# STATE OF MONTANA VENDOR CONTRACT

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## V.C. #: COR14-2965A
## Title: Offender Tracking System

| | | | | |
|---|---|---|---|---|
| CONTRACT TERM | FROM | April 1, 2014 | CONTRACT STATUS | NEW (x) |
| | TO | March 31, 2016 | | RENEW ( ) |
| VENDOR ADDRESS | BI, Incorporated<br>6400 Lookout Road<br>Boulder, CO 90301 | | ORDER ADDRESS | |
| ATTN: | Laurent Lepoutre | | ATTN: | |
| PHONE: | 303-218-1133 | | PHONE: | |
| FAX: | | | FAX: | |
| E-MAIL: | Laurent.lepoutre@bi.com | | E-MAIL: | |

PRICES: Per Contract

DELIVERY: Per Contract

F.O.B.: Per Contract

TERMS: Per Contract

REMARKS:

| | | |
|---|---|---|
| RFP14-2965A | Jeannie Lake, Contracts Officer | Date: June 4, 2014 |

**AUTHORIZED SIGNATURE**

# OFFENDER TRACKING SYSTEM
# COR14-2965A

**THIS CONTRACT** is entered into by and between the ***State of Montana, Department of Corrections***, (State), whose address and phone number are PO Box 201301, Helena, MT 59620-1301and 406-444-3930 and ***BI Incorporated*** (Contractor), whose address and phone number are 6400 Lookout Road, Boulder CO 80301 and 303-218-1000.

## 1. EFFECTIVE DATE, DURATION, AND RENEWAL

**1.1 Contract Term.** The contract's initial term shall take effect ***April 1, 2014***, through ***March 31, 2016***, unless terminated earlier as provided in this contract. In no event is this contract binding on the State unless the 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.** The State may renew this contract under its then-existing terms and conditions (subject to potential cost adjustments described below in section 2, in one-year intervals, or any interval that is advantageous to the State. This contract, including any renewals, may not exceed a total of 10 years.

## 2. COST ADJUSTMENTS

**2.1 Cost Increase by Mutual Agreement.** After the contract's initial term and if the State agrees to a renewal, the parties may agree upon a cost increase. The State 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 Urban Consumers may be used to determine the increased value.

## 3. SERVICES AND/OR SUPPLIES

Contractor shall provide the State the following Offender Tracking System services as described in RFP14-2965A and Contractor's response to RFP14-2965A.

It is a mandatory requirement of this contract that the OTS use, at a minimum, GPS, cell phone tower tracking via CDMA with the capacity for triangulation, and an RF Beacon per unit. The RF Beacon will signal via cell phone tower and/or landline tracking. The OTS service will allow authorized MDOC staff the ability to configure the device through a web interface. An RF Beacon will to be utilized with every GPS device utilized. The RF Beacon must be able to communicate via cell phone tower and/or landline tracking; MDOC will be responsible for equipment installation and removal.

Contractors will provide an acquisition rate of once per minute and a transfer rate of every 30 minutes, except for alerts for active GPS. Contractor will provide an acquisition rate of once per minute and a transfer rate of every 24 hours except for alerts for Passive GPS.

The RF Beacon must be able to communicate with the GPS ankle device. MDOC requires the availability of RF Beacon/home unit equipment that is able to communicate via cell phone tower and/or landline tracking. It is a mandatory requirement of this contract that the OTS use, at a minimum, GPS, cell phone tower and/or landline tracking, and an RF Beacon per unit.

The industry standard, generic definition of a GPS beacon is as follows: "The beacon provides radio frequency (RF) monitoring by continuously emitting RF signals. When the offender-worn tracking unit enters the range of the beacon, the tracking unit stops collecting GPS points. The offender is monitored via the RF signals. The beacon does not transmit program or equipment data to the monitoring computer."

The industry standard, generic definition of a downloader is as follows: "The home-based downloader is an optional component, and only critical in situation where the offender lives, works, or travels in areas with little to no cell coverage. The offender simply plugs the tracking unit into the downloader, and program and equipment information is automatically communicated to the monitoring computer via the offender's landline connection.

## 3.1 IT REQUIREMENTS/USER INTERFACE/SECURITY

**3.1.1 Monitoring Software.** The Contractor must provide monitoring software via a web-based application accessible from any Internet connected device (computer, smart phone, tablet PC's, etc.) that utilizes a standard web browser. The application must allow agency personnel to access offender data from the monitoring center. No software components or applications can be installed on MDOC computers other than the current versions of Adobe Flash and Java. The application must not require the use of any software or Active-X controls that require elevated security privileges on the device. If utilizing Java for the framework, Contractor must be in a position that updates their software immediately when a security patch is released for Java as the State is obligated to update Java upon release of a Java patch addressing security issues.

**3.1.2 Redundancy.** Contractor's system must provide for 100% redundancy to avoid any downtime due to hardware or software issues. The Contractor must maintain data backup and restoration procedures in case of hardware or software failure.

**3.1.3 User Interface.** The system's workstation interface must be an easy-to-use web-based Windows program that allows any authorized user to quickly and efficiently access the system and perform any or all of the functions permitted by the individual's security level.

The Contractor's system will provide the following:

- Entry into the provider system must be password protected.
- Customizable security settings for every user.
- Enrolling and maintaining offenders (this should be a quick (5-10 minute) and simple process done by entering in basic data, assigning the device, and selecting the respective case officer).
- Activating and deactivating devices.
- Monitoring the current and prior status of any and/or all offenders.
- Current and historical location information, making real time adjustments to the monitoring of the offender.
- Generating all management reports.
- Ability to see and export activity logs for any offender.
- The provider's proposed system must monitor all changes; changes should be tracked via an audit log; this should include who made the change and date and time for that change.
- Acquisition rate. MDOC requires an acquisition rate of once per minute for both passive and active GPS.
- Transfer rate. MDOC requires a transfer rate of every 30 minutes, except for alerts, for active GPS and every 24 hours except for alerts for passive GPS.
- Impaired location.

**3.1.4 Security.** This section is mandatory.

The Contractor shall implement and maintain appropriate and effective security controls for the work performed within the scope of the Offender Tracking System contract. As applicable, these controls should be based on the National Institute of Standards and Technology (NIST) information technology security standards, guidelines and specifications. Issues to be addressed in these controls include, but are not limited to:

- Prevention, deterrence, and detection of fraud and abuse.
- Maintenance of privacy, integrity, access, and confidentiality.
- Protection of public property and rights.
- Confidentiality of the Department's proprietary management and planning information.

- Physical security of facilities, equipment, data, supplies, and documentation.
- Screening and training of personnel.

Appropriate access control procedures shall be in effect in all project work areas. Adequate provisions and procedures shall be in place for securing: offsite data files; computer programs stored as electronic media; documentation; and supplies, using available facilities.

The Contractor must provide a Security Plan (including a Disaster Recovery Plan). The Security Plan will define the security controls in place to ensure appropriate and effective security for the work performed within the scope of the Offender Tracking System contract. This Security Plan must include, but not be limited to:

- How the contractor proposes to comply with the State's personnel administration policies and procedures to promote proper screening of individuals who are authorized to bypass technical and operational security controls of the system.
- The methods the contractor will employ to ensure the integrity of the system.
- The methods the contractor will employ to ensure timely and reliable access to information.
- The methods the contractor will employ to ensure the confidentiality of Department data.

The Contractor shall incorporate any revisions to the Security Plan as directed by the Department. The Contractor shall update the Security Plan on an annual basis, taking into account changes in the Contractor's and Department's operating environment, policies and procedures, or state or federal regulations.

The Contractor stores and interfaces with sensitive data that is either input by the users or through interfaces with other state or federal agencies. The Contractor must control the use or disclosure of information as permitted or required by this agreement or as required by law. The Contractor must establish, maintain, and use appropriate safeguards to prevent use or disclosure of client personal information used by the Contractor. This information must be held confidential and must not be divulged without the written consent of the Department. Need for access must be demonstrable and an auditable record of approvals must be maintained.

All documents, data compilations, reports, computer programs, and any other work provided to or produced by the Contractor in the performance of the contract must be kept confidential by the Contractor until publicly released by the Department or until written permission is granted by the Department for its release.

Publicly available information that is owned by the Department and information that is developed or maintained as part of this contract should not be released by contractor unless specifically authorized by the Department. Contractor personnel must sign Department confidentiality agreements before commencing work under this contract.

Contractor will have security controls in place at its location and with its staff that meet those required by the NIST Special Publication 800-53 Recommended Security Controls for Federal Information Systems and Organizations. Due to the confidential nature of the information and materials which will be accessible to Contractor, State shall have the right to require Contractor, at its own expense, to conduct reference checks and background checks on Contractor staff to be used to provide the services as required pursuant to 45 CFR 95.621(f)(1) and other applicable laws and regulations if any. State reserves the right in its sole discretion to reject any proposed staff as a result of the information produced by such reference and background checks or additional sources of information.

## 3.2 ALERTS AND NOTIFICATIONS

The Contractor's system will provide the following:

### 3.2.1 Alerts.

- Low battery
- Battery charging

- Lost location
- Lost cell coverage
- Zone violation
- Curfew violation
- Equipment tampers: three types of tamper – strap tamper, device tamper, and device removal (once properly installed)
- No motion or motion detection is optional. MDOC requires the availability of similar technology

The Contractor's system will provide the following:

**3.2.2 Notifications.**

- Email
- Pager
- Fax
- Live phone alerts
- SMS/Text

## 3.3 ZONING AND MAPPING

The Contractor's system will provide the following:

**3.3.1 Zoning.**

- Create zones around fixed locations.
- Ability to make inclusion zones (where offender has to be).
- Ability to make exclusion zones (where offender is not allowed).
- Ability to make undifferentiated zones for notification of entry and exit without rules associated. MDOC officers will be able to create inclusion and exclusion zones in certain cases. For example, if a new school is built, the officer can create an exclusion zone around that school.
- Can size of zone be determined by staff?
- Do zones have the ability to overlap?
- Ability for users to create schedules around zones.
- Flexibility of schedules (one time or repeating occurrence).
- Can schedules be altered remotely by authorized staff?
- Can zones be created around mobile devices such as a cell phone or an offender's bracelet?
- Buffer zones around fixed or mobile zones.

The Contractor's system will provide the following:

**3.3.2 Mapping.**

- The system's accuracy of an offender's location on the map.
- The ability to see proximity of one or more offenders to any address at any time.
- Ability to see any or all tracked offenders on the same map.
- Identifies the inclusion and exclusion zones (mentioned in Section 3.3.1).
- Geographical landmarks.
- Zoom in and out on any area of the map.
- See an offender in real time.
- See an offender's history with "bread-crumbing" of previous location points.
- Show speed, stops, and movement.
- Measure distances between any locations on the map.
- Scroll around the map with a computer mouse.
- Ability to print from the map or any report screen.
- Play back location history.
- Play, pause, stop, fast forward, rewind.

- Notification every minute with call in every 30 minutes unless zone violation

## 3.4 OFFENDER TRACKING DEVICE

**3.4.1 Location Technologies.** It is a mandatory requirement of this contract that the OTS use, at a minimum, GPS, cell phone tower/landline tracking via CDMA with the capacity for triangulation, and an RF Beacon per unit. The RF Beacon must be able to communicate with the GPS ankle device and will signal via cell phone tower and/or landline.

**3.4.2 Tracking Device.** The offender tracking device must be FCC compliant, meet market safety standards, be surge protected, be made of hypoallergenic material with no harmful substances, and present no health or safety hazards to staff and/or offenders. The standard program is two months long, and it may be extended up to six months. Certain sex offenders are statutorily required to be on lifetime GPS.

- Battery life (minimum of 24 hours under normal monitoring conditions while the offender is away from a charging location).
- Charging capabilities.
  - Charges (required voltage).
  - Length of time to charge.
- Attachment method.
  - One piece tracking unit installed on the individual's ankle.
  - Reusable.
  - Field replaceable.
  - Ease of installation.
- Durability.
- Waterproof capacity.
- Temperature range.
- Withstand vibrations.
- Capable of retaining points if cell coverage lost or battery fails.

## 3.5 SERVICE CENTER

The Contractor will provide the following:

The contractor must provide a service center dedicated to monitoring services of the Offender Tracking System.

- Toll free telephone lines for all communications to and from MDOC.
- Hours of availability-24 hours a day, seven days a week, year round basis, including holidays.
- Service center staff physically present and available at all times for MDOC.
- Location of service center (Contractor's staff must speak fluent English and shall not have an accent that is difficult for the average person to comprehend).

## 3.6 BUSINESS SERVICES

**3.6.1 Equipment Repair, Maintenance, Service, and Replacement.** This section states "Units shall include supplies such as batteries, latches, straps, and installation kits at no extra charge.

**3.6.2 Spare Offender Tracking Devices.** MDOC currently keeps a 20% spare unit inventory with a spare unit cost allowance of 20%.

**3.6.3 Service Diagnostics.** MDOC requires answers to support requests as related to equipment maintenance and operation issues through email and a 1-800 toll free number.

**3.6.4 Process for Obtaining Additional Devices.** Contractor will supply a sufficient quantity of units to meet the needs of the MDOC subject to notice five business days prior to shipment. MDOC will assist in forecasting unit needs.

**3.6.5 Equipment Warranties.** MDOC requires a minimum one year warranty on all GPS monitoring equipment.

**3.6.6 Tools and Expendables.** MDOC requires the contractor to supply all tools and expendables.

**3.6.7 Lost and/or Damaged Equipment Costs.** The current lost and damaged allowance of tracking devices is 10%.

**3.6.8 Billing Invoices with Electronic Option.** MDOC requires that offenders receive invoice hard copies through US mail. MDOC requires electronic copies of all offender invoices and pay records via Word, PDF, or other electronic format. MDOC requires separate billing accounts and invoices for adult offenders and juvenile offenders.

**3.6.9 Self-Pay That Allows the Offenders to Pay the Cost of the Monitoring System.** The Contractor is responsible for invoicing and collecting payments from the offender. If the offender does not pay the monitoring fees, MDOC will pay the balance due and proceed with a hearings officer on a case by case basis to collect the fees from the offender. MDOC requires separate billing accounts and invoices for adult offenders and juvenile offenders. Self-pay invoices must include current monthly payment, payment history, and account balance.

**3.6.10 Home Based Receiver.** In certain cases, offenders will reside or work in areas with poor or no cellular coverage. In these cases MDOC requires a home-based receiver. Currently, the MDOC does not use any home-based receivers, but requires the option due to Montana's geographical challenges the offender simply plugs the tracking unit into the downloader; program and equipment information is automatically communicated to the monitoring computer via the offender's landline connection.

## 3.7 TRAINING

The Contractor shall provide on-site training at a minimum of six separate regional Probation and Parole offices (total of 48 staff), at no additional cost to MDOC. Training must address installation/operation of the offender tracking device and operation/use of the software. The Contractor must supply training materials to all MDOC staff during the initial training. The initial training phase may take approximately two weeks.

The Contractor shall also provide MDOC with a follow-up training plan that includes a training of MDOC officers hired or assigned after the initial training period. The training plan will also include a six month checkup to ensure MDOC officers understand all aspects of the system. The State shall accept webinar training sessions for on-going training as required.

## 3.8 SUPPLY

The Contractor shall supply a sufficient quantity of units to meet MDOC need.

- MDOC will provide notice of five business days prior to shipment.
- Units shall include supplies, such as batteries, latches, straps, and installation kits, at no extra charge.
- Contractor shall be responsible for shipping units and supplies via ground delivery at no charge to MDOC.
- Overnight shipping options must be available.

## 4. WARRANTIES

**4.1 Warranty For Services.** The Contractor warrants that it performs all services using reasonable care and skill and according to its current description (including any completion criteria) contained in this contract. State agrees to provide timely written notice of any failure to comply with this warranty so that the Contractor can take corrective action.

**4.2 Warranty for Hardware.** The Contractor warrants that hardware provided is free from defects in materials and workmanship and conforms to the specifications. The warranty period for provided hardware is a fixed period commencing on the date specified in a statement of work or applicable contract. If the hardware does not function as warranted during the warranty period and the Contractor is unable to either: i) make it do so; or ii) replace it with one that is at least functionally equivalent, State may return it to the Contractor for a full refund.

The parties agree that the warranties set forth above do not require uninterrupted or error-free operation of hardware or services unless otherwise stated in the specifications.
These warranties are the State's exclusive warranties and replace all other warranties or conditions, express or implied, including, but not limited to, the implied warranties or conditions of merchantability and fitness for a particular purpose.

## 5. CONSIDERATION/PAYMENT

**5.1 Payment Schedule.** In consideration of the Offender Tracking System to be provided, the State shall pay Contractor according to the following schedule:

| | | |
|---|---|---|
| A. | Total of Per Unit Rental Fee (per day) plus *Active* Monitoring Fee (per unit, per day) plus RF Beacon Fee plus Self-Pay Program Fee plus Home Based Unit Fee | $ 3.89 |
| B. | Total of Per Unit Rental Fee (per day) plus *Passive* Monitoring Fee (per unit, per day) plus RF Beacon Fee plus Self-Pay Program Fee plus Home Based Unit Fee | $ 3.69 |
| C. | Spare Unit Fee Cost above Allowance % | $2.30/day |
| D. | Lost/Stolen/Damaged Unit Replacement Cost Above Allowance % | $1250.00 ExacuTrack One<br>$250.00 Beacon |
| E. | Strap Replacement Cost | $ 60.00 |
| F. | Charger Replacement Cost | $ 60.00 |
| G. | Additional Remote Training Cost | $ No additional charge |
| H. | Additional On-Site Training Cost | $ No additional charge |

**5.2 Withholding of Payment.** The State may withhold disputed payments to Contractor under the subject statement of work (or where no statement of work exists, the applicable contract). The withholding may not be greater than, in the aggregate, fifteen percent (15%) of the total value of the subject statement of work or applicable contract. With respect to payments subject to milestone acceptance criteria, the State may withhold payment only for such specific milestone if and until the subject milestone criteria are met. Contractor is not relieved of its performance obligation if such payment(s) is withheld.

**5.3 Payment Terms.** Unless otherwise noted in the solicitation document, the State has 30 days to pay invoices, as allowed by 17-8-242, MCA. Contractor shall provide banking information at the time of contract execution in order to facilitate the 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, the State is not obligated to pay the invoice.

## 6. ACCESS AND RETENTION OF RECORDS

**6.1 Access to Records.** Contractor shall provide the State, Legislative Auditor, or their authorized agents access to any records necessary to determine contract compliance. The State may terminate this contract under section 18, without incurring liability, for the Contractor's refusal to allow access as required by this section. (18-1-118, MCA.)

**6.2 Retention Period.** Contractor shall create and retain all records supporting the offender tracking system for a period of eight years after either the completion date of this contract or termination of the contract.

## 7. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

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

## 8. HOLD HARMLESS/INDEMNIFICATION

Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this contract.

## 9. 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 shall not be liable for special, incidental, consequential, punitive, or indirect damages. Damages caused by injury to persons or tangible property, or related to intellectual property indemnification, are not subject to a cap on the amount of damages.

## 10. REQUIRED INSURANCE

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

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

**10.3 Specific Requirements for Commercial General Liability.** Contractor shall purchase and maintain occurrence coverage with combined single limits for bodily injury, personal injury, and property damage of $1,000,000 per occurrence and $5,000,000 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.

The 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.

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

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

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

**10.6 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 the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135. Contractor must notify the State immediately of any material change in insurance coverage, such as changes in limits, coverages, change in status of policy, etc. The State reserves the right to require complete copies of insurance policies at all times.

## 11. COMPLIANCE WITH WORKERS' COMPENSATION ACT

Contractor shall comply with the provisions of the Montana Workers' Compensation Act while performing work for the 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 the State Procurement Bureau, P.O. Box 200135, Helena, MT 59620-0135.

## 12. COMPLIANCE WITH LAWS

Contractor shall, in performance of work under this contract, fully comply with all applicable federal, state, or local laws, rules, and regulations, including but not limited to, the Montana Human Rights Act, 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. Any subletting or subcontracting by Contractor subjects subcontractors to the same provision. In accordance with 49-3-207, MCA, 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

upon race, color, religion, creed, political ideas, sex, age, marital status, physical or mental disability, or national origin by the persons performing this contract.

## 13. DISABILITY ACCOMMODATIONS

The 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.

## 14. REGISTRATION WITH THE SECRETARY OF STATE

Any business intending to transact business in Montana must register with the Secretary of State. Businesses that are incorporated 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.

## 15. INTELLECTUAL PROPERTY/OWNERSHIP

**15.1 Mutual Use.** Contractor shall make available to the 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 the State to receive the benefits of this contract. Unless otherwise specified in a statement of work, both parties shall 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, modifications that Contractor has developed or prepared for the 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".

**15.2 Title and Ownership Rights.** The 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 the 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.

**15.3 Ownership of Work Product.** Contractor shall execute any documents or take any other actions as may reasonably be necessary, or as the State may reasonably request, to perfect the State's ownership of any Work Product.

**15.4 Copy of Work Product.** Contractor shall, at no cost to the State, deliver to the State, upon the State's request during the term of this contract or at its expiration or termination, a current copy of all Work Product in the form and on the media in use as of the date of the State's request, or such expiration or termination.

**15.5 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 the State (the "Contractor Pre-existing Materials"). Contractor Pre-existing Materials are not Work Product. Contractor shall provide full disclosure of any Contractor Pre-Existing Materials to the State before its use and to prove its ownership. If, however, Contractor fails to disclose to the State such Contractor Pre-Existing Materials, Contractor shall grant the 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 the State to receive the intended benefit under this contract. Such license shall remain in effect for so long as such Pre-Existing Materials remain embedded in the Work Product. Except as otherwise provided for in Section 15.3 or as may be expressly agreed in any statement of work, Contractor shall retain title to and ownership of any hardware it provides under this contract.

## 16. PATENT AND COPYRIGHT PROTECTION

**16.1 Third Party Claim.** If a third party makes a claim against the State that the products furnished under this contract infringe upon or violate any patent or copyright, the State shall promptly notify Contractor. Contractor shall defend such claim in the State's name or its own name, as appropriate, but at Contractor's expense. Contractor shall indemnify the State against all costs, damages, attorney fees, and all other costs and expenses of litigation that accrue as a result of such claim. If the State reasonably concludes that its interests are not being properly protected, or if principles of governmental or public law are involved, it may enter any action.

**16.2 Product Subject of Claim.** If any product furnished is likely to or does become the subject of a claim of infringement of a patent or copyright, then Contractor may, at its option, procure for the State the right to continue using the alleged infringing product, or modify the product so that it becomes non-infringing. If none of the above options can be accomplished, or if the use of such product by the State shall be prevented by injunction, the State will determine whether the contract has been breached.

## 17. CONTRACT OVERSIGHT

**17.1 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.

**17.2 Right to Assurance.** If the 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, the 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 the State's option, be the basis for terminating this contract and pursuing the rights and remedies available under this contract or law.

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

## 18. CONTRACT TERMINATION

**18.1 Termination for Cause.** The State may, by written notice to Contractor, immediately 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.

**18.2 Termination for Cause with Notice to Cure Requirement.** Contractor may terminate this contract for the State's failure to perform any of its duties under this contract after giving the 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.

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

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

## 19. EVENT OF BREACH – REMEDIES

**19.1 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, including but not limited to beginning work under this contract without prior State approval and breaching Section 24 obligations; or
- Voluntary or involuntary bankruptcy or receivership.

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

**19.3 Actions in Event of Breach.**

Upon the Contractor's material breach, the State may:

- Terminate this contract under Section 18; or
- Treat this contract as materially breached and pursue any of its remedies under this contract, at law, or in equity.

Upon the State's material breach, the Contractor may:

- Terminate this contract after giving the State 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; 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.

## 20. FORCE MAJEURE

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

## 21. 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.

## 22. CONFORMANCE WITH CONTRACT

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the contract shall be granted without the State Procurement Bureau's prior written consent. Product or services provided that do not conform to the contract terms, conditions, and specifications may be rejected and returned at Contractor's expense.

## 23. LIAISONS AND SERVICE OF NOTICES

**23.1 Contract Manager.** The State Contract Manager identified below is the State's single point of contact and shall perform all contract management under 2-17-512, MCA, on the State's behalf. Written notices, requests, complaints, or any other issues regarding this contract should be directed to the State Contract Manager.

The State's Contract Manager is:
April Grady
5 S. Last Chance Gulch
Helena, MT 59601
Phone: (406) 444-4941
Fax: (406) 444-9818
agrady@mt.gov

**23.2 State Project Manager.** The State Project Manager identified below will manage the day-to-day project activities on behalf of the State.

The State Project Manager for this contract is:
Megan Coy
5 S. Last Chance Gulch
Helena, MT 59601
Phone: (406) 444-1538
Fax #: (406) 444-7909
MCoy@mt.gov

**23.3 Contract Manager.** The Contractor Contract Manager identified below will be the single point of contact to the State Contract Manager and will assume responsibility for the coordination of all contract issues under this contract. The Contractor Contract Manager will meet with the State Contract Manager and/or others necessary to resolve any conflicts, disagreements, or other contract issues

Contractor's Contract Manager is:
Laurent Lepoutre, Business Development Director
6400 Lookout Rd.
Boulder, CO 801301
(303) 218-1133
Laurent.lepoutre@bi.com

**23.4 Contractor Project Manager.** The Contractor Project Manager identified below will manage the day-to-day project activities on behalf of the Contractor:

The Contractor Project Manager for this contract is:
Joseph Johnson
6400 Lookout Rd.
Boulder, CO 801301)
(303) 218-1110
Joseph.johnson@bi.com

**23.5 Notifications.** The 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, mail, or facsimile. If notice is provided by personal service or facsimile, the notice is effective upon receipt; if notice is provided by mail, the notice is effective within three business days of mailing. A signed and dated acknowledgement of the notice is required of both parties.

## 24. MEETINGS

**24.1 Technical or Contractual Problems.** Contractor shall meet with the 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 the State in the performance of their respective obligations, at no additional cost to the State. The State may request the meetings as problems arise and will be coordinated by the State. The State shall provide Contractor a minimum of three full working days' notice of meeting date, time, and location. Face-to-face meetings are desired; however, at Contractor's option and expense, a conference call meeting may be substituted. Contractor's consistent failure to participate in problem resolution meetings, Contractor missing or rescheduling two consecutive meetings, or Contractor's failure to make a good faith effort to resolve problems may result in termination of the contract.

**24.2 Progress Meetings.** During the term of this contract, the State's Project Manager shall plan and schedule progress meetings with Contractor to discuss Contractor's and the State's progress in the performance of their respective obligations. These progress meetings will include the State Project Manager,

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

**24.3 Failure to Notify.** If Contractor fails to specify in writing any problem or circumstance that materially affects the costs of its delivery of services or products, including a material breach by the State, about which Contractor knew or reasonably should have known with respect to the period during the term covered by Contractor's status report, Contractor shall not be entitled to rely upon such problem or circumstance as a purported justification for an increase in the price for the agreed upon scope.

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

## 25. CONTRACTOR PERFORMANCE ASSESSMENTS

**25.1 Assessments.** The State may conduct assessments of the Contractor's performance. The Contractor will have an opportunity to respond to assessments, and independent verification of the assessment may be utilized in the case of disagreement.

**25.2 Record.** Completed assessments may be kept on record at the State's Information Technology Services Division and may serve as past performance data. Past performance data will be available to assist agencies in the selection of IT service providers for future projects. Past performance data may also be utilized in future procurement efforts.

## 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 shall provide transition assistance for a reasonable, mutually agreed period of time after the expiration or termination of this contract or particular work under this contract. The purpose of this assistance is to allow for the expired or terminated portion of the services to continue without interruption or adverse effect, and to facilitate the orderly transfer of such services to the 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. The State shall pay Contractor for any resources utilized in performing such transition assistance at the most contract current rates. If the State terminates a project or this contract for cause, then the State may offset the cost of paying Contractor for the additional resources Contractor utilized in providing transition assistance with any damages the 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 shall pay its own costs and attorney fees. (18-1-401, MCA.)

## 28. TAX EXEMPTION

The State of Montana is exempt from Federal Excise Taxes (#81-0302402).

## 29. AUTHORITY

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

## 30. SEVERABILITY CLAUSE

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

## 31. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT

**31.1 Contract.** This contract consists of 17 numbered pages, any Attachments as required, RFP14-2965A 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.

**31.2 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.

## 32. WAIVER

The 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.

## 33. EXECUTION

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

**STATE OF MONTANA**
**MONTANA DEPARTMENT OF CORRECTIONS**
**5 S. LAST CHANCE GULCH**
**HELENA, MT 59601**

BY: Pam Bunke

Pam Bunke, Administrator
Adult Community Corrections Division

(Signature)

DATE: 5-19-14

**BI, INCORPORATED**
**6400 LOOKOUT ROAD**
**BOULDER, CO 80301**
**FEDERAL ID # 84-0769926**

BY: _____

Michael Pharris, Assistant Secretary
BI, Incorporated

(Signature)

DATE: _____

Approved as to Legal Content:

Colleen Lambrose 5-27-14
Legal Counsel (Date)

Approved as to Form:

_____ 5-28-14
Procurement Officer (Date)
State Procurement 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.

for _____ 5/21/14
Chief Information Officer (Date)
Department of Administration