

Montana Family Education Savings Program Marketing Services

The Board of Regents of the Montana University System ("Board") is seeking marketing services for the Montana Family Education Savings Program's ("MFESP") qualified tuition program, Achieve Montana.

Open	8/19/2022 4:00 PM MDT	Type	Request for Proposal
Close	9/15/2022 2:00 PM MDT	Number	EDU-RFP-2023-01
		Currency	US Dollar
Sealed Until	9/15/2022 2:00 PM MDT	Payment Terms	0% 0, Net 30

Contacts

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Commodity Codes

Commodity Code	Description
3301	Media Communications - Advertising
1813	Financial Services - Investments

Description

The Board of Regents of the Montana University System (“Board”) is seeking marketing services (the “Services”) for the Montana Family Education Savings Program’s (“MFESP”) qualified tuition program, Achieve Montana. Achieve Montana is Montana’s qualified tuition program operating under Section 529 of the Internal Revenue Code (“IRC”). The MFESP also operates a Bank Plan that is currently closed to new investments.

The MFESP provides college savings vehicles to help families specifically save for higher education expenses and avoid incurring added debt in order to send their children to college. The MFESP requires marketing Services for Achieve Montana in order to increase awareness of Achieve Montana as well as grow the number of Montana accounts and assets.

The following organizations currently provide administrative, custodial, investment, and 529 advisory services to the MFESP:

Achieve Montana Program Manager:	Ascensus College Savings
Investment Plan Recordkeeper:	Ascensus College Savings
Bank Plan Recordkeeper:	Nexbank - College Savings Bank
529 Consulting:	Great Disclosure LLC

As of December 31, 2021 approximately 9,000 accounts are funded in Achieve Montana. Of those, approximately 5,300 are in state accounts. The total assets in Achieve Montana were approximately \$200,000,000.

Prerequisites

- ★ 1. Review and accept the single point of contact information.
- ★ 2. Review and accept the Schedule of Events.
- ★ 3. Review and accept the contract term.
- ★ 4. Review and accept our RFP general information.
- ★ 5. Review instructions for submitting a proposal.
- ★ 6. Review and accept our contract template requirements.
- ★ 7. Review and accept the University System's insurance requirements.
- ★ 8. Review and accept the University's Mandatory Requirements clause.
- ★ 9. Review and accept the Presentation/Demonstration/Interview requirement.

Buyer Attachments

1. [RFP 2023-01 Attachment 1-Scope of Services.docx](#)
2. [RFP 2023-01 Attachment 2-Technical Proposal.docx](#)
3. [RFP 2023-01 Attachment 3-Cost Proposal.docx](#)
4. [RFP 2023-01 Attachment 4-Evaluation Criteria.docx](#)
5. [K2023-01 529 Plan Marketing.docx](#)

Group 1: General

Instructions:

- 1.1 I understand it is my responsibility to check the Public Q&A board before submitting my proposal ★
- 1.2 I understand that to ensure my questions will be answered, they should be submitted to the public Q&A board by August 26, 2022. Questions may be submitted after this deadline but there is no guarantee that late questions will be answered. ★
- 1.3 Please submit a current W-9. ★
- 1.4 Please provide contact information for the contract liaison: _____ is Contractor's liaison. (Address): (City, State, ZIP): Telephone: Cell Phone: E-mail: ★
- 1.5 Provide name, title and email address for Contract signatory. ★
- 1.6 Equal Pay for Montana Women. Executive Order No. 12-2016 promoting equal pay for Montana women directs the Department of Administration to include incentives in the RFP process for contractors who engage in best practices to promote wage transparency. These best practices include the following: (a) posting salary ranges in employment listings; (b) certifying that the contractor will not ask about wage history in employee interviews; (c) certifying that the contractor will not retaliate or discriminate against employees who discuss or disclose their wages in the workplace. Offeror indicating it will comply with Executive Order No. 12-2016 will receive 5% of the total points available. Offerors who do not comply will not receive the available points. ★
- 1.7 I understand that any and all costs associated with my product or service must be disclosed in my proposal. Any and all costs not disclosed in my proposal will be deemed non-applicable. I understand the University System is not liable to pay any cost that was not disclosed in my proposal. ★
- 1.8 Offeror has read, understands and will comply with Attachment 1: Scope of Services ★

Group 2: Technical Proposal

Instructions:

- 2.1 Offeror should download all documents provided as attachments, and follow submittal instructions found in Attachment 2: Technical Proposal. Please upload response addressing each requirement listed. ★

Group 3: Cost Proposal

Instructions:

- 3.1 Offeror should download and complete cost table found in Attachment 3: Cost Proposal. Please upload completed cost table. ★

Group 4: Evaluation Criteria

Instructions:

- 4.1 I understand the RFP will be evaluated based on the scoring criteria provided in Attachment 4. ★

There are no Items added to this event.

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ATTACHMENT 1: SCOPE OF SERVICES

1.1 INTRODUCTION

The Board of Regents of the Montana University System (“Board”) is seeking marketing services (the “Services”) for the Montana Family Education Savings Program’s (“MFESP”) qualified tuition program, Achieve Montana. Achieve Montana is Montana’s qualified tuition program operating under Section 529 of the Internal Revenue Code (“IRC”). The MFESP also operates a Bank Plan that is currently closed to new investments.

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1.2 BACKGROUND

The MFESP was created under the enabling legislation by the 1997 Montana Legislature. The MFESP is administered by the Office of the Commissioner of Higher Education (“OCHE”) on behalf of the Board of Regents (“BOR”) who also act as trustee of the MFESP.

The MFESP also includes a seven member Oversight Committee (“OSC”) which is under the authority of the BOR and members are appointed by the governor to staggered 4-year terms consisting of the Commissioner of Insurance or the Commissioner’s designee, the State Treasurer or the State Treasurer’s designee, the presiding officer of the BOR or the presiding officer’s designee, and four member of the general public, each of whom possesses knowledge, skill, and experience in accounting, risk management, or investment management or as an actuary. This advisory committee is created under the authority granted to the board by §20-25-901, Montana Code Annotated (“MCA”).

Montana residents are eligible to deduct annually from Montana adjusted gross income for contributions up to \$3,000 (\$6,000 if married, filing jointly). This deduction to taxable income is not exclusive to the MFESP and can be used for contributions made to any qualified tuition program.

Achieve Montana currently offers investment options with underlying investments from Blackrock Advisors, LLC, Dimensional Fund Advisors LP, New York Life Insurance Company, Charles Schwab Investment Management, Inc., and The Vanguard Group, Inc. The MFESP staff oversees and administers the BOR’s contract with the Program Manager.

The state's primary goal in offering a 529 plan is to help families avoid incurring large amounts of debt in order to send their children to college, as well as to promote an educated work force for the future. The state owns the Achieve Montana website (achievemontana.com). The MFESP's current marketing firm maintains the public facing pages of the Achieve Montana website and the program manager maintains the secure/log in pages of the Achieve Montana website.

1.3 DESCRIPTION OF SERVICES

The Offeror will provide a comprehensive marketing plan and the Services outlined below and will document and demonstrate experience in providing such Services in similar applications. The Offeror will be expected to provide these Services under the control and direction of the MFESP staff, OSC, and BOR. The Offeror shall not perform any activities under the agreement resulting from this RFP (the "Agreement") without the prior written approval of the MFESP staff.

Detailed information regarding the requirements to be met and the tasks to be performed are provided below. Offerors are encouraged to recommend and include in their technical proposals any other Services or activities necessary or beneficial to the successful marketing of Achieve Montana. Notwithstanding any other provision hereof, the Offeror must be capable of providing the Services required hereunder immediately following the approval of the comprehensive marketing plan.

As approved by the MFESP staff, the Offeror shall provide such additional Services as contained in its final approved proposal.

A. COMPREHENSIVE MARKETING PLAN. The Offeror, in concert with MFESP staff, shall assist with the development of Achieve Montana's annual marketing strategy and public outreach campaign. The goal of the plan is to increase participation among all Montana families who have higher education dreams for their children. The comprehensive marketing plan will include:

- Development of or maintenance and enhancement of an existing central theme which will foster a connection between all of Achieve Montana's marketing materials for the year.
- Strategy to target potential Achieve Montana participants across all income levels.
- Strategy to reach new and current parents and/or grandparents.
- Work with the MFESP to implement the annual plan throughout the MFESP fiscal year (July 1 – June 30).

B. BRANDING. The Offeror, in concert with the MFESP staff, shall build awareness of Achieve Montana and its brand to support the mission, goals, and objectives within the stated budget parameters of the Comprehensive Marketing Plan. All materials across all mediums will follow Achieve Montana's branding standards.

C. CREATIVE. The Offeror will develop and implement all creative aspects pertaining to the marketing of Achieve Montana including but not limited to digital marketing, radio, public service announcements, print collateral, promotional products, and Achieve Montana's website.

D. SPONSORSHIPS AND PARTNERSHIPS. The Offeror shall assist with the development of sponsorships and partnerships which are in line with the goals of the Comprehensive Marketing Plan.

E. ENROLLMENT KIT. The Enrollment Kit provides prospective participants with all details regarding Achieve Montana. While the MFESP staff is primarily responsible for the content of the Enrollment Kit, the MFESP is receptive to suggestions, ideas, or comments about how the Enrollment Kit could be developed into a stronger marketing tool. See the Enrollment Kit is available at <https://achievemontana.com/forms-and-literature/>. The Enrollment Kit generally includes a Highlights Booklet, the Program Description, Enrollment Forms, and return envelopes. The Offeror is responsible for the concept,

layout and design, and possibly the printing for Enrollment Kit. Printing of the Enrollment Kits may be coordinated and paid for directly by the MFESP.

F. BROCHURE. The tri-fold brochure provides a general overview of Achieve Montana and the benefits of investing in Achieve Montana. Brochures are full color pieces, tri-fold or bi-fold used for public distribution, displayed at other public places, or as direct mail pieces. The Offeror is responsible for the concept, layout and design, and printing of the brochure. Offeror should potentially find and review potential outlets for brochure distribution.

G. MEDIA PLANNING AND BUYING. The Offeror will research, develop and execute a media-buying plan. The research will include media audience, ratings/readership, value-added opportunities such as non-profit bonus spots, on-air interviews, and brochure distribution at selected station events and/or other criteria as determined to be relative to the benefit of Achieve Montana. The Offeror will conduct the media buy as determined in conjunction with the MFESP staff. All media, outside production costs, subcontractors' costs, or out-of-pocket expenses incurred will be invoiced at net, with no mark-up or commission.

H. INTERACTIVE MARKETING PLANNING AND BUYING – WEB. The Offeror will assist the MFESP with developing and/or carrying out a comprehensive interactive marketing strategy, which would support the mission, goals and objectives within the stated budget parameters of the Comprehensive Marketing Plan. This effort should include banner ads, text ads, search terms, social media, emails, website updates, webinars and videos or podcasts. The Offeror will also be asked for its support with website updates, email and video or podcast distribution as deemed necessary. Content is to be developed in tandem with the MFESP staff. Development will include creative, layout and design, and placement on web outlets approved by the MFESP. All media, outside production costs, subcontractors' costs, or out-of-pocket expenses incurred will be invoiced at net, with no mark-up or commission.

I. ACHIEVE MONTANA WEBSITE. The public facing pages of the Achieve Montana website (achievemontana.com) is hosted and maintained by the current Achieve Montana marketing services firm. The Offeror shall host and maintain the Achieve Montana website in accordance with the terms of the Agreement. The Offeror must also interface with the secure pages of the website hosted and maintained by the Achieve Montana program manager. Achieve Montana's program manager manages the secure/log in pages of www.achievemontana.com and Offeror will be required to work closely with the program manager's team regarding website updates and changes. The Offeror shall be responsible for transitioning the website to its platform and/or web host, if applicable.

J. COMMUNITY OUTREACH SUPPORT. The Offeror shall assist the MFESP with developing and/or carrying out comprehensive public relations services, which support the mission, goals and objectives outlined within the stated budget parameters of the Comprehensive Marketing Plan. These Services may include, and are not limited to, securing relationships with targeted media, organizations and/or audiences that can lead to informational seminars or other outreach opportunities, producing relevant signs, banners, posters, or other informational/decorative displays for events, and managing or maintaining social media communication avenues.

K. ACCOUNT MANAGEMENT. The Offeror, in conjunction with the MFESP staff, will be responsible for coordinating the marketing activities, setting expectations, managing deadlines and providing a central point of contact for the firm to carry out the above mentioned Description of Services.

L. REPORTING. The Offeror will prepare a review and/or summary of the effectiveness of Achieve Montana's marketing strategy on a monthly, quarterly, and ad hoc basis at the direction of the MFESP staff. This report will highlight all Services provided by the Offeror to the MFESP, the effectiveness of each Service, and recommendations to improve or enhance future marketing strategies.

M. MEETINGS. The Offeror shall meet at least monthly with the MFESP staff to review progress, provide necessary guidance to the MFESP staff in solving problems that may arise and provide advice and

consultation for new initiatives. Meetings may be held at the Offeror's location, the MFESP staff's office, by telephone, video meeting, or any other location in Montana as determined by the MFESP staff. The Offeror must also agree to ad hoc meetings throughout the year at mutually convenient times to address issues of concerns with existing projects; brainstorm new projects and initiatives; or to receive status updates with accurate timelines for ongoing or future projects as directed by the MFESP staff.

N. WORKING PAPERS. All working papers, reports, printer's proofs, photography, databases, electronic files and other documentation prepared by the Offeror in the performance of the Agreement. Upon termination or expiration of this Agreement, unless otherwise agreed to in writing by the BOR, all of the above mentioned items shall be submitted to the BOR in a format that meets the BOR's approval.

529 Plan Marketing Services

Contract # _____

Montana University System – Montana Family Education Savings Program, Achieve Montana
[_____] , 2022

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THIS CONTRACT is entered into by and between the **Montana University System, Montana Family Education Savings Program (MUS-MFESP), Achieve Montana** whose address and phone number are 560 North Park, Helena, MT, ph.: 406-449-9169 and (insert name of contractor), (Contractor), whose address and phone number are (insert address) and (insert phone number).

1. EFFECTIVE DATE, DURATION, AND RENEWAL

1.1 Contract Term. The contract's initial term is January 1, 2023 through December 31, 2026, unless terminated earlier as provided in this contract. In no event is this Contract binding on the MUS-MFESP unless all required MUS-MFESP's authorized representatives have 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 MUS-MFESP may renew this Contract under its then-existing terms and conditions (subject to potential cost adjustments described below in section 2) in two-year intervals, or any interval that is advantageous to the MUS-MFESP. This contract, including any renewals, may not exceed a total of seven years

2. COST ADJUSTMENTS

2.1 Cost Increase by Mutual Agreement. After the contract's initial term and if the MUS-MFESP agrees to a renewal, the parties may agree upon a cost increase. The MUS-MFESP 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

Contractor shall provide the MUS-MFESP the 529 Plan marketing services as described in RFP #2022-01 and contractor's response.

4. WARRANTIES

4.1 Warranty of Services. Contractor warrants that the services provided conform to the Contract requirements, including all descriptions, specifications and attachments made a part of this contract. The MUS-MFESP's acceptance of services provided by Contractor shall not relieve Contractor from its obligations under this warranty. In addition to its other remedies under this contract, at law, or in equity, the MUS-MFESP may, at Contractor's expense, require prompt correction of any services failing to meet Contractor's warranty herein. Services corrected by Contractor shall be subject to all the provisions of this Contract in the manner and to the same extent as services originally furnished.

5. CONSIDERATION/PAYMENT

5.1 Payment Schedule. In consideration of the 529 plan marketing services to be provided, the MUS-MFESP shall pay Contractor upon receipt of monthly invoices during the life of the contract. Amounts billed include all costs associated with the services set forth in Section 1.3 of of RFP #2022-01.

5.2 Withholding of Payment. In addition to its other remedies under this contract, at law, or in equity, the MUS-MFESP may withhold payments to Contractor if Contractor has breached this contract. Such withholding may not be greater than, in the aggregate, 15% of the total value of the subject statement of work or applicable contract.

5.3 Payment Terms. All payment terms will be computed from the date of acceptance of supplies or services OR receipt of a properly executed invoice, whichever is later. Unless otherwise noted in the solicitation document, the MUS-MFESP 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 MUS-MFESP'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 MUS-MFESP is not obligated to pay the invoice.

6. RESERVED

7. NON-EXCLUSIVE CONTRACT

The intent of this Contract is to provide MUS-MFESP with an expedited means of procuring supplies and/or services. This Contract is for the convenience of MUS-MFESP institutions and is considered by MSU Procurement Services to be a "Non-exclusive" use contract. Therefore, institutions 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. MSU Procurement Services does not guarantee any usage.

8. RESERVED

9. ACCESS AND RETENTION OF RECORDS

9.1 Access to Records. Contractor shall provide the MUS-MFESP, State, Legislative Auditor, or their authorized agents access to any records necessary to determine Contract compliance. The MUS-MFESP may terminate this Contract under section 23, without incurring liability, for the Contractor's refusal to allow access as required by this section. (18-1-118, MCA.)

9.2 Retention Period. Contractor shall create and retain all records supporting the services described in this Contract for a period of three years after either the completion date of this Contract or termination of the contract.

10. ASSIGNMENT, TRANSFER, AND SUBCONTRACTING

Contractor may not assign, transfer, or subcontract any portion of this Contract without the MUS-MFESP's prior written consent. (18-4-141, MCA.) Contractor is responsible to the MUS-MFESP 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 MUS-MFESP under this contract.

11. **HOLD HARMLESS/INDEMNIFICATION**

Contractor agrees to protect, defend, and save the MUS-MFESP, its 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 MUS-MFESP, under this agreement.

12. **RESERVED**

13. **REQUIRED INSURANCE**

13.1 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.

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

13.3 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 **\$500,000** per occurrence and **\$1,000,000** 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 MUS-MFESP, its officers, officials, employees, and volunteers are to be covered and listed as additional insureds via **the certificate of insurance under 'description of operations' and by endorsement to the policy** 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. Reference should be made to same on the COI, but the actual separate endorsement must be provided.

13.4 Deductibles and Self-Insured Retentions. Any deductible or self-insured retention must be declared to and approved by the MUS-MFESP. At the request of the MUS-MFESP either: (1) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the MUS-MFESP, 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.

13.5 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 MSU Procurement Services, P.O. Box 172600, Bozeman, MT 59717-2600. Contractor must notify the MUS-MFESP immediately of any material change in insurance coverage, such as changes in

limits, coverages, change in status of policy, etc. The MUS-MFESP reserves the right to require complete copies of insurance policies at all times.

14. 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 MUS-MFESP employees. This insurance/exemption must be valid for the entire Contract term and any renewal. Upon expiration, a renewal document must be sent to MUS Procurement Services, P.O. Box 172600, Bozeman, MT 59717-2600.

15. COMPLIANCE WITH LAWS

Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016 Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

16. DISABILITY ACCOMMODATIONS

The MUS-MFESP 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.

17. RESERVED

18. 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>.

19. **RESERVED**

20. **RESERVED**

21. **RESERVED**

22. **RESERVED**

23. **CONTRACT TERMINATION**

23.1 Termination for Cause with Notice to Cure Requirement. The MUS-MFESP 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.

23.2 Termination for Cause with Notice to Cure Requirement. Contractor may terminate this Contract for the MUS-MFESP's failure to perform any of its duties under this Contract after giving the MUS-MFESP 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.

23.3 Reduction of Funding. The MUS-MFESP must by law terminate this Contract if funds are not appropriated or otherwise made available to support the MUS-MFESP'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 MUS-MFESP shall terminate this Contract as required by law. The MUS-MFESP shall provide Contractor the date the MUS-MFESP's termination shall take effect. The MUS-MFESP 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 MUS-MFESP shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date the MUS-MFESP's termination takes effect. This is Contractor's sole remedy. The MUS-MFESP 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.

24. **EVENT OF BREACH – REMEDIES**

24.1 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 MUS-MFESP approval and breaching Section 29.1 obligations; or
- voluntary or involuntary bankruptcy or receivership.

24.2 Event of Breach by MUS-MFESP. The MUS-MFESP's failure to perform any material terms or conditions of this Contract constitutes an event of breach.

24.3 Actions in Event of Breach.

Upon the Contractor's material breach, the MUS-MFESP may:

- terminate this Contract under section 23; or
- treat this Contract as materially breached and pursue any of its remedies under this contract, at law, or in equity.

Upon the MUS-MFESP's material breach, the Contractor may:

- terminate this Contract after giving the MUS-MFESP 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. 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.

25. 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.

26. 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.

27. CONFORMANCE WITH CONTRACT

No alteration of the terms, conditions, delivery, price, quality, quantities, or specifications of the Contract shall be granted without MSU Procurement Services 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.

28. LIAISONS AND SERVICE OF NOTICES

28.1 Contract Liaisons. All project management and coordination on the MUS-MFESP's behalf must be through a single point of contact designated as the MUS-MFESP's liaison. Contractor shall 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 the MUS-MFESP's liaison and Contractor's liaison.

_____ is MUS-MFESP's liaison.

(Address):

(City, State, ZIP):

Telephone:

Cell Phone:

Fax:

E-mail:

_____ is Contractor's liaison.

(Address):

(City, State, ZIP):

Telephone:

Cell Phone:

Fax:

E-mail:

28.2 Notifications. The MUS-MFESP'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.

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

29. MEETINGS

29.1 Technical or Contractual Problems. Contractor shall meet with the MUS-MFESP'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 MUS-MFESP in the performance of their respective obligations, at no additional cost to the MUS-MFESP. The MUS-MFESP may request the meetings as problems arise and will be coordinated by the MUS-MFESP. The MUS-MFESP 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 or electronic 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 this Contract .

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

29.3 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 MUS-MFESP, 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.

29.4 MUS-MFESP's Failure or Delay. For a problem or circumstance identified in Contractor's status report in which Contractor claims was the result of the MUS-MFESP's failure or delay in discharging any MUS-MFESP obligation, the MUS-MFESP shall review same and determine if such problem or circumstance was in fact the result of such failure or delay. If the MUS-MFESP 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 MUS-MFESP 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.

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

31. CHOICE OF LAW AND VENUE

This Contract is governed by the laws of Montana. The parties agree that, in the event of litigation concerning this Contract, venue shall be in the First Judicial District of the State of Montana, in and for the County of Lewis and Clark. State of Montana and each party shall pay its own costs and attorney fees. (See section 18-1-401, MCA.)

32. TAX EXEMPTION

State of Montana is exempt from Federal Excise Taxes (#81-0302402) except as otherwise provided in the federal Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119].

33. AUTHORITY

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

34. 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.

35. SCOPE, ENTIRE AGREEMENT, AND AMENDMENT

35.1 Contract. This Contract consists of **(insert number)** numbered pages, any Attachments as required, RFP # 2022-01, 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.

35.2 Entire Contract. 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.

36. WAIVER

The MUS-MFESP'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.

37. DEBARMENT

The contractor certifies, by signing this Contract that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (Contract) by any governmental department or agency. If the contractor cannot certify this statement, attach a written explanation for review by MUS-MFESP.

38. EXECUTION

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

**MONTANA UNIVERSITY SYSTEM
Office of the Commissioner of
Higher Education**

(INSERT CONTRACTOR'S NAME)

BY: _____
(Name/Title)

BY: _____
(Name/Title)

(Signature) (Date)

(Signature) (Date)

Approved as to Legal Content:

MUS/OCHE Legal Counsel (Date)
(Required for purchases over \$25,000)

Approved as to Form:

Brian D. O'Connor (Date)
Chief Procurement Officer - MUS
(Required for purchases over \$25,000)