

**ONSITE HEARING TESTS/REMOTE AUDIOLOGY SERVICES  
AUDICUS  
CONTRACT NO. COR24-0673-HSB**

**THIS CONTRACT** is entered into by and between the State of Montana, **Montana Department of Corrections**, (State), whose address and phone number are P.O. Box 201301, 5 S. Last Chance Gulch, Helena, MT 59620-1301, (406) 444-3930, and Audicus, (Contractor), whose address and phone number are 130 W 29<sup>th</sup> Street, 11th Floor, New York, NY 10001, (917) 909-6197.

**1. EFFECTIVE DATE, DURATION, AND RENEWAL**

**1.1 Contract Term.** The Contract's initial term is, November 1, 2023, through October 31, 2024, unless terminated earlier as provided in this Contract. In no event is this Contract binding on State unless State's authorized representative has signed it. The legal counsel signature approving legal content of the Contract and the procurement officer signature approving the form of the Contract do not constitute an authorized signature.

**1.2 Contract Renewal.** State may renew this Contract under its then-existing terms and conditions (subject to potential cost adjustments described below in section 2) in one (1)-year intervals, or any interval that is advantageous to State. This Contract, including any renewals, may not exceed a total of seven (7) years.

**2. COST ADJUSTMENTS**

**Cost Adjustments Negotiated Based on Changes in Contractor's Costs.** After the Contract's initial term and if State agrees to a renewal, the parties may negotiate cost adjustments at the time of Contract renewal. Any cost increases must be based on demonstrated industrywide or regional increases in Contractor's costs. State is not obligated to agree upon a renewal or a cost increase.

**3. SERVICES AND/OR SUPPLIES**

Contractor will provide State with the equipment and training to perform digital hearing tests. When completing hearing tests with Audicus equipment results will reproduce pure tone hearing test assessments. Contractor will also provide phone, e-mail, and online chat support as needed. Results will be sent to Contractor whose audiologists will review and provide recommendations for hearing aids pursuant to State's approval. When hearing aids are ordered, Contractor will program each hearing aid to the specifications needed for each Patient. Audicus will ship the hearing aid(s) to the facility and should arrive within 5-business days.

Contractor shall provide State with the following Supplies:

- USB External Sound Card.
  - USB Audio Adapter Computer Connector 2.0 Male.
  - Headset Connector 3.5mm Female.
- Over-the-Ear-Earmuffs
  - Noise reduction earmuffs, over the ear, adjustable band.
- In the Ear Headphones
  - Etymotic Audiometric Hearing Headset, in the ear device.
  - High accuracy sound with enhanced bass
- Equipment Carrying Case
  - Travel-sized carrying case, all equipment, easy to store.

#### 4. WARRANTIES

**4.1 Warranty of Products.** Contractor warrants that the products supplied conform to the specifications requested, are fit and sufficient for the purpose manufactured, are of good material and workmanship, and are free from defect for a period of **(90)** days from the date of shipment. The length of warranty may vary by product. Contractor further warrants that the products are new and unused and of the latest model or manufacture, unless State specifies otherwise. Contractor acknowledges that exceptions will be rejected.

**4.2 Warranty of Services.** Contractor represents and warrants that the services will be performed in a professional and workmanlike manner with a degree of care, skill, and competence that is consistent with generally accepted industry standards reasonably expected of similar types of engagements. Contractor warrants that the manner in which it provides the services conform to the Contract requirements, including all descriptions, specifications, and attachments made a part of this Contract. State's acceptance of services provided by Contractor will not relieve Contractor from its obligations under this warranty. In addition to its other remedies under this Contract, at law, or in equity, State may require Contractor to promptly correct, at Contractor's expense, any services failing to meet Contractor's warranty herein. Services corrected by Contractor will be subject to all the provisions of this Contract in the manner and to the same extent as services originally furnished.

#### 5. CONSIDERATION/PAYMENT

**5.1 Payment Schedule.** In consideration of the supplies and services to be provided, State will pay Contractor according to the following schedule:

- A. The Contractor must bill all laboratory services to Conduent on an HCFA-1500 claim form. Billing information shall include, but is not limited to, CHIMES ID, the inmate DOC number, valid diagnosis codes, and Montana Medicaid's current procedure/service codes. Claims must be submitted to:

Conduent Claims Processing Unit  
PO Box 8000  
Helena, MT 59604

The Contractor acknowledges that they will be compensated by Conduent according to current fee schedules and limits as contained in Montana Medicaid's Manual. Only claims submitted by the Contractor within one (1) year of date of service shall be processed.

All Contractor claims must be submitted within one (1) calendar year of date of service. The State will accept no adjustments, including coding and late-charge adjustments, later than thirty (30) days after payment of the original claim. Payment for claims submitted after one calendar year, or adjustments or late charges submitted later than thirty (30) days after payment of the original claim, which would have resulted in an increased payment if timely submitted, will be forfeited. The State shall have no liability for claims when said claims are not submitted in accordance with this requirement.

- B. State shall pay Contractor a monthly rate of **\$129.00** per set of equipment and shall not exceed **\$3,096.00 per year** for the services and supplies described herein.
- C. State shall pay Contract **\$118.00** one-time setup fee per program activation.
- D. Reimbursement shall follow the current Montana Medicaid Reimbursement Fee Schedule.

**5.2 Withholding of Payment.** Subject to provisions of Section 20, Event of Breach – Remedies, State may withhold payments to Contractor if Contractor has breached this Contract. Such withholding may not be greater than, in the aggregate, 5% of the total value of the subject statement of work or applicable contract.

**5.3 Payment Terms.** Unless otherwise noted in the solicitation document, State has thirty (30) days from receipt to pay invoices, as allowed by § 17-8-242, MCA. Contractor will provide banking information at the time of Contract execution in order to facilitate State’s electronic funds transfer payments.

**5.4 Reference to Contract.** The Contract number must appear on all invoices, packing lists, packages, and correspondence pertaining to the Contract. If the number is not provided, State is not obligated to timely pay the invoice.

**6. NON-EXCLUSIVE CONTRACT**

The intent of this Contract is to provide State with an expedited means of procuring supplies and/or services. This Contract is for the convenience of State and is considered by State to be a “Non-exclusive” use contract. Therefore, State may obtain this product/service from sources other than the Contract holder(s) as long as they comply with Title 18, MCA, and their delegation agreement. State does not guarantee any usage.

**7. ACCESS AND RETENTION OF RECORDS**

**7.1 Access to Records.** Contractor will provide State, Legislative Auditor, or their authorized agents access to any records necessary to determine Contract compliance. State may terminate this Contract under Section 19, Contract Termination, without incurring liability, for Contractor’s refusal to allow access as required by this section. (§ 18-1-118, MCA.) Offender’s protected health information (PHI) will not be made accessible to Legislative Auditor Division without a HIPAA-compliant release and if applicable a 42 CFR Part-2 compliant release signed by the offender.

**7.2 Retention Period.** Contractor will create and retain all records supporting the provision of services pursuant to this Contract for a period of eight (8) years after either the completion date of this Contract or termination of the Contract.

**8. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING**

Contractor may not assign, transfer, or subcontract any portion of this Contract without State’s prior written consent. (§ 18-4-141, MCA) Contractor is responsible to State for the acts and omissions of all subcontractors or agents and of persons directly or indirectly employed by such subcontractors, and for the acts and omissions of persons employed directly by Contractor. No contractual relationships exist between any subcontractor and State under this Contract.

**9. DEFENSE, INDEMNIFICATION / HOLD HARMLESS**

Contractor will protect, defend, indemnify, and save harmless the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, from and against all claims, liabilities, demands, causes of action, judgments, and losses, including all costs of defense and reasonable attorney fees, arising in favor of or asserted by Contractor’s employees and agents, its subcontractors, its subcontractor’s employees and agents, or third parties on account of property damage, personal injury, bodily injury, death, or financial or other loss of any kind that in any way, directly or indirectly, arise or allegedly arise out of or in connection with this Contract.

## **10. LIMITATION OF LIABILITY**

Contractor's liability for Contract damages is limited to direct damages and further to no more than twice the Contract amount. Contractor will not be liable for special, incidental, consequential, punitive, or indirect damages. Damages caused by injury to persons or tangible property, or related to intellectual property indemnification, are not subject to a cap on the amount or type of damages.

## **11. REQUIRED INSURANCE**

**11.1 General Requirements.** Contractor will maintain for the duration of this Contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by Contractor, agents, employees, representatives, assigns, or subcontractors. This insurance will cover such claims as may be caused by any negligent act or omission.

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

**11.3 Specific Requirements for Commercial General Liability.** Contractor will purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of **\$1,000,000** per occurrence and **\$2,000,000** aggregate per year to cover such claims as may be caused by any act, omission, or negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors.

State, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds for liability arising out of activities performed by or on behalf of Contractor, including the insured's general supervision of Contractor, products, and completed operations, and the premises owned, leased, occupied, or used.

**11.4 Specific Requirements for Professional Liability.** Contractor will 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, negligence of Contractor or its officers, agents, representatives, assigns, or subcontractors. Note: If "occurrence" coverage is unavailable or cost prohibitive, Contractor may provide "claims made" coverage provided the following conditions are met: (1) the commencement date of this Contract must not fall outside the effective date of insurance coverage and it will be the retroactive date for insurance coverage in future years; and (2) the claims made policy must have a three-year tail for claims that are made (filed) after the cancellation or expiration date of the policy.

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

**11.6 Certificate of Insurance/Endorsements.** A certificate of insurance from an insurer with a Best's rating of no less than A- indicating compliance with the required coverages has been received by

Department of Corrections, P.O. Box 201301, 5 S. Last Chance Gulch, Helena, MT 59620-1301. *The certificates must name the State of Montana as certificate holder and Contractor will provide copies of additional insured endorsements required by Contractor's commercial general liability and automobile liability policies.* Contractor must notify State immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. State reserves the right to require complete copies of insurance policies at all times.

**11.7 Specific Requirements for Cyber/Data Information Security Insurance.** The Contractor will purchase and maintain cyber/information security insurance coverage with combined single limits for each wrongful act of \$2,000,000 per occurrence to cover the unauthorized acquisition of personal 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 State requires and will 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 will be available to the State. Such insurance must cover, at a minimum, privacy notification costs, credit monitoring, forensics investigations, legal fees/costs, regulatory fines and penalties, and third party liability settlements or judgements as may be caused by any act, omission, or negligence of the Contractor's officers, agents, representatives, assigns or subcontractors. Note: If occurrence coverage is unavailable or cost-prohibitive, the State will accept 'claims made' coverage provided the following conditions are met: 1) the retroactive date must be shown, and must be before the date of the contract or the beginning of contract work; 2) insurance must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract of work; and 3) if coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of three (3) years after completion of work.

## **12. LICENSURE**

Contractor agrees to provide the State with copies of appropriate current licenses issued under Title 37 of the Montana Code Annotated for all persons performing services under this Contract, prior to services stated herein being provided.

Regulations. Audicus shall be licensed, certified, and registered in accordance with Federal laws and regulatory requirements. Audicus will provide a licensed Audiologist in the state where State operations take place to review all hearing tests and provide recommendations. Audicus' industry is normally subject to state-by-state statutory and regulatory regimes, however, these state laws and regulations are preempted by federal law as enforced by the United States Food and Drug Administration. Audicus may not be in compliance with those state laws and regulations to the extent preempted by the federal law. Audicus represents that it is compliant with federal regulations governing hearing aid devices and Audicus or its affiliates possess local corresponding dispensing licenses in those states where services are performed. Audicus represents and warrants to fulfill, at all times, all applicable requirements of State and federal law, which govern Audicus' operations.

## **13. COMPLIANCE WITH WORKERS' COMPENSATION ACT**

Contractor will comply with the provisions of the Montana Workers' Compensation Act while performing work for State of Montana in accordance with §§ 39-71-401, 39-71-405, and 39-71-417, MCA. Proof of compliance must be in the form of workers' compensation insurance, an independent contractor's exemption, or documentation of corporate officer status. Neither Contractor nor its employees are State employees. This insurance/exemption must be valid for the entire Contract term and any renewal. Upon expiration, a renewal

document must be sent to Department of Corrections, P.O. Box 201301, 5 S. Last Chance Gulch, Helena, MT 59620-1301.

#### **14. COMPLIANCE WITH LAWS**

**14.1 Applicable Laws.** Contractor will, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act 42 U.S.C. § 18001 et seq. Contractor will comply with the Prison Rape Elimination Act 34 U.S.C. § 30301 et seq., the Prison Rape Elimination Act final rule 28 CFR Part 115, and MDOC Policy 1.1.17, Prison Rape Elimination Act to include incident reporting. State has a zero-tolerance policy as to incidents of sexual assault/rape or sexual misconduct in its correctional facilities or premises. Contractor is referred to § 45-5-501 MCA. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with § 49-3-207, MCA, and State of Montana Executive Order No. 04-2016, Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

**14.2 Affordable Care Act.** The Affordable Care Act requires a Contractor, if Contractor is an applicable large employer under the ACA, to provide healthcare coverage for its employees who provide services for the State and work for 30 or more hours per week. This coverage must also cover the eligible employee's dependents under the age of 26. The coverage must (a) meet the minimum essential coverage, minimum value, and affordability requirements of the employer responsibility provisions under Section 4980H of the Code (ACA), and (b) otherwise satisfy the requirements of the Code § 4980H (ACA).

#### **15. DISABILITY ACCOMMODATIONS**

State does not discriminate on the basis of disability in admission to, access to, or operations of its programs, services, or activities. Individuals who need aids, alternative document formats, or services for effective communications or other disability related accommodations in the programs and services offered are invited to make their needs and preferences known to this office. Interested parties should provide as much advance notice as possible.

#### **16. REGISTRATION WITH THE SECRETARY OF STATE**

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are domiciled in another state or country, but which are conducting activity in Montana, must determine whether they are transacting business in Montana in accordance with §§ 35-14-1505, 35-8-1001, and 35-12-1309 MCA. Such businesses may want to obtain the guidance of their attorney or accountant to determine whether their activity is considered transacting business.

If businesses determine that they are transacting business in Montana, they must register with the Secretary of State and obtain a certificate of authority to demonstrate that they are in good standing in Montana. §§ 35-8-1001, 35-12-1302, and 35-14-1502, MCA. To obtain registration materials, call the Office of the Secretary of State at (406) 444-3665, or visit their website at <http://sosmt.gov>.

## 17. INTELLECTUAL PROPERTY/OWNERSHIP

**17.1 Mutual Use.** Contractor will make available to State, on a royalty-free, non-exclusive basis, all patent and other legal rights in or to inventions first conceived and reduced to practice or created in whole or in part under this Contract, if such availability is necessary for State to receive the benefits of this Contract. Unless otherwise specified in a statement of work, both parties will have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use copyrightable property created under this Contract. This mutual right includes (i) all deliverables and other materials, products, or modifications that Contractor has developed or prepared for State under this Contract; (ii) any program code, or site-related program code that Contractor has created, developed, or prepared under or primarily in support of the performance of its specific obligations under this Contract; and (iii) manuals, training materials, and documentation. All information described in (i), (ii), and (iii) is collectively called the “Work Product”.

**17.2 Title and Ownership Rights.** State retains title to and all ownership rights in all data and content, including but not limited to multimedia or images (graphics, audio, and video), text, and the like provided by State (the “Content”), but grants Contractor the right to access and use Content for the purpose of complying with its obligations under this Contract and any applicable statement of work.

**17.3 Ownership of Contractor Pre-Existing Materials.** Contractor retains ownership of all literary or other works of authorship (such as software programs and code, documentation, reports, and similar works), information, data, intellectual property, techniques, subroutines, algorithms, methods or related rights and derivatives that Contractor owns at the time this Contract is executed or otherwise developed or acquired independent of this Contract and employed by Contractor in connection with the services provided to State (the “Contractor Pre-existing Materials”). Contractor Pre-existing Materials are not Work Product. Contractor will provide full disclosure of any Contractor Pre-existing Materials to State before its use and to prove its ownership. If, however, Contractor fails to disclose to State such Contractor Pre-existing Materials, Contractor will grant State a nonexclusive, worldwide, paid-up license to use any Contractor Pre-existing Materials embedded in the Work Product to the extent such Contractor Pre-existing Materials are necessary for State to receive the intended benefit under this Contract. Such license will remain in effect for so long as such Pre-Existing Materials remain embedded in the Work Product. Except as otherwise provided for in **Section 22.3, Ownership of Work Product**, or as may be expressly agreed in any statement of work, Contractor will retain title to and ownership of any hardware it provides under this Contract.

## 18. CONTRACT OVERSIGHT

**18.1 CIO Oversight.** The Chief Information Officer (CIO) for the State of Montana, or designee, may perform contract oversight activities. Such activities may include the identification, analysis, resolution, and prevention of deficiencies that may occur within the performance of contract obligations. The CIO may require the issuance of a right to assurance or may issue a stop work order.

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

**18.3 Stop Work Order.** State may, at any time, by written order to Contractor require Contractor to stop any or all parts of the work required by this Contract for the period of days indicated by State after the

order is delivered to Contractor. The order must be specifically identified as a stop work order issued under this clause. Upon receipt of the order, Contractor will immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. If a stop work order issued under this clause is canceled or the period of the order or any extension expires, Contractor will resume work. The State Project Manager will make the necessary adjustment in the delivery schedule or contract price, or both, and this Contract will be amended in writing accordingly.

**18.4 System Security.** Contractor will ensure systems delivered under this Contract are adequately secure. For purposes of this Contract, adequate security is defined to require compliance with federal and State of Montana security requirements and to ensure freedom from those conditions that may impair the State's use of its data and information technology or permit unauthorized access to the State's data or information technology. The State of Montana has established control standards and policies that align with the NIST Cybersecurity Framework. The latest revision of NIST SP 800-53 is used for control adherence evaluation established after developing a security categorization utilizing FIPS PUB 199. Thus, Contractor will provide reasonable proof, through independent audit reports, that the system specified under this Contract meets or exceeds federal and State of Montana security requirements to ensure adequate security and privacy, confidentiality, integrity, and availability of the State's data and information technology. Annual assurance statements will be delivered to the Contract Liaison. Annual assurance statements must contain a detailed accounting of the security controls provided and must be in the form of a NIST Security Assessment Report or FedRAMP Security Assessment Report.

**18.5 Physical Access.** Contractor represents and warrants that it has established and during the Term it will at all times enforce:

- (a) Physical protection mechanisms for all information assets and information technology to ensure such assets and technology are stored and protected in appropriate data centers;
- (b) Appropriate facility entry controls limiting physical access to systems that store or process data;
- (c) Processes to ensure access to facilities is monitored and is restricted on a "need to know" basis; and
- (d) Controls to physically secure all Confidential Information and to properly destroy such information when it is no longer needed.

**18.6 Prohibited Activities and Spoofing.** Licensor and its officers, employees, agents, subcontractors, and affiliated users, will not violate or attempt to violate the security of the State's network or interfere or attempt to interfere with the State's systems, networks, authentication measures, servers or equipment, or with the use of or access to the State's network by any other user. Such prohibited activity includes (i) accessing or logging into a server where access is not authorized; (ii) unauthorized probing, scanning, or testing the security or vulnerability of the State's network or other systems; and (iii) attempting to portray itself as the State or an affiliate of the State or otherwise attempting to gain access, without authorization, via the State's network or systems to any account or information technology resource not belonging to Licensor or its officers, employees, agents, subcontractors, and affiliated users ("Spoofing"). Licensor will not perform unauthorized Spoofing or scanning of any kind, including user account identity. Systems will not Spoof the mt.gov domain or engage in Email Spoofing. Email Spoofing is the creation of email messages with a forged sender address. For example, Email Spoofing includes creating or sending emails using the State's domain.

## **19. CONTRACT TERMINATION**

**19.1 State Termination for Cause with Notice to Cure Requirement.** State may terminate this Contract in whole or in part for Contractor's failure to materially perform any of the services, duties, terms, or



conditions contained in this Contract after giving Contractor written notice of the stated failure. The written notice must demand performance of the stated failure within a specified period of time of not less than **30** days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

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

**19.3 Contractor Termination for Cause with Notice to Cure Requirement.** Contractor may terminate this Contract for State's failure to perform any of its duties under this Contract after giving State written notice of the failure. The written notice must demand performance of the stated failure within a specified period of time of not less than **30** days. If the demanded performance is not completed within the specified period, the termination is effective at the end of the specified period.

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

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

**19.5 Noncompliance with Department of Administration Requirements.** The Department of Administration, under the provisions of § 2-17-514, MCA, retains the right to cancel or modify any contract, project, or activity that is not in compliance with the Department's Plan for Information Technology, State Strategic Plan for Information Technology, or any Statewide IT policy or standard in effect as of the date of contract execution. In the event of such termination, State will pay for products and services delivered to date and any applicable termination fee specified in the statement of work or work order. Any modifications to this Contract must be mutually agreed to by the parties.

## **20. EVENT OF BREACH – REMEDIES**

**20.1 Event of Breach by Contractor.** Any one or more of the following Contractor acts or omissions constitute an event of material breach under this Contract:

- Products or services furnished fail to conform to any requirement;
- Failure to submit any report required by this Contract;
- Failure to perform any of the other terms and conditions of this Contract;
- Beginning work under this Contract without prior State approval or breaching Section 25.1, Technical or Contractual Problems, obligations; or
- Voluntary or involuntary bankruptcy or receivership.

**20.2 Event of Breach by State.** State's failure to perform any material terms or conditions of this Contract constitutes an event of breach.

**20.3 Actions in Event of Breach.** Upon Contractor's material breach, State may:

- Terminate this Contract under Section 19.1, State Termination for Cause with Notice to Cure Requirement and pursue any of its remedies under this Contract, at law, or in equity; or
- Treat this Contract as materially breached and pursue any of its remedies under this Contract, at law, or in equity.

Upon State's material breach, Contractor may:

- Terminate this Contract under Section 19.3, Contractor Termination for Cause with Notice to Cure Requirement, and pursue any of its remedies under this Contract, at law, or in equity; or
- Treat this Contract as materially breached and, except as the remedy is limited in this Contract, pursue any of its remedies under this Contract, at law, or in equity.

## **21. FORCE MAJEURE**

Neither party is responsible for failure to fulfill its obligations due to causes beyond its reasonable control, including without limitation, acts or omissions of government or military authority, acts of God, materials shortages, transportation delays, fires, floods, labor disturbances, riots, wars, terrorist acts, or any other causes, directly or indirectly beyond the reasonable control of the nonperforming party, so long as such party uses its best efforts to remedy such failure or delays. A party affected by a force majeure condition will provide written notice to the other party within a reasonable time of the onset of the condition. In no event, however, will the notice be provided later than five working days after the onset. If the notice is not provided within the five-day period, then a party may not claim a force majeure event. A force majeure condition suspends a party's obligations under this Contract, unless the parties mutually agree that the obligation is excused because of the condition.

## **22. WAIVER OF BREACH**

Either party's failure to enforce any contract provisions after any event of breach is not a waiver of its right to enforce the provisions and exercise appropriate remedies if the breach occurs again. Neither party may assert the defense of waiver in these situations.

## **23. CONFORMANCE WITH CONTRACT**

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the Contract will be granted without the State Procurement Bureau's prior written consent. Product or services provided that do

not conform to the Contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

## **24. LIAISONS AND SERVICE OF NOTICES**

**24.1 Contract Liaisons.** All project management and coordination on State's behalf must be through a single point of contact designated as State's liaison. Contractor will designate a liaison that will provide the single point of contact for management and coordination of Contractor's work. All work performed under this Contract must be coordinated between State's liaison and Contractor's liaison.

Todd Boese is State's liaison  
5 South Last Change Gulch  
Helena, MT 59602  
(406) 444-4761  
[Todd.Boese@mt.gov](mailto:Todd.Boese@mt.gov)

Ahmed Buzeriba is Contractor's liaison  
130 W 29<sup>th</sup> St, 11<sup>th</sup> Floor  
New York, NY 10001  
(917) 909-6197  
[ahmed@audicus.com](mailto:ahmed@audicus.com)

**24.2 Notifications.** State's liaison and Contractor's liaison may be changed by written notice to the other party. Written notices, requests, or complaints must first be directed to the liaison. Notice may be provided by personal service, email, mail, or facsimile. If notice is provided by personal service, email, or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective on the third business day after mailing.

## **25. MEETINGS**

**25.1 Technical or Contractual Problems.** Contractor will meet with State's personnel, or designated representatives, to resolve technical or contractual problems occurring during the Contract term or to discuss the progress made by Contractor and State in the performance of their respective obligations, at no additional cost to the State. State may request the meetings as problems arise and will be coordinated by State. State will 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.

**25.2 Failure to Notify.** If Contractor fails to specify in writing any problem or circumstance that materially affects the costs of its delivery of services or products, including a material breach by State, about which Contractor knew or reasonably should have known with respect to the period during the term covered by Contractor's status report, Contractor will 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.

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

## **26. TRANSITION ASSISTANCE**

If this Contract is not renewed at the end of this term, if the Contract is otherwise terminated before project completion, or if particular work on a project is terminated for any reason, Contractor will provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of this Contract or particular work under this Contract. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to State or its designees. The parties agree that such transition assistance is governed by the terms and conditions of this Contract, except for those terms or conditions that do not reasonably apply to such transition assistance. State will pay Contractor for any resources utilized in performing such transition assistance at the most current Contract rates. If State terminates a project or this Contract for cause, then State may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages State may have sustained as a result of Contractor's breach.

**27. CHOICE OF LAW AND VENUE**

Montana law governs this Contract. The parties agree that any litigation concerning this bid, proposal, or this Contract must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party will pay its own costs and attorney fees, except as provided in **Section 9, Defense, Indemnification/Hold Harmless**.

**28. 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 42 U.S.C. § 18001 et seq.

**29. PERSONAL PROPERTY TAX**

All personal property taxes will be paid by Contractor.

**30. AUTHORITY**

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

**31. SEVERABILITY**

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

**32. PARAGRAPH HEADINGS**

The captions and headings set forth in this Contract are for convenience of reference only and will not be construed so as to define or limit the terms and provisions hereof.

**33. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT**

**33.1 Contract.** This Contract consists of **13** numbered pages, any Attachments as required, as amended, and Contractor's response, as amended. In the case of dispute or ambiguity arising between or among the documents, the order of precedence of document interpretation is the same.

**33.2 Entire Agreement.** These documents are the entire agreement of the parties. They supersede all prior agreements, representations, and understandings. Any amendment or modification must be in a written agreement signed by the parties.

**34. WAIVER**

State's waiver of any Contractor obligation or responsibility in a specific situation is not a waiver in a future similar situation or is not a waiver of any other Contractor obligation or responsibility.

**35. EXECUTION**

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

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**STATE OF MONTANA**  
**Montana Department of Corrections**  
**5 S. Last Chance Gulch**  
**Helena, MT 59620-1301**

**AUDICUS**  
**130 W 29<sup>th</sup> St, 11<sup>th</sup> Floor**  
**New York, NY 10001**

DocuSigned by:  
*Cynthia McGillis-Hiner* 1/29/2024  
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Cynthia McGillis-Hiner, Bureau Chief (Date)  
Health Services Bureau

DocuSigned by:  
*Patrick Freuler* 1/8/2024  
E6C1797869B9468...  
Patrick Freuler, CEO (Date)

Approved as to Form:

DocuSigned by:  
*Ashley Salmon* 1/5/2024  
B98C1BE4493E492...  
Ashley Salmon, Contracts Officer (Date)  
Financial Services Bureau

Approved as to Legal Content:

DocuSigned by:  
*Iryna O'Connor* 1/5/2024  
2890DE391609463...  
Iryna O'Connor, Legal Counsel (Date)  
Legal Services Bureau

Chief Information Officer Approval:

Contractor is notified that, under the provisions of 2-17-514, MCA, the Department of Administration retains the right to cancel or modify any contract, project, or activity that is not in compliance with the Agency's Plan for Information Technology, the State Strategic Plan for Information Technology, or any statewide IT policy or standard.

DocuSigned by:  
*Kevin Gilbertson* 1/8/2024  
209081032F49415...  
Kevin Gilbertson, Chief Information Officer (Date)  
Department of Administration  
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