

**STATE OF IDAHO SPECIAL TERMS AND CONDITIONS FOR CUSTOMIZED SOFTWARE
AND RELATED SERVICES**

1. **DEFINITIONS:** Unless the context clearly requires otherwise, the definitions set forth in the *State of Idaho Standard Contract Terms and Conditions* shall apply to terms used in these *State of Idaho Special Terms and Conditions for Customized Software and Related Services*. In addition, the following terms shall have the following meanings when used in these *State of Idaho Special Terms and Conditions for Customized Software and Related Services*:
 - A. Customized Software – Software that is designed and created for the State or modified for the State and related documentation, including training manuals, flowcharts, data dictionaries, user manuals and operation manuals. The modification of Software shall include alteration of the object code or source code of the Software.
 - B. Software – A series of instructions or statements in a form acceptable to a machine that processes data and is designed to cause the machine to execute an operation or operations. Software includes operating systems, assemblers, compilers, interpreters, data management systems, utility programs, and ADPE Maintenance/Diagnostics programs.
 - C. Update – An update, upgrade, enhancement, repair, patch or fix to Customized Software produced by or for the Contractor and offered for use, purchase or license to Contractor's customers.

2. **SOFTWARE LICENSE:** Contractor grants the State a perpetual, nontransferable, irrevocable and nonexclusive license to use, maintain and enhance the Customized Software.
 - A. The State's license includes the right to all Updates. The payments paid by the State under the Agreement shall be the sole source of payment for Updates during the term of the Agreement. Following the termination or expiration of the Agreement, the Contractor may charge the State the lesser of the lowest fee charged to other recipients of the Update or a commercially reasonable fee for the Update. Contractor shall provide notice to the State when an Update is offered to Contractor's customers.
 - B. The State is permitted to make a single archive copy of the Customized Software. The archive copy shall contain the same copyright notice and proprietary markings that are on the original Customized Software.
 - C. At the option and expense of the State, Contractor shall establish a Software escrow on terms reasonably acceptable to the State.

3. **CONTRACTOR REPRESENTATIONS AND WARRANTIES:** Contractor represents and warrants that:
 - A. The Contractor has the right and authority to make the modifications to Software, if any, made for the State under the Agreement.
 - B. The Customized Software does not infringe upon a United States' patent, copyright, trade secret or trademark.
 - C. The Contractor will provide Property under the Agreement in a timely and workmanlike manner.

4. **ACCEPTANCE:** When the Agreement does not include installation, acceptance shall occur ninety (90) days after delivery of the Customized Software to the State. When the Agreement includes installation, acceptance shall occur ninety (90) days after the completion of installation by the Contractor. Acceptance shall not occur if the State notifies the Contractor in writing within the applicable ninety (90) day period that the Customized Software does not satisfy the terms of the Agreement or otherwise fails to pass test procedures or programs established under the Agreement.

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5. SOFTWARE WARRANTY:

A. The Contractor warrants that:

- (i) The tapes, diskettes or other media containing the Customized Software will be free of defects in materials and workmanship under normal use for ninety (90) days from the delivery date.
- (ii) For one (1) year following acceptance, as more particularly described in section 4, the Customized Software will perform in accordance with the specifications and acceptance criteria set forth in the Agreement.
- (iii) The Customized Software is not incompatible with the Software and hardware used by the State and described in the Agreement. Incompatibility shall include the creation of errors in data, the loss of data, the inability to access data, and delays and stoppages in the performance of work by the Contractor or the State arising from the Customized Software.

B. Contractor shall repair or replace, within a commercially reasonable time and at its sole cost and expense, all Customized Software failing to comply with the warranties provided in this section 5. If the Contractor fails to repair or replace the Customized Software within a commercially reasonable time, the State may, in its sole discretion, act to repair or replace the Customized Software and the Contractor shall reimburse the State for all costs incurred by the State to repair or replace the Customized Software.

C. EXCEPT AS STATED IN THIS SECTION 5, CONTRACTOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6. LIMITATION OF LIABILITY: CONTRACTOR SHALL NOT BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, OR FOR LOST PROFITS, SAVINGS OR REVENUES OF ANY KIND, WHETHER OR NOT CONTRACTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATION OF LIABILITY IN THIS SECTION 6 SHALL NOT INCLUDE: CONTRACTOR'S WARRANTY OBLIGATIONS UNDER SECTION 5; DAMAGES TO REAL OR TANGIBLE PROPERTY, EXCLUDING THE STATE'S OTHER SOFTWARE, DATA, AND DATA FILES; BODILY INJURY OR DEATH TO ANY PERSON NEGLIGENTLY CAUSED BY THE CONTRACTOR; AND DIRECT DAMAGES TO THE STATE, INCLUDING COSTS PAID TO THE CONTRACTOR BY THE STATE AND THE STATE'S COSTS OF RE-PROCUREMENT OR SECURING SUBSTITUTE PERFORMANCE OF THE AGREEMENT.

7. OWNERSHIP OF MATERIALS AND INFORMATION: Except as specifically provided otherwise in the Agreement, the State shall own and retain all rights to hardware and other goods purchased by the State under the Agreement and to information, materials, procedures, processes and data developed, derived, documented, stored, or furnished by the Contractor under the Agreement.