

Participating Addendum Number NVP_23025
for
COMPUTER EQUIPMENT, PERIPHERALS & RELATED SERVICES
between
The State of Montana
and
NetApp U.S. Public Sector, Inc.

This Participating Addendum is entered into by the State of Montana ("Participating Entity," "State") and the following Contractor (each a "Party" and collectively the "Parties") for the purpose of participating in NASPO ValuePoint Master Agreement Number 23025, executed by Contractor and the State of Minnesota for Computer Equipment, Peripherals & Related Services ("Master Agreement"):

NetApp U.S. Public Sector, Inc. ("Contractor")
8350 Broad St.
12th Floor
Tysons, VA 22102

I. PARTICIPATING ADDENDUM CONTACTS.

Contractor's contact for this Participating Addendum is:

Harry Franks
Sr. Contracts Manager
harry.franks@netapp.com
703.918.7317

Participating Entity's contact for this Participating Addendum is:

Grace Waring
Contracts Officer
Cooppurchasing@mt.gov
406-444-2516

- II. TERM.** This Participating Addendum is effective as of the date of the last signature below and will terminate upon termination of the Master Agreement, as amended, unless the Participating Addendum is terminated sooner in accordance with the terms set forth herein.
- III. PARTICIPATION AND USAGE.** The NASPO ValuePoint Master Agreement may be used by all State agencies, institutions of higher institution, political subdivisions and other entities authorized to use statewide contracts in the State of Montana. Issues of interpretation and eligibility for participation are solely within the authority of the State Chief Procurement Official.
- IV. GOVERNING LAW.** The construction and effect of this Participating Addendum and any Orders placed hereunder will be governed by and construed in accordance with federal and Participating Entity's State laws. Montana law governs this Contract. The parties agree that any litigation concerning this Contract, including Participating Addendum and Purchase Orders, 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.
- V. SCOPE.** Except as otherwise stated herein, this Participating Addendum incorporates the scope, pricing, terms, and conditions of the Master Agreement and the rights and obligations set forth therein as applied to Contractor and Participating Entity and Purchasing Entities.
- a. Equipment/Services.** Purchase or lease of Band 3 Computer Equipment (Servers and Storage) and related services available through the Master Agreement may be offered and sold or leased by Contractor to Purchasing Entities.
 - b. Contractor Partners.** All subcontractors, dealers, distributors, resellers, and other partners identified on Contractor's NASPO ValuePoint webpage as authorized to provide Products and Services to Participating Entity may provide Products and Services to users of this Participating Addendum. Contractor will ensure that the participation of Contractor's subcontractors, dealers, distributors,

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Between the State of Montana and
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resellers, and other partners is in accordance with the terms and conditions set forth in the Master Agreement and in this Participating Addendum.

Contractor shall notify State in writing of any amendment to the Master Agreement. Any amendment to the Master Agreement shall be deemed incorporated into this Participating Addendum unless the amendment is rejected by the Participating Entity in writing to Contractor within ten (10) calendar days of State's receipt of Contractor's written notice to State and is documented thereafter via written amendment hereto.

Any conflict between this Participating Addendum and the Master Agreement will be resolved in favor of the Participating Addendum.

VI. ATTACHMENTS. This Participating Addendum includes the following attachments:

- a. Attachment A: State's Modifications and Additions to Master Agreement 23025 Terms and Conditions;
- b. Attachment B: Federal Terms and Conditions; and
- c. NASPO ValuePoint Master Agreement No. 23025.

VII. ORDER OF PRECEDENCE.

- a. Participating Entity's Participating Addendum;
- b. State's Terms and Conditions (Attachment A);
- c. State's Federal Terms and Conditions (Attachment B); and
- d. The NASPO ValuePoint Master Agreement Number 23025, any Amendments and Attachments.

These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the Order listed above. Except for the terms included in the Attachment and Exhibits hereto, no other terms and conditions shall apply, including terms listed or referenced on the Contractor's website, in the Contractor's quotations or in similar documents subsequently provided by the Contractor, unless otherwise agreed by the Parties. Participating Entity's Participating Addendum and Attachments shall not diminish, change, or impact the rights of the Lead State with regard to the Lead State's contractual relationship with Contractor under the terms of the Master Agreement.

VIII. SUBMISSION OF PARTICIPATING ADDENDUM TO NASPO VALUEPOINT. Upon execution, Contractor shall email a copy of this Participating Addendum and any amendments hereto to NASPO ValuePoint at pa@naspovaluepoint.org. While Participating Entity will maintain the official record of this Participating Addendum, the Parties agree that this Participating Addendum, as amended, may be published on the NASPO ValuePoint website.

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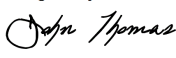
Between the State of Montana and
NetApp U.S. Public Sector, Inc.

SIGNATURE

The undersigned for each Party represents and warrants that this Participating Addendum is a valid and legal agreement binding on the Party and enforceable in accordance with the Participating Addendum's terms and that the undersigned is duly authorized and has legal capacity to execute and deliver this Participating Addendum and bind the Party hereto.

IN WITNESS WHEREOF, the Parties have executed this Participating Addendum.

PARTICIPATING ENTITY:

Signed by:

49E3FEEF749664B6...
Signature

John Thomas


Printed Name

Chief Procurement Officer


Title

9/16/2024


Date

Signed by:

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Signature
Date
Legal Counsel

9/5/2024

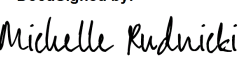
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Signature
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Procurement Officer

9/6/2024

DocuSigned by:

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Signature
Date
Chief Information Officer

9/10/2024

CONTRACTOR:

DocuSigned by:

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Signature

Michelle Rudnicki

Printed Name

President

Title

9/10/2024

Date

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.

Attachment A: State's Modifications and Additions to Master Agreement 23025 Terms and Conditions

The following terms and conditions govern during the term of the Participating Addendum (PA).

1. PAYMENT TERM

All payment terms are computed from the date of delivery of supplies or services OR receipt of a properly executed invoice, whichever is later. State is allowed 30 days to pay such invoices. All contractors are required to provide banking information at the time of PA execution in order to facilitate State electronic funds transfer payments.

Withholding of Payment. 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, Purchase Order, or applicable contract. With respect to payments subject to milestone acceptance criteria, State may withhold payment only for such specific milestone if and until the subject milestone criteria are met. Contractor is not relieved of its performance obligation if such payment(s) is withheld.

2. U.S. FUNDS

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

3. REFERENCE TO PA

The Purchase Order number MUST appear on all invoices, packing lists, packages, and correspondence pertaining to the PA contract.

4. STATE OF MONTANA ADMINISTRATIVE FEE

The State of Montana assesses an Administrative Fee of one and one-half percent (1.50%) for all net sales (sales less credits and returns) made under this Contract. The prices paid to Contractor must include the 1.5% Administrative Fee. Contractor shall remit this Administrative Fee concurrent with the Required Usage Reporting described below. The Administrative Fee must be submitted by ACH along with email notification to State of Montana Contract Officer (CO). This Administrative Fee is effective upon execution of this PA.

5. REQUIRED REPORTING

Contractor shall submit quarterly reports to the CO assigned by State to manage this Contract. Contractor shall provide CO with an electronic usage report (Excel), which must list the following information at the minimum: purchasing entity; description of items purchased; date of purchase; contract price; and the extended price for each

transaction. These reports are due no more than 30 days after the end of the quarter as follows:

First Quarter: July 1 through September 30;
Second Quarter: October 1 through December 31;
Third Quarter: January 1 through March 31; and
Fourth Quarter: April 1 through June 30.

6. TAXES

- 6.1. **Payment.** Contractor shall pay all property and sales taxes, if any.
- 6.2. **Exemption.** State of Montana is exempt from Federal Excise Taxes (#81-0302402), except as otherwise provided in the federal Patient Protection and Affordable Care Act [P.L. 111- 148, 124 Stat. 119].
- 6.3. **Certificate.** All purchasers under this PA shall provide Contractor with a tax exemption certificate for all purchases.

7. SHIPPING AND DELIVERY

Contractor shall provide Participating Entity the same Shipping and Delivery as it has provided the State of Minnesota in the Master Agreement.

8. INSURANCE

Contractor shall provide the Participating Entity the same insurance as it has provided the State of Minnesota in the Master Agreement and include the Participating Entity as an additional insured on these policies as it has the State of Minnesota. Electronic delivery of certificates of insurance and any endorsements shall be sent to the Primary Contact for the Participating Entity.

Contractor warrants that it performs all services using reasonable care and skill and in accordance with generally accepted industry practices. State agrees to provide timely written notice of any failure to comply with this warranty so that Contractor can take corrective action.

9. RECORD ACCESS AND RETENTION

- 9.1. **Access to Records.** Contractor shall provide State, the Montana legislative auditor, or its authorized agents access to any records necessary to audit for Contract compliance. State may terminate this Agreement, without incurring liability, for Contractor's refusal to allow access as required by this Section. (18-1-118, MCA.)
- 9.2. **Retention Period.** Contractor shall retain all records related to this Contract for 8

years following the termination or expiration of this Contract.

10. ASSIGNMENT, TRANSFER AND SUBCONTRACTING

Contractor shall not assign, transfer or subcontract any portion of this Contract without the express written consent of State, which shall not unreasonably withhold consent. (Section 18-4-141, MCA.)

11. WARRANTIES

11.1. Warranty of Products

Contractor warrants that the Contractor-branded products supplied materially conform to the product documentation for a period of 90 days from the date of shipment. The length of warranty may vary by product. Contractor further warrants that the products are new and unused and of the latest model or manufacture.

11.2. Warranty of Services (RESERVED.)

11.3. Warranty of Title

Contractor warrants all Goods are free and clear of any liens or encumbrances, Contractor has full legal title to the Goods, and that no other person or entity has any right, title, or interest in the Goods which limit the rights granted to the Participating Entity.

11.4. Warranty on Safety and Health Requirements

Contractor warrants that all Goods comply with all applicable health and safety standards, including Occupational Safety and Health Administration (OSHA) health and safety standards.

11.5. Manufacturer Warranties

Contractor shall transfer all manufacturer warranties covering the Goods, if any, transferred to the Participating Entity at time of delivery at no charge.

11.6. Warranties Cumulative

The warranties in this Section are in addition to any other warranties provided in this Contract. All warranties are cumulative and are intended to afford the Participating Entity the broadest warranty protection available.

11.7. Warranty For Services (RESERVED.)

12. PUBLIC INFORMATION

- A. This Contract and all related documents are subject to disclosure pursuant to Montana public information laws.
- B. Under Montana public information laws, this Contract, referenced documents, including pricing documents, are all deemed public information.

13. CIO 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.

14. CIO OVERSIGHT

The Chief Information Officer (CIO) for the State of Montana, or designee, may perform oversight activities. Such activities may include the identification, analysis, resolution, and prevention of deficiencies that may occur while performing services. The CIO may require the issuance of a right to assurance or may issue a Stop Work Order.

15. RIGHT TO ASSURANCE

If State, in good faith, has reason to believe that Contractor does not intend to, is unable to, or has refused to perform or continue performing all material obligations under these Terms and Conditions, State may demand in writing that Contractor give a written assurance of intent to perform. Contractor's failure to provide written assurance within the number of days specified in the demand (in no event less than five business days) may, at State's option, be the basis for termination and pursuing the rights and remedies available to State.

16. STOP WORK ORDER

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

17. BLIND OR VISUALLY IMPAIRED

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. DEFENSE, INDEMNIFICATION / HOLD HARMLESS

18.1. Indemnities by Contractor

Contractor, at its sole cost and expense, shall defend, indemnify and hold harmless the State of Montana, the contracting agency, or their officers, officials, directors, agents, employees, volunteers, contractors, successors, assignees, or designees from any and all claims, causes of actions, judgments, suits and settlements, and reasonable costs including attorney fees, arising out of, or resulting from: third party claims to the extent they arise from:

- A. Any intentional or negligent acts or omissions of Contractor, its employees, sub-contractors or assignees in connection with the performance of this Contract or any purchase order issued under the Contract, resulting in bodily injury or death or damages to tangible property, except for when the sole negligence is that of State as permitted by law.
- B. Infringement of United States patents, copyrights, trade and service marks, and any other intellectual or intangible property rights in or in connection with the Contractor-branded hardware or software sold and delivered under the Contract and any purchase orders issued under the Contract. Contractor will pass through any indemnities from third-party vendors or licensors to the extent permissible.
- C. Tax liability, unemployment insurance, workers' compensation, or expectations of benefits by Contractor, its employees, representatives, agents, or subcontractors in or in connection with the execution or performance of the Contract and any Purchase Orders issued under the Contract.

Subject to 18.2 below, Contractor will pay Contractor approved settlement amounts or damages and costs finally awarded by a court of competent jurisdiction to the extent specifically attributable to the claim.

18.2. Coordination of Defense

State shall give Contractor prompt written notice of any Claim, and at Contractor's expense and within State law, State agrees to provide Contractor with control of the defense and settlement negotiations and information and cooperation in the defense of the Claim. Contractor acknowledges that under Montana law, the Montana Attorney General may participate in an action, including settlement negotiations, involving State.

18.3 Remedies for Infringement

In relation to any third party infringement claim, Contractor may, at its option, substitute or modify the applicable Contractor-branded product(s), or the relevant

portion thereof, so that it becomes non-infringing; procure any necessary license; or replace the applicable product(s). If Contractor determines that none of these alternatives is reasonably available, then the State may cease using and, if applicable, return the infringing Contractor-branded product(s) and Contractor will refund the State's purchase price for such product(s). Notwithstanding anything to the contrary in this Agreement, Contractor has no obligation or liability for any IP Claim related to the Contractor-branded hardware and software that arises from or relates to: (a) Contractor's compliance with, or use of, designs, specifications, inventions, instructions, or technical information furnished by or on behalf of the State; (b) modifications to the product(s) made by or on behalf of the State without Contractor's prior written authorization; (c) the State's failure to upgrade or use a new version of the product(s), to make a change or modification requested by Contractor, to implement or configure the services in a manner set forth by Contractor, if requested by Contractor, or to cease using the product(s), if requested by Contractor; (d) the Contractor-branded product(s) or any portion thereof, in combination with any other product or service; (e) Third-Party Branded Products; or (f) any content or information stored on or used by the State or a third party in connection with a Contractor-branded product.

Notwithstanding anything to the contrary in this Agreement, this Section 18.3 states Contractor's entire liability and the State's sole and exclusive remedies for IP Claims.

18.4. 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: (1) settlements, judgments, losses, damages, liabilities, and penalties, fines; and (2) defense of the Claim, including but not limited to attorney fees, court costs, and the costs of investigation, discovery, and experts.

19. LIMITATION OF LIABILITY

Contractor shall provide the Participating Entity the same Limitation of Liability as it has provided the State of Minnesota in the Master Agreement.

20. COMPLIANCE WITH LAWS

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

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].

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

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

20.1. Nondiscrimination Against Firearms Entities/Trade Associations

Contractor shall not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, and Contractor shall not discriminate during the term of the contract against a firearm entity or firearm trade association. This Section shall be construed in accordance with 30-20-301, MCA.

21. CONTRACT TERMINATION

21.1. Termination for Convenience

State may, by written notice to Contractor, terminate this Contract without cause and without incurring liability to Contractor. State shall give notice of termination to Contractor at least 30 days before the effective date of termination. State shall 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 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.

21.2. 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.

21.3. 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 shall take effect. 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, State shall be 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 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.

21.4. Terrorism, Suspension or Debarment, or Otherwise Ineligible

State has the absolute right to terminate the Contract 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; or
- C. Contractor is found to be ineligible to hold the Contract under the laws of State.

22. EVENT OF BREACH – REMEDIES

22.1. 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 materially conform to any requirement;
- 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 26.1, Technical or Contractual Problems, obligations; or
- Voluntary or involuntary bankruptcy or receivership.

22.2. Event of Breach by State

State's failure to perform any material terms or conditions of this Contract constitutes an event of breach.

22.3. Actions in Event of Breach

- A. Upon Contractor's material breach, State may:
 - Terminate this Contract under Section 21.1, Termination for Convenience 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.
- B. Upon State's material breach, Contractor may:
 - Terminate this Contract under Section 21.2, Termination for Cause with Notice to Cure, 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.

23. 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.

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. 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.

26. MEETINGS

26.1. Technical or Contractual Problems.

Contractor shall meet with State's personnel, or designated representatives, to resolve technical or contractual problems occurring during the Contract term or to discuss the progress made by Contractor and State in the performance of their respective obligations, at no additional cost to State. State may request the meetings as problems arise and will be coordinated by State. State shall provide Contractor a minimum of three full working days' notice of meeting date, time, and location. Face-to-face meetings are desired; however, at Contractor's option and expense, a conference call meeting may be substituted. Contractor's consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor's failure to make a good faith effort to resolve problems may result in termination of the Contract.

26.2. Progress Meetings

During the term of this Contract, State's Project Manager shall plan and schedule progress meetings with Contractor to discuss Contractor's and State's progress in the performance of their respective obligations. These progress meetings will include State's Project Manager, Contractor's Project Manager, and any other additional personnel involved in the performance of this Contract as required. At each meeting, Contractor shall provide State with a written status report that identifies any problem or circumstance encountered by Contractor, or of which Contractor gained knowledge during the period since the last such status report, which may prevent Contractor from completing any of its obligations or may generate charges in excess of those previously agreed to by the parties. This may include the failure or inadequacy of State to perform its obligation under this Contract. Contractor shall identify the amount of excess charges, if any, and the cause of any identified problem or circumstance and the steps taken to remedy the same.

26.3. 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 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.

26.4. State's Failure or Delay

For a problem or circumstance identified in Contractor's status report in which Contractor claims was the result of State's failure or delay in discharging any State obligation, State shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If State agrees as to the cause of such problem or circumstance, then the parties shall extend any deadlines or due dates affected thereby and provide for any additional charges by Contractor. This is Contractor's sole remedy. If State does not agree as to the

cause of such problem or circumstance, the parties shall each attempt to resolve the problem or circumstance in a manner satisfactory to both parties.

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

28. CHOICE OF LAW AND VENUE

Montana law governs this Contract. The parties agree that any litigation concerning this 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, except as provided in Section 18, Defense, Indemnification/Hold Harmless.

Nothing in these provisions shall be construed as a waiver of the sovereignty or governmental immunity State enjoys, whether derived from the Eleventh Amendment to the United States Constitution or otherwise, or a waiver of any defenses to Proceedings or consent to jurisdiction based thereon.

29. AUTHORITY

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

30. SEVERABILITY

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.

31. WAIVER

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.

32. PUBLIC DISCLOSURE

Contractor may publicize the Contract term, scope and price without prior written approval. However, Contractor may not use the State seal, any State logo, or claim any State endorsement as to the Contract without prior written approval by State.

33. SURVIVAL

All provisions in this Contract that relate to warranties, Audit, Payment, Indemnification, Defense, and Hold Harmless, and Limitation of Liability, shall survive any termination of this Contract.

(The remainder of this page is intentionally left blank)

Attachment B Federal Terms and Conditions (Non-Construction)

NOTE: NO EXCEPTIONS TO THE LISTED FEDERAL TERMS AND CONDITIONS WILL BE CONSIDERED. THE STATE IS NOT PERMITTED TO ALTER THESE TERMS AND CONDITIONS THROUGH OUR FEDERAL PARTNER.

By submitting a response to this invitation for bid, request for proposal, limited solicitation, or acceptance of a contract, the contractor/vendor agrees to acceptance of the following Federal Terms and Conditions along with all other provisions that are specific to this solicitation or contract as applicable.

1. Nondiscrimination

Contractor agrees that no person shall be denied benefits of, or otherwise be subjected to discrimination in connection with the Contractor's performance under this contract, on the ground of race, religion, color, national origin, sex or handicap. Accordingly and to the extent applicable, the Contractor agrees to comply with the following national policies prohibiting discrimination:

- a. On the basis of race, color or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.) as implemented by DoD regulations at 32 CFR part 195.
- b. On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 {3 CFR, 1964-1965 Comp. pg. 339}, as implemented by Department of Labor regulations at 41 CFR part 60.
- c. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by DoD regulations at 32 CFR part 196.
- d. On the basis of age, in The Age Discrimination Act of 1975 (42 U.S.C. Section 6101 et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.
- e. On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56.

2. Lobbying

Contractor agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the

making of any Federal loan; the entering into of any cooperative agreement; and, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

The Final Rule, New Restrictions on Lobbying, issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 28) to implement the provisions of Section 319 of Public Law 101-121 (31 U.S.C. Section 1352) is incorporated by reference and the State agrees to comply with all the provisions thereof, including any amendments to the Interim Final Rule that may hereafter be issued.

3. Drug-Free Work Place

Contractor agrees to comply with the requirements regarding drug-free workplace requirements in Subpart B of 32 CFR part 26, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

4. Environmental Protection

- a. Contractor agrees that its performance under this contract shall comply with:
 - 1) The requirements of Section 114 of the Clean Air Act (42 U.S.C. Section 7414);
 - 2) Section 308 of the Federal Water Pollution Control Act (33 U.S.C. Section 1318), that relates generally to inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued thereunder;
 - 3) The Resources Conservation and Recovery Act (RCRA);
 - 4) The Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA);
 - 5) The National Environmental Policy Act (NEPA);
 - 6) The Solid Waste Disposal Act (SWDA);
 - 7) The applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.), as implemented by Executive Order 11738 and Environmental Protection Agency (EPA) rules at 40 CFR Part 31;
 - 8) To identify any impact this contract may have on the quality of the human environment and provide help as needed to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et seq.) and any applicable federal, state or local environmental regulation.
- b. In accordance with the EPA rules, the parties further agree that the Contractor/Vendor shall also identify to the state any impact this contract may have on:
 - 1) The quality of the human environment and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C 4321, et seq.) and to prepare Environment Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the

agency provides written notification of compliance with the environmental impact analysis process.

- 2) Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et seq.), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.
- 3) Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.), concerning protection of U.S. coastal resources.
- 4) Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et seq.), concerning preservation of barrier resources.
- 5) Any existing or proposed component of the National Wild and Scenic Rivers System, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).
- 6) Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C 300H-3).

5. Use of United States Flag Vessels

Contactor agrees that travel under this contract shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the inter-operative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.

The Contactor/Vendor agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. Chapter 553), as implemented by Department of Transportation regulation at 46 CFR 381.7, and 46 CFR 381.7(b).

6. Debarment and Suspension.

Contractor is subject to the non-procurement debarment and suspension regulations implementing Executive Orders 12549 and 12689, 2 CFR Part 180. These regulations restrict awards, subawards, and contracts with certain parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

Contractor agrees to comply with the DOD implementation of 2 CFR part 180 (at 2 CFR 1125) by checking the Excluded Parties List System (EPLS) at the current OMB website to verify (sub)contractor eligibility to receive contracts and subcontracts resulting from this Agreement. The Contractor shall not solicit offers from, nor award contracts to contractors listed in EPLS. This verification shall be documented in the Contractors contract files and shall be subject to audit by Federal and State audit agencies.

7. Buy American Act.

Contractor agrees that it will not expend any funds appropriated by Congress without complying with The Buy American Act (41 U.S.C. 10a et seq). The Buy American Act gives preference to domestic end products and domestic construction material. In addition, the Memorandum of Understanding between the United States of America, and the European Economic Community (EEC) on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide that EEC and NAFTA end products and construction materials are exempted from application of the Buy American Act.

8. Uniform Relocation Assistance and real Property Acquisition Policies

Contractor agrees that it will comply with CFR 49 part 24, which implements the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

9. Copeland "Anti-Kickback" Act

Contractor agrees that it will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). As applied to this contract, the Copeland "Anti-Kickback" Act makes it unlawful to induce, by force, intimidation, threat or procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

10. Contract Work Hours and Safety Standards Act

Contractor agrees that it will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5). As applied to this agreement, the Contract Work Hours and Safety Standards Act specifies that no laborer or mechanic doing any part of the work contemplated by this agreement shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1.5 times the basic rate of pay.

11. Rights to Inventions Made Under a Contract or Agreement.

Any discovery or invention that arises during the course of the contract shall be reported to the non-Federal entity. Contractor/Vendor must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

12. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended

Any Contract or subcontract in excess of \$150,000 must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-

7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the State who in turn will report to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

13. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

Contractors that bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

14. System For Award Management and Unique Entity Identification Number Requirements.

Contractor agrees to comply with the System for Award Management (Sam.gov) maintained by the General Services Administration. Contractor shall provide a Unique Entity ID assigned to it.

15. Procurement of recovered materials.

Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

16. 2 C.F.R. 200.326, Appendix II, Required Contract Clauses

2 C.F.R. 200.326, Appendix II, Required Contract Clauses are incorporated by reference as if set forth in full text and are made part of this agreement as applicable. Contractor shall comply with all applicable contract clauses and provide the same clauses in any subcontracts or purchase orders issued in support of this agreement with the state.

17. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

The Contractor agrees it will not provide or use covered telecommunications equipment or services in the performance of this contract in compliance with 2 CFR 200.216. Covered telecommunications equipment or services has the meaning provided in Public Law 115-232, section 889.