

**Attachment A
State's Terms and Conditions**

The following Terms and Conditions govern this Contract.

1. STANDARD OF CARE

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

2. CONSIDERATION/PAYMENT

2.1. [Fee/Payment] Schedule

[Option One Payment Schedule] State shall pay Contractor as follows: (insert pay schedule below).

[Option Two Fee Schedule] State shall pay Contractor the [Insert fee description] fee(s) in Exhibit [Enter Exhibit Identifier].

2.2. Withholding Payments

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

2.3. Payment Terms

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

2.4. 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, State is not obligated to pay the invoice.

3. TAXES

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

4. ACCESS AND RETENTION OF RECORDS

4.1. Access to Records

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

[Enter Contract Number]

[Enter Contract Name]

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4.2. Retention Period

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

5. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

5.1. Consent to Assign, Transfer or Subcontract

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

5.2. Contractor Responsible for Subcontractors

Contractor is responsible to State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and State under this Contract.

6. COMPLIANCE WITH LAWS

6.1 Contractor Lawful

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

6.2 Contractor is Employer

Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act (P.L. 111-148, 124 Stat. 119).

6.3 Nondiscriminatory Practices

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

6.1.A.1. the hiring of persons to fulfill Contractor's duties in this Contract will be made based on merit and qualifications; and

6.1.A.2. there will be no discrimination based on race, color, sex, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

Any subcontracting by Contractor obligates subcontractors to the above.

7. CHOICE OF LAW, VENUE, AND SOVEREIGNTY

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

8. DEFENSE, INDEMNIFICATION / HOLD HARMLESS

8.1. Indemnities by Contractor

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

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

8.2. Coordination of Defense

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

8.3. State Reimbursement

If Contractor fails to comply with its defense obligations under this section, State may undertake its own defense. If State undertakes its own defense, Contractor shall reimburse State for all costs to State resulting from: (A) settlements, judgments, losses, damages, liabilities, and penalties, fines; and (B) defense of

any Claim, including but not limited to attorney fees, court costs, and the costs of investigation, discovery, and experts.

9. REQUIRED INSURANCE

9.1. General Insurance Requirements

Contractor shall maintain for the duration of this Contract, at its cost and expense, insurance protecting State, its elected and appointed officials, agents, and employees against claims for bodily injury, death, personal injury, property damage, and contractual liability, which may arise from or in connection with the negligence of Contractor, its employees, agents, representatives, assigns, or subcontractors. This insurance must cover such claims as may be caused by any negligent act or omission. If Contractor maintains higher limits than the minimums required in this Contract, State is entitled to coverage up to the higher limits maintained by Contractor.

9.2. Primary Insurance

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

9.3. Deductibles and Self-Insured Retentions

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

9.4. Certificate of Insurance/Endorsements

A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages has been received by State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. The certificates must name the State of Montana as certificate holder, and Contractor shall provide copies of additional insured endorsements required by Contractor's commercial general liability and automobile liability policies. Contractor must notify State immediately of any material change in insurance coverage, such as changes in limits, coverages, or changes in status of policy. State reserves the right to require complete copies of insurance policies at all times.

9.5. Commercial General Liability

Contractor shall purchase and maintain coverage at least as broad as Insurance Services Form CG 00 01 covering commercial general liability (CGL) on an

“occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits of at least \$2,000,000 per occurrence and \$2,000,000 in the aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor or its employees, officers, officials, agents, representatives, assigns, or subcontractors.

NOTE: For political subdivisions of State (counties, cities, towns, and school districts) use this to replace above section language:

Contractor shall purchase and maintain coverage on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal and advertising injury with limits of at least \$750,000 per claim and \$1,500,000 per occurrence and \$2,000,000 in the aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor or its employees, officers, officials, agents, representatives, assigns, or subcontractors.(2-9-211, MCA.)

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

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

9.6. Compliance With Workers' Compensation Act

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for State of Montana in accordance with 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are State employees. This insurance/exemption must be valid for the entire Contract term and any renewal. Upon expiration, a renewal document must be sent to State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135.

10. CONTRACT TERMINATION

10.1. Termination for Cause with Notice to Cure Requirement

Either party may terminate this Contract for the other's failure to perform any of its duties under this Contract after giving written notice of the failure to the other. 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.

10.2. Termination for Convenience

State may, by written notice to Contractor, terminate this Contract without cause and without incurring liability to Contractor. State shall give notice of termination to Contractor at least 30 days before the effective date of termination. State will pay Contractor only that amount, or prorated portion thereof, owed to Contractor up to the date State's termination takes effect. This is Contractor's sole remedy. State is not liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

10.3. Reduction of Funding

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

10.4. Terrorism, Suspension or Debarment, or Otherwise Ineligible

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

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

11. TRANSITION ASSISTANCE

11.1. Transfer of Duties

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

11.2. Transfer Period

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

11.3. Payment

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

11.4. Records

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

11.5. Offset of Costs

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

12. FORCE MAJEURE

[Enter Contract Number]

[Enter Contract Name]

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

13. WAIVER

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

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

14. CONTRACT MANAGEMENT

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

15. SEVERABILITY

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

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