgment of Addendum:**

The offeror for this solicitation must acknowledge receipt of this addendum. This page must be submitted at the time set for the proposal opening or the proposal may be disqualified from further consideration.

I acknowledge receipt of Addendum No. 1

Signed: \_\_\_\_\_

Company Name: \_\_\_\_\_

Date: \_\_\_\_\_

Sincerely,

Marianne Krpan  
Procurement Officer

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1.	14	3.3.2.1	<p><u>Question</u> Will MSF consider alternative approaches to satisfy the Readiness assessment and Proof of concept?</p> <p><u>Answer:</u></p> <p>MSF is requiring each selected vendor to prepare 1) a Readiness assessment report summarizing specific information as noted in the RFP and 2) a Predictions report of the 3 primary areas of interest as noted in the RFP. MSF would consider a vendor's alternative approaches as supplementary information.</p>
2.	14	3.3	<p><u>Question</u> Will MSF proceed if only one vendor is chosen for Readiness Assessment and Proof of concept?</p> <p><u>Answer:</u></p> <p>Yes, as long as the vendor meets all qualifications and criteria as outlined in the RFP.</p>
3.	17	3.3.4.7	<p><u>Question</u> We do not require the receipt of PII (personally identifiable information) to achieve the goals of this RFP, nor can we accept it. May it be deleted from the extract file before being provided to us?</p> <p><u>Answer:</u></p> <p>Yes. MSF will generally provide the same data to all selected vendors participating in the proof of concept phase but will, at the request of the vendor, delete any unwanted data fields.</p>

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4.	17	3.3.4.7	<p><u>Question</u>            Will data be provided to us in our standard format, or other industry format? Or in claim center format?</p> <p><u>Answer:</u></p> <p>MSF will provide the data in a standardized excel, XML, or comma-delimited format. It will be the vendor's responsibility to convert it into the format used by your product/model.</p>
5.	27-32	Applies to all Sections of Appendix B.	<p><u>Question</u>            It is not entirely clear to us how the contracting process will operate and whether the “up to three” vendors execute one contract for the duration of the project or if a second agreement will be put in place for the single vendor (per the process in RFP 2.4.9). As such, we suggest MSF increase its flexibility around the contracting process via the addendum wherein MSF reserve discretion to make material changes in the terms beyond what is set out in the Addendum.</p> <p><u>Reason/Impact:</u> The change will facilitate clarity and promote mutual understanding and agreement on terms and scope. Impacts our price and risk assessment.</p> <p><u>Answer</u></p> <p>All vendors (up to three) who participate in the readiness assessment and proof of concept phases of the contract will have the same contractual language. Should MSF proceed to a production environment, a new contract for that work and a new scope of work will be created contingent on the proof of concept results, and the language incorporated in the contract for the production environment.</p> <p>MSF is agreeable to limited changes in contract terms. See answers to questions below.</p> <p>MSF amends 1.2 - Contract Period of the RFP to clarify the contract periods. New language is</p>

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			<p>underlined, deleted language is interlined.</p> <p><b><u>1.2 CONTRACT PERIOD</u></b></p> <p>The initial contract (with up to three Offerors) will cover Readiness Assessment and Proof of Concept sections of the RFP, but MSF reserves the right to terminate the RFP and the contracts at any point. The estimated initial contract period is from August 15, 2013 through December 2, 2013.</p> <p>If MSF chooses to proceed with Production Environment Service Application, a final contract will be executed with the successful Offeror. The <u>initial</u> contract period is <del>one year</del> <u>two years</u>, beginning tentatively on July 15, 2014, and ending July 14, 2016. The parties may mutually agree to a renewal of this contract in <del>two one-year</del> intervals, or any interval that is advantageous to MSF. This contract, including any renewals, may not exceed a total of seven years, at MSF's option. Fees may be modified at contract renewal upon agreement of the parties.</p>
6.	27	App. B Sec. 1	<p><u>Question</u></p> <p>We request that a scope of work document be prepared, to the extent agreed to by the parties, that clarifies and adjusts the scope and that takes precedence over the RFP and proposal (including any adjustments as may be appropriate following the down select to three vendors and for purposes of finalizing the single contract).</p> <p><u>Reason/Impact:</u> The change will facilitate clarity and promote mutual understanding and agreement on terms and scope. Impacts our price and risk assessment.</p> <p><u>Answer</u></p> <p>The scope of work is outlined in 3.3 of the RFP and will be incorporated into the contracts with any appropriate clarifications based on the selected Offerors' responses to the RFP at the</p>

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			<p>discretion of MSF. The contract, all attachments, the RFP, the RFP amendments, the RFP response by vendors and any onsite presentations provided as part of the responses, if any, will be included as part of the contract. The order of precedence, should there be a conflict among those documents, will be in the same order.</p>
7.	27	App. B Sec. 2	<p><u>Question</u>          The section should be clarified to provide that the exercise of each 1 year interval is subject to mutual agreement on the price increase such that there is no unilateral right to extend the contract given that escalation/out year pricing is not agreed to under the proposed structure.</p> <p><u>Reason/Impact:</u> Absent agreement on price, a unilateral extension right is inequitable. Impacts our price and risk assessment.</p> <p><u>Answer</u></p> <p>MSF amends Section 2 of the contract as follows. (The term language will be modified to reflect the appropriate term for the Readiness Assessment and the Proof of Concept) The intent as per Section 1.2 of the RFP is that the initial term is two years. New language is underlined, deleted language is interlined.</p> <p style="text-align: center;"><b><u>SECTION 2</u></b>  <b><u>CONTRACT TERM/RENEWAL</u></b></p> <p>The term of this contract will be _____ through _____ as the contractor is available. This instrument shall not be effective until duly signed by all the parties hereto.</p> <p>The parties may renew this contract under its then-existing terms and conditions in 1 year intervals, or any <u>mutually agreed upon</u> interval <del>that is advantageous to MSF</del>. This contract, including any renewals, may not exceed a total of 7 years. After the contract's initial term <del>and</del></p>

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			<p><del>if the MSF agrees to a renewal, the parties may mutually agree upon a cost increase. MSF is not obligated to agree upon a renewal or a cost increase. Failure to reach agreement on a cost increase does not obligate either party to renew.</del></p>
8.	28	App. B Sec. 6	<p><u>Question</u>          We request that this section be clarified in contract negotiations to provide that Contractor is responsible for its agents and subcontractors performance of work and that the terms “indirectly employed” be removed.</p> <p><u>Reason/Impact:</u> As structured, the clause is overly broad. __Impacts our price and risk assessment.</p> <p><u>Answer</u></p> <p>No, the Contractor is responsible for managing their subcontractors' work. However, the second sentence will be revised to state ‘As it pertains to this contract and scope of work, the Contractor shall be responsible to MSF 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 the Contractor. See amended contract language below. New language is underlined and deleted language is interlined.</p> <p style="text-align: center;"><b>SECTION 6</b>  <b><u>ASSIGNMENT, TRANSFER AND SUBCONTRACTING</u></b></p> <p>The contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of MSF. (Section 18-4-141, MCA.) <u>As it pertains to this contract and scope of work,</u> <del>the</del> Contractor shall be responsible to MSF 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 the Contractor. No contractual relationships exist between any subcontractor and MSF.</p>

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9.	28	App. B Sec. 7	<p><u>Question</u>            We take exception to this provision. We request that this section be clarified in contract negotiations within the parameters of following provisions:</p> <p>a) <i>Contractor shall indemnify, defend and hold harmless Client and its personnel from and against any and all Claims attributable to claims of third parties solely for bodily injury, death or damage to real or tangible personal property, to the extent directly and proximately caused by the negligence or intentional misconduct of Contractor while engaged in the performance of the Services.</i></p> <p>b) <i>Contractor agrees to indemnify, defend and hold harmless Client and its personnel from and against any and all Claims attributable to claims of third parties for infringement by a Deliverable of any U.S. patent known to Contractor or copyright or any unauthorized use of any trade secret, except to the extent that such infringement or unauthorized use arises from, or could have been avoided except for (i) the indemnified party's modification of the Deliverable or use thereof in a manner not contemplated by the Engagement Letter, (ii) the failure of the indemnified party to use any corrections or modifications made available by Contractor, (iii) information, materials, instructions or specifications provided by or on behalf of the indemnified party, or (iv) the use of the Deliverable in combination with any product or data not provided by Contractor whether or not with Contractor's consent. If Client's use of any such Deliverable, or any portion thereof, is or is likely to be enjoined by order of a court of competent jurisdiction as such an infringement or unauthorized use, Contractor, at its option and expense, shall have the right to (x) procure for Client the continued use of such Deliverable, (y) replace such Deliverable with a non-infringing Deliverable, or (z) modify such Deliverable so it becomes non-infringing; provided that, if (y) or (z) is the option chosen by Contractor, the replacement or modified Deliverable is capable of performing substantially the same function. The foregoing provisions of this paragraph constitute the sole and exclusive remedy of the indemnified parties, and the sole and exclusive obligation of Contractor, relating to a claim that any of Contractor's Deliverables infringe any patent, copyright or other intellectual property right of a third party.</i></p> <p>c) <i>As a condition to the foregoing indemnity obligations, the indemnified party shall provide the indemnifying party with prompt notice of any Claim for which indemnification shall be sought hereunder and shall cooperate in all reasonable respects with the indemnifying party in connection with any such Claim. The indemnifying party shall be entitled to control the handling of any such Claim and to defend or settle any such Claim, in its sole discretion, with counsel of its own choosing.</i></p>

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			<p><u>Reason/Impact:</u> The indemnity is overly broad and not viewed as commercially reasonable or acceptable by the Contractor. Contractor has successfully negotiated indemnity in all other Montana contracts.</p> <p>We have included a limitation of liability provision in the supplemental provisions below. A commercially reasonable limitation of liability is a required term.</p> <p><u>Answer</u></p> <p>MSF is not agreeable to limiting the liability of the Contractor, particularly as to an unauthorized disclosure or data breach of personally identifying or confidential or private information or data in the possession of Contractor, regardless of the fault of Contractor. If language addressing claims of third parties for infringement is necessary, MSF is willing to negotiate at a later date.</p>
10.	28-29	App. B Sec 8	<p><u>Question</u></p> <p>We recognize the importance of protecting confidential information. We do request to adjustments to this provision in negotiations: (1) the designation of “all” information and data seems overly broad and a process should be established to identify the actual confidential information; and (2) for certain records, we would like to retain an archival copy (this would not apply to all data and this can be clarified in discussions).</p> <p>We also request that that the State acknowledge and protect Contractor’s confidential information (and have included a confidentiality provision in the supplemental terms below). We have also included a standard “Deliverables “clause that we use in connection with all predictive modeling projects that addresses ownership and licensing. That clause is as follows:</p> <p><i>a) Upon full payment to Contractor hereunder, and subject to the terms and conditions contained herein, Contractor hereby grants Client a royalty-free, fully paid-up, non exclusive license to use, for Client’s internal business purposes, the works of authorship, materials, information, Algorithmic Solutions and other intellectual property delivered to Client pursuant to the Contract (the “Deliverables”). For purposes of these terms and the Contract, the term “Algorithmic</i></p>

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			<p><i><b>Solution</b></i>” means a multivariate formula developed from data provided to Contractor by or on behalf of Client, which relates independent variables to a dependent variable.</p> <p>b) To the extent a Deliverable being licensed to Client hereunder constitutes inventory within the meaning of section 471 of the Internal Revenue Code, such Deliverable is licensed to Client by XXX as agent for XXX on the terms and conditions contained herein. The rights granted in this Section 4(b) do not apply to any software, documentation or products that are subject to a separate license agreement between Client and any third party (including XXX’s affiliates).</p> <p><u>Reason/Impact:</u> Contractor cannot perform the services unless its confidential information/application is protected. In addition, a process to identify client information and data as confidential enhances overall security and protections. Both of these issues should be discussed in contract negotiations such that the contract accurately addresses the issues. Impacts our price and risk assessment.</p> <p><u>Answer</u></p> <p>MSF is firm on our requirement that all information and data must be returned following the Readiness Assessment and Proof of Concept steps. If MSF chooses to proceed with the Production Environment Service Application, a final contract will be executed with the successful Offeror. The data confidentiality provision for use of MSF data by the Contractor can be negotiated at that time to clarify the information and data that requires confidentiality and will take into consideration the delivery model of the final service model application.</p> <p>Ownership and licensing terms can also be negotiated at a later date as appropriate for the production environment contract.</p> <p>Paragraph 3 of Section 8 below provides the opportunity for the Contractor to request in writing an archival copy upon termination of the contract. MSF has the option of approving this request if conditions can be agreed upon.</p> <p>Section 8 is also amended as follows. New language is underlined.</p>

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			<p style="text-align: center;"><b><u>SECTION 8</u></b> <b><u>CONFIDENTIALITY</u></b></p> <ol style="list-style-type: none"><li data-bbox="655 521 2016 878">1. Contractor will keep all information received from MSF, and all information and data created under the contract confidential, except that Contractor may utilize confidential or private information and data to the extent necessary to perform the services required under this contract. Contractor shall not disclose or provide third parties confidential or private information or data received from MSF or created under this contract unless authorized in writing by MSF to release the data or information. If Contractor is subpoenaed for MSF information, Contractor must notify MSF within 24 hours of service of the subpoena, and prior to responding to the subpoena. All employees and agents of Contractor who may receive confidential information or data from MSF will be advised of the confidentiality requirements of this contract.</li><li data-bbox="655 922 2016 1101">2. Contractor understands and agrees that the provisions of MCA §§ 2-6-501 to 2-6-504, concerning the protection of certain personal information received from MSF, as defined in the law, apply to the Contractor while performing a function for MSF. Contractor shall comply with this law, and will adopt and implement an information security policy and procedures in accordance with this law.</li><li data-bbox="655 1144 2016 1425">3. Contractor shall maintain the security of all information and data received from MSF and all information and created under the contract during the term of the contract. Contractor shall not use confidential or private information or data received from MSF or created under this contract after termination of this contract, except as specifically permitted by this contract or upon prior written consent. Unless otherwise agreed in writing, upon termination of this contract, Contractor shall cease using the information and data and all such information shall be returned or destroyed upon the direction of MSF.</li></ol>

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			<p>4. <a href="#"><u>Should an unauthorized disclosure of data or information occur, Contractor shall notify Montana State Fund as soon as practicable upon identification of the disclosure. Contractor is responsible for providing notice to the individuals whose private, confidential, or personally identifying data or information was disclosed.</u></a></p>
11.	29	App. B Sec.11	<p><u>Question</u>          We would like to clarify Section 1 to provide that the 30 day notice is a cure notice such that the Contractor/State may cure the alleged breach and we would also request that termination under this section be permitted only for “material” breaches.</p> <p>We would like to clarify Section 2 to provide that Contractor will be paid the prorated portion that will include the work in progress as of the effective date of the termination. Section 5 should also be clarified to provide that Contractor will be paid the prorated portion that will include the work in progress as of the effective date of the termination.</p> <p><u>Reason/Impact:</u> Clarification of the 30 day notice period as a cure period is consistent with public sector contracting and default terminations should be utilized only in context of material breaches of the contracts requirements/terms.</p> <p><u>Answer</u></p> <p>MSF will agree to make only the following change to Section 11 (1).</p> <p>MSF amends Section 11 (1) – Contract Termination as follows. New language is underlined.</p> <p style="text-align: center;"><b><u>SECTION 11</u></b>  <b><u>CONTRACT TERMINATION</u></b></p>

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			<p>1. MSF or the Contractor, with 30 days written notice to the other, may at any time during the term of this contract, terminate this contract with cause, or if the other party:</p> <ul style="list-style-type: none"> <li>a. fails to perform its contractual duties or responsibilities; or</li> <li>b. does not meet expected performance levels; or</li> <li>c. does not meet time frames to improve performance levels as developed by MSF and the Contractor.</li> </ul> <p><u>Contractor has the opportunity to cure within the 30 days after receiving written notice of termination. If deficiencies are not cured to MSF's satisfaction within the 30 days, the termination will occur.</u></p>
12.	30	App. B Sec. 13	<p><u>Question</u>          For purposes of confirming technical compliance and to further clarify the “Data Breach” coverage “regardless of fault”, Contractor requests that the clauses be deferred to contract negotiations for finalization. Contractor’s coverage has been accepted for purposes of all other Montana contracts.</p> <p><u>Reason/Impact:</u> In our experience, technical compliance type issues can sometimes be created by unnecessary, imprecise or outdated language and terms. By deferring the issue to negotiations, that outcome can be avoided. In connection with the We want to avoid a technical compliance issue. For purposes of data breach, the “no fault” and the lack of a specified amount appear to create coverage and cost issues. We request bidders be permitted to negotiate that provision. Impacts our price and risk assessment as well as contract compliance.</p> <p><u>Answer</u>          MSF is not willing to modify our requirement for data breach coverage based upon the type of information/data to be shared with the successful vendor(s) for either the Readiness Assessment and Proof of Concept contract or the final Production contract. MSF is requiring</p>

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			<p>coverage in the following areas:</p> <ul style="list-style-type: none"> <li>• Information Security and Privacy Liability, annual aggregate limit of \$2,000,000</li> <li>• Privacy Notification Costs, annual aggregate limit of \$500,000.</li> </ul> <p>MSF is willing to negotiate the specific amount of coverage but MSF will require data breach coverage during the contract engagement.</p>
13.	31	App. B Sec. 17	<p><u>Question</u>          This provision should be made mutual.</p> <p><u>Reason/Impact:</u> That provision is generally mutual and it is unfair to have it reserved to one party only. It should apply to both equally. Impacts our price and risk assessment.</p> <p><u>Answer</u></p> <p>MSF is agreeable to this change. Section 17 will change as follows. New language is underlined.</p> <p style="text-align: center;"><b>SECTION 17</b>  <b><u>FAILURE OF ENFORCEMENT IS NOT A WAIVER</u></b></p> <p>Failure of MSF <u>or contractor</u> to enforce any of the provisions of this contract does not constitute a waiver of that provision or affect any part of this contract, or the right of MSF <u>or contractor</u> to later enforce that provision.</p>
14.	31	App. B Sec. 18	<p><u>Question</u>          We request that this provision be revised consistent with Contractor’s prior contract with MSF to provide that:</p>

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			<p>1. Contractor agrees that it will at all times in good faith, and in a professional manner consistent with applicable industry standards, perform all of the duties and obligations that may be required of it pursuant to the express terms of the Agreement.</p> <p>2. Contractor agrees to conduct itself in a businesslike manner and to abide by all laws, rules, and regulations applicable to its performance of the services hereunder.</p> <p>3. The parties agree to comply with, abide by, and be bound by the terms, conditions and covenants of this Agreement.</p> <p>We also request the following Warranty provision be included:</p> <p><b><i>Limitation on Warranties. THIS IS A SERVICES ENGAGEMENT. CONTRACTOR WARRANTS THAT IT SHALL PERFORM THE SERVICES IN GOOD FAITH AND IN A PROFESSIONAL MANNER. CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE</i></b></p> <p><u>Reason/Impact:</u> Subsections 1-3 introduce subjective terms/obligations and outcomes that are also subjective or out of our control. We believe compromise language that was used in a prior contract protects both parties' interests. We believe the Warranty provision to be a standard industry practice and believe the additional clarity is in both parties' interests. Impacts our price and risk assessment.</p> <p><u>Answer</u></p> <p>MSF agrees to the vendor's suggested language for section 18.</p> <p>Section 18 – Best Efforts of Contractor is amended as follows. New language is underlined and deleted language is interlined.</p> <p style="text-align: center;"><b>SECTION 18</b>  <b><u>BEST EFFORTS OF CONTRACTOR</u></b></p>

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			<p><del>1. Contractor agrees that it will at all times faithfully, industriously, and to the best of its ability, experience and talents, perform all of the duties and obligations that may be required of it pursuant to the express terms of the agreement.</del></p> <p><del>2. Contractor agrees to conduct itself so as not to diminish the good will and reputation of MSF or its employees and to abide by all applicable laws, rules and regulations.</del></p> <p><del>3. Contractor further agrees to comply with, abide by and be bound by the terms, conditions and covenants of this agreement.</del></p> <p><u>1. Contractor agrees that it will at all times in good faith, and in a professional manner consistent with applicable industry standards, perform all of the duties and obligations that may be required of it pursuant to the express terms of the Agreement.</u></p> <p><u>2. Contractor agrees to conduct itself in a businesslike manner and to abide by all laws, rules, and regulations applicable to its performance of the services hereunder.</u></p> <p><u>3. The parties agree to comply with, abide by, and be bound by the terms, conditions and covenants of this Agreement.</u></p> <p><b><u>4. Limitation on Warranties. THIS IS A SERVICES ENGAGEMENT. CONTRACTOR WARRANTS THAT IT SHALL PERFORM THE SERVICES IN GOOD FAITH AND IN A PROFESSIONAL MANNER. CONTRACTOR DISCLAIMS ALL OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE</u></b></p>
15.	31	App. B Sec. 19	<p><u>Question</u>          We believe the MSF Assistance provision should be clarified in the contract to reflect MSF's duties and responsibilities.</p>

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			<p>Below is the provision as previously negotiated with MSF:</p> <p><i>It is agreed MSF shall cooperate with the Contractor and provide such information and access to its personnel, facilities, equipment and systems as is necessary for Contractor to provide the services as set forth in Section 1. MSF will provide no other assistance, personnel or equipment to Contractor unless otherwise agreed to in writing. MSF shall be solely responsible for the performance of its personnel and agents, and the accuracy and completeness of all data and information provided to Contractor for purposes of the performance of the services hereunder. Contractor's performance is dependent on MSF's timely and effective satisfaction of MSF's responsibilities under this Agreement and timely decisions and approvals of Client in connection with the services hereunder. The services hereunder may include advice and recommendations, but Contractor will not make any decisions on behalf of MSF in connection with the implementation of such advice and recommendations.</i></p> <p><u>Reason/Impact:</u> We believe the previously agreed to provision, including the addition of the specific duties and responsibilities in the scope section, serve both parties' interest in that it clarifies how the contract will proceed and provides certainty around the important issues addressed with the clause. Impacts our price and risk assessment.</p> <p><u>Answer</u></p> <p>MSF will amend Section 19 – MSF Assistance as follows. New language is underlined and deleted language is interlined.</p> <p style="text-align: center;"><b><u>SECTION 19</u></b> <b><u>MSF ASSISTANCE</u></b></p> <p><del>MSF shall not supply Contractor with any assistance in the form of personnel, office equipment or other similar and related items.</del> <u>It is agreed MSF shall cooperate with the Contractor and</u></p>

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			<p><a href="#"><u>provide such information and access to its personnel, facilities, equipment and systems as is necessary for Contractor to provide the services as set forth in Section 1- Scope of Work or as mutually agreed. MSF will provide no other assistance, personnel or equipment to Contractor unless otherwise agreed to in writing. *The services hereunder may include advice and recommendations, but Contractor will not make any decisions on behalf of MSF in connection with the implementation of such advice and recommendations.</u></a></p> <p>*This sentence may be moved to Section 1 – Scope of Work in the contract for production.</p>
16.	32	App. B Sec. 21	<p><u>Question</u>          We request the Ownership section be revised consistent with Contractor’s prior contract with the MSF to address timing and transfer information, data and reports and to clarify protection of preexisting intellectual property. It may be necessary to further reconcile the requested change with Section 8 of the contract (addressed in Item #6 above.)</p> <p>Below is the provision as previously negotiated with MSF:</p> <p><i>The Contractor shall record all information and data obtained in the performance of the Agreement and shall make such information available to MSF upon request. Upon completion of this Agreement, all information and data shall become the property of MSF. The Contractor and MSF agree that any and all public releases of information pertaining to this Agreement be submitted to, approved, and released by MSF provided that MSF may authorize the Contractor in writing to release such information. The Contractor agrees that it shall not disclose such reports or any personally identifying claim information to any third party without the express written consent of the MSF Operations Support Vice President or Controller, except as may be required by law, regulation, judicial or administrative process. Notwithstanding the foregoing, MSF acknowledges and agrees that the Contractor shall retain all intellectual property rights in, and shall have no restrictions on use or disclosure of, any and all ideas, know-how, methodologies and techniques or other intellectual property other than the information or data incorporated in such reports. The provisions of this Section 4 will survive termination of this contract.</i></p>

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			<p><u>Reason/Impact</u>: Protection of our IP is a critical issue for us. In addition, clarification of timing and transfer of data and reports is an important clarification and provides increased certainty and better risk assessment. Impacts our price and risk assessment.</p> <p><u>Answer</u></p> <p>MSF will agree to include the language on intellectual property, see Section 21 below as amended. New language underlined. The remaining suggested language is generally in Section 8 and Section 21 of the Contract and currently in the Contract, see below. Section 8 is also amended as follows. New language is underlined.</p> <p style="text-align: center;"><b><u>SECTION 8</u></b> <b><u>CONFIDENTIALITY</u></b></p> <ol style="list-style-type: none"> <li>1. Contractor will keep all information received from MSF, and all information and data created under the contract confidential, except that Contractor may utilize confidential or private information and data to the extent necessary to perform the services required under this contract. Contractor shall not disclose or provide third parties confidential or private information or data received from MSF or created under this contract unless authorized in writing by MSF to release the data or information. If Contractor is subpoenaed for MSF information, Contractor must notify MSF within 24 hours of service of the subpoena, and prior to responding to the subpoena. All employees and agents of Contractor who may receive confidential information or data from MSF will be advised of the confidentiality requirements of this contract.</li> <li>2. Contractor understands and agrees that the provisions of MCA §§ 2-6-501 to 2-6-504, concerning the protection of certain personal information received from MSF, as defined in the law, apply to the Contractor while performing a function for MSF. Contractor shall comply with this law, and will adopt and implement an information security policy and procedures in accordance with this law.</li> </ol>

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			<p>3. Contractor shall maintain the security of all information and data received from MSF and all information and created under the contract during the term of the contract. Contractor shall not use confidential or private information or data received from MSF or created under this contract after termination of this contract, except as specifically permitted by this contract or upon prior written consent. Unless otherwise agreed in writing, upon termination of this contract, Contractor shall cease using the information and data and all such information shall be returned or destroyed upon the direction of MSF.</p> <p>4. <u>Should an unauthorized disclosure of data or information occur, Contractor shall notify Montana State Fund as soon as practicable upon identification of the disclosure. Contractor is responsible for providing notice to the individuals whose private, confidential, or personally identifying data or information was disclosed.</u></p> <p style="text-align: center;"><b><u>SECTION 21</u></b> <b><u>OWNERSHIP RIGHTS</u></b></p> <p>The Contractor shall record all information and data obtained in the performance of the Agreement and shall make such information available to MSF upon request. During the term of this contract all information, data and reports from Contractor are the property of MSF. The Contractor and MSF agree that any and all public releases of information pertaining to this Agreement be submitted to, approved, and released by MSF provided that MSF may authorize the Contractor in writing to release such information. <u>Notwithstanding the foregoing, MSF acknowledges and agrees that the Contractor shall retain all intellectual property rights in, and shall have no restrictions on use or disclosure of, any and all ideas, know-how, methodologies and techniques or other intellectual property other than the information or data incorporated in such reports.</u> The provisions of this section will survive termination of this contract.</p>

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17.	NA	NA	<p><u>Question</u></p> <p>Below are additional provisions which we request MSF acknowledge in its addendum as being subject to negotiation and inclusion in the Contract. The provisions directly impact Contractor’s assessment of the risks which, in addition to related price impacts, will also be considered for purposes of the acceptability of the engagement.</p> <p><b>1. Services.</b> <i>The services provided (the “Services”) by XX (“Contractor”) under the Contract may include advice and recommendations, but Contractor will not make any decisions on behalf of Client in connection with the implementation of such advice and recommendations.</i></p> <p><b>2. Limitation on Damages.</b> <i>XXX, its subsidiaries and subcontractors, and their respective personnel shall not be liable to Client for any claims, liabilities, or expenses relating to this engagement (“Claims”) for an aggregate amount in excess of the fees paid by Client to XXX pursuant to this engagement, except to the extent resulting from the recklessness, bad faith or intentional misconduct of XXX or its subcontractors. In no event shall XXX, its subsidiaries or subcontractors, or their respective personnel be liable for any loss of use, data, goodwill, revenues or profits (whether or not deemed to constitute a direct Claim), or any consequential, special, indirect, incidental, punitive or exemplary loss, damage, or expense, relating to this engagement. In circumstances where any limitation on damages or indemnification provision hereunder is unavailable, the aggregate liability of Contractor, its subsidiaries and subcontractors, and their respective personnel for any Claim shall not exceed an amount that is proportional to the relative fault that the conduct of Contractor and its subcontractors bears to all other conduct giving rise to such Claim.</i></p> <p><b>3. Client Responsibilities.</b></p> <p>a) <i>Client shall cooperate with Contractor hereunder, including, (i) providing Contractor with reasonable facilities and timely access to data, information and personnel of Client; (ii) providing experienced and qualified personnel having appropriate skills to perform their assigned tasks and duties in a competent and timely fashion; (iii) providing a stable, fully functional system infrastructure environment which will support the Services and allow Contractor and Client to work productively; and (iv) promptly notifying Contractor of any issues, concerns or disputes with respect to the Services.</i></p> <p>b) <i>Client shall be solely responsible for, among other things, (i) the performance of its personnel and agents; (ii) making all management decisions and performing all management functions; (iii) designating a competent management</i></p>

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			<p>member to oversee the Services; (iv) the accuracy and completeness of Client data and information ("<b>Client Data</b>") provided to Contractor for purposes of the performance of the Services; (v) providing or procuring all third party data and information ("<b>Third Party Data</b>") to be used in the performance of the Services or in the development or use of the Algorithmic Solutions or other Deliverables; (vi) removing Sensitive Information (as defined below) from all Client Data and Third Party Data prior to such data being provided to Contractor; (vii) approving all variables used in the Algorithmic Solutions; (viii) evaluating the adequacy and results of the Services; and (ix) accepting responsibility for the results of the Services. The term "<b>Sensitive Information</b>" means any of the following information: an individual's name, social security number; driver's license number; state identification number; financial account number; credit or debit card number; passport number; date of birth; mother's maiden name; health insurance policy or subscriber identification number; racial or ethnic origin; political opinions; religious or philosophical beliefs; trade union membership; sexual orientation; health insurance claims history or health insurance application information; or information relating to an individual's past, present, or future physical or mental health or condition, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual.</p> <p>c) Client represents and warrants that (i) all Client Data and Third Party Data that it provides to, or procures for use by, Contractor in connection with the performance of Services will be obtained in accordance with all applicable laws, regulations or regulatory guidance, including the Fair Credit Reporting Act, ("<b>Applicable Law</b>"); (ii) use of Client Data and Third Party Data for the purposes and in the manner contemplated in the Engagement Letter will not violate any Applicable Law; and (iii) Client will not use the Deliverables, or any results produced by the use of the Deliverables, for any purpose, or in any manner, that would violate any Applicable Law. Without limiting the foregoing, Client shall not use the Deliverables, or any results produced by use of the Deliverables, for the purpose of making employment or credit decisions about an individual, denying or cancelling insurance coverage for an individual, setting rates for an individual's insurance coverage or otherwise taking any adverse action against an individual.</p> <p>d) Contractor's performance is dependent upon the timely and effective satisfaction of Client's responsibilities hereunder and timely decisions and approvals of Client in connection with the Services. Contractor shall be entitled to rely on all decisions and approvals of Client.</p> <p><b>4. Confidentiality and Use.</b></p> <p>a) To the extent that, in connection with this engagement, either party (each, the "receiving party") comes into possession of any confidential information of the other (the "disclosing party"), it will not disclose such information to any third party without the disclosing party's consent, using at least the same degree of care as it employs in maintaining in confidence its own confidential information of a similar nature, but in no event less than a reasonable degree of care. The disclosing party hereby consents to the receiving party disclosing such information (i) as expressly set forth in the Engagement Letter, (ii) to subcontractors, whether located within or outside of the United States, that are providing services in connection with this engagement and that have agreed to be bound by confidentiality obligations similar to</p>

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			<p><i>those in this Section 11(a), (iii) as may be required by law, regulation, judicial or administrative process, or in accordance with applicable professional standards or rules, or in connection with litigation pertaining hereto, or (iv) to the extent such information (A) is or becomes publicly available other than as the result of a disclosure in breach hereof, (B) becomes available to the receiving party on a nonconfidential basis from a source that the receiving party believes is not prohibited from disclosing such information to the receiving party, (C) is already known by the receiving party without any obligation of confidentiality with respect thereto, or (D) is developed by the receiving party independently of any disclosures made to the receiving party hereunder. In addition, if Client is an attest client of any affiliate or related entity of Contractor, any such information may be used by any affiliate or related entity of Contractor in the context of its professional obligations as the independent accountants for Client. Nothing in this Section 11(a) shall alter Client's obligations under Section 11(b). Contractor, however, may use and disclose any knowledge and ideas acquired in connection with the Services to the extent they are retained in the unaided memory of its personnel.</i></p> <p><i>b) All Services and Deliverables shall be solely for Client's benefit, and are not intended to be relied upon by any person or entity other than Client. Client shall not disclose the Services or Deliverables, or refer to the Services or Deliverables in any communication, to any person or entity other than the Client except as specifically set forth in the Contract.</i></p> <p><u>Answer</u></p> <ol style="list-style-type: none"> <li>1. Agreed to by MSF, in Section 19 (as amended), see question 15.</li> <li>2. Not agreed to by MSF.</li> <li>3. Not agreed to by MSF.</li> <li>4. Not agreed to by MSF.</li> </ol>
18.	14	3.3.2.1	<p><u>Question</u>            Section 3.3.2.1 seems to be based on the assumption that the offeror is planning to re-use an existing, or pre-built, predictive model, against which the MSF data will be evaluated "on paper" before the POC is initiated. Is the use of a pre-existing model a requirement for a vendor to participate and/or pass the Readiness Assessment phase?</p> <p><u>Answer</u></p>

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			<p>No, MSF does not require the use of an existing or pre-built model for the Readiness Assessment. MSF is requiring each selected vendor to prepare a Readiness Assessment report summarizing specific information as noted in the RFP. The objective of the Readiness Assessment is to evaluate whether MSF data appears to be sufficient in the opinion of the vendor to develop a reasonably predictive model for our purposes.</p>
19.	13-14	3.2.2	<p><u>Question</u>          Is MSF expecting the scoring service to provide, beside a severity (or risk level) for each scored claim also a claim-level ranking of factors which contributed to the score, or is a “model-level” representation of the factors and their importance deemed sufficient in providing MSF’s staff with a good explanation of the scoring system.</p> <p><u>Answer</u>          We are not entirely clear what is meant by “claim-level” versus “model-level”. We would expect the service to be able to report what variables on an individual claim in the context of the model are most influential in determining the identifications we are interested in, i.e. whether a claim is suitable for auto-adjudication (low severity) or is a high risk claim (high but unrecognized severity), as defined in the RFP.</p>
20.	13	3.2	<p><u>Question</u>          In terms of providing some technical background about the MSF current process...Does the MSF maintain and operate a data-warehouse that stores all the relevant information relevant to the workers comp and occupational injury program?</p> <p><u>Answer</u>          Yes</p>

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21.	13	3.2	<p><u>Question</u>            In terms of providing some technical background about the MSF current process...Does the data warehouse, or any other system maintain historical data beyond just claims, such as employer policy history, premium payment history, etc.? How far back might such information be available?</p> <p><u>Answer</u>            Yes, our data warehouse contains employer policy and payment historical data back to 1994.</p>
22.	13	3.2.1	<p><u>Question</u>            In the phrase "20% of our new claims fall into this category", does "this category" refer to claims routed or claims paid under a reservation of rights?</p> <p><u>Answer</u>            Both. Approximately 20% of our claims are processed automatically without human intervention (auto adjudication) and are paid under a reservation of rights.</p>
23.	13	3.2.2	<p><u>Question</u>            Does MSF collaborate with other state agencies, such as workforce commission etc. to gather third party information on employers, employee work history, or other employment-related data?</p> <p><u>Answer</u>            MSF does not currently systematically gather such data from other state agencies. Such information may be sought on a case-by-case basis as needed.</p>

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24.	13	3.2.2	<p><u>Question</u> Can you provide a list of the external data sources already available to MSF?</p> <p><u>Answer</u> MSF does not currently systematically gather external data. Such information may be sought on a case-by-case basis as needed.</p>
25.	16	3.3.4.1	<p><u>Question</u> Referring to bullet #1 on page 16, what type of built-in capabilities does Guidewire ClaimCenter provide for integration?</p> <p><u>Answer</u> There are no built-in integration capabilities within Guidewire.</p>
26.	16	3.3.4.1	<p><u>Question</u> Referring to bullet #1 on page 16, the phrase “could then be used by Guidewire” implies there are other MSF claim systems or claim-related systems. Are there other claim or claim-related systems that the MSF desired solution will need to integrate with, and if so, please provide a system name, functional description and types of built-in capabilities the system provides for integration.</p> <p><u>Answer</u> No, there are no other claim or claim-related systems. However, we may choose to use our data warehouse as a repository for vendor-supplied output/information.</p>

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27.	13	3.2.1	<p><u>Question</u>  <i>“Throughout the life of a claim there could be additional information received, or claims development that would lead an MSF claim examiner to update reserves, such as attorney involvement, escalating medical co-morbidities, and job return or placement.”</i></p> <p>The RFP nominates certain models; including at FROI and 45 days development of the claim. Would the MSF be accepting of additional models that predict the time and claims on which certain critical events occur that are drivers of significant cost changes? Amongst others, the most obvious example of this being the prediction of the attorney involvement.</p> <p><u>Answer</u></p> <p>MSF is primarily interested in the 3 areas of interest noted in 3.3.2.2 Proof of Concept Demonstration. MSF would also consider a vendor’s suggestions for additional models and/or time events as a future project. Section 3.3.4.6 allows for submission of additional claim analytics applications that a vendor would want to offer MSF for consideration as future business plans develop.</p>
28.	13-14 & 17	3.2.2 3.3.4.5	<p><u>Question</u>  <i>“MSF will provide the detail data in its claims and financial systems in order to allow the Offeror to develop the statistical model with the addition of various external data sources/elements as optional.”</i>      and section 3.3.4.5  <i>“Indicate whether the proposed source is publically available. “Publically available information” means information available through the normal stream of commerce, legally obtainable for use within the State of Montana and available under Montana law and constitution, including, but not limited to Internet and various social media websites.”</i></p> <p>Is it a problem for the MSF if some of these external variables come with a small one time or small</p>

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			<p><b>annual cost?</b></p> <p><u>Answer</u></p> <p>MSF requests the vendor to describe the external data proposed within section 3.3.4.5. MSF is not opposed to the additional cost if it meets our definition of publically available and provides value to the predictability of the claims. Any additional costs should be included within this section and referenced within section 5.1 Cost Proposal.</p>
29.	13-14	3.2.2	<p><u>Question</u>  <i>"The model should allow for recalibration based on observed results, additional data sources/elements, and changes to business rules and processes over time."</i></p> <p><b>Does MSF desire to have the ability to recalibrate the models internally?</b></p> <p><b>Does MSF desire to be able to make a series of related, but different models internally?</b></p> <p><u>Answer</u></p> <p>MSF is interested in having the model periodically recalibrated as needed. MSF would work with the servicing vendor to determine the most practical and efficient division of labor between internal MSF staff resources and vendor resources. MSF may be interested, as a future consideration, to be able to deploy additional claim analytics applications as business plans develop (e.g. fraud, subrogation, attorney involvement, etc.). MSF currently does not have, and currently does not plan to develop, internal predictive modeling capabilities.</p>
30.	15-16	3.3.4.1	<p><u>Question</u>  <i>"The Offeror will describe their service delivery model solution and how the results are delivered to MSF, i.e.</i></p>

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			<p><i>Offeror external web port, e-mail based solution, full integration, etc.”</i></p> <p>Does MSF have a preferred method of delivery? Does MSF have preferred delivery architectural structures?</p> <p><u>Answer</u></p> <p>MSF does not have a preferred method of delivery or architectural structure.</p>
31.	15-16	3.3.4.1	<p><u>Question</u></p> <p><i>“Demonstrate how you would return a score and reason message output that could then be used by Guidewire’s ClaimCenter version 7.0 for further workflow assignments and business process integration if applicable.”</i></p> <p>What access, if any, will be provided to either MSF or Guidewire staff during the RFP process to ensure an appropriate integration between the Offeror’s solution and MSF’s Guidewire system?</p> <p><u>Answer</u></p> <p>There will be no integration contemplated for the readiness assessment or proof of concept phases of this work. Therefore, access to MSF staff for integration within those two phases will not be necessary.</p> <p>Should MSF proceed with a production environment, access to MSF staff will be appropriate to assure successful integration with the selected vendor. There is no access to Guidewire staff, as there is no anticipated change to the Guidewire ClaimCenter Version 7.0 product. The intent is, should MSF proceed to a production environment, the selected vendor and MSF will work together to modify the MSF systems such that work queues integrated within the Guidewire system could be created to alert claims examiners or management that additional information from the vendor is available for review and action.</p>

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32.	15-16	3.3.4.1	<p><u>Question</u>  <i>“Based on claim development and additional data over the life of the claim, the Offeror should include the ability to rescore claims on a schedule or based on specific triggers.”</i>  <b>Does MSF have a list of currently expected rescore triggers?</b></p> <p><u>Answer</u>          MSF is requesting the vendors to propose re-score triggers based upon their expertise with claim analytic solutions.</p>
33.			<p><u>Question</u>          What information for the predictive model does MSF require for referrals to the special investigative unit?</p> <p><u>Answer</u>          MSF is primarily interested in the 3 areas of interest noted in 3.3.2.2 Proof of Concept Demonstration. MSF would consider a vendor’s suggestions for additional models and/or time events as a future project. Section 3.3.4.6 allows for submission of additional claim analytics applications that a vendor would want to offer MSF for consideration as future business plans develop.</p>