**CONTRACT NUMBER** Insert Contract Number

THIS CONTRACT, is entered into between the Montana Department of Public Health and Human Services, (the "Department"), whose contact information is as follows: Insert Address, lnsert City, MT, lnsert Zip Code, and Phone Number (406) lnsert Phone Number, and Fax Number (406) lnsert Fax Number, and lnsert Contractor Name (the “Contractor”), whose contact information is as follows: Federal Tax ID lnsert Federal Tax ID Number , DUNS Number lnsert DUNS Number, lnsert Street Address, lnsert City, Insert State, lnsert Zip Code, Phone Number lnsert Phone Number, and Fax Number lnsert Fax Number; respectively (collectively, the “Parties”).

**RECITALS**

Therefore, in consideration of the foregoing recitals, covenants, terms and conditions set forth herein, the Parties agree as follows:

**SECTION 1. SERVICES/SCOPE OF WORK**

TBD

A. This Contract constitutes the basic agreement between the parties for: Competent Professional Authority (CPA) services for the Montana Special Supplemental Nutrition Program for Women, Infants and Children (WIC), (the “Services”) program, as more particularly described in Attachment 1 Scope of Work **(TBD)**

B. Time is of the essence under this Contract.

C. The Department and the Contractor, their employees, agents, contractors and subcontractors will cooperate with each other, and with other state or federal administrative agency employees, contractors and subcontractors at no charge for purposes relating to the delivery of and administration of the services to be delivered under this Contract.

D. The Contractor will perform the Services in accordance with all of the provisions of the Contract, which consists of the following documents:

1. Contract (this instrument)
2. Attachment 1: Scope of Work (TBD)
3. Attachment 2: Payment/ Fee Schedule or Budget (TBD)
4. Attachment 3: WIC Expenditure Report (Invoice)
5. Attachment 4: Federal and State Law Requirements
6. Attachment 5: Insurance Requirements
7. Attachment 6: Business Associate Agreement
8. Attachment 7: Assurances
9. Attachment 8: Dark Money Disclosure Declaration
10. Attachment Insert Reference: Request for Proposal, Contractor’s Proposal (TBD)

**SECTION 2. TERM OF CONTRACT**

The term of this Contract is from Insert Month lnsert Day, lnsert Year through lnsert Month Insert Day, lnsert Year unless terminated in accordance with the Contract. Renewals of this Contract, by written agreement of the parties, may be made at one-year intervals, or any interval that is agreed upon by both parties. The Contract may not be renewed for more than a total of 6 years.

**SECTION 3. CONSIDERATION AND PAYMENTS**

Subject to the terms and conditions contained in this Contract, the Department will pay the Contractor for the Services as follows:

1. Other Programs as Payers for Services – Non-Duplication of Payment

 The Contractor may not seek compensation from monies payable through this Contract for the costs of goods and services that may be or are reimbursed, in whole or in part, from other programs and sources.

1. Billing Procedures and Requirements

Payment shall be made in the sum/sums and on the date/dates specified as follows:

TBD

1. Payment to the Contractor shall be made to:

lnsert Contractor Name

 lnsert Address

lnsert City, lnsert State, lnsert Zip Code

1. The Contractor must bill in accordance with the procedures and requirements the Department identifies and must itemize all services and expenses for reimbursement. Contractor must submit invoices on forms the Department provides. Invoice is attached as Attachment 3

C. Adjustments to Consideration

The Department may adjust the consideration provided to the Contractor under this Contract based on any reductions of funding, governing budget, erroneous or improper payments, audit findings, or failings in the Contractor’s delivery of services.

D. Sources of Funding

The sources of the funding for this Contract are 100% from federal grants from: United States Department of Agriculture, Special Supplemental Nutrition Program for Women, Infants and Children (WIC), grant number 10.557.

E. Erroneous and Improper Payments

The Contractor may not retain any monies the Department pays in error or which the Contractor, its employees, or its agents improperly receive. The Contractor must immediately notify the Department if it determines a payment may be erroneous or improper and must return that payment within 30 days of the Department requesting its return. If the Contractor fails to return to the Department any erroneous or improper payment, the Department may recover such payment by any methods available under law or through this Contract, including deduction of the payment amount from any future payments to be made to the Contractor.

F. Final Payment

The Department will issue the final payment to the Contractor for the Services when the Department has accepted the Services and determined that the Contractor has met all of its Contract performance obligations satisfactorily.

G. Tax 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].

H. Personal Property Tax

All personal property taxes will be paid by Contractor.

**SECTION 4. PREVAILING WAGE REQUIREMENTS**

Section applicability TBD

**SECTION 5. COST ADJUSTMENTS**

Cost Increase by Mutual Agreement**.** After the Contract’s initial term and if the Department agrees to a renewal, the parties may agree upon a cost increase. The Department is not obligated to agree upon a renewal or a cost increase. Any cost increases must be based on demonstrated industry-wide or regional increases in Contractor's costs. Publications such as the Federal Bureau of Labor Statistics and the Consumer Price Index (CPI) for all UrbanConsumers may be used to determine the increased value.

**SECTION 6. WARRANTIES**

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 Department’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 Department may require Contractor to promptly correct, at Contractor's expense, 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.

**SECTION 7. CREATION AND RETENTION OF RECORDS**

A. The Contractor must maintain all records, (written, electronic or otherwise) documenting compliance with the requirements of this Contract and its attachments, and with state and federal law, relating to performance, monetary expenditures and finances during the term of this Contract and for 8 ­­years after its completion date. The obligation to maintain records required by this paragraph survives the termination or expiration of this Contract.

B. If any litigation, reviews, claims or audits concerning the records related to the performance of the Contract is begun, then the Contractor must continue to retain records until such activity is completed.

C. The Contractor must provide the Department and its authorized agents with reasonable access to records the Contractor maintains for purposes of this Contract. The Contractor must make the records available at all reasonable times at the Contractor’s general offices or other location as agreed to by the parties.

**SECTION 8. ACCOUNTING, COST PRINCIPLES, AND AUDIT**

A. Accounting Standards

The Contractor must maintain a system of accounting procedures and practices sufficient for the Department to determine to its satisfaction that the system (1) permits timely development of all necessary cost data in the form contemplated by the contract type, and (2) is adequate to allocate costs in accordance with Generally Accepted Accounting Principles.

B. Audits and Other Investigations

The Department and any other legally authorized federal and state entities and their agents may conduct administrative activities and investigations, including audits, to ensure the appropriate administration and performance of this Contract, and the proper expenditure of monies, delivery of goods, and provision of Services pursuant to this Contract. The Contractor will provide the Department and any other authorized governmental entity and their agents access to and the right to record or copy any and all of the Contractor’s records, materials and information necessary for the conduct of any administrative activity, investigation or audit. Administrative activities and investigations may be undertaken, and access shall be afforded under this section from the time the parties enter this Contract until the expiration of 8 years from the completion date of this Contract.

C. Corrective Action

 If directed by the Department, the Contractor must take corrective action to resolve audit findings. The Contractor must prepare a corrective action plan detailing actions the Contractor proposes to undertake to resolve the audit findings. The Department may direct the Contractor to modify the corrective action plan.

D. Reimbursement for Sums Owing

The Contractor must reimburse or compensate the Department in any other manner as the Department may direct for any sums of monies determined by any administrative activity, investigation or audit to be owing to the Department.

E. The Contractor must comply with the federal audit and cost accounting requirements set forth in 45 CFR Part 75 and 2 CFR Part 300.

**SECTION 9. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING**

1. The Contractor will not assign, transfer, delegate or subcontract any right or duty arising under this Contract without prior written approval from the Department.

B. Any assignment, transfer, delegation, or subcontracting of the Contractor’s rights or duties under this Contract does not relieve the Contractor from its responsibility and liability for performance of all Contractor obligations under this Contract. The Contractor will be as fully responsible for the acts or omissions of any subcontractor as it is for its own acts or omissions.

**SECTION 10. INDEMNIFICATION**

A. The Contractor, at its sole cost and expense, must indemnify, defend, and hold harmless the State of Montana against any allegations of liability of any kind, relating to personal injury, death, damage to property, or any other legal obligation and any resulting judgments, losses, damages, liability, penalties, costs, fees, cost of legal defense and attorney’s fees, to the extent caused by or arising out of Contractor’s performance of services under this Contract or in any way resulting from the acts or omission of Contractor, and/or its agents, employees, representatives, assigns, and subcontractors.

B. The Department must give the Contractor notice of any allegation of liability and at the Contractor’s expense the Department shall cooperate in the defense of the matter.

C. If the Contractor fails to fulfill its obligations as the indemnitor under this section, the Department may undertake its own defense. If the Department undertakes its own defense, the Contractor must reimburse the Department for any and all costs to the Department resulting from settlements, judgments, losses, damages, liabilities, and penalties and for all the costs of defense incurred by the Department including but not limited to attorney fees, investigation, discovery, experts, and court costs.

**SECTION 11. LIMITATIONS OF STATE LIABILITY**

1. Any liabilities of the State of Montana and its officials, employees and agents are governed and limited by the provisions of Title 2, Chapter 9, MCA, for all acts, omissions, negligence, or alleged acts or omissions, negligent conduct, and alleged negligent conduct related to this Contract.

B. The Department shall not be liable, regardless of the form of action, whether in contract, tort, negligence, strict liability or by statute or otherwise, for any claim related to or arising under this Contract for consequential, incidental, indirect, special, or exemplary damages, including without limitation lost profits and lost business opportunities.

**SECTION 12. INSURANCE COVERAGE**

Without limiting any of Contractor's obligations hereunder, Contractor must carry insurance coverage in accordance with the requirements stated in Attachment 5, Insurance Requirements, attached hereto and incorporated herein by reference.

**SECTION 13. CONFLICTS OF INTEREST**

The Contractor must not have any conflict of interest regarding the performance of the Services under this Contract. The Contractor may not enter into any contract or other arrangement for the use, purchase, sale lease or rental of real property, personal property or services funded with monies of this Contract if an employee, administrator, officer or director of the Contractor may receive a financial or other valuable benefit as a result. The Department may grant exceptions to this prohibition where it determines the particular circumstances warrant the granting of an exception.

**SECTION 14. COMPLIANCE WITH LAWS/WARRANTIES**

 A. The Contractor must comply with all state and federal laws, rules, regulations, ordinances, and executive orders applicable to the performance of the Services under this Contract. Attachment 4 to this Contract contains a list of state and federal authorities. The Contractor must assure that all subcontractors comply with all applicable laws.

B. Civil Rights.The Contractor may not discriminate in any manner against any person on the basis of race, color, national origin, age, physical or mental disability, marital status, religion, creed, sex, sexual orientation, political beliefs, genetic information, veteran’s status, culture, social origin or condition, ancestry, or an individual’s association with individuals in any of the previously mentioned protected classes in the performance of this Contract or in the delivery of Montana State services or funding on behalf of the State of Montana.

C. The Contractor must submit the assurances, where applicable, set forth in Attachment 7 and attached as Attachment TBD, to this Contract prior to commencement of work under this Contract.

D. The Contractor represents and warrants that the Contractor is legally authorized under state and federal business and tax legal authorities to conduct business in accordance with this Contract.

E. The Contractor represents and warrants that it is an independent contractor and that its employees, agents and subcontractors are not employees of the State of Montana. The Contractor may not in any manner represent or maintain the appearance of being employees of the State of Montana.

F. The Contractor must comply with all applicable Workers' Compensation requirements.

G. The Contractor must pay all state, federal, social security, unemployment insurance, and all other taxes, assessments, or contributions due and payable to the State of Montana and/or the United States in connection with the Services to be performed under this Contract. The Contractor must hold the State of Montana harmless from any liability on account of any such taxes or assessments.

H. The following information may be required pursuant to 2 CFR 200:

Include if applicable, if not delete. For questions on applicability contact your Division budget staff.

1. Sub recipient name: lnsert Subrecipient Name

2. Sub recipient Unique Entity Identifier: lnsert DUNS Number

3. FAIN number: Insert FAIN Number

4. Federal award date: lnsert Date

5. Federal award start and end date: lnsert Dates

6. Total amount of funds obligated with this action: $lnsert Amount

7. Amount of funds obligated to sub recipient: $lnsert Amount

8. Total amount of the federal award: $lnsert Amount

9. Project description: lnsert Description

10. Awarding agency/pass-through entity/contact info: lnsert Entity/Contact Info

11. CFDA number/name: lnsert Number/Name

12. Research and Development: Insert Yes/No

13. Indirect cost rate: Insert Rate

**SECTION 15. REGISTRATION OF OUT OF STATE ENTITIES**

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 35-1-1026 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>.

**SECTION 16. OWNERSHIP OF DATA AND DOCUMENTS**

All data, information, work in progress, documents, reports, patents or copyrights developed in connection with any services under this Contract or information provided to the Contractor, both in hard-copy form and as may embodied on any recording and storage media, is deemed Department property and, upon request at the termination or expiration of this Contract, shall be delivered to the Department.

**SECTION 17. CONFIDENTIALITY**

A. Personal Information

1. During the term of this Contract, the Contractor, its employees, subcontractors and agents

must treat and protect as confidential all material and information the Department provides to the Contractor or which the Contractor acquires on behalf of the Department in the performance of this Contract which contains the personal information of any person.

2. In its use and possession of personal information, the Contractor must conform to security standards and procedures meeting or exceeding current best business practices. Upon the Department’s request, the Contractor will allow the Department to review and approve any specific security standards and procedures of the Contractor.

B. Notice by Contractor of Unauthorized Disclosures or Uses of Personal Information

Immediately upon discovering any unauthorized disclosure or use of personal information by the Contractor, its employees, subcontractors, agents, the Contractor must confidentially report the disclosure or use to the Department in detail, and must undertake immediate measures to retrieve all such personal information and to prevent further unauthorized disclosure or use of personal information.

C. Notice by Contractor of Investigations, Complaints, Litigation Concerning the Use and Protection of Personal Information

1. The Contractor must provide the Department with written notice within five work days of the Contractor receiving notice of any administrative action or litigation threatened or initiated against the Contractor based on any legal authority related to the protection of personal information.

2. With its notice, the Contractor must provide the Department with copies of any relevant correspondence, pleadings, papers, administrative or legal complaints and determinations.

D. Contract Information

The Contractor must hold in strict confidence any data, findings, results, or recommendations obtained or developed by the Contractor in connection with the Services under this Contract, including but not limited to, information and data given to the Contractor by the Department, its agents or contractors or any other source.

E. Access/Use of Confidential Information

The Contractor may not access or use personal, confidential, or other information obtained through the Department, its agents and contractors, unless the Contractor does so:

 1. in conformity with governing legal authorities and policies;

 2. with the permission of the persons or entities to whom or which the information pertains; and

 3. with the review and approval by the Department prior to use, publication or release.

F. The information contained within this Contract and attachments, inclusive of Contractor’s proposal and its attachments, if any, and information otherwise provided to the Department in relation to this contractual relationship is not confidential and is available for public inspection and copying unless determined in accordance with federal or state law to be confidential as personal consumer, recipient or employee information or as business/corporate proprietary information that is protected from release. To any extent required or allowed by law, the Department has the right to use for public purposes and to disclose to the public contractual information inclusive of reports, evaluations, statistics, and other management and performance information related to this Contract.

**SECTION 18.** **PROPRIETARY INFORMATION**

A. Before the Department can recognize a business/corporate claim of confidential trade secret or proprietary information, the Contractor must identify and segregate the information for which the claim is being asserted and must have provided a detailed legal analysis supporting the claim of confidentiality. The Contractor must include with that claim an affidavit of legal counsel on the form provided by the Department, titled “AFFIDAVIT FOR PROPRIETARY INFORMATION CONFIDENTIALITY,” attesting to legal counsel’s legal relationship to the Contractor, acknowledging the primacy of federal and Montana law with respect to the claim, and indemnifying the Department with respect to defense and warranting the Contractor’s responsibility for all legal costs and attorneys’ fees, should the Department accept the claim as legitimate and as a result be subjected to administrative or legal contest.

B. The Department will provide the Contractor timely notice of any administrative or legal request or contest from a third party seeking release of contractual and related information for which the Contractor has properly made a claim that the information is confidential as trade secret or proprietary information. If the Department determines that such information is subject to the public right to know and must be released as requested, the Department will provide the Contractor with notice of the intended release five working days prior to the date of the proposed release. The notice period is intended to allow the Contractor to make arrangements, if desired, to intervene through an appropriate legal forum to contest the release.

**SECTION 19. COMPLIANCE WITH THE FEDERAL HIPAA AND HITECH**

 **PRIVACY AND SECURITY REQUIREMENTS**

If the Contractor is a “Business Associate” as defined at 45 C.F.R. § 160.103, it must comply with the privacy and security requirements for functioning as a “business associate” of the Department or as a “covered entity” under HIPAA and HITECH. In addition to executing this Contract, the Contractor must execute the Business Associate Agreement attached to this Contract as Attachment 6.

**SECTION 24. COMPLIANCE WITH DARK MONEY SPENDING DISCLOSURE REQUIREMENTS**

Contractor shall comply with the provisions of the State of Montana Executive Order No. 15-2018. Contractor shall annually submit a declaration form to the contract liaison. Declaration forms can be found at: <http://spb.mt.gov/Procurement-Guide> or <http://spb.mt.gov/Laws-Rules>.

Contractor shall also annually submit a disclosure form to the contract liaison as required. Disclosure forms can be found at: <http://spb.mt.gov/Procurement-Guide> or <http://spb.mt.gov/Laws-Rules>.

All disclosures must be submitted to the Department for reporting on <https://transparency.mt.gov>. Failure to comply with these requirements may result in contract termination. Contractor agrees that such a failure is a material breach of this Contract.

**SECTION 25. PUBLICITY AND DISCLAIMERS**

A. The Contractor may not use monies under this Contract to pay for media, publicity or advertising that in any way associates the services or performance of the Contractor or the Department under this Contract with any specific political agenda, political party candidate for public office, or any matter to be voted upon by the public. Media includes but is not limited to commercial and noncommercial print, verbal and electronic media.

B. The Contractor must inform any people to whom it provides consultation or training services under this Contract that any opinions expressed do not necessarily represent the position of the Department. All public notices, information pamphlets, press releases, research reports, posters, public service announcements, web sites and similar modes of presenting public information pertaining to the services and activities funded with this Contract prepared and released by the Contractor must include the statement:

“This project is funded in whole or in part under a Contract with the Montana Department of Public Health and Human Services. The statements herein do not necessarily reflect the opinion of the Department.”

C. The Contractor must state the percentage and the monetary amount of the total program or project costs of this Contract funded with (a) federal monies and (b) non-federal monies in all statements, press releases, and other documents or media pieces made available to the public describing the services provided through this Contract.

D. Before the Contractor uses, publishes, releases or distributes them to the public or to local and state programs, the Department must review and approve all products, materials, documents, publications, press releases and media pieces (in any form, including electronic) the Contractor or its agents produce with contract monies to describe and promote services provided through this Contract.

**SECTION 26. ACCESS TO PREMISES**

The Contractor must provide the State of Montana and any other legally authorized governmental entity, or their authorized representatives, the right to enter at all reasonable times the Contractor’s premises or other places where contractual performance occurs to inspect, monitor or otherwise evaluate contractual performance. The Contractor must provide reasonable facilities and assistance for the safety and convenience of the persons performing these duties. All inspection, monitoring and evaluation must be performed in such a manner as not to unduly interfere with contractual performance.

**SECTION 27. LIAISON AND SERVICE OF NOTICES**

Kate Girard, Phone Number (406) 444-4747, Fax Number (406) 444-0293, kgirard@mt.gov, or their successor, is the liaison for the Department. lnsert Contractor Liaison Name, Phone Number lnsert Phone Number, Fax Number lnsert Fax Number, Insert Email is the liaison for the Contractor. These persons serve as the primary contacts between the parties regarding the performance of this Contract. Written notices, reports and other information required to be exchanged between the parties must be directed to the liaison at the parties’ addresses set out in this Contract.

**SECTION 28. IDENTIFICATION/SUBSTITUTION OF PERSONNEL**

The personnel identified or described in Contractor's proposal shall perform the services provided for the Department under this Contract. Contractor agrees that any personnel substituted during the term of this Contract must be able to conduct the required work to industry standards and be equally or better qualified than the personnel originally assigned. The Department reserves the right to approve Contractor personnel assigned to work under this Contract and any changes or substitutions to such personnel. The Department's approval of a substitution will not be unreasonably withheld. This approval or disapproval shall not relieve Contractor to perform and be responsible for its obligations under this Contract. The Department reserves the right to require Contractor personnel replacement. If Contractor personnel become unavailable, Contractor shall provide an equally qualified replacement in time to avoid delays to the work plan.

**SECTION 29. MEETINGS**

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

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

**SECTION 30. FORCE MAJEURE**

If the Contractor or the Department is delayed, hindered, or prevented from performing any act required under this Contract by an occurrence beyond the control of the asserting party including, but not limited to, theft, fire, or public enemy, severe and unusual weather conditions, injunction, riot, strikes, lockouts, insurrection, war, or court order and the asserting party gives prompt written notice of the event to the other party, then performance of the act shall be excused for the period of the delay, to the extent the performance is actually affected and the asserting party resumes performance as soon as practicable. Matters of the Contractor’s finances shall not be considered a force majeure.

**SECTION 31. CONTRACT TERMINATION**

A. The Department may terminate this Contract without cause and in lieu of any or all other remedial measures available through this Contract. The Department terminating without cause must give written notice of termination to the Contractor at least sixty (60) days prior to the effective date of termination. In the event of such termination without cause, the Contractor shall be paid for all Services rendered satisfactorily to the termination date and for any direct costs (not including anticipated profits) incurred by the Contractor as a result of the termination. Such payment shall constitute the Contractor’s sole right and remedy. The Department has the right to terminate without cause even when a condition of force majeure exists.

B. The Department may immediately terminate this Contract if the Contractor engages in any violation of state or federal law listed in this Contract or any Attachment to this Contract, or which otherwise may be applicable to the Contract arising from the performance of Services under this Contract.

C.  The Department may terminate this Contract in whole or in any aspect of performance under this Contract if:

 1. federal or state funding for this Contract becomes unavailable or reduced for any reason; or

2. the Department determines that the Contractor is failing to perform in accordance with the terms of this Contract. In such event, the Department shall give Contractor written notice of breach and an opportunity to cure the breach. Contractor will correct the breach within 30 calendar days of receipt of such notice unless the cure period is otherwise specified in the written notice of breach. If the breach is not corrected timely, this Contract may be terminated immediately, in whole or in part, by written notice from the Department to Contractor. The option to terminate shall be at the sole discretion of the Department.

D. Upon expiration, termination or cancellation of this Contract, or any portion of this Contract, the Contractor must assist the Department, its agents, representatives and designees in closing out this Contract, and in providing for the orderly transfer of contract responsibilities and the continued delivery of contract services by the Department or its designee, and shall allow the Department access to the Contractor’s facilities, records and materials to fulfill these requirements.

**SECTION 32. ADDITIONAL REMEDIES**

1. Withholding Payments

If the Contractor fails to perform the services in conformance with the requirements of this Contract, the Department has the right, with notice, to withhold any and all payments directly related to the non-compliant services. The Department may withhold any payments due to the Contractor, without penalty or work stoppage by Contractor, until the Contractor cures performance to the satisfaction of the Department. The Contractor is not relieved of its performance obligations if any payment is withheld.

B. Reductions in Payments Due

Amounts owed to the Department by the Contractor under this Contract, including but not limited to liquidated or other damages, or claims for damages, may be deducted or set-off by Department from any money payable to Contractor pursuant to this Contract.

C. If, in the Department’s reasonable judgment, a default by Contractor is not so substantial as to require termination of the entire Contract, reasonable efforts to induce the Contractor to cure the default are unavailing, the Contractor fails to cure such default within 30 calendar days of receipt of notice from the Department, and the default is capable of being cured by the Department or by another resource without unduly interfering with continued performance by the Contractor, the Department, without prejudice to any other remedy it may have, may terminate performance of the particular service that is in default and provide or procure the services reasonably necessary to cure the default. In the event of a termination for failure to perform, Department will, without limiting its other available remedies, have the right to procure the terminated services and the Contractor will be liable for: (i) the cost difference between the cost of the terminated services and the costs for the replacement services acquired from another vendor or expended by Department, and (ii) if applicable, the following administrative costs directly related to the replacement of this Contract: costs of competitive bidding, mailing, advertising and staff time costs.

D. Stop Work Order

 1. The Department may, at any time, by written stop work order to the Contractor, require the Contractor to stop any or all parts of the work required by this Contract for the period of days indicated by the Department after the stop work order is delivered to Contractor. The stop work order must be specifically identified as a stop work order issued under this section. Upon receipt of the stop work order, the Contractor must immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the stop work order during the period of work stoppage.

2. If a stop work order issued under this section is canceled or the period of the stop work order, or any extension expires, the Contractor must resume contractual performance. The Department, as may be necessary, must adjust through amendment to this Contract the delivery schedule or reimbursement, or both.

E. Right to Assurance

 If the Department, in good faith, has reason to believe that the Contractor does not intend to, or is unable to perform or has refused to perform or continue performing all material obligations under this Contract, the Department may demand in writing that the Contractor give a written assurance of intent to perform. Failure by Contractor to provide written assurance within the number of days specified in the demand (not less than five business days) may, at the Department’s option, be the basis for terminating this Contract under the terms and conditions or other rights and remedies available by law or provided by this Contract.

F. Any remedies provided by this Contract are not exclusive and are in addition to any other remedies provided by law.

**SECTION 33. CHOICE OF LAW, REMEDIES AND VENUE**

A. This Contract is governed by the laws of the State of Montana.

1. For purposes of litigation concerning this Contract, venue must be in the First Judicial District in and for the County of Lewis and Clark, State of Montana.
2. If there is litigation concerning this Contract, the Contractor must pay its own costs and attorney fees.

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

**SECTION 34. GENERAL**

A. No statements, promises, or inducements made by the parties or their agents are valid or binding if not contained in this Contract and the materials expressly referenced in this Contract as governing the contractual relationship.

B. The headings to the section of this Contract are convenience of reference and do not modify the terms and language of the sections to which they are headings.

C. Except as may be otherwise provided by its terms, this Contract may not be enlarged, modified or altered except by written amendment signed by the parties to this Contract.

D. If there is a dispute as to the duties and responsibilities of the parties under this Contract, this Contract along with any attachments prepared by the Department, including request for proposal, if any, govern over the Contractor’s proposal, if any.

E. If a court of law determines any provision of this Contract is illegal, all other provisions of this Contract remain in effect and are valid and binding on the parties.

F. Any provision of this Contract that is determined to conflict with any federal or state law or regulation, is inoperative to the extent it conflicts with that authority and is to be considered modified to the extent necessary to conform with that authority.

G. Waiver of any default, breach or failure to perform under this Contract may not be construed to be a waiver of any subsequent default, breach or failure of performance. In addition, waiver of a default, breach or failure to perform may not be construed to be a modification of the terms of this Contract unless reduced to writing as an amendment to this Contract.

H. This Contract may be executed in counterparts, which together will constitute one instrument.

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

**MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES**

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Insert Name, lnsert Title

**CONTRACTOR**

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

lnsert Name, Insert Title

Attachment 1 To Contract No. lnsert Contract Number

**SCOPE OF WORK**

Services provided by the Certified Professional Authority (Registered Nurse or Registered Dietitian) include:

* Complete all necessary WIC training including civil rights (initially and annually), SPIRIT modules, and other training as required by the State to ensure contractor is up to date on WIC policy and procedure.
* Complete any/all appointment types as requested by the State Office or Local Agency staff, per agreed upon schedule
	+ Documentation in management information system according to policy
* Receive, review and complete high-risk appointment requests (if CPA is a Registered Dietitian or other identified professional in the High-Risk Referral Table)
* Provide consultation and support services to local agency staff related to nutrition, lactation, and other health related topics within professional scope. This may include: review of exempt formula prescription forms for accuracy, appropriateness, and completion by Health Care Providers; approval of prescription forms which require a Registered Dietitian to approve and allow issuance of specific foods for participants on Food Package III; and/or other requested services by the local agency or state WIC staff within the professional scope of the contractor.
* Provide additional WIC program support activities to local or state WIC staff within the professional and contracted scope of work.

Additional provisions:

* Consult with State Office staff at least monthly to ensure effective communication about scheduling, training, technical assistance, or other topics as needed. Meeting will be scheduled at an agreed upon time.
* Provide services in a method acceptable to the WIC clinic and/or State Agency. While WIC has waivers in place for physical presence, all activities may be completed remotely. Technology that meets the needs of the participants and program will be used, including phone, approved video conferencing platform, or other pre-approved means of connecting with participants remotely.

Attachment 2 To Contract No. lnsert Contract Number

**PAYMENT/FEE SCHEDULE OR BUDGET**

TBD

Attachment 3 To Contract No. Insert Contract Number

**WIC Expenditure Report here**

Attachment 4 To Contract No. Insert Contract Number

Rev. 4/2019

**FEDERAL AND STATE LAW REQUIREMENTS**

A. Compliance with Federal Authorities

Contractor assures that it and any of its subcontractors will comply with all federal laws, regulations, and executive orders, that are applicable to this Contract, to include the provisions of the below referenced laws, regulations and executive orders. The list is not intended, nor must it be construed, as a listing of all federal authorities with which Contractor must comply for the purposes of the Contract, or that Contractor must comply with each of the authorities listed. The Contractor is responsible for determining with which federal authorities it must comply in the performance of the Contract.

1. Civil Rights Act of 1964 (42 U.S.C. § 2000d, *et seq*.), prohibiting discrimination based on

 race, color, or national origin.

1. Age Discrimination Act of 1975 (42 U.S.C. § 6101, *et seq.*), prohibiting discrimination based on age.
2. Education Amendments of 1972 (20 U.S.C. § 1681), prohibiting discrimination based upon gender.
3. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), prohibiting discrimination based upon disability.
4. Americans with Disabilities Act of 1990 (42 U.S.C. § 12101, *et seq.*), prohibiting discrimination based upon disability.
5. Vietnam-Era Veterans Readjustment Assistance Act (38 U.S.C. § 4212), prohibiting discrimination in employment against protected veterans and requiring affirmative actions of recruit and employ protected veterans.
6. The Federal Executive Orders 11246, 11478, and 11375 and 41 CFR Part 60, requiring equal employment opportunities in employment practices.
7. Executive Order No. 13166 requiring facilitation of access for persons with limited English proficiency to federally funded services.
8. False Claims Act, 31 U.S.C. §§ 3729-3733 (the “Lincoln Law”), prohibiting recipients of federal payments from submitting a false claim for payment.
9. Sherman Anti-Trust Act, 15 U.S.C. §§1-7m prohibiting any contract, trust, or conspiracy in restraint of interstate o foreign trade.
10. Anti-Kickback Act of 1986, 41 U.S.C. §§ 51-58 and the Anti-Kickback Statute, 42 U.S.C. §§ 1320(a)-(7)a, prohibiting the exchange or offer to exchange anything of value to induce the referral of federal health care program business.
11. Debarment and Suspension (Executive Orders 12549 and 12689, 2 CFR 180 and 2 CFR Subtitle B, Chapter III Part 300) prohibiting contract awards to parties listed on government-wide exclusions in the System for Award Management (SAM). SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
12. Whistleblower Protection Act, 10 U.S.C. 2409, 41 U.S.C. 4712, and 10 U.S.C. 2324, 41 U.S.C. 4304 and 4310, requiring compliance with statutory requirements for whistleblower protections.
13. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352), prohibiting the use of federal funds to pay for 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 disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.
14. Drug-Free Workplace Act of 1988, 41 U.S.C. §701, et. seq., requiring all organizations receiving federal monies to maintain a drug-free workplace.
15. Federal Funding Accountability and Transparency Act of 2006, requiring reporting of subawards and executive compensation;
	1. First-tier Subawards.

All recipients, unless exempt as provided in paragraph D, must report each action that obligates $25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity. Recipients must report the information about each obligating action in accordance with the submission instructions posted at [www.fsrs.gov](http://www.fsrs.gov).

* 1. Total Compensation of Recipient Executives.
		1. All recipients must report total compensation for each of the five most highly

compensated executives for the preceding completed fiscal year, if,

1. the total Federal funding authorized to date under this award is $25,000 or more; in the preceding fiscal year, recipients received: Eighty percent or more of the annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
2. $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
3. The public does not have access to information about the compensation of the executives through periodic reports filed under the Securities Exchange Act of 1934 and Internal Revenue Code of 1986.
	* 1. Where and when to report. Recipients must report executive total compensation described in paragraph b.1 of this award term:
4. The Contractor is to submit the Compensation Report to the Department by the end of the month following the month in which the total of the monies obligated through this Contract is at $25,000 or more, whether occurring at the time of signing or at some later date due to a contractual amendment.  The Contractor must continue to submit the Compensation Report annually during the term of the Contract on the anniversary of the initial date of submittal, even if the total consideration for the Contract is later amended to be less than $25,000.
5. The Contractor will submit the Compensation Report to the Department by first-class mail addressed as follows or via email:

DPHHS

Attn:  BFSD-FFATA Reporting

PO Box 4210

Helena, MT  59604-4210

hhsffata@mt.gov

* 1. Total Compensation of Subrecipient Executives.

All recipients unless exempt as provided in paragraph d. of this award term, for each first-tier subrecipient. Recipients must report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if

1. in the subrecipient's preceding fiscal year, the subrecipient received:
2. 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
3. $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
4. The public does not have access to information about the
compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986.

d. Exemptions. All recipients' gross income, from all sources of the previous tax year, under $300,000, are exempt from the requirements to report:

1. Subawards, and
2. The total compensation of the five most highly compensated executives of any subrecipient.
3. Disclosure of Ownership and Control Information pursuant to 42 C.F.R. §§ 455.104, 455.105, and 455.106, requiring disclosures of ownership and control, business transactions, and persons with criminal convictions in connection with the delivery of Medicaid funded services.
4. Federal Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Information Technology For Economic And Clinical Health of 2009 (HITECH), requiring compliance with privacy, security, electronic transmission, coding and other requirements applicable to Covered Entities or a Business Associate as defined for purposes of the acts.
5. Patient Protection and Affordable Care Act – P.L. 111-148
6. Section 1557 of the Affordable Care Act and 45 CFR Part 92, prohibiting discrimination in health programs and activities any part of which receives Federal financial assistance.

B. Compliance with State of Montana Authorities.

Contractor assures that it and any of its subcontractors will comply with all State of Montana laws, rules, ordinances and executive orders, that are applicable to this Contract, to include the provisions of the below referenced laws. The list is not intended, nor must it be construed, as a listing of all state authorities with which Contractor must comply for the purposes of the Contract, or that Contractor must comply with each of the authorities listed. Contractor is responsible for determining with which state authorities it must comply in the performance of the Contract.

1. Montana False Claims Act, Title 17, Chapter 8, part 4, MCA.
2. Montana Anti-Trust laws – §30-14-201, MCA, et. seq.
3. Montana Human Rights Act Title 49 MCA
4. Montana Governmental Code of Fair Practices Title 49, Chapter 3

Attachment 5 To Contract No. lnsert Contract Number

Rev. 7/2020

**INSURANCE REQUIREMENTS**

**I. Insurance.**

Contractor shall maintain for the duration of the 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 the Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance shall cover such claims as may be caused by any negligent act or omission. The certificates must name the State of Montana Department of Public Health and Human Services as certificate holder and Contractor shall provide copies of additional insured endorsements required by Contractor’s commercial general liability and automobile liability policies.

**II. Primary Insurance.**

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

**III. Insurance Requirements.**

**Specific Requirements for 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 submitted.

**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’s officers, agents, representatives, assigns, or subcontractors.

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

**Liability:** The Contractor shall purchase and maintain occurrence 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 the Contractor’s officers, agents, representatives, assigns, or subcontractors.

**Additional Insured Status:** The Department, its officers, officials, employees, and volunteers are to be covered as additional insureds for automobiles owned, leased, hired, or borrowed by the Contractor.

**Specific Requirements for Professional Liability:** Contractor shall purchase and maintain occurrence coverage with combined single limits for each wrongful act 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 the Contractor’s officers, agents, representatives, assigns or subcontractors.

**Specific Requirements for Business Income/Interruption Insurance:** Contractor shall purchase and maintain Business Income/Interruption Insurance covering business income lost as a result of an event that interrupts the operations of the business. Coverage amount should be determined between the Contractor and insurance agent.

**Specific Requirements for Cyber/Data Information Security Insurance:** 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 unauthorized acquisition of personal information 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 Department 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 Department. 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 Department 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.

**IV. Deductibles and Self-Insured Retentions.**

Any deductible or self-insured retention must be declared to and approved by the Department. At the request of the Department, either: 1) the insurer shall reduce or eliminate such deductibles or self-insured retentions with respect to the Department, its officers, employees, or volunteers; or 2) at its own expense, Contractor shall procure a bond guaranteeing payment of losses and related investigations, claims administration, and defense expenses. Note: The deductible/self-insured provision does not apply to political subdivisions of the state (i.e. counties, cities, towns, and school districts) under §2-9-211, MCA.

**V. Certificates of Insurance.**

Insurance is to be placed with an insurer with a Best’s rating of no less than A-. Note: Best’s ratings do not apply to political subdivisions of the state (i.e. counties, cities, towns, and school districts) under §2-9-211, MCA. All certificates and endorsements are to be received by the Department prior to the provision of a service or purchase of a product. Contractor must notify the Department immediately, of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The Department reserves the right to require complete copies of insurance policies or self-insured memorandums of coverage at all times.

Attachment 6 To Contract No. lnsert Contract Number

Rev. 4/2019

**BUSINESS ASSOCIATE AGREEMENT**

**PARTIES**

This Business Associate Agreement (Agreement) is entered into between the Department of Public Health and Human Services, (the “Department”), State of Montana (State), whose contact information is as follows: lnsert Address, lnsert City, MT, Insert Zip Code, Phone Number (406) lnsert Phone Number, Fax Number (406) lnsert Fax Number, and lnsert Contractor Name (Business Associate), whose contact information is as follows: Federal Tax ID Number Insert Federal Tax ID Number, DUNS Number lnsert DUNS Number, Insert Street Address, Insert City, lnsert State, lnsert Zip Code, Phone Number lnsert Phone Number, and Fax Number lnsert Fax Number.

**THE PARTIES AGREE AS FOLLOWS:**

**1. Business Associate Status**

a. The Department is subject to and must comply with provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as codified at 42 U.S.C. § 1320d-d8, and the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), enacted as part of the American Recovery and Reinvestment Act of 2009, as codified at 42 U.S.C. §§ 300jj et seq. and §§ 17901, et seq. and the implementing regulations for the two acts at 45 CFR Parts 160, 162 and 164.

b. The Department has determined it is a hybrid entity as defined in the implementing regulations, that is a covered entity performing both covered and non-covered functions. Under the HIPAA and HITECH and the implementing regulations, the Business Associate, as an entity that performs or assists in the performance of an administrative or data function for the Department involving the use or disclosure of protected health information (PHI) for the Department, is acting as a business associate of a covered entity.

**2. Definitions that Apply to This Agreement**

Terms used in this Agreement have the same meaning as those terms in the HIPAA and HITECH Acts and the implementing regulations.

**3. Status as a Business Associate**

The Business Associate agrees that it is a Business Associate of the Department, as defined at 45 CFR § 160.103, and further agrees that it is obligated to comply with the terms of this Agreement and with the requirements of the HIPAA and HITECH Acts and the implementing regulations.

**4. Obligations of Business Associate**

The Business Associate, as a business associate of the Department, must:

a. use or disclose PHI, including E-PHI, only as is permitted or required by this Agreement, in compliance with the Department's minimum necessary standard policies and procedures, or by applicable law inclusive of 45 CFR Parts 160, 162 and 164;

b. use appropriate safeguards to prevent use or disclosure of PHI and E-PHI other than as provided for by this Agreement or by law;

c. implement appropriate administrative, physical and technical security safeguards as set forth in § 164.306, § 164.308, and § 164.312, that reasonably and appropriate protect the confidentiality, integrity, and availability of PHI and prevent use or disclosure of the PHI other than as provided for by this Agreement;

d. mitigate to the extent practicable and as may be directed by the Department any harmful effect that is known to the Business Associate of a use or disclosure of PHI by the Business Associate that is in violation of the requirements of this Agreement;

e. report in a timely manner as required by law and this Agreement to the Department any use or disclosure of the PHI not provided for by this Agreement inclusive of uses and disclosures of information that are not in compliance with the minimum necessary standard;

f. report to the Department any security incident of which it becomes aware, and at the request of the Department must identify: i) the date of the security incident, ii) the scope of the security incident, iii) the Business Associate's response to the security incident, and iv) the identification of the party responsible for causing the security incident, if known;

g. enter, as required by 45 CFR § 164.504, into Business Associate Agreements containing the terms and conditions as required by the HIPAA and HITECH Acts and the implementing regulations and as are stated in this Agreement, with any subcontractors performing services in relation to the services being provided by the Business Associate for the Department that involve PHI;

h. make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of the Department, available to the Department, or to the Secretary of the Federal Department of Health and Human Services in accordance with 45 CFR § 164.408, in a time and manner prescribed by the Department or designated by the Secretary, for purposes of the Secretary determining the Department's and the Business Associate's compliance with the Privacy Regulation, the Security Regulation, and the HITECH Act;

i. document disclosures of PHI and collect information related to those disclosures necessary for the Department to respond to a request by a person for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528 and Section 13405(c) of the HITECH Act;

j. provide to the Department or a person, in time and manner prescribed by the Department, documentation necessary for the Department to respond to a request by a person for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Notwithstanding 45 CFR § 164.528(a)(1)(i), the Business Associate must document disclosures of PHI made through an electronic health record to carry out treatment, payment or health care operations as provided by 45 CFR § 164.506 in the six years prior to the date on which the accounting is requested, and to collect information related to such disclosures as required by the Secretary in regulation pursuant to Section 13405(c)(2) of the HITECH Act;

k. implement a response program, in compliance with Section 13402 of the HITECH Act and implementing regulations, and Subpart D of 45 CFR Part 164 that specifies the actions to be taken when the Business Associate detects or becomes aware of unauthorized access to information systems. The response program must include the following features:

(i) The Business Associate must notify the Department, by facsimile or telephone, of any breach or suspected breach of its security related to areas, locations, or computer system which contain unsecured PHI, including, without limitation, any instance of theft, unauthorized access by fraud, deception, or other malfeasance or inadvertent access (an "incident") in accordance to 45 CFR § 164.410, as promptly as possible, upon having reason to suspect that an incident may have occurred or determining the scope of any such incident, but in no event later than two (2) calendar days upon having reason to suspect that an incident may have occurred;

(ii) In the event of any incident, the Business Associate must provide to the Department, in writing, those details concerning the incident as the Department may request, and must cooperate with the Department, its regulators and law enforcement to assist in regaining possession of the unsecured PHI and in preventing its further unauthorized use, and take any necessary remedial actions as may be required by the Department to prevent other or further incidents;

(iii) If the Department determines that it may need to notify any person(s) as a result of such incident that is attributable to the Business Associate's breach of its obligations under this Agreement, the Business Associate must bear all reasonable direct and indirect costs associated with the determination, including, without limitation, the costs associated with providing notification to the affected person, providing fraud monitoring or other services to affected persons and any forensic analysis required to determine the scope of the incident;

(iv) The Business Associate, working in cooperation with the Department, must update the notice provided to the Department under this Agreement of the incident to include, to the extent possible and as soon as possible, the identification of each person whose unsecured PHI has been, or is reasonably believed by the Business Associate or the Department to have been accessed, acquired, used or disclosed during the incident and must provide any of the following information the Department is required to include in its notice to the person pursuant to 45 CFR § 164.404(c):

(A) A brief description of what happened, including the date of the incident and the date of the discovery of the incident, if known;

(B) A description of the types of unsecured PHI that were involved in the incident (e.g., Social Security Number, full name, date of birth, address, diagnosis);

(C) Any steps the person should take to protect themselves from potential harm resulting from the incident;

(D) A brief description of what is being done to investigate the incident, mitigate the harm, and protect against future incidents;

(E) Contact procedures for persons to ask questions or learn additional information which shall include a toll-free number, an e-mail address, website, or postal address; and

(F) This additional information must be submitted to the Department immediately at the time the information becomes available to the Business Associate.

 (v) limit its use and disclosure of PHI created or received by the Business Associate from or on behalf of the Department to uses or disclosures as are permitted to the Business Associate under the applicable requirements of 45 CFR § 164.504(e) and the HITECH Act and the terms of this Agreement. The Business Associate must also comply with the additional requirements of Subtitle D of the HITECH Act that relate to privacy and that apply to covered entities and to the Business Associate as a business associate; and

(vi) respond to a person's request under 45 CFR § 164.522(a)(1)(i)(A) that the Business Associate restrict the disclosure of the person's PHI.

**5. Permitted Uses, Disclosures and Limitations**

a. Except as otherwise limited in this Agreement, the Business Associate may use or disclose PHI on behalf of, or to provide services to, the Department for the following purposes, if such use or disclosure of PHI would not violate the requirements of the HIPAA and HITECH Acts and the implementing regulations if done by the Department or otherwise violate the minimum necessary policies and procedures of the Department:

to perform services under this contract.

b. The Business Associate may use PHI to report violations of federal and state laws to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1) and (2).

c. The Business Associate, as required by 45 CFR § 164.504(e)(1)(iii), must terminate any business associate agreement with a subcontractor that violates the requirements of this Agreement or the applicable law.

d. The Business Associate shall not directly or indirectly receive remuneration in exchange for PHI that is created or received by the Business Associate from or on behalf of the Department.

**6. Use and Disclosure for Business Associate's Purposes**

a. The Business Associate must use and disclose PHI that is created or received by the Business Associate from or on behalf of the Department in compliance with each applicable requirement of 45 CFR § 164.504(e) and the HITECH Act.

b. The Business Associate may use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate provided that:

 (i) the disclosures are required by law;

 (ii) the disclosures are expressly authorized in this Agreement by the Department;

(iii) the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only for the purpose for which it was disclosed to the person; and

(iv) the Business Associate requires the person to whom the information is disclosed to report immediately any incident of which it is aware in which the confidentiality of the information has been breached.

c. The Business Associate may only use PHI for Data Aggregation purposes if the Department in this Agreement expressly authorizes those purposes and the Data Aggregation is permitted in accordance with 42 CFR § 164.504(e)(2)(i)(B).

d. To the extent otherwise permitted by this Agreement, a communication that is described in the definition of Marketing in 45 CFR § 164.501 for which the Department receives or has received Direct or Indirect Payment (excluding payment for Treatment) in exchange for making such communication, shall not be considered a Health Care Operation unless:

(i) such communication describes only a drug or biologic that is currently prescribed for the recipient of the communication and any payment received in exchange for making such a communication is reasonable in amount; or

(ii) the communication is made by the Business Associate on behalf of the Department and the communication is otherwise consistent with this Agreement. No communication may be made by the Business Associate without prior written authorization by the Department.

**7. Obligations of the Department**

a. The Department must notify the Business Associate of any limitation(s) in the Department's notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect the Business Associate's use or disclosure of PHI. A copy of the Department's Notice of Privacy Practice is attached to this Agreement and incorporated herein.

b. The Department must notify the Business Associate of any changes in, or revocation of, permission by a person to use or disclose PHI, to the extent that such changes may affect the Business Associate's use or disclosure of PHI.

c. The Department must notify the Business Associate of any restriction to the use or disclosure of PHI that the Department has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect the Business Associate's use or disclosure of PHI.

d. The Department, except as may be expressly agreed to by the parties and stated in this Agreement, may not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the requirements of the HIPAA and HITECH Acts and the implementing regulations if done by the Department.

**8. Term and Termination**

a**.** The term of this Agreement shall be effective as of the effective date that the Business Associate begins delivery of its services and shall terminate when all of the PHI provided by the Department to the Business Associate, or created or received by the Business Associate on behalf of the Department, is destroyed or returned to the Department, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this subsection.

b**.** Upon the Department's knowledge of a breach, as defined in § 164.402, by the Business Associate, the Department, as its sole discretion, must provide an opportunity for the Business Associate to:

 (i) cure the breach; or

(ii) end the violation and terminate this Agreement if the Business Associate does not cure the breach; or

 (iii) end the violation within the time specified by the Department; or

(iv) immediately terminate this Agreement if the Business Associate has breached a material term of this Agreement and cure is not possible; or

(v) if neither termination nor cure are feasible, the Department must report the violation to the Secretary.

c**.** Upon the Business Associate'sknowledge of a material breach by the Department, the Business Associate must either:

(i) notify the Department of such breach in reasonable detail, and provide an opportunity for the Department to cure the breach or violation; or

(ii) if cure is not possible, the Business Associate may immediately terminate this Agreement; or

(iii) if neither termination nor cure is feasible, the Business Associate shall repot the violation to the Secretary.

d. The Department may unilaterally terminate this Agreement with the Business Associate upon thirty (30) days written notice in the event:

(i) the Business Associate does not promptly enter into negotiations to amend this Agreement when requested by the Department pursuant to the terms of this Agreement; or

(ii) the Business Associate does not enter into an amendment to this Agreement providing assurance regarding the safeguarding of PHI that the Department, in its sole discretion, deems sufficient to satisfy the standards and requirements of the HIPAA and HITECH Acts and the implementing regulations.

**9. Effect of Termination**

a. Except as provided in this subsection, upon termination of this Agreement, for any reason, the Business Associate shall at the Department's sole discretion return or destroy all PHI received from the Department, or created or received by Business Associate on behalf of the Department. This Agreement shall apply to PHI that is in the possession of subcontractors or agents of the Business Associate. The Business Associate shall retain no copies of the PHI.

b. In the event that the Business Associate determines that returning or destroying the PHI is infeasible, the Business Associate must provide to the Department notification of the conditions that make return or destruction infeasible. Upon written agreement by the Department that return or destruction of PHI is infeasible, the Business Associate must extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI.

**10. Miscellaneous**

a. Regulatory References.A reference in this Agreement to a section in the Privacy Regulation or Security Regulation means the section as in effect or as amended.

b. Amendment.The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the Department to comply with the requirements of the HIPAA and HITECH Acts and the implementing regulations.

c. Survival. The respective rights and obligations of the Business Associate under this Agreement shall survive the termination of this Agreement.

d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit the Department to comply with the requirements of the HIPAA and HITECH Acts and the implementing regulations.

**MONTANA DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES**

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Insert Name, Insert Title

**BUSINESS ASSOCIATE**

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Insert Name, Insert Title

Attachment 7 To Contract No. Insert Contract Number

**ASSURANCES**

**DEPARTMENT’S ANNUAL CERTIFICATION**

DPHHS GS-301

Rev. 5/2019

**ANNUAL CERTIFICATION FOR DEPARTMENT OF PUBLIC HEALTH & HUMAN SERVICES OF THE CONTRACTOR’S COMPLIANCE WITH CERTAIN STATE AND FEDERAL REQUIREMENTS**

This annual certification form is standardized for general use by the Department Of Public Health And Human Services (Department) in contracting relationships. Not all of these assurances may be pertinent to the Contractor's circumstances. The Contractor in signing this form is certifying compliance only with those requirements that are legally or contractually applicable to the circumstances of the contractual relationship of the Contractor with the Department.

These assurances are in addition to those stated in the federal OMB 424B (Rev. 7‑97) form, known as "ASSURANCES ‑ NON‑CONSTRUCTION PROGRAMS", issued by the federal Office of Management of the Budget (OMB). Standard Form 424B is an assurances form that must be signed by the Contractor if the Contractor is to be in receipt of federal monies.

There may be program specific assurances, not appearing either in this form or in the OMB Standard Form 424B, for which the Contractor may have to provide additional certification.

This form and OMB Standard Form 424B are to be provided with original signatures to the Department's contract liaison. The completed forms are maintained by the Department in the pertinent procurement and contract files.

Further explanation of several of the requirements certified through this form may be found in the text of related contract provisions and in the Department's policies pertaining to procurement and contractual terms. In addition, detailed explanations of federal requirements may be obtained through the Internet at sites for the federal departments and programs and for the Office for Management of the Budget (OMB) and the General Services Administration (GSA).

**ASSURANCES**

Insert Contractor Name.

The **Contractor**, Insert Contractor Name, for the purpose of contracting with the Montana Department of Public Health & Human Services, by its signature on this document certifies to the Department its compliance, as may be applicable to it, with the following requirements.

**The Contractor assures the Department:**

**GENERAL COMPLIANCE REQUIREMENTS**

1. That the Contractor does not engage in conflicts of interest in violation of any state or federal legal authorities, any price fixing or any other anticompetitive activities that violate the federal antitrust Sherman Act, 15 U.S.C. §§1 – 7, Anti-Kickback Act, 41 U.S.C. §§ 51-58, and other federal legal authorities. And that the Contractor does not act in violation of 18-4-141, MCA or other legal authorities by colluding with other contractors for the purpose of gaining unfair advantages for it or other contractors or for the purpose of providing the services at a noncompetitive price or otherwise in a noncompetitive manner.
2. That the Contractor does not act in violation of the federal False Claims Act at31 U.S.C. §§ 3729

3733(the “Lincoln Law”) or of the Montana False Claims Act, at Title 17, chapter,8, part 4, MCA. And that the Contractor and its employees, agents and subcontractors act to comply with requirements of the federal False Claims Act by reporting any credible evidence that a principal, employee, agent, contractor, subgrantee, subcontractor, or other person has submitted a false claim to the federal government.

1. That the Contractor is solely responsible for and must meet all labor, tax, and other legal Authorities requirements pertaining to its employment and contracting activities, inclusive of insurance premiums, tax deductions, unemployment and other tax withholding, overtime wages and other employment obligations that may be legally required with respect to it.
2. That the Contractor maintains necessary and appropriate workers compensation insurance coverage.

1. That the Contractor is an independent contractor and possesses, unless by law not subject to or exempted from the requirement, a current independent contractor certification issued by the Montana Department Of Labor And Industry in accordance with 39-71-417 through 39-71-419, MCA.

F. That the Contractor’s subcontractors and agents are in conformance with the requirements of Sections B, C, and D of this Certification.

G. That the Contractor, any employee of the Contractor, or any subcontractor in the performance of the duties and responsibilities of the proposed contract: 1) are not currently suspended, debarred, or otherwise prohibited in accordance with 2 CFR Part 180, OMB Guidelines To Agencies On Government wide Debarment and Suspension (nonprocurement) from entering into a federally funded contract or participating in the performance of a federally funded contract; and 2) are not currently removed or suspended in accordance with 18-4-241, MCA from entering into contracts with the State Of Montana.

H. That the Contractor is in compliance with those provisions of the privacy, security, electronic transmission, coding and other requirements of the federal Health Insurance Portability And Accountability Act of 1996 (HIPAA) and the federal Health Information Technology For Economic And Clinical Health (HITECH), a part of the American Recovery And Reinvestment Act Of 2009, and the implementing federal regulations for both acts that are applicable to contractual performance if the Contractor is either a Covered Entity or a Business Associate as defined for purposes of those acts.

1. That, as required by legal authorities or contract, the Contractor maintains smoke and tobacco free public and work sites. And if the contract performance is related to the delivery of a human service, the Contractor does not perform any work involved in the production, processing, distribution, promotion, sale, or use of tobacco products or the promotion of tobacco companies; or 3) accept revenues from the tobacco industry or subsidiaries of the tobacco industry if the acceptance results in the appearance that tobacco use is desirable or acceptable or in the appearance that the Contractor endorses a tobacco product or the gifting tobacco related entity.

**COMPLIANCE REQUIREMENTS FOR FEDERALLY FUNDED CONTRACTS**

J. That the Contractor, in conformance with the Pro-Children Act of 1994 (20 U.S.C. §6081 *et seq.*), prohibits smoking at any site of federally funded activities that serve youth under the age of 18. This federal prohibition is not applicable to a site where the only federal funding for services is through Medicaid monies or the federally funded activity at the site is inpatient drug or alcohol treatment.

K. That the Contractor does not expend federal monies in violation of federal legal authorities prohibiting expenditure of federal funds on lobbying the United States Congress or state legislative bodies or for any effort to persuade the public to support or oppose legislation.

L. That the Contractor maintains in compliance with the Drug-Free Workplace Act of 1988, 41 U.S.C. 701, et seq., drug free environments at its work sites, providing required notices, undertaking affirmative reporting, and other requirements, as required by federal legal authorities.

M. That the Contractor is not delinquent in the repayment of any debt owed to a federal entity.

N. That the Contractor, if expending federal monies for research purposes, complies with federal legal authorities relating to use of human subjects, animal welfare, biosafety, misconduct in science and metric conversion.

O. That the Contractor, if receiving aggregate payments of medicaid monies totaling $5,000,000 or more annually, has established in compliance with 1902(a)(68) of the Social Security Act, 42 U.S.C. 1396a(a)(68), written policies with educational information about the federal False Claims Act at 31 U.S.C. §§ 3729–3733 (the “Lincoln Law”) and presents that information to all employees.

P. That the Contractor is in compliance with the executive compensation reporting requirement of the Federal Funding Accountability And Transparency Act (FFATA or Transparency Act), P.L. 109-282, as amended by Section 6202(a), P.L. 110-252-1, either in that the Contractor does not meet the criteria necessitating the submittal of a report by an entity or in that, if the Contractor meets the criteria mandating reporting, the Contractor produces the information in a publicly available report to the Securities And Exchange Commission (SEC) or to the Internal Revenue Service and provides the report in a timely manner to the Department or produces a separate report with the information and submits that report to the in a timely manner to the Department.

Q. That the Contractor, if a contractor for the delivery of medicaid funded services, is in compliance with the requirements of 42 C.F.R. §§ 455.104, 455.105, and 455.106 concerning disclosures of ownership and control, business transactions, and persons with criminal convictions.

R. That the Contractor, if providing federally funded health care services, is not as an entity currently federally debarred from receiving reimbursement for the provision of federally funded health care services and furthermore does not currently have any employees or agents who are federally debarred from the receiving reimbursement for the provision of federally funded health care services.

**COMPLIANCE REQUIREMENTS FOR FEDERALLY FUNDED CONTRACTS INVOLVING THE PURCHASE OR DEVELOPMENT OF PROPERTY**

S. That the Contractor manages any real, personal, or intangible property purchased or developed with federal monies in accordance with federal legal authorities.

T. That the Contractor, if expending federal monies for construction purposes or otherwise for property development, complies with federal legal authorities relating to flood insurance, historic properties, relocation assistance for displaced persons, elimination of architectural barriers, metric conversion and environmental impacts.

U. That the Contractor, if the contract exceeds $100,000, complies with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the federal Energy Policy and Conservation Act, Pub. L. 94-163, 42 U.S.C. §6321 et. seq.

V. That the Contractor, if the contract exceeds $100,000, complies with all applicable standards, orders and requirements issued under section 306 of the Clean Air Act, 42 U.S.C. 7607, section 508 of the Clean Water Act, 33 U.S.C. 1368, Executive Order 11738, and U.S. Environmental Protection Agency regulations, 40 C.F.R. Part15 and that if the Contractor enters into a subcontract that exceeds $100,000 these requirements are in that contract.

**CONTRACTOR**

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Insert Name, Insert Title

**SOURCES OF INFORMATION**

DPHHS GS-302

Rev. 06/2018

**SOURCES OF INFORMATION ON THE PRIVACY, TRANSACTIONS AND SECURITY REQUIREMENTS PERTAINING TO HEALTH CARE INFORMATION OF THE FEDERAL HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA) AND THE FEDERAL HEALTH INFORMATION TECHNOLOGY FOR ECONOMIC AND CLINICAL HEALTH ACT (HITECH), ENACTED AS PART OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

The following are sources of information concerning the applicability of and implementation of the privacy, transactions and security requirements of HIPAA and HITECH. The Department Of Public Health & Human Services requires that contractors generating, maintaining, and using health care information in relation to recipients of State administered and funded services be compliant with the requirements of HIPAA and HITECH as applicable under the federal legal authorities and the status of the Department as a health care plan.

There can be difficulty in interpreting the applicability of the HIPAA and HITECH requirements to an entity and various circumstances. It is advisable to retain knowledgeable experts to advise concerning determinations of applicability and appropriate compliance.

Websites specified here may be changed without notice by those parties maintaining them.

**FEDERAL RESOURCES**

The following are official federal resources in relation to HIPAA and HITECH requirements. These are public sites. Implementation of the additional requirements under HITECH, due to the more recent date of enactment, is occurring on an ongoing basis.

1. U.S. Department Of Health & Human Services / Office Of Civil Rights [www.hhs.gov/ocr/hipaa](http://www.hhs.gov/ocr/hipaa)

The federal Department Of Health & Human Services / Office Of Civil Rights (OCR) provides information pertaining to privacy and security requirements under HIPAA and HITECH including the adopted regulations and various official interpretative materials. This site includes an inquiry service. OCR is responsible for the implementation of the privacy and security aspects of HIPAA/HITECH and serves as both the official interpreter for and enforcer of the privacy requirements.

2. U.S. Department Of Health & Human Services / Centers For Disease Control & Prevention

<http://www.cdc.gov/Other/privacy.html>. The federal Department Of Health & Human Services / Centers For Disease Control & Prevention (CDC) provides information pertaining to the application of privacy requirements under HIPAA to public health activities and programs.

**STATE RESOURCES**

The Department Website For Medicaid Provider Information provides general information for providers of services on compliance with various state and federal requirements. <https://medicaidprovider.mt.gov/>

Further information concerning HIPAA/HITECH compliance in the delivery of services funded through the Department’s various programs can be reviewed at the Department Website for DPHHS HIPAA Policies. <https://dphhs.mt.gov/HIPAA>

Certain departmental programs may have more detailed guidance available in relation to particular programs of services. Inquiries may be directed at a program to determine if further information is available.

**PROVIDER ASSOCIATIONS**

Many national and state provider associations have developed extensive resources for their memberships concerning HIPAA/HITECH requirements. Those are important resources in making determinations as to the applicability and implementation of HIPAA/HITECH.

**CONSULTANT RESOURCES**

There are innumerable consulting resources available nationally. The Department does not make recommendations or referrals as to such resources. It is advisable to pursue references before retaining any consulting resource. Some consulting resources may be inappropriate for certain types of entities and circumstances.

**ASSURANCES NON-CONSTRUCTION OMB 424**

**OMB Approval No. 0348-0040 ASSURANCES - NON-CONSTRUCTION PROGRAMS**

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions reducing this burden, to the Office of Management and Budget, Paperwork Reduction project (0348-0040), Washington, DC 20503. **PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurance. If such is the case, you will be notified.**

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPMs Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include, but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. 1681-1683 and 1685-1686), which prohibit discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3) as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 2601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (I) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-66), which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. 276a to 276a-7), the Copeland Act (40 U.S.C. 276c and 18 U.S.C. 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333, regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard are to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approval State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955k, as amended (42 U.S.C. 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling and treatment of warm blooded animals held for research, teaching or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4801 et seq.) Which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

**CONTRACTOR**

BY: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Insert Name, Insert Title

**DISCLOSURE OF LOBBYING ACTIVITIES**

 **DISCLOSURE OF LOBBYING ACTIVITIES** Approved by OMB

 Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352 0348-0046



**INSTRUCTIONS FOR COMPLETION OF SF-LLL,**

**DISCLOSURE OF LOBBYING ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawarded or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to Title 31 U.S.C., Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include, but are not limited to, subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in Item 4 checks Subawardee, then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award of loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in Item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number, the contract, grant or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., RFP-DE-90-001".

9. For a covered Federal action, where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in Item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in Item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services and include full address if different from 10(a). Enter Last Name, First Name and Middle Initial (MI).11. The certifying official shall sign and date the form, print his/her name, title and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

**FFATA COMMON DATA ELEMENTS AND COMPENSATION REPORT**

DPHHS-FB-180

Rev. 4/2019

State of Montana

Department of Public Health and Human Services

Business and Financial Services Division

**Federal Funding Accountability and Transparency Act**

**FFATA Summary: FFATA Common Data Elements Report**

**Section 1: Sub-Award Information Required for Reporting**

This report must be completed upon contract obligation of >$25,000.

|  |  |  |  |
| --- | --- | --- | --- |
| **MT Item** | **MT Data Element** | **Insert Data** | **Description** |
| FFATA-1-01 | Subrecipient DUNS Number | Insert Subrecipient DUNS Number | Provide subrecipient organization’s 9-digit Data Universal Numbering System (DUNS) number or Central Contractor Registration plus 4 extended DUNS number. |
| FFATA-1-02 | DPHHS Contract Number | Insert DPHHS Contract Number | Provide contract/grant/award number (if any) assigned to the subrecipient award by recipient. |
| FFATA-1-02-A | Grant Award Name | Insert Grant Award Name | Provide grant/award name assigned by the federal government (i.e. Child Abuse; VR-Independent Living; Immunization; Primary Care; Substance Abuse, etc). |
| FFATA-1-03 | Subrecipient Name | lnsert Subrecipient Name | Provide legal name of subrecipient as registered in the Central Contractor Registration (www.ccr.gov). |
| FFATA-1-04-A | Address Line 1 | lnsert Address | Physical location as listed in Central Contractor Registration. |
| FFATA-1-04-B | Address Line 2 | lnsert Address |  |
| FFATA-1-04-C | City | lnsert City |  |
| FFATA-1-04-D | State | lnsert State |  |
| FFATA-1-04-E | Zip+4 | lnsert Zip |  |
| FFATA-1-04-F | Congressional District | Insert Congressional District | AL or 01 for District if MT. |
| FFATA-1-05 | CFDA (Catalog of Federal Domestic Assistance) Number | lnsert CFDA Number | If not known, DPHHS will complete. |
| FFATA-1-06 | Total Contract | lnsert Contract Value | Provide total amount obligated to subawardee or subcontractor for contract period indicated. |
| FFATA-1-07 | Contract Period | lnsert Contract Period | Indicate project/grant period established in subaward document during which sponsorship begins and ends. For multi-year awards for a project/grant period (e.g., 5 years) funded in increments known as budget periods or funding periods, provide total project/grant period, not individual budget period or funding period. |
| FFATA-1-08-A | Primary Performance City | lnsert Performance City | Provide City of primary performance. |
| FFATA-1-08-B | Primary Performance County | lnsert Performance County | Provide County of primary performance. |
| FFATA-1-08-C | Primary Performance State | Insert Performance State | Provide State of primary performance. |
| FFATA-1-08-D | Primary Performance Zip+4 | lnsert Performance Zip | Provide Zip of primary performance. |
| FFATA-1-08-E | Congressional District | lnsert Congressional District | Provide Congressional District of primary performance. |
| FFATA-1-09 | Funding Agency | lnsert Funding Agency | If not known, DPHHS will complete. |
| FFATA-1-10 | Brief Description of Purpose of Funding Action | lnsert Purpose |  |

DPHHS-FB-181

Rev. 4/2019

State of Montana

Department of Public Health and Human Services

Business and Financial Services Division

**Federal Funding Accountability and Transparency Act**

**FFATA Summary: FFATA Common Data Elements Report**

**Section 2: Officers/Executive Compensation Report**

This section must be completed upon contract obligation of >$25,000 and yearly thereafter.

**CONTRACT TITLE:**  Insert Contract Title

**DPHHS CONTRACT #:** Insert DPHHS Contract Number

**DUNS #:** Insert DUNS #

**SUBMITTED BY:** Insert Name and Title

**INSERT DATE:**  Insert Submission Date

**Is Subrecipient (Contractor) Exempt?** Insert Yes or No

|  |  |  |  |
| --- | --- | --- | --- |
|  | **Name** | **Total Compensation** | **Title** |
| 1. | Insert Name | Insert Amount | lnsert Title |
| 2. | Insert Name | lnsert Amount | Insert Title |
| 3. | lnsert Name | lnsert Amount | lnsert Title |
| 4. | lnsert Name | lnsert Amount | lnsert Title |
| 5. | lnsert Name | lnsert Amount | lnsert Title |

**RETURN FFATA FORMS TO:**

**DPHHS**

**ATTN: BFSD-FFATA REPORTING**

**PO Box 4210**

**Helena, MT 59604-4210**

**or**

**e-Mail:** **hhsffata@mt.gov**

Attachment 8 To Contract No. lnsert Contract Number

**DARK MONEY DISCLOSURE DECLARATION**

**Declaration Form**

**Dark Money Spending Disclosure Requirements**

Contracting Entity shall comply with the [State of Montana Executive Order No. 15-2018](http://governor.mt.gov/Portals/16/docs/2018EOs/EO-15-2018_Disclosure%20Requirement.pdf) requiring the disclosure of dark money spending.

**Definitions.** As used in this declaration form, the following definitions apply:

**Electioneering Communication:** A paid communication that is publicly distributed by radio, television, cable, satellite, internet website, mobile device, newspaper, periodical, billboard, mail, or any other distribution of printed or electronic materials, that is made within 60 days of the initiation of voting in an election in Montana, that can be received by more than 100 recipients in the district in Montana voting on the candidate or ballot issue, and that:

1. refers to one or more clearly identified candidates in that election in Montana;
2. depicts the name, image, likeness, or voice of one or more clearly identified candidates in that election in Montana; or
3. refers to a political party, ballot issue, or other question submitted to the voters in that election in Montana.

The term does not mean:

1. a bona fide news story, commentary, blog, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, internet website, or other periodical publication of general circulation unless the facilities are owned or controlled by a candidate or political committee;
2. a communication by any membership organization or corporation to its members, stockholders, or employees;
3. a commercial communication that depicts a candidate's name, image, likeness, or voice only in the candidate's capacity as owner, operator, or employee of a business that existed prior to the candidacy; or
4. a communication that constitutes a candidate debate or forum or that solely promotes a candidate debate or forum and is made by or on behalf of the person sponsoring the debate or forum.

In this definition, the phrase "made within 60 days of the initiation of voting in an election" means:

1. in the case of mail ballot elections, the initiation of voting occurs when official ballot packets are mailed to qualified electors pursuant to [13-19-206](https://leg.mt.gov/bills/mca/title_0130/chapter_0190/part_0020/section_0060/0130-0190-0020-0060.html), MCA; or
2. in other elections the initiation of voting occurs when absentee ballot packets are mailed to or otherwise delivered to qualified electors pursuant to [13-13-214](https://leg.mt.gov/bills/mca/title_0130/chapter_0130/part_0020/section_0140/0130-0130-0020-0140.html), MCA.

**Contracting Entity:** A bidder, offeror, or contractor.

**Covered Expenditure** means:

1. A contribution, expenditure, or transfer made by the Contracting Entity, any of its parent entities, or any affiliates or subsidiaries within the entity's control, that:

i. is to or on behalf of a candidate for office, a political party, or a party committee in Montana; or

ii. is to another entity, regardless of the entity's tax status, that pays for an Electioneering Communication, or that makes contributions, transfers, or expenditures to another entity, regardless of its tax status, that pays for Electioneering Communication; and

1. The term excludes an expenditure made by the Contracting Entity, any of its parent entities, or any affiliates or subsidiaries within the entity's control made in the ordinary course of business conducted by the entity making the expenditure; investments; or expenditures or contributions where the entity making the expenditure or contribution and the recipient agree that it will not be used to contribute to candidates, parties, or Electioneering Communication.

**Solicitation Requirements.** The Contracting Entity shall disclose Covered Expenditures that the Contracting Entity has made within two years prior to submission of its bid or offer.

The disclosure of Covered Expenditures is only required by the bidder/offeror whenever the aggregate amount of Covered Expenditures made within a 24-month period by the bidder/offeror, any parent entities, or any affiliates or subsidiaries within the bidder/offeror’s control exceeds $2,500.

If the bidder/offeror meets the disclosure requirements, the bidder/offeror shall submit this signed declaration form indicating “Yes” AND the required disclosure form with its bid/proposal.

If the bidder/offeror does NOT meet the disclosure requirements, the bidder/offeror shall submit this signed declaration form with its bid/proposal indicating “No”.

**Annual Contract Requirements.** The Contracting Entity agrees that if awarded a contract and the contract term exceeds, or has the potential to exceed 24 months, it must annually review and complete a new declaration form and disclosure form, if necessary.

No - I do NOT meet the disclosure requirements. I certify that I have read, understand these requirements and the Contracting Entity has not made Covered Expenditures in excess of $2,500 in the 24 months immediately preceding the submission of this form.

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Company Name

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Signature Date

Insert Contract Number

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contract or Solicitation Number

Yes - I meet the disclosure requirements for the 24 months immediately preceding the submission of this form. I have read, understand the requirements and I will complete the necessary disclosure form and submit it with this form.

Disclosure Template: <https://spb.mt.gov/Laws-Rules>

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Company Name

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_

Authorized Signature Date

Insert Contract Number

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Contract or Solicitation Number

Attachment 9 To Contract No. Insert Contract Number

**REQUEST FOR PROPOSAL/RESPONSE TO PROPOSAL**

TBD