

MASTER CONTRACT FOR INFORMATION TECHNOLOGY (IT) SERVICES SPB15-2895P

THIS CONTRACT is entered into by and between the State of Montana, Department of Administration, State Financial Services Division, (State), whose address and phone number are PO Box 200102, Helena MT 59620-0102, (406) 444-2575 and _____, (Contractor), whose address and phone number are _____ and _____.

1. EFFECTIVE DATE, DURATION, AND RENEWAL

1.1 Contract Term. The Contract's initial term is July 1, 2016, (or upon contract execution), through June 30, 2018, unless terminated earlier as provided in this Contract. In no event is this Contract binding on the State unless the State's authorized representative has signed it. The legal counsel signature approving legal content of the Contract and the procurement officer signature approving the form of the Contract do not constitute an authorized signature.

1.2 Contract Renewal. The State may renew this Contract under its then-existing terms and conditions in two-year intervals, or any interval that is advantageous to the State. This Contract, including any renewals, may not exceed a total of ten years.

2. COST ADJUSTMENTS

Cost Increase by Mutual Agreement. Cost adjustments to any Tier II amendment under the Master Contract shall be by mutual agreement of the parties to this Contract and the ordering agency.

3. SERVICES AND/OR SUPPLIES

3.1 Tier Two Model. The Master Contract for IT Services is a two-tier model.

3.1.1 Tier One is the process through which Contractors are prequalified. The selection criteria for Tier One consist of company project experience and references. Rates/cost and staff qualifications are not part of Tier One and thus not included in this Contract. They will be included in the Tier Two Procedure.

3.1.2 Tier Two utilizes a selection procedure to select a Contractor for specific project tasks under a statement of work (SOW), or staff augmentation under a Position Description, issued by the ordering agency.

Selection of a Contractor will be dependent on the value of each project initiated under the Master Contract. For projects with an estimated cost of \$5,000 or less, the agency may directly select any contractor. For projects with an estimated cost of between \$5,000 and \$25,000, agency personnel must solicit responses from at least three prequalified Contractors before making a selection.

Projects with an anticipated value of over \$25,000 are competed through a Contractor Engagement Proposal (CEP) through which responses can be solicited from all prequalified Contractors. CEP solicitations are web-based, where the ordering agency will post a detailed statement of work (SOW) or Position Description, along with the project/engagement requirements and selection criteria, to the Montana Acquisition & Contracting System (eMACS) [Vendor Portal](#). It is the Contractor's responsibility to maintain appropriate eMACS registration in order to receive notices of CEP solicitation opportunities.

Agency personnel will review and evaluate the responses according to criteria included in the CEP, and select the Contractor with the highest overall rating. Cost may not be the only deciding factor in contractor selection.

3.1.3 Tier Two Scoring Framework. The following categories may be used by the ordering agency to define the selection criteria. The information requested, and the detail required will depend on the agency's needs, as well as the project's cost, risk, and complexity.

- **Contractor Experience in Providing Services (Company Qualifications)**

The Contractor shall describe their experience and specific talents in providing the services being sought. This may include number of years providing services, company background information, references, work samples, etc.

- **SOW Understanding and Contractor's Approach/Methodology**

The Contractor shall provide a response stating that they have read and understand the SOW and provide information on how they will satisfy the requirements in the SOW. The Contractor will also identify any expected variances between the SOW requirements and how the Contractor will complete the project.

- **Project Schedule (May be in SOW)**

The Contractor shall provide a detailed schedule, including start date, milestone completion dates, and a project completion date that will conform to agency requirements. The Contractor may also be required to identify possible schedule issues and how they would deal with them.

- **Staff and Resources**

The Contractor shall identify the staff and other resources it plans to utilize to complete the project. The ordering agency will request staff resumes or other supporting documentation for proof of experience.

- **Project Cost**

The Contractor shall provide the total project cost, and/or the cost per milestone.

Note: The ordering agency will determine the weighting factors depending on project/agency needs. Each category may be evaluated using a scoring guide the same or similar to the guide in Section 4 of RFP15-2895P. Cost is usually scored by comparing each proposed cost to the lowest cost. The lowest cost will receive the maximum points; the higher costs get fewer points based on its relationship to the lowest cost.

3.2 Subcontracting. Subcontracting will only be allowed when a prequalified, approved Contractor under the Master Contract will complete a significant portion of the project. The State will make the determination of significant portion on an individual basis. The Contractor shall be prime, and responsible for all acts and omissions of all subcontractor(s). In no situation will the State allow for the majority of the work to be completed under the Master Contract by a non-approved subcontractor.

3.3 Responsibilities. The following outlines the responsibilities of the Parties:

3.3.1 State Information Technology Services Division (SITSD).

- Review and approve all IT procurement requests between the Contractor and individual State agencies.
- Review and approve all requests by Contractor to obtain a subcontractor(s).
- Assist agencies with the Tier Two selection process.

3.3.2 State Procurement Bureau (SPB).

- Approve any request for exception to the Tier Two process over an agency's delegated authority level.
- Provide contract management, and project oversight.
- Review and approve all Contracts and amendments.

3.3.3 Ordering Agency.

- Develop procurement request / CEP documents.
- Submit to SPB for approval.
- Develop Statement of Work (SOW) or Position Description (for staff augmentation).
- Provide project management.

- Keep SPB informed during the planning and implementation phases.
- Provide the final SOW (or Position Description) Amendment to SITSD for approval.

3.3.4 Contractor.

- Provide qualified personnel to ordering agency to discuss and negotiate initial project deliverables.
- Must obtain written approval from SITSD before beginning any work on any project.
- Comply with all aspects of the SOW and procurement request.
- Responsible for any subcontractor(s) as outlined in the procurement request.
- Provide resumes and/or supporting documentation upon request to SPB and/or ordering agency in order to verify that staff assigned to the project meet qualifications as proposed.
- Provide a Contract Manager and a Project Manager if/as necessary.
- Provide quarterly reports and any ad hoc reports upon request to the SPB Contract Manager. The SPB Contract Manager will determine report specifications, which are subject to change.

3.3.5 Contractor Reporting Requirement. The Contractor will provide a quarterly report by the 10th of the month following each quarter (due: OCT 10th / JAN 10th / APR 10th / JUL 10th). The report shall be self-entered using the Contractor's ePass account - via the State's ePass Montana website: <https://app.mt.gov/epass/epass>. The website is programmed to require completing the minimum required information in order for each report submission to be successfully entered, e.g. the Contract number (SPB15-2895P- __), and the total dollar amount that you invoiced the State during the quarter being reported.

Reports are not required for quarterly period which there was no contract activity.

Failure to provide reports in a timely manner may result in suspension from the Contract. Consistent failure to provide reports per this clause may result in termination of Contract.

4. WARRANTIES

4.1 Warranty for Services. The Contractor warrants that it performs all services using reasonable care and skill and according to its current description (including any completion criteria) contained in this contract. State agrees to provide timely written notice of any failure to comply with this warranty so that the contractor can take corrective action.

4.2 Warranty for Software. For a period of ninety (90) days from the date of receipt of software, the Contractor warrants that: (i) the unmodified software will provide the features and functions, and will otherwise conform to all published documentation including on the 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.

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

The parties agree that the warranties set forth above do not require uninterrupted or error-free operation of hardware or services unless otherwise stated in the specifications.

These warranties are the State's exclusive warranties and replace all other warranties or conditions, express or implied, including, but not limited to, the implied warranties or conditions of merchantability and fitness for a particular purpose.

5. CONSIDERATION/PAYMENT

5.1 Payment Schedule. In consideration for the services to be provided, the State shall pay within 30 days of receipt of a properly executed invoice and acceptance of all services. Each individual SOW or Position Description amendment issued under this Contract will have specific payment terms.

5.2 Withholding of Payment. The 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, the State may withhold payment only for such specific milestone if and until the subject milestone criteria are met. Contractor is not relieved of its performance obligation if such payment(s) is withheld.

5.3 Payment Terms. Unless otherwise noted in the Statement of Work, the State has thirty (30) days to pay invoices, as allowed by 17-8-242, MCA. Contractor shall provide banking information at the time of contract execution in order to facilitate the State's electronic funds transfer payments.

5.4 Reference to Contract. The contract number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the contract. If the number is not provided, the State is not obligated to pay the invoice.

6. COOPERATIVE PURCHASING

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

7. NON-EXCLUSIVE CONTRACT

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

8. ACCESS AND RETENTION OF RECORDS

8.1 Access to Records. Contractor shall provide the State, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance. The State may terminate this contract under section 22, without incurring liability, for the Contractor's refusal to allow access as required by this section. (18-1-118, MCA.)

8.2 Retention Period. Contractor shall create and retain all records supporting the services provided for a period of eight years after either the completion date of this contract or termination of the contract.

9. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

Contractor may not assign, transfer, or subcontract any portion of this contract without the State's prior written consent. (18-4-141, MCA.) Contractor is responsible to the 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 the State under this contract.

10. HOLD HARMLESS/INDEMNIFICATION

10.1 General Indemnification. Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this contract.

10.2 Additional Indemnification. Claims under this provision include those arising out of or that are in any way connected with Contractor's breach of this contract, including any Claims asserting that any of Contractor's employees are employees or common law employees of the State or any of its agencies, including, but not limited to, excise taxes or penalties imposed on the State under Internal Revenue Code ("Code") §§ 4980H, 6055 or 6056.

11. LIMITATION OF LIABILITY

Contractor's liability for contract damages is limited to direct damages and further to no more than twice the contract amount. Contractor shall not be liable for special, incidental, consequential, punitive, or indirect damages. Damages caused by injury to persons or tangible property, or related to intellectual property indemnification, or indemnification under Section 10, are not subject to a cap on the amount or type of damages.

12. REQUIRED INSURANCE

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

12.2 Primary Insurance. Contractor's insurance coverage shall be primary insurance with respect to the State, its officers, officials, employees, and volunteers and shall apply separately to each project or location. Any insurance or self-insurance maintained by the State, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

12.3 Specific Requirements for Commercial General Liability. Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of \$1,000,000 per occurrence and \$2,000,000 aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

The State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor, products, and completed operations, and the premises owned, leased, occupied, or used.

12.4 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by the State. At the request of the State either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the State, its officers, officials, employees, or volunteers; or (2) at the expense of Contractor, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses.

12.5 Certificate of Insurance/Endorsements. A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages, has been received by the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. Contractor must notify the State immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

13. 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, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are State employees. This insurance/exemption must be valid for the entire contract term and any renewal. Upon expiration, a renewal document must be sent to the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135.

14. COMPLIANCE WITH LAWS

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

15. COMPLIANCE WITH THE AFFORDABLE CARE ACT

15.1 Contractor is Employer. Contractor is the employer and, therefore, responsible for providing healthcare benefits for its employees under the Affordable Care Act. Contractor states that all individuals who perform services for an agency of the State are and at all times shall remain Contractor's employees / common law employees. Contractor further acknowledges and agrees that, throughout the term of this contract, Contractor retains the right to direct and control its employees.

15.2 State Benefit Plans. Contractor agrees and acknowledges that it, its employees or common law employees are not entitled to participate in any of the benefit plans or programs that the State now or hereafter maintain for its employees. If any state or federal court, or any local, state or federal government agency, division or other related government entity, shall determine that Contractor, its employees, or common law employees, are considered an employee or common law employee of the State, or if for any reasons Contractor, its agents or employees, were to meet the eligibility criteria with respect to any benefit plan or program now or hereafter available to State employees or otherwise become eligible to participate in any State-sponsored benefit plans or programs, Contractor, its employees or common law employees, waive any right to participate in, either retrospectively or prospectively, or receive any benefits under any State-sponsored benefit plans or programs. This waiver of any right to participate in State-sponsored employee benefit programs represents a material component of the terms and compensation agreed to by these parties and is not in any way conditioned on any representation or assumption concerning status of Contractor, its agents, or employees, with respect to the State, as employee, common law employee, independent contractor or temporary employee.

15.3 Contractor Provided Health Care Coverage. If Contractor is an applicable large employer

under the Affordable Care Act, Contractor shall offer to all its employees or common law employees who perform services for the State under this contract for more than 29 hours a week and their dependents under age 26 health care coverage under its health care plans. Such coverage must provide minimum essential coverage and minimum value, be affordable for purposes of the employer responsibility provisions under Section 4980H of the Code, and otherwise satisfy the requirements of Code § 4980H if provided by the State.

15.4 Reporting Requirements. Contractor further states that it shall satisfy all reporting requirements under Code §§ 6055 and 6056 for Contractor's employees or common law employees who perform services for the State.

15.5 Auditing. The State may audit Contractor's operations to ensure that Contractor has complied with the statements made above.

16. DISABILITY ACCOMMODATIONS

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

17. TECHNOLOGY ACCESS FOR BLIND OR VISUALLY IMPAIRED

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

18. REGISTRATION WITH THE SECRETARY OF STATE

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with 35-1-1026 and 35-8-1001, MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

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

19. INTELLECTUAL PROPERTY/OWNERSHIP

19.1 Mutual Use. Contractor shall make available to the 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 the 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 the State under this contract; (ii) any program code, or site-related program code that Contractor has created, developed, or prepared under or primarily in support of the

performance of its specific obligations under this contract; and (iii) manuals, training materials, and documentation. All information described in (i), (ii), and (iii) is collectively called the "Work Product".

19.2 Title and Ownership Rights. The 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 the State (the "Content"), but grants Contractor the right to access and use Content for the purpose of complying with its obligations under this contract and any applicable statement of work.

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

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

19.5 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 the State (the "Contractor Pre-existing Materials"). Contractor Pre-existing Materials are not Work Product. Contractor shall provide full disclosure of any Contractor Pre-Existing Materials to the State before its use and to prove its ownership. If, however, Contractor fails to disclose to the State such Contractor Pre-Existing Materials, Contractor shall grant the State a nonexclusive, worldwide, paid-up license to use any Contractor Pre-Existing Materials embedded in the Work Product to the extent such Contractor Pre-Existing Materials are necessary for the State to receive the intended benefit under this contract. Such license shall remain in effect for so long as such Pre-Existing Materials remain embedded in the Work Product. Except as otherwise provided for in Section 19.3 or as may be expressly agreed in any statement of work, Contractor shall retain title to and ownership of any hardware it provides under this contract.

20. PATENT AND COPYRIGHT PROTECTION

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

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

21. CONTRACT OVERSIGHT

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

21.2 Right to Assurance. If the State, in good faith, has reason to believe that Contractor does not intend to, is unable to, or has refused to perform or continue performing all material obligations under this contract, the 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 the State's option, be the basis for terminating this contract and pursuing the rights and remedies available under this contract or law.

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

22. CONTRACT TERMINATION

22.1 Termination for Cause with Notice to Cure Requirement. The State may terminate this contract in whole or in part for Contractor's failure to materially perform any of the services, duties, terms, or conditions contained in this contract after giving Contractor written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

22.2 Termination for Cause with Notice to Cure Requirement. Contractor may terminate this contract for the State's failure to perform any of its duties under this contract after giving the State written notice of the failure. The written notice must demand performance of the stated failure within a specified period of time of not less than 30 days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

22.3 Reduction of Funding. The State must by law terminate this contract if funds are not appropriated or otherwise made available to support the State's continuation of performance of this contract in a subsequent fiscal period. (18-4-313(4), MCA.) If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, the State shall terminate this contract as required by law. The State shall provide Contractor the date the State's termination shall take effect. The State shall not be liable to Contractor for any payment that would have been payable had the contract not been terminated under this provision. As stated above, the State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date the State's termination takes effect. This is Contractor's sole remedy. The State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

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

23. EVENT OF BREACH – REMEDIES

23.1 Event of Breach by Contractor. Any one or more of the following Contractor acts or omissions constitute an event of material breach under this contract:

- Products or services furnished fail to conform to any requirement;
- Failure to submit any report required by this contract;
- Failure to perform any of the other terms and conditions of this contract, including but not limited to beginning work under this contract without prior State approval or breaching section 28.1 obligations; or
- Voluntary or involuntary bankruptcy or receivership.

23.2 Event of Breach by State. The State's failure to perform any material terms or conditions of this contract constitutes an event of breach.

23.3 Actions in Event of Breach. Upon Contractor's material breach, the State may:

- Terminate this contract under Section 22.1 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 the State's material breach, Contractor may:

- Terminate this contract under section 22.2 and pursue any of its remedies under this contract, at law, or in equity; or
- Treat this contract as materially breached and, except as the remedy is limited in this contract, pursue any of its remedies under this contract, at law, or in equity.

24. FORCE MAJEURE

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

25. WAIVER OF BREACH

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

26. CONFORMANCE WITH CONTRACT

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

27. LIAISONS AND SERVICE OF NOTICES

27.1 Contract Manager. The State Contract Manager identified below is the State's Master Contract for IT Services point of contact and shall perform all contract management on the State's behalf. Written notices, requests, complaints, or any other issues regarding this Master Contract should be directed to the State Contract Manager.

Steve Haynes is the State's Contract Manager.
Montana Department of Administration
State Financial Services Division
State Procurement Bureau
125 N. Roberts, Helena, MT 59620-0135
Telephone: (406) 444-2516
E-mail: SHaynes@mt.gov

_____ is Contractor's Contract
Manager.
(Address):
(City, State, ZIP):
Preferred Telephone (Mobile or Office):

E-mail:

27.2 Notifications. The State's contract manager and Contractor's contract manager may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the contract manager. Notice may be provided by mail, personal service, and email. If notice is provided by personal service or email, the notice is effective upon receipt; if notice is provided by mail, the notice is effective within three business days of mailing. A signed and dated acknowledgement of the notice is required of both parties.

28. MEETINGS

28.1 Technical or Contractual Problems. Contractor shall meet with the 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 the State in the performance of their respective obligations, at no additional cost to the State. The State may request the meetings as problems arise and will be coordinated by the State. The 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.

28.2 Progress Meetings. During the term of this contract, the State's Contract Manager may plan and schedule progress meetings with Contractor to discuss Contractor's and the State's progress in the performance of their respective obligations. These progress meetings will include the State Contract Manager, and any other additional personnel involved in the performance of this contract as required. At each meeting, Contractor shall provide the 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 the 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.

28.3 Failure to Notify. If Contractor fails to specify in writing any problem or circumstance that materially affects the costs of its delivery of services or products, including a material breach by the 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.

28.4 State's Failure or Delay. For a problem or circumstance identified in Contractor's status report in which Contractor claims was the result of the State's failure or delay in discharging any State obligation, the State shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If the 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 the 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.

29. TRANSITION ASSISTANCE

If this contract is not renewed at the end of this term, if the contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor shall provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of this contract or particular work under this contract. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the State or its designees. The parties agree that such transition assistance is governed by the terms and conditions of this contract, except for those terms or conditions that do not reasonably apply to

such transition assistance. The State shall pay Contractor for any resources utilized in performing such transition assistance at the most current contract rates. If the State terminates a project or this contract for cause, then the State may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages the State may have sustained as a result of Contractor's breach.

30. CHOICE OF LAW AND VENUE

Montana law governs this contract. The parties agree that any litigation concerning this bid, proposal, or this contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees.

31. TAX EXEMPTION

The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

32. AUTHORITY

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

33. SEVERABILITY CLAUSE

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

34. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT

34.1 Contract. This contract consists of 14 numbered pages, any Attachments as required, Solicitation # RFP15-2895P, as amended, and Contractor's response, as amended. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

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

35. WAIVER

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

36. EXECUTION

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

STATE OF MONTANA
Department of Administration
State Financial Services Division
125 N. Roberts, Mitchell Building
Helena, Montana 59620

FEDERAL ID # _____

BY: Cheryl Grey / Administrator, State Financial Services Division

(Name/Title)

BY: _____

(Name/Title)

(Signature)

(Signature)

DATE: _____

DATE: _____

Approved as to Legal Content:

Legal Counsel (Date)

Approved as to Form:

Procurement Officer (Date)
State Procurement Bureau

Chief Information Officer Approval:

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

State Chief Information Officer (Date)
Department of Administration