

## STATE OF IDAHO STANDARD TERMS AND CONDITIONS FOR ON-PREMISE SOFTWARE AND RELATED SERVICES

Note: In the event of conflict with the State of Idaho Standard Contract Terms and Conditions, the following provisions will take precedence:

**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 Standard Terms and Conditions for On-Premise Software and Related Services*. In addition, the following terms shall have the following meanings when used in these *State of Idaho Standard Terms and Conditions for On-Premise Software and Related Services*:

A. 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, but is not limited to operating systems, assemblers, compilers, interpreters, data management systems, utility programs, and Automatic Data Processing Equipment Maintenance/Diagnostics programs.

B. Commercial-Off-the-Shelf – Software that is not Customized Software.

C. Configuration - The setting up of and organizing of such functionality that includes but is not limited to tables, schema, personal calculation rules, functions, features, operations and infotypes, including screens and reports.

D. Customized Software – Software that is 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 but does not include Configuration.

E. On-Premise Software – Software that is installed on and operates on State-owned or State-managed computer equipment.

F. Solution – the products, services, or both, provided by the Contractor under the Contract, which may include any combination of Software (On-Premise Software, Commercial-Off-the-Shelf Software [and Customized Software, if any]).

G. Update – An enhancement, repair, patch or fix to Software produced by or for the Contractor and offered for use, purchase or license to Contractor’s customers. Updates also include enhancements, repairs, patches and fixes to the Software’s security and functionality.

**2. SOFTWARE LICENSE:** Contractor grants the State a perpetual, nontransferable, irrevocable and nonexclusive license to use and maintain the Software.

A. The State’s license includes the right to all Updates at no additional cost during the license period. Contractor shall provide notice to the State when an Update is offered to Contractor’s customers.

B. The State is permitted to duplicate the software to best meet its Data recovery needs, including, but not limited to, maintaining copies of the software for COOP plans, and software installed on backup servers, virtual servers or both, for the sole purpose of contingency. The archive copy shall contain the same copyright notice and proprietary markings that are on the original Software.

**3. CONTRACTOR REPRESENTATIONS AND WARRANTIES:** Contractor represents and warrants that:

A. Contractor has the full power and authority to grant the State any license as provided in the Contract and has the full power and authority to grant to the State access to the Solution, and all required functionality as specified in the Contract.

B. The Solution in whole or in part, does not infringe upon an enforceable patent, copyright, trade secret, trademark or other proprietary right. The Contractor knows of no action or proceeding which could adversely affect the Contractor's ability to perform or complete its obligations under the Contract. Should a third-party claim prevail, inhibiting the State's use of the Solution, the Contractor shall, at its own expense, secure all required resources necessary to ensure uninterrupted use of the Solution up to and including, replacement of the Solution.

C. If the Contractor produces any modifications to the Software components of the Solution that create errors in data, the loss of data, the inability to access data, or results in delays or stoppages in the performance of work by the Contractor or the State, the Contractor shall immediately address and correct such errors, which shall be at no additional cost to the State.

D. The Solution shall perform in accordance with the Contract and shall perform to all specific claims and specifications provided in the Contract.

**4. ACCEPTANCE:** When the Contract does not require the Contractor to install the Software, acceptance shall occur ninety (90) days after delivery of the Solution to the State. When the Contractor is required by the Contract to provide installation, acceptance shall occur ninety (90) days after the completion of installation of the Solution by the Contractor. Acceptance shall not occur (regardless of which party is responsible for installation) if the State notifies the Contractor in writing within the applicable ninety (90) day period that the Solution does not satisfy the terms of the Contract or otherwise fails to pass test procedures or programs established under the Contract.

**5. ACCEPTANCE OF CUSTOMIZED SOFTWARE:** For any Customized Software, acceptance of Customized Software shall occur when the Customized Software has been operating in accordance with the requirements of the Contract in a production environment for ninety (90) consecutive production days.

**6. SOFTWARE WARRANTY:**

A. The Contractor warrants that:

- (i) Following acceptance as described in section 4 (or, for Customized Software, as described in section 5), and for the entire term of the Contract, including any renewal and extension terms, the Solution will perform in accordance with the requirements of the Contract.
- (ii) The Solution is compatible with the software and infrastructure specified in the Contract. Incompatibility will include but not be limited to, the creation of errors in data, the loss of data, the inability to access data, and delays and stoppages in performance of work by the Contractor or the State arising from the Solution. In addition, the Solution contains no malware or any other software inclusions such as backdoors, datamining capabilities, spyware, command and control, monitoring, or any other functionality or capability that may adversely impact the State's ability to use the Solution.

- (iii) The Contractor shall provide required licenses, maintenance, and Updates in a timely manner for the duration of the Contract.
- (iv) Upon receipt of notification from the State, the Contractor shall immediately repair or replace any aspect of the Solution failing to comply with the specifications and acceptance criteria set forth in the Contract. If the Contractor fails to repair or replace any such aspect of the Solution within the time frame to do so set forth in the Contract, or within the time frame otherwise agreed upon by the parties, the State may, in its sole discretion and upon providing written notice to Contractor, act to repair or replace the Solution, in whole or in part, and the Contractor shall reimburse the State for all costs incurred by the State to repair or replace the Solution.

#### **7. OWNERSHIP OF MATERIALS AND INFORMATION:**

A. Except as specifically provided otherwise in the Contract, the State shall own and retain all rights to the following: (a) any information, documents, data, or materials provided by the State to the Contractor for purposes of the Contract; and (b) any deliverable provided by the Contractor to the State under the Contract (collectively, with (a), "State Property").

B. Upon written request of the State, the Contractor shall deliver the State Property to the State in an accessible format. As used in this section, "accessible format" shall mean that the Contractor will provide copies of State Property to the State accessible in Microsoft Word, with the Word version specified by the State, or in such other electronic format accepted in writing by the State, accompanied by any images and associated artwork, capable of copying and insertion into new electronic documents, and without locking or "screen shots". Where Configuration is required, the Contractor shall, at no additional cost to the State, provide such Configuration to the State.

**8. OWNERSHIP OF CUSTOMIZED SOFTWARE:** For any Customized Software, and notwithstanding any license granted herein by the Contractor to the State, the State shall own and retain all rights to the Customized Software and any information, documents, data, or materials provided by the State to the Contractor for purposes of the Contract.