

STATE OF IDAHO CONTRACT TERMS AND CONDITIONS

ARTICLE 1 – GENERAL TERMS AND CONDITIONS

1.1. Definitions. Except as defined otherwise in this Contract, the following terms shall have the following meanings, whether capitalized or not, unless the context requires otherwise. Terms not defined within this Contract shall have the meanings defined in Idaho Code section 67-9203 and in IDAPA 38, title 05, chapter 01, Rules of the Division of Purchasing.

- 1.1.1. “Agency” means the board, commission, department, agency, or office of the State receiving the Property provided by the Contractor pursuant to this Contract.
- 1.1.2. “Contract” means this written agreement between Contractor and the State for the acquisition of property, which may be the result of a solicitation, and which may include the Solicitation or specification document and the accepted portions of the bid or proposal and other documents as identified herein, unless the context means one or more agreements with other contractors or for the acquisition or other property.
- 1.1.1. “Contractor” means the offeror, bidder, or proposer selected under the Solicitation to enter a contract with the State and identified as the Contractor in the heading above in this Contract.
- 1.1.2. “Data Breach” means any unauthorized access to or acquisition of Non-Public State Data following a Security Incident that compromises the security, confidentiality, or integrity of the Non-Public State Data, or the ability of the State to access the Non-Public State Data.
- 1.1.3. “Non-Public State Data” means State Data that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the State because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information. Non-Public State Data includes, but is not limited to, Personal State Data.
- 1.1.4. “Personal State Data” means State Data, which alone or in combination with other data, includes information relating to an individual that identifies the individual by name, identifying number, mark, or description that can be readily associated with a particular individual and which is not a public record. Personal State Data includes but is not limited to the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver’s license, passport); financial account information, including account number, credit or debit card numbers; Protected Health Information (PHI) relating to a person; or education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv).
- 1.1.5. “Property” means goods, services, parts, supplies, and equipment, both tangible and intangible, including but not limited to, designs, plans, programs, systems, techniques, and any rights or interests in such property.
- 1.1.6. “Protected Health Information (PHI)” means individually identifiable health information held or transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI also includes but may not be limited to information that is a subset of health information, including demographic information collected from an individual, and 1) is created or received by a health care provider, health

plan, employer, or health care clearinghouse; and 2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; and a) that identifies the individual; or b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

- 1.1.7. "Purchasing Administrator" means the administrator of the Department of Administration, Division of Purchasing.
- 1.1.8. "Purchasing Authority" means the state entity authorized to enter into the Contract, which shall be either the Department of Administration, Division of Purchasing, or the Agency.
- 1.1.9. "Security Incident" means the unauthorized access to Contractor's network that the Contractor or the State believes could reasonably result in the use, disclosure, or theft of the State's Non-Public State Data within the possession or control of Contractor. A Security Incident also includes a security breach to Contractor's system, regardless of if Contractor is aware of unauthorized access to the State's Non-Public State Data. A Security Incident may or may not turn into a Data Breach.
- 1.1.10. "Software" means 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.
- 1.1.11. "State" means the state of Idaho including each board, commission, department, agency, or office of the state of Idaho, unless the context means one or more other states of the United States.
- 1.1.12. "State Data" means all information and data developed, documented, derived, stored, installed, or furnished by the State under the Contract, including all data related to records owned by the state of Idaho.
- 1.1.13. "Solicitation" means an invitation to bid (ITB), request for quotes (RFQ), or request for proposals (RFP) issued by the State for the purpose of soliciting bids, proposals, or quotes resulting in the Contract.

1.2. Term

- 1.2.1. Initial Term. The initial term of the Contract shall commence on the Effective Date and expire on the Service End Date identified in the header of this Contract.
- 1.2.2. Renewal Options. Upon mutual, written agreement by the parties, the Contract may be extended under the same terms and conditions for the time interval equal to the initial term, or for such period of time as to agreed to by the parties. The Contract is not anticipated to exceed five (5) years including all renewals.

1.3. Price

- 1.3.1. Price. The pricing for the Contract is included in **Appendix A.**
- 1.3.2. Price Increases. Except as set forth in this section, prices shall not increase during the initial term or during any renewal or extension term. Unless accepted by the Purchasing Authority in writing or provided for in the Contract, prices shall not increase between the prior term and a renewal term. The Purchasing Authority may accept a price increase

during a term or upon renewal as provided in Contract or upon submission of evidence by Contractor that Contractor's costs have increased by causes beyond the control and without the fault or negligence of Contractor, and that Contractor could not have included in its offered price because they were unforeseeable or because the Solicitation did not contemplate future pricing.

1.4. Termination and Remedies

1.4.1. Termination for Contractor Default. The State may terminate the Contract, any order issued pursuant to the Contract, or both when the Contractor has been provided written notice of default or non-compliance and has failed to cure the default or non-compliance within a reasonable time, which time shall be determined in the sole discretion of the Purchasing Authority. If the default or non-compliance is not capable of cure or if the cure requires more than thirty (30) calendar days, the Purchasing Authority may provide notice of termination without a cure period. The State shall not be required to provide advance written notice or a cure period and may immediately terminate this Contract in whole or in part if the State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Contract.

1.4.2. Effect of Termination

1.4.2.1. If the Contract is terminated for default or non-compliance, the Contractor will be liable for any costs resulting from the State's award of a new contract and any damages incurred by the State. The State, upon termination for default or non-compliance, reserves the right to take any legal action it may deem necessary including, without limitation, offset of damages against payment due.

1.4.2.2. Unless provided otherwise in the Contract, upon termination by the Purchasing Authority for default or non-compliance, Contractor shall: a) promptly discontinue all work, unless the termination notice directs otherwise; b) promptly return to the State any Property provided by the State pursuant to this Contract; and c) deliver or otherwise make available to the State all data, reports, estimates, summaries and such other information and materials as may have been accumulated by Contractor in performing this Contract, whether completed or in process, which the Contractor is obligated by the Contract or law to provide to the State upon completion.

1.4.3. Remedies. In addition to any remedies available to the State under law or equity, the State may, at its sole discretion, take or require one (1) or more of the following remedial actions if the Contractor's performance is deficient and does not comply with the Contract requirements: 1) require the Contractor to take corrective action to ensure that performance conforms to Contract requirements; 2) reduce payment to reflect the reduced value of the performance received; 3) require the Contractor to subcontract all or part of the service at no additional cost to the State; 4) withhold payment or require payment of actual damages caused by the deficiency; 5) withhold payment or require payment of liquidated damages, if liquidated damages are provided for in the Contract;

6) secure the deficient products or services and deduct the costs of products or services from payments to the Contractor under the Contract; 7) require Contractor to remove, at its sole expense, any non-conforming or deficient Property from the State's premises; or 8) terminate the Contract pursuant to any termination provisions within the Contract. These remedies are cumulative to the extent the remedies are not inconsistent, and the State may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

1.5. Changes and Modifications

- 1.5.1. Amendments. Except as provided herein for ministerial changes, the Contract may be modified or amended only upon written consent of the Purchasing Authority and Contractor. The Contract may not be released, discharged, changed, extended, modified, subcontracted or assigned in whole or in part (collectively, an "Amendment") except to the extent provided by a written instrument signed by the Contractor and the Purchasing Authority. The Purchasing Authority is authorized to execute any Amendment. The Agency is authorized to execute Amendments consisting solely of plans required by the Contract and ministerial or administrative documents that further define the day-to-day responsibilities of the Contractor and the Agency. The Agency is not authorized to execute Amendments directly or indirectly increasing monetary obligations of the State, expanding the scope of the Contract or extending the Contract term. An Amendment not executed in compliance with this section is voidable, at the option of the Purchasing Administrator.
- 1.5.2. Ministerial Changes. In the event the State discovers or is notified of a typographical or other ministerial or clerical error in the Contract, the Purchasing Authority may correct such error after providing notice to the Contractor of its intent to make the correction and an opportunity for the Contractor to object that the proposed correction is not ministerial or clerical. The Purchasing Authority will make a copy of the corrected Contract available to the Contractor upon the effectiveness of the correction.
- 1.5.3. Material Changes. Amendments to the Contract shall be in compliance with the State Procurement Act, Idaho Code title 67, chapter 92. The Purchasing Authority may accept material changes with an amendment if such changes could not reasonably been anticipated by the parties at the time of the Solicitation and do not frustrate the competitive process or provide the Contractor with an unfair advantage, as determined by the Purchasing Administrator in his or her sole discretion.

1.6. No Personal Liability. Contractor specifically understands and agrees that in no event shall any official, officer, employee or agent of the State be personally liable or responsible for any representation, statement, covenant, warranty or obligation contained in, or made in connection with, this Contract, express or implied.

1.7. Contract Relationship; Workers' Compensation Insurance

- 1.7.1. Independent Contractor. Contractor's status under the Contract shall be that of an independent contractor, and not that of an agent or employee. Contractor is solely liable for all labor, taxes, insurance, required bonding, and other expenses, except as

specifically stated herein. Contractor shall exonerate, indemnify and hold the State harmless from and against and assume full responsibility for payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, social security, workman's compensation and income tax laws with respect to Contractor or Contractor's employees engaged in performance under the Contract.

- 1.7.2. Workers' Compensation Insurance. Contractor shall maintain worker's compensation insurance as required by law and shall provide certificate of same if requested by the State. Failure to provide a certificate of worker's compensation insurance may result in termination of the Contract. Provision of workers' compensation insurance by the State under this provision shall be in the name of the Contractor as employer and shall not alter the independent contractor status of Contractor under the Contract. Contractor must provide either a certificate of worker's compensation insurance issued by a surety licensed to write worker's compensation insurance in the state of Idaho, as evidence that the Contractor has in effect a current Idaho worker's compensation insurance policy, or an extraterritorial certificate approved by the Idaho Industrial Commission from a state that has a current reciprocity agreement with the Idaho Industrial Commission.

1.8. Taxes. The State is generally exempt from payment of state sales and use taxes and from personal property tax for Property purchased for its use. The State is generally exempt from payment of federal excise tax under a permanent authority from the District Director of the Internal Revenue Service (Chapter 32 Internal Revenue Code). The State will furnish exemption certificates upon written request by Contractor. If Contractor is required to pay any taxes incurred as a result of doing business with the State, Contractor shall be solely responsible for the payment of those taxes.

1.9. General Indemnification and Insurance

- 1.9.1. Contractor's Indemnification. Contractor shall indemnify, defend, and save harmless the State, its officers, agents, employees, and volunteers from and against any and all liability, claims, damages, losses, expenses, actions, settlements, attorneys' fees, and suits whatsoever caused by, arising out of, or in connection with Contractor's acts or omissions under this Contract or Contractor's failure to comply with any state or federal statute, law, regulation, or rule during performance or applicable to the performance of the Contract.
- 1.9.2. Actions on Tender; Limitation. Upon receipt of the State's tender of indemnity and defense, Contractor shall immediately take all reasonable actions necessary, including, but not limited to, providing a legal defense for the State, to begin fulfilling its obligation to indemnify, defend, and save harmless the State. Contractor's indemnification and defense liabilities described herein shall apply regardless of any allegations that a claim or suit is attributable in whole or in part to any act or omission of the State under the Contract. Contractor shall not be required to hold the State harmless for damages attributed to the State in a final order issued by a court of competent jurisdiction. If it is determined by a final judgment that the State's negligent act or omission is the sole proximate cause of a suit or claim, the State, to the extent funds are legally available therefore, shall reimburse Contractor for reasonable defense costs attributable to the

defense provided by any Special Deputy Attorney General appointed pursuant to section 9.3.

- 1.9.3. Requirements of Defense. Any legal defense provided by Contractor to the State under this section must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the Attorney General of the State of Idaho as a Special Deputy Attorney General pursuant to Idaho Code Sections 67-1401(13) and 67-1409(1).
- 1.9.4. Insurance. Contractor shall furnish and maintain insurance coverages as set forth on **Appendix B – Insurance Requirements** of this Contract.

1.10. Patent and Copyright Indemnity

- 1.10.1. Indemnity. Contractor shall indemnify and hold the State harmless and shall defend at its own expense any action brought against the State based upon a claim of infringement of a United States' patent, copyright, trade secret, or trademark for Property purchased under the Contract. Contractor shall pay all damages and costs finally awarded and attributable to such claim, but such defense and payments are conditioned on the following: 1) that Contractor shall be notified promptly in writing by the State of any notice of such claim; 2) that Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise and State may select at its own expense advisory counsel; and 3) that the State shall cooperate with Contractor in a reasonable way to facilitate settlement or defense of any claim or suit.
- 1.10.2. Limitation. Contractor shall have no liability to the State under any provision of this clause with respect to any claim of infringement that is based upon: 1) the combination or utilization of the Property with machines or devices not provided by the Contractor other than in accordance with Contractor's previously established specifications unless such combination or utilization was disclosed in the Solicitation or the specifications; 2) the modification of the Property unless such modification was disclosed in the Solicitation or the specifications; or 3) the use of the Property not in accordance with Contractor's previously established specifications unless such use was disclosed in the Solicitation or the specifications.
- 1.10.3. Option to Replace, Modify, or Refund. Should the Property become, or in Contractor's opinion be likely to become, the subject of a claim of infringement of a United States' patent, the Contractor shall, at its option and expense, either procure for the State the right to continue using the Property, to replace or modify the Property so that it becomes non-infringing, or to grant the State a full refund for the purchase price of the Property and accept its return.

1.11. Billing

- 1.11.1. Contract Numbers on all Documentation. Contractor shall clearly show the State's Contract number or Purchase Order number on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.
- 1.11.2. Invoices. Contractor shall submit all invoices directly to the Agency.
- 1.11.3. Payment Processing. Invoices shall be accepted and processed for payment in accordance with Idaho Code sections 67-2302 and 67-9218.

1.12. Assignment, Merger, Consolidation, or Change of Contractor

- 1.12.1. Application of Idaho Statutes. Assignments, mergers, consolidations, and changes of the Contractor under this Agreement are subject to the provisions of Idaho Code sections 67-1027 and 67-9230.
- 1.12.2. Consent to Assign. Contractor shall not assign this Contract, or its rights, obligations, or any other interest arising from the Contract, or delegate any of its performance obligations, without the express written consent of the Purchasing Administrator and the Idaho Board of Examiners.
- 1.12.3. Consent to Change of Contractor. Any entity into which Contractor may be merged or with which it may be consolidated, any entity resulting from any merger or consolidation to which Contractor is a party, or any entity succeeding to the business of Contractor shall not become the successor of Contractor without first obtaining the prior written approval of the Purchasing Administrator and the Idaho State Board of Examiners.
- 1.12.4. Effect of Non-Compliance. At the option of the Purchasing Administrator, transfer without approval required by this section shall cause the annulment of the Contract. All rights of action for any breach of the Contract are reserved to the State notwithstanding such annulment. As provided in Idaho Code section 67-1027, the State shall not be obligated to pay the assignee until the assignment is recognized by the Idaho Board of Examiners and no damages shall accrue to Contractor or the assignee arising from the State's assignment and payment processes pursuant to Idaho Code sections 67-1027 and 67-9230.

1.13. Subcontracting. Unless otherwise allowed by the State in this Contract, Contractor shall not, without written approval from the State, enter into any subcontract relating to the performance of this Contract or any part thereof. Approval by the State of Contractor's request to subcontract or acceptance of or payment for subcontracted work by the State shall not in any way relieve the Contractor of any obligation under this Contract. The Contractor shall be and remain liable for all damages to the State caused by negligent performance or non-performance of work under the Contract by Contractor's subcontractor or its sub-subcontractor. Except where the State has approved in writing a Contractor subcontract with other insurance provisions, Contractor must require all of its subcontractors under this Contract to purchase and maintain the insurance coverage set forth in the Contract for the Contractor in connection with the performance of work by the approved subcontractor.

1.14. Compliance with Law, Licensing, and Certifications. Contractor shall comply with all requirements of federal, state and local laws and regulations applicable to Contractor or to the Property provided by Contractor pursuant to the Contract. For the duration of the Contract, Contractor shall maintain in effect and have in its possession all licenses and certifications required by federal, state and local laws and rules.

1.15. State's Confidential Information

- 1.15.1. Collection and Ownership. Pursuant to the Contract, Contractor may collect, or the State may disclose to Contractor, financial, personnel or other information that the State

regards as proprietary or confidential (“Confidential Information”). Such Confidential Information shall belong solely to the State. The State may require that Contractor’s officers, employees, agents or subcontractors agree in writing to the obligations contained in this section. The Agency may require that Confidential Information be returned to the Agency upon termination of this Contract subject to Contractor’s document retention procedures as required by law.

- 1.15.2. Use. Contractor shall use such Confidential Information only in the performance of its services under the Contract and shall not disclose Confidential Information or any advice given by it to the State to any third party, except for the following:
 - 1.15.2.1. With the State’s prior written consent;
 - 1.15.2.2. Under a valid order of a court or governmental agency of competent jurisdiction and then only upon timely notice to the State unless prohibited by such order; or
 - 1.15.2.3. In response to any electronic discovery, litigation holds, discovery searches and expert testimonies related to the State’s data under the Contract, or which in any way might reasonably require access to the State’s data and then only upon timely notice to the State, unless prohibited by law from making such contact.
- 1.15.3. Limitation. Confidential Information shall not include data or information that:
 - 1.15.3.1. Is or was in the possession of Contractor before being furnished by the State, provided that such information or other data is not known by Contractor to be subject to another confidentiality agreement with or other obligation of secrecy to the State;
 - 1.15.3.2. Becomes generally available to the public other than as a result of disclosure by Contractor; or
 - 1.15.3.3. Becomes available to Contractor on a non-confidential basis from a source other than the State, provided that such source is not known by Contractor to be subject to a confidentiality agreement with or other obligation of secrecy to the State.

1.16. Public Records. Pursuant to the Idaho Public Records Act, Idaho Code title 74, chapter 1, records, including documents in all forms, received from the Contractor may be open to public inspection and copying unless exempt from disclosure. The Contractor shall clearly designate individual portions of records as “exempt” on each page of the record containing exempt portions and shall indicate the basis in the Idaho Public Records Act for such exemption. The State will not accept the marking of an entire record as exempt. In addition, the State will not accept a legend or statement on one (1) page that all, or substantially all, of the record is exempt from disclosure. Contractor shall indemnify and defend the State against all liability, claims, damages, losses, expenses, actions, attorney fees and suits whatsoever for honoring Contractor’s designation of exemption or for Contractor’s failure to designate a record as exempt. Contractor’s failure to designate as exempt any record or portion of a record that is released by the State shall constitute a complete waiver of any and all claims for damages caused by any such release. If the State honors a claim of exemption by Contractor, Contractor shall provide the legal defense for such claim.

1.17. Use of the State of Idaho's Name. Contractor shall not, prior to, in the course of, or after performance under the Contract, use the State's name in any advertising or promotional media, including press releases, as a customer or client of Contractor without the prior written consent of the State.

1.18. Fiscal Necessity and Non-Appropriation. The State is a government entity and it is understood and agreed that the State's payments herein provided for shall be paid from Idaho State Legislative appropriations. The Legislature is under no legal obligation to make appropriations to fulfill this Contract. This Contract shall in no way or manner be construed so as to bind or obligate the State of Idaho beyond the term of any particular appropriation of funds by the State's Legislature as may exist from time to time.

The State reserves the right to terminate this Contract in whole or in part (or any order placed under it) if, in its sole judgment, the Legislature of the State of Idaho fails, neglects, or refuses to appropriate sufficient funds as may be required for the State to continue such payments, or requires any return or "give-back" of funds required for the State to continue payments, or if the Executive Branch mandates any cuts or holdbacks in spending, or if funds are not budgeted or otherwise available, or if the State discontinues or makes a material alteration of the program under which funds were provided. The State shall not be required to transfer funds between accounts in the event that funds are reduced or unavailable.

All affected future rights and liabilities of the parties shall thereupon cease within ten (10) calendar days after notice to the Contractor. Further, in the event of non-appropriation, the State shall not be liable for any penalty, expense, or liability, or for general, special, incidental, consequential or other damages resulting therefrom.

1.19. Notices. Any notice given in connection with the Contract shall be given in writing and shall be delivered either by hand to the other party or by certified mail, return receipt requested, to the other party at the other party's address provided in the header of this Contract. Either party may change its address by giving notice of the change in accordance with this paragraph.

1.20. Authority to Conduct Business in Idaho; Service of Process. Contractor must independently determine whether Contractor is required to register with the Idaho Secretary of State, and, if so, must register and remain in good standing for the term of this Contract. If Contractor is not registered with the Idaho Secretary of State, Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested, at its address for notices under this Contract. Service shall be completed upon Contractor's actual receipt of process, or upon the State's receipt of the return thereof by the United States Postal Service, or a reasonable delivery service if Contractor's address is outside the United States, as refused or undeliverable.

1.21. Required Certifications.

1.21.1. Boycott of Israel. Pursuant to Idaho Code section 67-2346 (effective July 1, 2021), if payments under the Contract exceed one hundred thousand dollars (\$100,000) and Contractor employs ten (10) or more persons, Contractor certifies that it is not currently engaged in, and will not for the duration of the Contract engage in, a boycott of goods or

services from Israel or territories under its control. The terms in this section defined in Idaho Code section 67-2346 shall have the meaning defined therein.

1.21.2. Ownership or Operation by China. Pursuant to Idaho Code section 67-2359, Contractor certifies that it is not currently owned or operated by the government of China and will not for the duration of the Contract be owned or operated by the government of China. The terms in this section defined in Idaho Code section 67-2359 shall have the meaning defined therein.

1.21.3. Boycott of Various Industries. Pursuant to Idaho Code section 67-2347A (effective July 1, 2024), if payments under the Contract exceed one hundred thousand dollars (\$100,000) and Contractor employs ten (10) or more persons, Contractor certifies that it is not currently engaged in, and will not for the duration of the Contract engage in, a boycott of any individual or company because the individual or company: a) engages in or supports the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, minerals, hydroelectric power, nuclear energy, or agriculture; or b) engages in or supports the manufacture, distribution, sale, or use of firearms. The terms in this section defined in Idaho Code section 67-2347A shall have the meaning defined therein, including through reference to another section of Idaho Code.

1.22. Non-waiver. The failure of any party, at any time, to enforce a provision of the Contract shall in no way constitute a waiver of that provision, nor in any way affect the validity of the Contract, any part hereof, or the right of such party thereafter to enforce each and every provision hereof.

1.23. Attorney Fees. Notwithstanding any statute to the contrary, in the event suit is brought by any party to this Contract to enforce the terms of this Contract or to collect any moneys due hereunder, the prevailing party shall be entitled to recover reimbursement for reasonable attorneys' fees and costs, in the amount determined by the court, in addition to any other available remedies.

1.24. Force Majeure. Neither Contractor nor the State shall be liable for or deemed to be in default for any delay or failure to perform under the Contract if such delay or failure to perform results from unforeseeable causes including, but not restricted to, acts of God or the public enemy, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, or unusually severe weather. The unforeseeable cause must be beyond the control and without the fault or negligence of the party asserting it. Matters of the Contractor's finances shall not be a force majeure. The excused party is obligated to promptly perform in accordance with the terms of this Contract after the unforeseeable cause ceases. Unless otherwise agreed in writing by the parties, the period for the performance shall be extended for a period equivalent to the period of the force majeure delay.

1.25. Entire Agreement; Headings

1.25.1. Complete Statement of Terms. The Contract constitutes the entire agreement between the State and Contractor and shall supersede all previous proposals, oral or written, negotiations, representations commitments, and all other communications between the parties.

- 1.25.2. Conflicting and Supplemental Terms. Unless specifically accepted by the Purchasing Authority in writing, terms in documents outside of this Contract shall be of no force and effect.
- 1.25.3. Headings. All headings in this agreement are for convenience only and shall not affect the meaning of any provision hereof.

1.26. Governing Law. The Contract shall be construed in accordance with and governed by the laws of the state of Idaho. Any action to enforce the provisions of the Contract shall be brought in State district court in Ada County, Boise, Idaho.

1.27. Severability; Survival

- 1.27.1. Severability. If any part of this Contract is declared invalid or becomes inoperative for any reason, such invalidity or failure shall not affect the validity and enforceability of any other provision.
- 1.27.2. Survival. Any termination, cancellation, or expiration of the Contract notwithstanding, provisions which are intended to survive and continue shall survive and continue.

1.28. Sovereign Immunity. Nothing contained herein shall be deemed to constitute a waiver of the State's sovereign immunity, which immunity is hereby expressly reserved.

1.29. Electronic Signature; Counterparts

- 1.29.1. This Contract may be electronically signed. Any electronic signatures appearing on this Contract are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.
- 1.29.2. This Contract may be executed in two (2) or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

ARTICLE 2 – TERMS APPLICABLE TO THE PURCHASE OF GOODS

The following terms apply to the purchase of goods, which generally means the purchase of physical property that is delivered to the State. In the event of uncertainty as to the applicability of these terms, they shall be deemed applicable unless the State has explicitly stated that they do not apply.

2.1. Property – Goods

- 2.1.1. Specifications. Contractor shall deliver all Property in accordance with **Appendix C – Specifications**. Contractor's failure to deliver the Property as provided in this Contract is a material breach of this Contract.
- 2.1.2. New and Unused Property. Unless otherwise provided in the Specifications, all Property delivered by Contractor shall be new, unused, not previously installed or demonstrated, and shall be within current production inventory of the manufacturer or actively being marketed by the Contractor.
- 2.1.3. Components. Unless otherwise provided in the Specifications, all Property delivered by Contractor shall:

- 2.1.3.1. Include all components and accessories that the manufacturer identifies or lists as “standard.”
- 2.1.3.2. Include all components, hardware and parts necessary for complete and proper assembly, installation and operation of the Property.

2.2. Acceptance. Where an acceptance procedure is not set forth in the specifications the following shall apply. If no procedure is set forth in the specifications, the State may, in its sole discretion, conduct such testing and inspection as the State deems necessary.

- 2.2.1. No Installation of Property. When the Contract does not require installation, Acceptance shall occur fourteen (14) calendar days after delivery, unless the State has notified the Contractor in writing that the Property does not meet the specifications.
- 2.2.2. Installed Property. When the Contract requires installation, acceptance shall occur fourteen (14) calendar days after completion of installation, unless the State has notified the Contractor in writing that the products(s) delivered does not meet the specifications or that the Property is not installed correctly.
- 2.2.3. Revocation of Acceptance. The State may revoke acceptance as provided by Idaho Code section 28-2-608 and as provided in Paragraph 2.3 of this Article 2. Upon revocation, the State shall deliver written notice of revocation to Contractor specifying the defect or nonconformance, whether the Contractor is permitted to cure the defect or nonconformance and the time period for cure, if permitted.
- 2.2.4. Effect of Rejection or Revocation of Acceptance. If the State rejects the Property or revokes acceptance of the Property, Contractor shall refund all payments the State made to the Contractor for the Property and shall, at no cost to the State, remove the Property in the State’s possession as provided in the notice of rejection or revocation. If no date of removal is specified, Contractor shall remove the Property within fourteen (14) calendar days of the notice.

2.3. Non-compliance, Recall, and Regulatory Compliance. If all or a portion of the Property is recalled by a regulatory body or the manufacturer, or is known or reasonably suspected by Contractor not to comply with applicable regulatory standards, Contractor shall immediately notify the State and shall provide a copy of any notice received by Contractor concerning the Property. Notwithstanding prior acceptance under the Contract, the State may reject or revoke acceptance of Property recalled by a regulatory body or the manufacturer, or that is known or reasonably should be known by Contractor not to comply with applicable regulatory standards, in whole or in part. If the State rejects or revokes acceptance of the Property, Contractor shall remove the Property as provided in Paragraph 2.2.4 of this Article 2 at no cost to the State and shall reimburse the State for all payments made for such Property.

2.4. Warranty. Contractor warrants that the Property shall conform to or exceed the specifications and shall be fit for ordinary use, of good quality, with no material defects. Contractor’s warranty shall include replacement, repair, and any associated labor for the period of time required by the specifications or by the standard manufacturer or Contractor provided warranty, whichever is longer. If Contractor is not the manufacturer of the Property, Contractor shall ensure that the full, unadulterated, and undiminished manufacturer warranty is provided by the manufacturer to the

State at no additional cost to the State. If a conflict or inconsistency exists between the manufacturer's warranty and Contractor's warranty, the warranty that provides the greatest benefit and protection to the State shall prevail.

2.5. Shipping and Delivery. All Property delivered under this Contract shall be shipped directly to the Agency that placed the order at the location specified by the State, on an F.O.B. Destination freight prepaid and allowed basis with all transportation, unloading, uncrating, drayage, or other associated delivery and handling charges paid by the Contractor. Unless otherwise specified in the Contract, deliveries shall be made to the Agency's receiving dock or inside delivery point, such as the Agency's reception desk. The Contractor shall deliver all orders and complete installation, if required, within the time specified in the Contract. Time for delivery commences at the time the order is received by the Contractor.

2.6. Risk of Loss. Risk of loss and responsibility and liability for loss or damage remains with Contractor until acceptance by the State under the terms of this Contract. Upon acceptance, risk of loss shall pass to the State unless otherwise provided in the Contract and with the exceptions of latent defects, fraud and Contractor's warranty obligations. Loss, injury or destruction prior to acceptance by the State shall not release the Contractor from any obligation under the Contract.

ARTICLE 3 – TERMS APPLICABLE TO THE PURCHASE OF SERVICES

The following terms apply to the purchase of services, which generally means the purchase of work completed by employees of the Contractor, including any tangible deliverables that are created as part of that work (e.g., reports). In the event of uncertainty as to the applicability of these terms, they shall be deemed applicable unless the State has explicitly stated that they do not apply.

3.1. Property – Services. Contractor shall perform the Scope of Work detailed in **Appendix C – Specifications** of this Contract.

3.2. Contract Effectiveness. The Contract and any amendments shall be effective when signed by Contractor and the Purchasing Authority, or at a later date specified in the Contract or Amendment. Contractor shall not render services to the State until the Contract or amendment has become effective and the State shall not pay for any services rendered prior to the effective date of the Contract or amendment.

3.3. Conflict of Interest. Contractor must disclose to the State any actual or potential conflict of interest that exists or arises for itself or any of its subcontractors during the term of the Contract. If the conflict would interfere with Contractor or its subcontractor's performance of contractual obligations, as determined by the State, Contractor shall cure the conflict. Failure to cure such a conflict may result in the State terminating the Contract for Contractor default.

3.4. Reassignment of Contractor Employees. The Agency may, after consulting with Contractor, require the Contractor to reassign or otherwise remove from the Contract any Contractor employee or subcontractor found, in good faith, to be unacceptable to the Agency.

3.5. Acceptance. The Agency shall accept or reject deliverables and services as set forth in the Scope of Work in **Appendix C** or, if not addressed in the Scope of Work, within a reasonable time.

ARTICLE 4 – TERMS APPLICABLE TO THE PURCHASE OF TECHNOLOGY

The following terms apply to the purchase of technology, regardless of the delivery method (e.g., on-premise or cloud-hosted), cost structure (e.g., subscription), or other differentiating characteristics. In the event of uncertainty as to the applicability of these terms, they shall be deemed applicable unless the State has explicitly stated that they do not apply.

4.1. Title to Product. If Contractor provides an application program interface (API) as part of its Contractual obligations, Contractor shall convey to the State an irrevocable and perpetual license to use the API for the duration of the Contract.

4.2. Acceptance. Where an acceptance procedure is not set forth in the specifications the following shall apply. If no procedure is set forth in the specifications, the State may, in its sole discretion, conduct such testing and inspection as the State deems necessary.

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

4.3. Warranty. Contractor represents and warrants the following:

- 4.3.1. Contractor has the full power and authority to grant the State any license as provided in the Contract and to grant to the State access to the technology and all required functionality for the property being purchased through the Contract
- 4.3.2. The property being furnished under the Contract, in whole or in part, does not infringe upon the enforceable patent, copyright, trade secret, trademark, or other proprietary right. Contractor knows of no action or proceeding which could adversely affect 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 Property, the Contractor shall, at its own expense, secure all required resources necessary to ensure uninterrupted use of the property up to and including replacement of the Property.
- 4.3.3. If Contractor produces any modifications to the Software components of the Property 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 Contractor or the State, Contractor shall immediately address and correct such errors, which shall be at no additional cost to the State.
- 4.3.4. Following acceptance and for the entire term of the Contract, including any renewal and extension terms, the property shall perform in accordance with the Contract and shall

perform to all specific claims and specifications provided in the Contract. Additionally, Contractor shall perform materially as described in the Contract.

- 4.3.5. The Property provided by the Contractor is compatible with and will operate successfully with any environment, including software, infrastructure, web browser, and operating systems 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 Contractor or the State arising from the Property. In addition, the Property provided by Contractor under the Contract is free of 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 Property, and Contractor will use for the term of the Contract current industry standard security measures to prevent from entry, detect within, and remove from the Property any such malicious software.
- 4.3.6. The Property is fit for a particular purpose as detailed in the Contract.
- 4.3.7. Contractor shall provide required licenses, maintenance, and updates in a timely manner for the duration of the Contract. Contractor shall not interfere with the State's access to and use of the Property it acquires under the Contract.
- 4.3.8. Upon receipt of notification from the State, Contractor shall immediately repair or replace any aspect of the Property failing to comply with the specification and acceptance criteria set forth in the Contract. If Contractor fails to repair or replace any such aspect of the Property 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 Property, in whole or in part, and Contractor shall reimburse the State for all costs incurred by the State to repair or replace the Property.

4.4. Data Access Controls. Contractor shall provide access to State Data only to those Contractor employees and subcontractors who need to access the State Data to fulfill Contractor's obligations under the Contract. Contractor shall not allow access to the State's user accounts or State Data except during the course of required operations, in response to service or technical issues, as required by the Contract, or at the State's written request. Contractor must not share State Data with its affiliates or any third party without the State's express written consent. Contractor must ensure that, prior to being granted access to State Data, Contractor's employees and subcontractors who perform work under the Contract have successfully completed annual instruction of a nature sufficient to enable them to effectively comply with all State Data protection provisions of the Contract, and that Contractor's employees and subcontractors possess qualifications appropriate to the nature of the employees' duties and the sensitivity of the State Data they will be handling.

4.5. Data Ownership. The State owns and retains full right and title, and unrestricted access to State Data. Additionally, the State retains the right to backup State Data at its own data center or secondary location. Contractor shall not collect, access, or use State Data except 1) in the course of data center operations pursuant to services provided under this Contract, if applicable; 2) in response to service or technical issues; 3) as required or expressly allowed by the terms of the Contract; or 4) at the State's written request. Except as expressly allowed by the terms of the

Contract, no information regarding the State's use of Contractor's services or software may be disclosed, provided, rented, or sold to any third party for any reason unless required by law or regulation or by order of a court of competent jurisdiction. These obligations shall survive beyond the term of the Contract in perpetuity.

4.6. Data Privacy. Contractor must comply with all applicable laws related to data privacy and security, specific to the type(s) of Data and as otherwise specified in the Contract, which may include but is not limited to IRS Pub 1075, HIPAA, PCI, and FERPA.

4.7. Data Protection. If the Contractor will house State Data, protection of personal privacy and State Data shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of State Data at any time. To this end, Contractor shall safeguard the confidentiality, integrity, and availability of State Data and comply with the following conditions:

- 4.7.1. All Non-Public State Data shall be encrypted at rest and in transit with controlled access. Unless otherwise provided in the Contract, the Contractor is responsible for encryption of the Non-Public State Data. All encryption shall be consistent with validated cryptography standards such as the current standards in FIPS 140-2, Security Requirements for Cryptographic Modules, or the then-current NIST recommendation.
- 4.7.2. The State shall identify State Data it deems as Non-Public State Data to Contractor. The level of protection and encryption for all Non-Public State Data shall be identified in the Contract.
- 4.7.3. At no time shall any State Data or processes, that either belong to or are intended for the use of the State or its officers, agents, or employees, be copied, disclosed, or retained by Contractor or any party related to Contractor for subsequent use in any transaction that does not include the State.
- 4.7.4. Contractor shall not use any information collected in connection with the service provided under the Contract for any purpose other than fulfilling the service.
- 4.7.5. Data Location: Contractor shall provide its service to the State and its end users solely from data centers within the United States. Contractor shall not allow its personnel or subcontractors to store State Data on portable devices, except for devices that are used and kept only at its U.S. data centers. Each data center used by Contractor to support the Contract must be within a physical security perimeter to prevent unauthorized access, and physical entry controls must be in place so that only authorized personnel have access to State Data and State-written applications.
- 4.7.6. Contractor shall permit its staff to access State Data remotely only as required to provide technical support.

4.8. Security Incident and Data Breach Responsibilities. In the event of a Security Incident or Data Breach:

- 4.8.1. Contractor shall notify the State-designated contact(s) by telephone within twenty-four (24) hours, unless shorter time is required by applicable law, if Contractor has confirmed that there is, or Contractor reasonably believes that there has been, a Security Incident or Data Breach. Contractor shall 1) immediately quarantine all State Data from external access; 2) cooperate with the State to investigate and resolve the Security Incident or

Data Breach; 3) promptly implement remedial measures, if necessary; 4) for Data Breach, identify to the State, if the following is known by Contractor, the persons affected, their identities, and the State Data disclosed; and 5) document responsive actions taken related to the Security Incident or Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the service, if necessary.

4.8.2. Unless otherwise stipulated in the Contract, if a Data Breach is a direct result of Contractor's breach of its contractual obligation to encrypt Non-Public State Data or otherwise prevent its release as reasonably determined by the State, Contractor shall bear the costs associated with 1) the investigation and resolution of the Data Breach; 2) notifications to individuals, regulators, and others required by federal and state laws or as otherwise agreed to by the State and Contractor; 3) a credit monitoring service required by state or federal law or as otherwise agreed to by the State and Contractor; 4) a website or a toll-free number and call center for affected individuals required by federal and state laws, all not to exceed the average per record per person cost calculated for Data Breaches in the United States (as of January 2019, \$217 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the Data Breach; and 5) complete all corrective actions as reasonably determined by Contractor based on root cause.

4.8.3. Incident Response: Contractor may need to communicate with outside parties regarding a Security Incident or Data Breach, which may include contacting law enforcement, fielding media inquiries, and seeking external expertise as mutually agreed upon between the State and Contractor in writing, defined by law, or contained in the Contract. Discussing Security Incidents with the State must be handled on an urgent as needed basis, as part of Contractor's communication and mitigation processes as mutually agreed upon between the State and Contractor in writing, defined by law or as delineated in the Contract.

4.9. Notification of Legal Requests. Contractor shall contact the State upon receipt of any electronic discovery, litigation holds, discovery searches, and expert testimonials related to State Data under the Contract, or which in any way might reasonably require access to State Data. Contractor shall not respond to subpoenas, service of process, or other legal requests related to the State without first notifying and obtaining approval of the State, unless prohibited by law from providing such notice.

4.10. Background Checks and Security Awareness

4.10.1. Upon the request of the State, Contractor shall obtain criminal background checks for its employees and subcontractors that Contractor intends to utilize in the provision of services under the Contract and must provide the results of the criminal background checks to the State. If any Contractor employees or subcontractors are not acceptable to the State, in its sole opinion based upon the results of a criminal background check, the State shall have the right to request that such Contractor employee or subcontractor not provide services under the Contract. Contractor must comply with such requests and provide replacement employees or subcontractors in such cases.

- 4.10.2. Contractor shall promote and maintain an awareness of the importance of securing the State's information among Contractor employees and agents.

4.11. Transition, Transfer Assistance, Termination or Suspension

- 4.11.1. The State shall have the ability to import or export all or portions of State Data and State-written applications at its discretion without interference from Contractor at any time during the term of the Contract. This includes the ability for the State to import or export State Data and State-written applications to and from other entities.
- 4.11.2. Contractor shall reasonably cooperate without limitation with any State authorized entity for the transfer of State Data to the State upon termination or expiration of the Contract. The Contractor must transfer or allow the State to extract, at the State's option, State Data and State-written applications at no additional cost to and in a format designated by, the State, and the State Data must be unencrypted.
- 4.11.3. The return of State Data and State-written applications shall occur no later than sixty (60) calendar days after termination or expiration of the Contract; or within another timeframe as agreed to in writing by the parties. Contractor shall facilitate the State's extraction of State Data and State-written applications by providing the State with all necessary access and tools for extraction, at no additional cost to the State.
- 4.11.4. During any period of suspension of service, Contractor shall continue to fulfill its obligations to maintain State Data and State-written applications.
- 4.11.5. In the event of termination or expiration of the Contract, Contractor shall not take any action to intentionally erase State Data or State-written applications for a period of sixty (60) calendar days after the effective date of termination or expiration. After such period, Contractor shall have no obligation to maintain or provide any State Data or to maintain any State-written applications unless otherwise specified in the Contract and shall thereafter, unless legally prohibited, delete all State Data and State-written applications (in all forms) within its systems or otherwise in its possession or under its control, unless otherwise instructed by the State. State Data and State-written applications shall be permanently deleted and shall not be recoverable in accordance with NIST-approved methods. Contractor shall provide certificates of destruction to the State no later than ninety (90) calendar days after termination or expiration of the Contract.
- 4.11.6. Contractor must maintain the confidentiality and security of State Data and State-written applications during any transition or transfer thereafter for as long as Contractor possesses State Data and State-written applications.

4.12. Access to Security Logs and Reports. Contractor shall provide reports to the State; or alternatively, provide the State with access to report data and reporting tools. Unless specified otherwise in the Contract, reports shall include latency statistics, system performance statistics, user access logs, user access IP address, user access history, security logs, and events logs for all State Data.

ARTICLE 5 - TERMS APPLICABLE TO STATEWIDE CONTRACTS

The following terms apply to contracts that are specifically identified as statewide contracts, either in the solicitation or otherwise in the contract document, and to participating addendums issued

against a cooperative contract master agreement, unless such participating addendum explicitly states that it is for a single agency/is not a statewide contract.

5.1. Reporting

- 5.1.1. Summary Usage Report. Contractor shall provide a summary usage report on a quarterly basis, according to the deadlines below, indicating its total net sales for the previous quarter and the corresponding Administrative Fee. Contractor shall email reports to purchasing@adm.idaho.gov.

| Reporting Period (Fiscal Year Quarters) | Fee and Report Due Date |
|---|-------------------------|
| 1st Quarter (July 1 – September 30) | November 30th |
| 2nd Quarter (October 1 – December 31) | February 28th |
| 3rd Quarter (January 1 – March 31) | May 31st |
| 4th Quarter (April 1 – June 30) | August 30th |

- 5.1.2. Detailed Usage Report. Contractor shall provide a detailed usage report on a quarterly basis, according to the same deadlines and to the same email address identified above in Paragraph 5.1.1. The detailed usage report must include, at a minimum, the purchasing entity (e.g., agency name, school district, etc.), property description, category if applicable, quantity, unit price, and extended price.
- 5.1.3. Additional Reporting. Contractor shall provide any additional reporting as specifically identified in the Contractor or associated master agreement.

5.2. Administrative Fee

- 5.2.1. Application of Administrative Fee. This statewide Contract shall be subject to an Administrative Fee of one and one-quarter percent (1.25%), based on net sales under the Contract, as follows:
- 5.2.1.1. For Contracts that are not issued pursuant to a cooperative contracting master agreement, the prices to be paid by the State (the price offered by Contractor or otherwise agreed to by the State) shall be inclusive of a one and one-quarter percent (1.25%) Administrative Fee.
- 5.2.1.1.1. Contractor's failure to consider the Administrative Fee when preparing its Solicitation response shall not constitute or be deemed a waiver by the State of any Administrative Fees owed by Contractor to the State as a result of an award.
- 5.2.1.1.2. Contractor may add the cost of the State of Idaho Administrative fee to invoices if the Contract is a participating addendum pursuant to a cooperative contracting master agreement.
- 5.2.1.2. On a quarterly basis, Contractor shall remit to State of Idaho, Division of Purchasing, an amount equal to one and one-quarter percent (1.25%) of Contractor's net quarterly Contract sales (sales minus credits).
- 5.2.1.3. *For Example: If the total of Contractor's net sales to the Agency for one quarter is ten thousand dollars (\$10,000), Contractor must remit \$10,000 x 0.0125, equal to one hundred twenty-five dollars (\$125) to the Division of Purchasing for that quarter, along with the required quarterly usage report detailed in Paragraph 5.1.*
- 5.2.2. Payment of Administrative Fee. Contractor shall remit the Administrative Fee to the State of Idaho, Attn: Division of Purchasing, PO Box 83720, Boise, Idaho 83720-0075 on the due

date identified above in Paragraph 5.1 for reporting.

- 5.2.3. Refund of Administrative Fee. If the Contract is terminated by the State through no fault of the Contractor, or if item(s) are returned by the State through no fault, act, or omission of the Contractor after the sale of any such item(s) to the State, the State will refund the Contractor any Administrative Fees remitted. Administrative Fees will not be refunded or returned when an item is rejected or returned, or declined, or the Contract terminated by the State due to the Contractor's failure to perform or comply with specifications or requirements of the Contract. If, for any other reason, the Contractor is obligated to refund to the State all or a portion of the State's payment to the Contractor, or the State withholds payment because of the assessment of liquidated damages, the Administrative Fee will not be refunded in whole or in part.
- 5.2.4. Failure to Remit Administrative Fees. If Contractor fails to remit the Administrative Fee, as provided above, the State, at its discretion, may declare the Contractor in default; terminate the Contract; assess and recover re-procurement costs from the Contractor (in addition to all outstanding Administrative Fees); seek State or federal audits, monitoring or inspections; and/or exclude Contractor from participating in future solicitations. If, for any other reason, the Contractor is obligated to refund to the State all or a portion of the State's payment to the Contractor, or the State withholds payment because of the assessment of liquidated damages, the Administrative Fee will not be refunded in whole or in part.