

STATE OF MONTANA TERM CONTRACT

Department of Administration
 State Procurement Bureau
 165 Mitchell Building
 PO Box 200135
 Helena, MT 59620-0135
 Phone: (406) 444-2575 Fax: (406) 444-2529
 TTY Users-Dial 711
<http://gsd.mt.gov/>

T.C. #: SPB15-2662G
Title: Master Training Services Agreement
This is a non-exclusive contract.

CONTRACT TERM	FROM	July 9, 2014	CONTRACT STATUS	NEW (x)
	TO	June 30, 2015		RENEW ()
VENDOR ADDRESS	It's Elation, Inc. 2804 3 rd Avenue North Billings, MT 59101		ORDER ADDRESS	
ATTN:	Bruce Martin		ATTN:	
PHONE:	(406) 294-2402		PHONE:	
FAX:	N/A		FAX:	
E-MAIL:	Bruce.martin@elation.com		E-MAIL:	

PRICES: Per Contract Agreement
 DELIVERY: Per Contract Agreement
 F.O.B.: Per Contract Agreement
 TERMS: Per Contract Agreement

REMARKS: 

IFB/RFP No.: _____ Jodi Gollehon, CONTRACTS OFFICER DATE: 07/11/2014

AUTHORIZED SIGNATURE

MASTER TRAINING SERVICES AGREEMENT

15-2662G

THIS CONTRACT is entered into by and between the State of Montana, Department of Administration, General Services Division, State Procurement Bureau, (State) whose address and phone number are 125 North Roberts Street, Mitchell Building, Room 165, Helena, MT 59620, 406-444-2575 and It's Elation (Elation) (Contractor), whose address and phone number are P.O. Box 3294, Billings, MT 59103, 406-294-2402.

1. EFFECTIVE DATE, DURATION, AND RENEWAL

1.1 Contract Term. The contract's initial term is July 9, 2014, through June 30, 2015, 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 (subject to potential cost adjustments described below in section 2) in one-year intervals, or any interval that is advantageous to the State. This contract, including any renewals, may not exceed a total of seven years.

2. SERVICES AND/OR SUPPLIES

Contractor shall provide, on an as-needed basis, Business Engagement Training Services. Each training program will be individually designed based on agency's needs, and will be fully described in Task Order (Appendix A) signed by Contractor and using state agency.

3. WARRANTIES

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

4. CONSIDERATION/PAYMENT

4.1 Payment Schedule. In consideration of the training services provided, state agencies shall pay according to the payment schedule included in agreed upon Task order.

4.2 Withholding of Payment. In addition to its other remedies under this contract, at law, or in equity, the State may withhold payments to Contractor if Contractor has breached this contract. Such withholding may not be greater than, in the aggregate, 15% of the total value of the subject statement of work or applicable contract.

4.3 Payment Terms. Unless otherwise noted in the solicitation document, the State has 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.

4.4 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.

5. ACCESS AND RETENTION OF RECORDS

5.1 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 23, without incurring liability, for the Contractor's refusal to allow access as required by this section. (18-1-118, MCA.)

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

6. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

Contractor may not assign, transfer, or subcontract any portion of this contract without the State's prior written consent, which consent may not be unreasonably withheld or denied. (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.

7. HOLD HARMLESS/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.

8. REQUIRED INSURANCE

8.1 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.

8.2 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.

8.3 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.

8.4 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.

8.5 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.

9. 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.

10. COMPLIANCE WITH LAWS

Contractor shall, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including but not limited to, the Montana Human Rights Act, 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. Any subletting or subcontracting by Contractor subjects subcontractors to the same provision. In accordance with 49-3-207, MCA, 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 upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

11. 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.

12. 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>.

13. CONTRACT TERMINATION

13.1 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 (15). If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

13.2 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.

14. EVENT OF BREACH – REMEDIES

14.1 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:

- services provided 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;
- voluntary or involuntary bankruptcy or receivership.

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

14.3 Actions in Event of Breach.

Upon Contractor's material breach, the State may:

- terminate this contract under Section 13.1 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 14.2 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.

15. 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.

16. 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.

17. 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.

18. LIAISONS AND SERVICE OF NOTICES

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

Jodi Gollehon is the State's Contract Manager.
State Procurement Bureau
125 N. Roberts Street
Mitchell Building, Room 165
Helena, MT 59620-0135
Telephone: 406-444-2575
Fax: 406-444-2529
E-mail: Jgollehon@mt.gov

Bruce Martin is Contractor's Contract Manager.
It's Elation, Inc.
2804 3rd Avenue N.
Billings, MT 59101
Telephone: 406-294-2402
Cell Phone: 406-839-8227
E-mail: bruce.martin@elation.com

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

19. MEETINGS

19.1 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.

20. 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. (18-1-401, MCA.)

21. TAX EXEMPTION

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

22. AUTHORITY

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

23. 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.

24. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT

24.1 Contract. This contract consists of seven (7) numbered pages, Appendix A, and all signed Task Orders. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

24.2 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.

25. 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.

26. 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.

27. EXECUTION

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

STATE OF MONTANA
GENERAL SERVICES DIVISION
125 N. ROBERTS STREET
MITCHELL BLDG. ROOM 165
HELENA, MT 59620-135

IT'S ELATION, INC.
2804 3RD Avenue N.
BILLINGS, MT 59101
FEDERAL ID #

BY: _____
Steve Baiamonte, Administrator

BY: Bruce Martin
Bruce Martin, Director of Sales

SR

(Signature)

Bruce Martin

(Signature)

DATE: 9 July 2014

DATE: 7-9-14

Approved as to Legal Content:

Mike Mannon 7-9-14
Legal Counsel (Date)

Approved as to Form:

Edo Zeller 7/9/14
Procurement Officer (Date)
State Procurement Bureau

**TASK ORDER
MASTER TRAINAING SERVICES CONTACT, #15-2662G**

TASK ORDER – #

THIS TASK ORDER is entered into between the Department of _____, and Elation, Inc. This Task Order specifies the services and billing rate for Professional Business Training Services. All terms and conditions of Contract 15-2662G apply to this task order.

1. Describe services, outcomes, schedule, etc.

2. EFFECTIVE DATE AND PERIOD OF PERFORMANCE

The term of this Task Order will be xx months beginning at the Service Commencement Date (insert date) of the Business Training Engagement.

3. COMPENSATION

In consideration for the services to be provided, the Department shall pay the Contractor according to the following schedule:

**TASK ORDER
MASTER TRAINAING SERVICES CONTACT, #15-2662G**

4. Task Order Mangers. All communications related to this Task Order will be through the personnel identified below:

INSERT AGENCY NAME AND CONTACT INFORMATION

and

Elations, Inc.
Bruce Martin
2804 3rd Avenue N.
Billings, MT 59101

BY: _____ BY: _____
(Name/Title) (Name/Title)

BY: _____ BY: _____
(Signature) (Signature)

DATE: _____ DATE: _____