**AMENDMENT ONE**

**to the**

**END USER LICENSE AGREEMENT**

**between**

**THE STATE OF MONTANA**

**and**

**Insert Vendor Name**

This Amendment One (“Amendment”) is an Amendment to the **Insert Vendor Name** End User License Agreement (“Agreement”). If, and to the extent, any conflict exists between the Agreement and this Amendment, the provisions of this Amendment control.

The parties hereby agree that the following terms shall be added to the Agreement and shall supersede all prior terms in the Agreement:

1. **ACCESS AND RETENTION OF RECORDS**

**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 immediately terminate this contract without incurring liability for the Contractor’s refusal to allow access as required by this section. (18-1-118, MCA.)

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

2. **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.

3. **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.

4. **CONTRACT TERMINATION**

**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.

5. **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.

6. **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.)

7. **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 the issuance of a stop work order (2-17-514 MCA).

8. **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 this Agreement, 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 terminating this Agreement and pursuing the rights and remedies available under this Agreement or law.

9. **STOP WORK ORDER**

State may, at any time, by written order to Contractor require Contractor to stop any or all parts of the work required by this Agreement 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 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 Agreement shall be amended in writing accordingly.

10. **Disaster Recovery**

The State of Montana may replicate the Insert product name software onto its servers in its Disaster Recovery Data Center in Miles City, MT, for the purpose of utilizing the State’s licenses, at no additional cost, for testing the State of Montana’s disaster recovery plans during a 10-day test period, twice annually.  The server shall remain in a cold stand-by state, or off, until testing is carried out, or a disaster occurs that shuts down the State’s primary data center in Helena, MT.  The Miles City Data Center is located approximately 350 miles from Helena.  Also, the State shall be prohibited from making additional copies of the software for any other reason without permission.

11. **LIMITED LIABILITY**

The ConTRACTOR’s liability for contract damages FOR EACH CLAIM is limited to direct damages and further to no more than twice the contract amount. The 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 CONFIDENTIALITY RIGHTS AND OBLIGATIONS are not subject to a cap on the amount of damages or to a limit on the type of damages (e.g. direct, consequential, special, or punitive) incurred.

12. **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.

13. **Secretary of State Registration (Only include for new contracts, not renewals)**

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are domiciled in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with §§ 35-14-1505, 35-8-1001, and 35-12-1309 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. §§ 35-8-1001, 35-12-1302, and 35-14-1502, MCA. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sosmt.gov>.

14. **COOPERATIVE PURCHASING**

Under Montana law, public procurement units, as defined in 18-4-401, MCA, have the option of cooperatively purchasing with 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. The prices, terms, and conditions of this Agreement will be offered to these public procurement units. Payment of additional fees for the software company Services will be set out in a purchase order between the public procurement unit and a software company authorized Reseller. However, the State makes no guarantee of any public procurement unit participation in this Agreement.

15. **REQUIRED INSURANCE**

**(Insert for commercial general liability and automobile liability only)**

**15.1 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.

**(Insert for all insurance types)**

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

**(Insert for commercial general liability only)**

**15.3 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 **(insert dollar amount)** per occurrence and **(insert dollar amount)** 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.

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.

**(Insert for automobile liability only)**

**15.4 Specific Requirements for Automobile Liability.** Contractor shall purchase and maintain coverage with split limits of $500,000 per person (personal injury), $1,000,000 per accident occurrence (personal injury), and $100,000 per accident occurrence (property damage), OR combined single limits of $1,000,000 per occurrence to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for automobiles leased, owned, or borrowed by Contractor.

**(Insert for all insurance types)**

**15.5 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 shall reduce or eliminate such deductibles or self-insured retentions as respects 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.

**(Insert for all insurance types)**

**15.6** **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, change in status of policy, etc. State reserves the right to require complete copies of insurance policies at all times.

**(Optional for personal identification information (PII) security. Contact the SPB at 444-2575 for more information.)**

**15.7 Specific Requirements for Cyber/Data Information Security Insurance.** The Contractor shall purchase and maintain cyber/information security insurance coverage with combined single limits for each wrongful act of $2,000,000 per occurrence to cover the unauthorized acquisition of personal acquisition such as social security numbers, credit card numbers, financial account information, or other information that uniquely identifies an individual and may be of a sensitive nature in accordance with §2-6-1501, MCA through §2-6-1503, MCA. If the Contractor maintains higher limits than the minimums shown above, the State requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the State. Such insurance must cover, at a minimum, privacy notification costs, credit monitoring, forensics investigations, legal fees/costs, regulatory fines and penalties, and third party liability settlements or judgements as may be caused by any act, omission, or negligence of the Contractor’s officers, agents, representatives, assigns or subcontractors. Note: If occurrence coverage is unavailable or cost-prohibitive, the State will accept ‘claims made’ coverage provided the following conditions are met: 1) the retroactive date must be shown, and must be before the date of the contract or the beginning of contract work; 2) insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work; and 3) if coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase “extended reporting” coverage for a minimum of three (3) years after completion of work.

**16. 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.

**17. SECURITY REQUIREMENTS**

Systems delivered under this contract shall have assurances that they are *adequately secure.* For purposes of contract approval considerations herein, security is defined as freedom from those conditions that can cause loss of assets with unacceptable consequences. Understandably, no system can be guaranteed as 100% secure.   The State of Montana has established control standards and policies that align with the NIST Cybersecurity Framework. NIST SP 800-53, the latest revision is used for control adherence evaluation established after establishing a security categorization utilizing FIPS PUB 199.  Thus, the Contractor shall provide reasonable proof, through independent audit reports, that the system specified under this contract can meet or exceed expectations for both Federal and State of Montana regulatory requirements to ensure the risk is minimized to better protect privacy, confidentiality, integrity, and availability.  Annual assurance statements shall be delivered to the Contract Liaison.  Annual assurance statements must contain a detailed accounting of the security controls provided and must be in the form of a NIST Security Assessment Report, FedRamp Security Assessment Report, or SOC 2 report.  SOC 1 reports may be accepted by exception and where applicable.  SOC 3 reports will not be accepted.

**EXECUTION**

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

|  |  |
| --- | --- |
| **(Insert Agency Name)** | **(INSERT LICENSOR'S NAME)** |
| **(Insert Address)** | **(Insert Address)** |
| **Insert City, State, Zip)** | **(Insert City, State, Zip)** |
|  | **FEDERAL ID #**  |
|  |  |
|  |  |
| BY:  | BY:  |
| (Name/Title) | (Name/Title) |
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| Approved as to Legal Content: |  |
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| Legal Counsel (Date) |  |
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| Approved as to Form: |  |
|   |  |
| Procurement Officer (Date) |  |
| State Procurement Bureau |  |
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