



STATE DEPARTMENT OF EDUCATION

REQUEST FOR PROPOSAL 24-4509

**Digital, Adaptive Supplemental English Language
Learner Program, Mathematics Vocabulary
Acquisition**

Issue Date May
26, 2023

RFP 24-4509
TABLE OF CONTENTS

1	RFP ADMINISTRATIVE INFORMATION	3
2	OVERVIEW.....	4
2.1	DEFINITIONS	4
2.2	PURPOSE.....	4
2.3	BACKGROUND INFORMATION.....	4
2.4	RESULTING CONTRACT	5
3	QUESTIONS	5
3.1	RESTRICTIONS ON COMMUNICATIONS	5
3.2	PRE-PROPOSAL CONFERENCE.....	5
3.3	QUESTIONS.....	5
4	INSTRUCTIONS FOR SUBMISSION OF PROPOSAL	7
4.1	MANUALLY SUBMITTED PROPOSALS ONLY.....	7
4.2	SIGNATURE PAGE	7
5	PROPOSAL FORMAT	8
5.1	EVALUATION CODES.....	8
5.2	TABLE OF CONTENTS.....	8
5.3	FORMAT.....	8
6	MANDATORY SUBMISSION REQUIREMENTS	9
6.1	COVER LETTER	9
6.2	ACKNOWLEDGEMENT OF AMENDMENTS.....	9
6.3	TRADE SECRETS	10
6.4	EXECUTIVE SUMMARY.....	10
7	BUSINESS INFORMATION.....	11
7.1	EXPERIENCE	11
7.2	REFERENCES.....	11
7.3	SYSTEM FAILURES.....	11
7.4	SUSTAINABILITY OF FUTURE SERVICE	11
8	ORGANIZATION AND STAFFING	12
8.1	KEY PERSONNEL AND QUALIFICATIONS.....	12
8.2	SUBCONTRACTORS	12
9	SCOPE OF WORK - PROJECT APPROACH	13
9.1	DESCRIPTION OF PROPOSED SOLUTION.....	13
9.2	OTHER FEATURES.....	14
9.3	RESEARCH	15
9.4	PERTINENT QUESTION.....	15
9.5	MINIMAL TECHNICAL SPECIFICATIONS AND SOLUTION	16
10	COST PROPOSAL AND BILLING PROCEDURE	19
10.1	COST PROPOSAL.....	19
10.2	BILLING PROCEDURE	19
11	PROPOSAL REVIEW, EVALUATION AND AWARD.....	20
11.1	MANDATORY SUBMISSION REQUIREMENTS	20
11.2	TECHNICAL PROPOSAL.....	20
11.3	ORAL PRESENTATIONS	21
11.4	COST PROPOSAL.....	21
11.5	TOTAL POINTS	21
11.6	EVALUATION CRITERIA.....	21
11.7	AWARD AND OFFEROR DISCUSSIONS.....	21
11.8	NOTIFICATION OF INTENT TO AWARD CONTRACT / AWARDED OF CONTRACT / RECONSIDERATION	22

11.9 RESPONSIBILITY..... 22

APPENDIX A – COST PROPOSAL..... 23

APPENDIX B - SDE GENERAL TERMS AND CONDITIONS 24

APPENDIX C - SDE SPECIAL TERMS AND CONDITIONS FOR SOLICITATIONS 25

APPENDIX D - SDE SPECIAL TERMS AND CONDITIONS FOR CLOUD SERVICES 26

ATTACHMENT 1 - OFFEROR QUESTIONS 27

ATTACHMENT 2 - REFERENCES 29

SIGNATURE PAGE..... 33

1 RFP Administrative Information

RFP Title:	Digital, Adaptive Supplemental English Learner Program, Mathematics Vocabulary Acquisition
RFP Lead:	SDE Procurement Officer, TBD 650 W. State Street, 2 nd Floor Boise, ID 83702 208-332-6857 procurement@sde.idaho.gov
Submit sealed Proposal: PROPOSALS MUST BE RECEIVED AT THE PHYSICAL ADDRESS AND TIME/DATE STAMPED BY THE STATE DEPARTMENT OF EDUCATION PRIOR TO THE CLOSING DATE AND TIME.	650 W. State Street, 2 nd Floor Boise, ID 83702
Pre-Proposal Conference:	June 2, 2023, 3pm MST
Pre-Proposal Conference Location:	Zoom link: https://idahosde.zoom.us/j/93619290924
Deadline To Receive Questions:	June 7, 2023 5PM MST
RFP Closing Time and Date:	Proposals are due at or before 5PM MST on June 30, 2023. Late proposals received at 5:01 PM MST June 30, 2023 or after will be rejected.
SDE RFP response Opening Date:	July 3, 2023 at 10AM MST
Virtual Presentations for the top 3 potential vendors	Tentatively scheduled for week of July 24, 2023
Initial Term of Contract and Renewals:	One (1) year to start on August 1, 2023 pending funding. Upon mutual, written agreement, the Contract may be renewed, extended or amended. The anticipated total Contract term is five (5) years.

2 OVERVIEW

2.1 Definitions

"Administrator" means the key person in the local education agency responsible for testing and assessments given to students.

"Diagnostic assessment" means an assessment given to identify a student's specific learning challenges and needs and, as appropriate, diagnose learning disabilities to determine eligibility for special education services. These assessments are typically administered after a student's results on a screening assessment have identified the student as in need of support; they provide more detailed information related to the student's abilities and knowledge and are typically related to a specific content area.

"Screening assessment" means an assessment given to determine whether students may need specialized assistance or services, or whether they are ready to being a course, grade level, or academic program. These simple, time-efficient, and objective measures produce data, including reading levels, to inform judicious real-time instructional decisions, thus enabling true individualization of instruction at the student's point of learning.

2.2 Purpose

The SDE English Learner Program is seeking a highly qualified organization to provide a digital adaptive program to specifically support language instruction for mathematics. Under ESEA Section 3111(b)(2)(D)(I), the state may use funds to identify and implement effective language instruction educational programs and curricula for teaching English learners. Under Idaho Senate Bill 1209, Section 6, funding has been appropriated for research-based programs to assist with the instruction of students with non-English or limited-English proficiency. The SDE is looking for an organization which can provide digital adaptive curriculum to provide supplemental and intervention support for English Learner students learning academic vocabulary and language specific to K-12 mathematics. The scoring committee will recommend one product for K-12.

2.3 Background Information

Funding for this project is appropriated in Senate Bill 1209, Section 6. The bill states the funding is appropriated for research-based programs to assist with the instruction of students with non-English or limited-English proficiency. The State Department of Education would like to provide an additional tool that specifically focuses on language and vocabulary acquisition in mathematics specific to English language learners.

2.4 Resulting Contract

The Contract will be comprised of this RFP, including any incorporated documents; the successful Proposal, including any clarifications requested by the State; and an artifact formalizing any requirements agreed upon through contract discussions or negotiations, if applicable.

The following document(s) are incorporated into this RFP as if set out in their entirety, whether or not they are attached:

- Solicitation Instructions for Vendor
- SDE General Terms and Conditions
- SDE Special Terms and Conditions for Solicitations
- SDE Special Terms and Conditions for Cloud Services

If not attached, the documents may be found on the “Contracting Opportunities” page of SDE’s website, <https://www.sde.idaho.gov/contracting-opportunities/index.html>. If multiple versions of the above document(s) are available on the website, the version in effect on the day the RFP was issued shall apply.

3 Questions

3.1 Restrictions on Communications

From the issue date of this RFP, until a contract is awarded or the RFP is cancelled, vendors and their representatives are prohibited from communications (written or verbal) regarding this RFP with SDE staff, evaluation committee members, or other state employees other than the RFP Lead, except during formal solicitation events (including the pre-offer conference, demonstrations, and negotiations) or request for reconsideration defined in section 11.8 of this RFP.

3.2 Pre-Proposal Conference

A non-mandatory pre-proposal conference will be held on June 2, 2023 at 3pm MST via a zoom meeting.

3.3 Questions

3.3.1 All correspondence must be in writing. If it becomes necessary to revise any part of this RFP, addenda will be posted on the SDE website at the SDE Contracting Opportunities website. It is the responsibility of parties interested in this RFP to monitor the [SDE Contracting Opportunities website](#) for any updates or amendments. Any oral interpretations or clarifications of this RFP must not be relied upon. All changes to this RFP will be in writing and must be posted to the [SDE Contracting Opportunities website](#) to be valid. Alternate Proposals are not allowed.

3.3.2 Questions or other correspondence must be submitted in writing to the RFP Lead listed in Section 1.

QUESTIONS MUST BE RECEIVED BY 5:00 P.M. MOUNTAIN TIME ON THE DATE LISTED IN THE RFP ADMINISTRATIVE INFORMATION.

3.3.3 **Written questions must be submitted using Attachment 1, Offeror Questions.** Official answers to all written questions will be posted on the [SDE Contracting Opportunities website](#) as an amendment to this RFP.

3.3.4 Any questions regarding the SDE General Terms and Conditions or any special terms and conditions must also be submitted in writing, using Attachment 1, Offeror Questions, by the deadline identified in the RFP Administrative Information. Response times for answering questions may vary as some questions require consultation with legal counsel or other third parties. The State will make every effort to answer questions in a timely manner; however, the State will not guarantee a specific response time and does not guarantee that questions will be answered in the order received.

3.3.5 Questions regarding the requirements, terms, or conditions of the RFP must contain the following:

1. The rationale for the specific requirement being unacceptable to the party submitting the question (define the deficiency).
2. Recommended verbiage for the State’s consideration that is consistent in content, context, and

form with the State's requirement that is being questioned.

3. Explanation of how the State's acceptance of the recommended verbiage is fair and equitable to both the State and to the party submitting the question.

3.3.6 Proposals which are conditioned upon the State accepting other terms and conditions not found in the RFP, or which take exception to the State's requirements, terms, and conditions, will be found non-responsive, and no further consideration of the Proposal will be given.

4 INSTRUCTIONS FOR SUBMISSION OF PROPOSAL

4.1 Manually Submitted Proposals Only

Sealed Proposals must be received and time stamped by the State Department of Education at 650 W. State Street, 2nd Floor, Boise, Idaho, 83702 at or before 5PM. Mountain Time on or before **June 30, 2023**. The State Department of Education is not responsible for lost or undelivered Proposals, or for the failure of the United States Postal Service, FedEx, UPS, or the Idaho State Capitol Mall Central Mail Room to deliver Proposals to the State Department of Education by the Proposal deadline. Late Proposals will not be accepted. Fax Proposals will not be accepted.

The Proposal must be addressed to the RFP Lead, sealed, and identified as “**RFP 24-4509, Digital, Adaptive Supplemental English Language Learner Program, Mathematics Vocabulary Acquisition.**” Include your company name on the outside of the package.

The Technical Proposal and separately sealed Cost Proposal must be submitted at the same time (place all Proposal response materials within a larger package).

Each Proposal must be submitted with one (1) original Technical Proposal and one (1) original Cost Proposal.

Offerors must also submit one (1) electronic copy of the entire Proposal on ten (10) individual USB devices (1 proposal per USB device). Pdf is the required format (the only exception is for brochures or other information only available in an alternate format). The format and content must be the same as the manually submitted Proposal. The electronic version must NOT be password protected or locked in any way. The USB device must be identifiable with company name or logo.

The Technical Proposal must be separately sealed, identified “**Technical Proposal – RFP 24-4509, Digital, Adaptive Supplemental English Language Learner Program, Mathematics Vocabulary Acquisition**”

The Cost Proposal must be separately sealed, identified as “**Cost Proposal – RFP 24-4509, Digital, Adaptive Supplemental English Language Learner Program, Mathematics Vocabulary Acquisition.**”

4.2 (M) Signature Page

All Proposals must be submitted with a state supplied Signature Page (Attachment 3 on page 22 of this RFP) and must contain an **ORIGINAL HANDWRITTEN** signature executed in **INK** and be returned with the relevant Solicitation documents. Your ORIGINAL Signature Page should be included at the **FRONT** of your ORIGINAL Proposal.

5 PROPOSAL FORMAT

These instructions describe the format to be used when submitting a Proposal. The format is designed to ensure a complete submission of information necessary for an equitable analysis and evaluation of submitted Proposals. There is no intent to limit the content of Proposals.

5.1 Evaluation Codes

(M) Mandatory Response - failure to respond to any (M) section, or to comply with any mandatory specification or requirement will render Offeror's Proposal non-responsive and no further evaluation will occur.

(ME) Mandatory and Evaluated Response - failure to respond to any (ME) section, or to comply with any mandatory specification or requirement in an (ME) section will render Offeror's Proposal non-responsive and no further evaluation will occur. Offeror is required to respond to this specification with a detailed response identifying its understanding and how it will comply. Points will be awarded based on predetermined criteria.

(E) Evaluated Response - a response is desired and will be evaluated and scored. If not available, respond with "Not Available" or other response that identifies Offeror's ability or inability to supply the item or service or meet the specification. Failure to respond or a "Not Available" response will result in zero (0) points awarded. If available, Offeror is to respond with a detailed response identifying its understanding and how it will comply, and points will be awarded based on predetermined criteria.

Note: The designated State official may waive minor informalities as well as minor deviations. The State official also reserves the right to seek clarification on any M, ME or E requirement.

5.2 Table of Contents

Include a table of contents in the Technical Proposal identifying the contents of each section, including page numbers of major Sections.

5.3 Format

Proposals shall follow the numerical order of this RFP starting at the beginning and continuing through the end of the RFP. Proposal sections and Sections must be identified with the corresponding numbers and headings used in this RFP. In your response, restate the RFP section and/or Section, followed with your response.

Offerors are encouraged to use a different color font, bold text, italics, or other indicator to clearly distinguish the RFP section or Section from the Offeror's response.

6 Mandatory Submission Requirements

6.1 (M) Cover Letter

The Technical Proposal must include a cover letter on official letterhead of the Offeror; with the Offeror's name, mailing address, telephone number, e-mail address, and name of Offeror's authorized signer. The cover letter must identify the RFP Title and number, and must be signed by an individual authorized to commit the Offeror to the work proposed. In addition, the cover letter must include:

6.1.1 Identification of the Offeror's corporate or other legal entity status. Offerors must include their tax identification number. The Offeror must be a legal entity with the legal right to contract.

6.1.2 A statement indicating the Offeror's acceptance of and willingness to comply with the requirements of the RFP and attachments.

6.1.3. A statement of the Offeror's compliance with equal employment regulations.

6.1.4 A statement that Offeror has not employed any company or person other than a bona fide employee working solely for the Offeror or a company regularly employed as its marketing agent, to solicit or secure the Contract, and that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for the Contractor or a company regularly employed by the Contractor as its marketing agent, any fee, commission, percentage, brokerage fee, gifts or any other consideration contingent upon or resulting from the award of the Contract. The Offeror must affirm its understanding and agreement that for breach or violation of this term, the State has the right to annul the Contract without liability or, in its discretion, to deduct from the Contract price the amount of any such fee, commission, percentage, brokerage fee, gifts or contingencies.

6.1.5 A statement naming the firms and/or staff responsible for writing the Proposal.

6.1.6 A statement that Offeror is not currently suspended, debarred or otherwise excluded from federal or state procurement and non-procurement programs. Vendor information is available on the Internet at: <https://sam.gov>.

6.1.7 A statement affirming the Proposal will be firm and binding for one year from the Proposal opening date with an understanding that funds need to be approved and appropriated by the Idaho Legislature for Fiscal Year 2024 beginning on July 1, 2023.9

6.1.8 A statement that the Offeror warrants that it does not knowingly and willfully employ persons who cannot legally work in this country; it takes steps to verify that it does not hire persons who have entered our nation illegally or cannot legally work in the United States; and that any misrepresentation in this regard or any employment of persons who have entered our nation illegally or cannot legally work in the United States constitutes a material breach and will be cause for the imposition of monetary penalties up to five percent (5%) of the Contract price, per violation, and/or termination of its Contract.

6.2 (M) Acknowledgement of Amendments

If the RFP is amended, the Offeror must acknowledge each amendment with a signature on the acknowledgement form provided with each amendment. Failure to return a signed copy of each amendment acknowledgement form with the Proposal may result in the Proposal being found non-responsive.

6.3 Trade Secrets

Paragraph 28 of the Solicitation Instructions to Vendors describes trade secrets to *“include a formula, pattern, compilation, program, computer program, device, method, technique or process that derives economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by other persons and is subject to the efforts that are reasonable under the circumstances to maintain its secrecy.”* In addition to marking each page of the document with a trade secret notation (as applicable; and as provided in Paragraph 28 of the Solicitation Instructions to Vendors), Offerors must also:

6.3.1 Identify with particularity the precise text, illustration, or other information contained within each page marked “trade secret” (it is not sufficient to simply mark the entire page). The specific information you deem “trade secret” within each noted page must be highlighted, italicized, identified by asterisks, contained within a text border, or otherwise clearly delineated from other text/information and specifically identified as a “trade secret.”

6.3.2 Provide a separate document entitled “List of Redacted Trade Secret Information” which provides a succinct list of all trade secret information noted in your Proposal; listed in the order it appears in your submittal documents, identified by Page #, Section #/Paragraph #, Title of Section/Paragraph, specific portions of text/illustrations; or in a manner otherwise sufficient to allow the State’s procurement personnel to determine the precise text/material subject to the notation. Additionally, this list must identify with each notation the specific basis for your position that the material be treated as exempt from disclosure and how the exempting the material complies with the Public Records Law.

6.3.3 Submit a redacted copy of the Proposal with all trade secret information removed or blacked out. The redacted copy must be submitted electronically, with the word “redacted” in the file name.

6.4 Executive Summary

Include an executive summary in the Technical Proposal providing a condensed overview of the contents of the Technical Proposal demonstrating an understanding of the services to be performed.

7 Business Information

7.1 (ME) Experience

Describe in detail the Offeror's knowledge and experience in providing services similar to those required in this RFP. Include Offeror's business history, description of current service area, and customer base. Additionally, specifically address the following mandatory minimum requirements:

7.1.1 The Offeror must have a minimum of at least five (5) years of experience providing the proposed product prior to be eligible for award.

7.1.2 The Offeror must have a minimum of three (3) successful implementations in a district of more than 100,000 students or a state level contract.

7.2 (E) References

Provide three (3) completed Reference Questionnaires. **See Attachment 2.**

7.3 (ME) System Failures

Describe any failures of the proposed SaaS in the last two (2) years that resulted in permanent loss of customer data. Failure to fully disclose information in your response to this section may result in your Proposal being found non-responsive or may be grounds for Contract termination if you are awarded a Contract and the omission is discovered after Contract award.

7.4 (ME) Sustainability of Future Service

Describe any circumstances that have a reasonable likelihood of impeding the Offeror from continuing to provide and support the proposed SaaS system for at least five (5) years after Go Live including, but not limited to, pending lawsuits, sales, or acquisitions. Failure to fully disclose information in your response, to the best of your knowledge, may result in your Proposal being found non-responsive or may be grounds for Contract termination if you are awarded a Contract and the omission is discovered after Contract award.

8 Organization and Staffing

Describe your qualifications to successfully complete the requirements of the RFP by providing a detailed response to the following:

8.1 (ME) Key Personnel and Qualifications

Provide a list of key management, customer service and other personnel to be used in the fulfillment of this Contract, to include all pertinent contact information. Provide resumes for employees who will be managing and/or directly providing services under the Contract. Project Management and Technical Lead(s) must be clearly identified and their experience noted. For positions that are not filled, a position description (including requisite qualifications/experience) must be provided.

8.2 (M) Subcontractors

If you intend to utilize subcontractors, describe the extent to which they will be used to comply with Contract requirements. Include each position providing service, and provide a detailed description of how the subcontractors are anticipated to be involved under the Contract. Include a description of how the Offeror will ensure that all subcontractors and their employees will meet all Scope of Work requirements.

9 Scope of Work - Project Approach

9.1 **(ME) Description of proposed Solution** - use this Proposal outline as part of your response to the RFP. Keep in mind, the evaluators will be scoring your Proposal based on the methodologies proposed and the completeness of the response to each item listed below. Describe how your Solution provides the following required features. Provide evidence as outlined in table below.

ITEM #	Eval Code	REQUIRED FEATURE
9.1.1	ME	Describe proposed licensing structure for statewide contract providing unlimited licenses for K-12 English Learner students to as many districts as choose to use the product.
9.1.2	ME	What experience do you have in Idaho school districts?
9.1.3	ME	What current or recent statewide implementations have you completed? Provide a list of states. Describe the structure for providing support to Project Director with examples from other projects or states evidencing a single point of contact who will manage the implementation with the SDE Project Director with a team of experts from the vendor.
9.1.4	ME	Describe typical professional development program for one school year, including workshop descriptions. Describe how product allows for regional, virtual and face-to-face professional development to be planned collaboratively each school year with the SDE Project Director to support successful implementation and customized to adapt to changing SDE initiatives.
9.1.5	ME	Provide examples of customized communications and reports from other states. Describe how product will prepare state level usage and student progress report and communications.
9.1.6	ME	Describe how system is aligned to Idaho English Language Development (WIDA) Standards.

9.1.7	ME	Describe the system’s ability to span multiple proficiency levels within K-12 mathematics specific to language and vocabulary development.
9.1.8	ME	Describe how the system supports learning approaches appropriate for students at various grades and stages of development.
9.1.9	E	Describe how the system supports English Language Learners in developing mathematic academic vocabulary and the language of mathematics.
9.1.10	ME	Describe system’s ability to provide digital lesson sequences assigned automatically based on student assessment scores and adaptive to performance on lessons. Provide a detailed description of at least three (3) different lessons from two (2) different proficiency levels.
9.1.11	ME	Provide detailed descriptions of the different types of assessments that provide teachers resources aligned to the SDE Framework for Multi-tiered Systems of Support such as: <ul style="list-style-type: none"> ● Classroom formative assessment ● Screener assessments by grade level and by units of instruction
		<ul style="list-style-type: none"> ● Diagnostic assessment that includes comparison ranking across a national sample of peers ● Progress monitoring assessment ● Interim assessments ● Summative assessment
9.1.12	ME	Provide samples of reports that include, but are not limited to, the following: <ul style="list-style-type: none"> ● Student, school and district usage ● Student mastery of Idaho English Language Development (WIDA) standards – class level view and student level view ● Student performance on assessments aligned to WIDA ACCESS assessment ● Student progress report that shows student performance over time.
9.1.13	ME	Provide examples of innovative projects with Idaho districts or state or with other states that demonstrates responsiveness to client feedback.
9.1.14	E	Explain support available for parents when students are working on the Solution at home.

9.2 Other Features - describe how your Solution will or will not provide the following other features.

As applicable, provide evidence as outlined in the table below.

ITEM #	Eval Code	REQUIRED FEATURE
9.2.1	E	Provide a detailed description of teacher options to customize lessons and lesson pathways
9.2.2	E	Provide a detailed description of teacher options to customize assessments.
9.2.3	E	Provide a detailed description of system's ability to assess retention and mastery of isolated skills over time; provide a sample assessment. Describe how this feature works within the system.
9.2.4	E	Provide a detailed description how teacher created assessments work within in the system; provide a sample assessment
9.2.5	E	Provide examples of teaching resources for small group and whole group instruction that complement the digital lessons for a topic. How does this feature work in the system? Provide sample lessons.
9.2.6	E	Provide a detailed description of how the system supports academic language development in mathematics for English language learners

9.3 **Research (ME)** - Summarize your relevant research demonstrating the data validity, reliability and/or functional effectiveness of the assessment or assessment package and instruction. Provide full research in the Appendices.

9.4 **Pertinent Questions (E)** - Respond to the following questions:

9.4.1	Describe the theoretical framework that supports the product.
9.4.2	Discuss supporting a statewide implementation. What lessons have you learned from experience from past implementations that Idaho will benefit from?
9.4.3	Discuss challenges in using digital, adaptive English Language Learner instruction and assessments with learners of different ages and how has your company addressed those challenges.
9.4.4	Provide evidence of supporting schools using the product as a part of a multi-tiered system of support.
9.4.5	Provide information on the technological infrastructure necessary for this assessment to be administered effectively on a large scale (internet bandwidth, whether a local caching server is necessary, etc.)? How does this system address the needs of the state or districts if there are issues?
9.4.6	Describe how data associated with assessments is stored. If it is cloud-based, how is data security addressed?
9.4.7	Describe any adjustments that are planned for the Solution within the next 5 years and how might that affect the cost of a future contract for the state.
9.4.8	Describe current system of support in place for school districts that may be using a different adaptive English Language Learner product and provide a sample transition plan to a new product.

9.5 Minimal Technical Specifications and Solution

This is a mandatory part of your Proposal, and must be completed and submitted with your Technical Proposal.

Offerors must provide a detailed response to each requirement as to how the proposed Solution complies with the requirement.

For any requirement carrying an evaluation code of "M" or "ME," any "No" or "N" **may result in the Offeror's proposal being deemed non-responsive**, in which case no further consideration will be given to the proposal. **Should the Offeror become the contracted provider, any "Yes" or "Y" response found to be incorrect, regardless of the reason, will deem the Contractor in breach of the Contract, and the Contract may be terminated or the Contractor given an opportunity to cure the breach at its own expense by modifying the proposed Solution to meet the requirement.**

If the State terminates the Contract, the State will have no liability to the Contractor, financially or otherwise, for false information given by the Offeror in its proposal, and retains the right to recover damages according to the SDE General Terms and Conditions and any special terms and conditions.

Offerors are cautioned and encouraged to seek clarifying information to any requirement by using the time set aside prior to the closing of the solicitation for receiving Offeror questions.

Item #	Eval Code	Description
9.5.1	M	The Solution must be a hosted system.
9.5.2	M	The technical platform of the Solution must have been used in at least two (2) other successful implementations.
9.5.3	ME	Describe how the Solution will maintain compatibility with other Idaho state assessments and avoid causing system conflicts or compatibility issues with other required assessment solutions.
9.5.4	M	The Solution must allow all necessary Administrative Users to use the system concurrently.
9.5.5	M	The Solution must allow all necessary students to test concurrently.
9.5.6	ME	The Solution should allow for access by diverse client devices. At a minimum, the Solution must support the following: Microsoft Internet Explorer 9 or higher, Microsoft Edge, Chrome, Firefox, and Safari internet browsers; accessibility by mobile device (e.g. Chromebooks, tablets, etc.). Describe how the Solution will offer access for administrative users as well as students testing from various platforms (devices, browsers, apps, etc.).
9.5.7	ME	The Solution must comply with the accessibility requirements of the Americans with Disabilities Act (ADA) and section 508 of the Rehabilitation Act of 1973. Describe how the Solution supports the ADA and section 508 compliance found at: http://www.dol.gov/dol/topic/disability/ada.htm .
9.5.8	M	The Solution must be available to users 24 hours a day, 7 days a week, 365 days a year, except for planned and authorized maintenance.

9.5.9	M	The local school district shall have the ability to create, edit, modify, extend, open, and close testing windows in a simple and efficient manner.
9.5.10	M	The Contractor must provide a reliable method of protecting and retrieving data in the event of a system failure.
9.5.11	M	Contractor must provide reliable backup and restoration services; backup files must be encrypted.
9.5.12	M	All data must be encrypted during transmission, use and storage.
9.5.13	ME	The system must maintain multiple levels of security/control (e.g State, District, School, Classroom). Describe these levels of security/control available in the Solution.
9.5.14	M	The system must provide a reliable authentication mechanism which controls access to the system by validating each user (e.g. user-ID/password) at the start of each session.
9.5.15	M	Users must have individual and unique logins and passwords.
8.5.16	M	The system must store authentication credentials in encrypted format.
9.5.17	ME	Describe how the system would log unauthorized access attempts by date, time, user id, device and location, etc.
9.5.18	ME	Describe how the system would automatically log authorized user (admin, proctor, teacher, and student) activity [such as testing activity; system changes; setting changes; etc...].
9.5.19	M	Sessions must timeout (i.e. require logging in again) after a specified length of inactive time in the system.
9.5.20	ME	Contractor must respond to requests for technical support, with a Solution or action plan in a timely manner. Describe how your Solution will provide timely support and response to issues including any tiers of support, response times, etc.
9.5.21	M	System support must only be provided by the contractor or an SDE approved subcontractor.
9.5.22	ME	Technical support must be available to SDE and district and school administrative users by phone and email during regular SDE business hours (M-F, 8-6 Mountain Time). Identify any additional support avenues that may be available such as online chat.
9.5.23	M	Contractor must provide a digital/printable user manual that may be accessed through the system interface.
9.5.24	M	The system must include searchable online help/troubleshooting (in addition to the full user manual), preferably launching specific to the User's current activity in the system.
9.5.25	M	Technical support, licensing fees, upgrades and patches must be included in the annual Solution fee.
9.5.26	M	All error messages produced by the system must be user-friendly and meaningful so that users can determine how to correct the error or cancel the process.
9.5.27	ME	The system must allow for batch creation of administrator and student users using SDE specified format, as well as allow manual addition and management of users and accounts. Describe how the Solution will facilitate user account administration.
9.5.28	M	The system must support management of user profiles (i.e. name changes, roles, etc.) for all types of users.
9.5.29	M	Administrative Users must be able to create, modify, disable, and reactivate user access and security rights for other users.
9.5.30	M	The system must enable creating, editing and assigning groups. Students should be able to belong to multiple groups based on student contact to permit authorized access to given student data.
9.5.31	M	Authorized SDE System Managers must be able to make changes to the system (e.g. cut scores) at no additional cost (whether or not technical support is required.)

9.5.32	M	The system must allow Authorized SDE System Managers to manually enter/edit District administrative users.
9.5.33	M	The Solution must have the ability to reactivate users who have been locked out or inactivated (students and admin users).
9.5.34	M	The system must provide multiple levels of secure access to reports specified elsewhere in the RFP (users, status, testing results, etc.).
9.5.35	ME	The system must have a test prep that allows users the ability to offer student training on system use. Describe how students will be able to access a sample test (either a complete test or a few questions) in order to learn how the system functions before taking the assessment.
9.5.36	ME	The system must maintain student data records for a minimum of five (5) years.
9.5.37	ME	The system must allow for the use of State Student EDUID (Student Educational Unique Identification number) when entering student information.

10 COST PROPOSAL AND BILLING PROCEDURE

10.1 (ME) Cost Proposal

Use the format established in **Appendix A** to respond to the Cost Proposal of this RFP, and identify it as “Cost Proposal – 24-4509 Digital, Adaptive Supplemental English Language Learner Program, Mathematics Vocabulary Acquisition.” Altering the format may result in a finding that your Proposal is non-responsive.

The Offeror must provide a fully-burdened rate, which must include, **but not be limited to**, all operating and personnel expenses, such as: overhead, salaries, administrative expenses, profit, and supplies.

10.2 Billing Procedure

The Contractor must provide a signed invoice upon the SDE acceptance of each line item. The invoice must be submitted no later than thirty (30) calendar days after acceptance. No invoice will be accepted or paid without receipt of required documentation. Invoices submitted without the required documentation will be returned to the Contractor for resubmission.

The Contractor must provide the following information with each invoice:

1. SDE contract number
2. Identification of the billing period.
3. Total dollar amount billed for the billing period.
4. Detailed description of services/products provided and associated # of hours/\$ amounts, as appropriate.
5. Name of authorized individual/contact information for Contractor.

11 PROPOSAL REVIEW, EVALUATION AND AWARD

The objective of the State in soliciting and evaluating Proposals is to ensure the selection of a firm or individual that will produce the best possible results for the funds expended.

11.1 All Proposals will be reviewed first to ensure that they meet the Mandatory Submission Requirements of the RFP as addressed in **Sections noted with an (M) or (ME)**. Any Proposal(s) not meeting the Mandatory Submission Requirements will be found non-responsive.

11.2 Technical Proposal

11.2.1 The Technical Proposal will consist of the sections set forth in section 9.5 above. The Technical Proposal will be reviewed first on a “pass” or “fail” basis to determine compliance with those requirements listed in the RFP with an **(M) or (ME)**. All Proposals which are determined by the State, in its sole discretion, to be responsive in this regard will continue in the evaluation process outlined in this Section.

11.2.2 The Technical Proposal will be evaluated and scored utilizing one (1) or more Technical Proposal Evaluation Committee(s).

11.2.3 The scores for Business Information section will be normalized as follows: The proposal with the highest raw Business Information section score will receive all available Business Information points: 75 points. Other proposals will be assigned a portion of the maximum available points, using the formula: $75 \times \text{raw score of Business Information section being evaluated} / \text{highest raw Business Information section score}$.

11.2.4 The scores for the Organization and Staffing section will be normalized as follows: The proposal with the highest raw Organization and Staffing section score will receive all available Organization and Staffing section points: 75 points. Other proposals will be assigned a portion of the maximum available Organization and Staffing Points, using the formula: $75 \times \text{raw score of Organization and Staffing section being evaluated} / \text{highest raw Organization and Staffing section score}$.

11.2.5 The scores for the Scope of Work section will be normalized as follows: The proposal with the highest raw Scope of Work section score will receive all available Scope of Work section points: 300 points. Other proposals will be assigned a portion of the maximum available Scope of Work section points, using the formula: $300 \times \text{raw score of Scope of Work section being evaluated} / \text{highest raw Scope of Work section score}$.

11.2.6 The scores for the Technical Requirements and Solution section will be normalized as follows: The proposal with the highest raw Technical Requirements and Solution section score will receive all available Technical Requirements and Solution section points: 200 points. Other proposals will be assigned a portion of the maximum available Technical Requirements and Solution Points, using the formula: $200 \times \text{raw score of Technical Requirements and Solution section being evaluated} / \text{highest raw Technical Requirements and Solution section score}$.

11.2.7 Product Demonstration

Demonstrations and Software verification - The State may require demonstrations from up to six (6) Offerors with the highest combined scores from the following sections: Business Information, Organizations and Staffing, Scope of Work, and Technical Requirements and Solutions. The scores for the Product Demonstration section will be normalized as follows: The proposal with the highest raw Product Demonstration section will receive all available Product Demonstration section points: 150 points. Other proposals will be assigned a portion of the maximum available, using the formula: $150 \times \frac{\text{raw score of Product Demonstration section}}{\text{highest raw Product Demonstration section score}}$. The State may provide demonstration scenarios in accordance with the specifications of this Solicitation.

11.3 Oral Presentations

After an initial scoring of Technical Proposals, SDE may require, at its discretion, the highest technically scored proposals to provide an in-depth review with oral presentations and may modify technical scoring based on these reviews. It is the intent of SDE to evaluate competencies and understanding needed to perform the services in this RFP based on the interactions with individuals assigned by the Offeror to Idaho and not strictly on the written RFP response. This in-depth review must be completed in person or virtually, as required by SDE.

11.4 Cost Proposal

11.4.1 If Oral Presentations are conducted, the Cost Proposal will only be opened and evaluated for Offerors who are invited to and provide Oral Presentations. If Oral Presentations are not conducted, the Cost Proposal from every Offeror that is responsive up to this point will be opened and evaluated.

11.4.2 The scores for the Cost Proposal will be normalized as follows: The Proposal with the lowest overall total proposed cost will receive all available Cost Points: 200 points. Other Proposals will be assigned a portion of the maximum score using the formula: $200 \times \frac{\text{lowest proposed cost}}{\text{proposed cost being evaluated}}$.

11.5 Total Points

The number of total points for each Proposal will be determined by adding the normalized score for the Business Information section score to the normalized score for the Organization and Staffing section to the normalized score for the Scope of Work section to the normalized score for the Technical Requirements and Solutions section to the normalized score for the Product Demonstration section to the normalized score for the Cost Proposal.

11.6 Evaluation Criteria

Technical Proposal:

Mandatory Submission Requirements	Pass/Fail
Business Information (Section 7)	50 points
Organization and Staffing (Section 8)	100 points
Scope of Work - Project Approach (Section 9)	300 points
Technical Requirements and Solution	200 Points
Product Demonstrations	150 points
Cost Proposal (Appendix A)	200 points
Total Points	1,000 points

11.7 Award and Offeror Discussions

The SDE may, at its sole option, either accept an offeror's initial proposal by award of contract or enter into discussions with offerors whose proposals are deemed to be reasonably susceptible of being considered for award. Discussions with individual offerors (including the utilization of one or more rounds of "Best and Final Offer" and/or Negotiations) may be conducted. NOTE: Offerors should submit their best proposals initially, as there is no guarantee that SDE will conduct any discussions. The SDE may, in its best interest, elect to award the contract to or enter into discussions with the apparent responsive, responsible offeror whose Proposal receives the highest number of total normalized points.

11.8 Notification of Intent to Award Contract / Awarding of Contract / Reconsideration

Within five (5) working days following the evaluation period, SDE will notify all offerors by email of its intent to award a contract and of the evaluation scores. If the selected offeror does not enter into a contract within ninety (90) days of notification, SDE may withdraw the award from that offeror and award the contract to the offeror ranked second in the evaluation process. Within five (5) working days from the date of a notice of award, the responsive, responsible offerors may submit a request for reconsideration in writing to the SDE Chief Procurement Officer. The request shall specifically state the exact basis for reconsideration. The Superintendent will, in her sole discretion, review the request and issue a written response to the request.

11.9 Responsibility

The RFP Lead may, in the SDE's sole discretion, require the apparent high point Offeror to provide documentation to demonstrate its responsibility. The RFP Lead may request documentation including, but not limited to: credit or financial reports, and references. Failure to provide requested documentation may result in the Offeror being deemed non-responsible. Nothing herein shall prevent SDE from using other means to determine Offeror's responsibility.

APPENDIX A – COST PROPOSAL

24-4509 Digital, Adaptive Supplemental English Language Learner
Program, Mathematics Vocabulary Acquisition

The offeror shall submit this Cost Proposal in a sealed envelope marked "Cost Proposal – 24-4509 Adaptive English Language Learner K-6," which shall be separate from the Technical Proposal. Along with this Cost Proposal, please provide an itemized breakdown to support your cost.

ESTIMATED QUANTITY	UNIT	Deliverables	TOTAL PRICE
			\$ _____
			\$ _____
			\$ _____
			\$ _____
			\$ _____
			\$ _____
		Total Proposal Cost	\$ _____

Contractor's Legal Business Name		Tax ID#	
Phone:		Email:	
Contractor's Authorized Representative's Printed Name		Title	
Signature		Date	

APPENDIX B - SDE GENERAL TERMS AND CONDITIONS

Appendix B is attached as a separate pdf document. Please see the attached document with the document file name "SDE General Terms and Conditions.pdf."

APPENDIX C - SDE SPECIAL TERMS AND CONDITIONS FOR SOLICITATIONS

Appendix C is attached as a separate pdf document. Please see the attached document with the document file name "SDE Special Terms and Conditions for Solicitations.pdf."

APPENDIX D - SDE SPECIAL TERMS AND CONDITIONS FOR CLOUD SERVICES

Appendix D is attached as a separate pdf document. Please see the attached document with the document file name "SDE Special Terms and Conditions for Cloud Services.pdf."

ATTACHMENT 1 - OFFEROR QUESTIONS

PLEASE DO NOT IDENTIFY YOUR NAME OR YOUR COMPANY'S NAME OR PRODUCT NAMES OF INTELLECTUAL PROPERTY IN YOUR QUESTIONS.

ADD ROWS BY HITTING THE TAB KEY WHILE WITHIN THE TABLE AND WITHIN THE FINAL ROW.

The following instructions must be followed when submitting questions using the question format on the following page.

1. DO NOT CHANGE THE FORMAT OR FONT. Do not bold your questions or change the color of the font.
2. Enter the RFP section number that the question is for in the "RFP Section" field (column 2). If the question is a general question not related to a specific RFP section, enter "General" in column 2. If the question is in regard to a provision of the SDE General Terms and Conditions or any special terms and conditions, state the clause number in column 2. If the question is in regard to an attachment, enter the attachment identifier (example "Attachment A") in the "RFP Section" (column 2), and the attachment page number in the "RFP page" field (column 3).
3. Do not enter text into the "Response" field (column 5). This is for the State's use only.
4. Once completed, this form is to be e-mailed per the instructions in the RFP. The e-mail subject line is to state the RFP number followed by "Questions."

Question	RFP Section	RFP Page	Question	Response
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				

ATTACHMENT 2 - REFERENCES

INSTRUCTIONS TO THE OFFEROR:

Offerors will be scored on three (3) completed reference questionnaires (if fewer than three (3) are received prior to the RFP closing date and time, the Offeror will receive a zero (0) for all questions not scored and questionnaires not received). Scores from reference questionnaires will be averaged. The reference questionnaires must be from individuals, companies, or agencies for which the Offeror provided products or services that are similar in nature and scope to those requested by this RFP, and within the last 5 years from the date this RFP was posted. The SDE may not be utilized as a reference. Only one (1) reference will be received/qualify per reference company/agency. If multiple references are received from the same company/agency, only the first received will be accepted.

References outside the requisite number of years (*See paragraph above*), and references determined by the State, in its sole discretion, to be not of a similar nature and scope to the products or services requested in this RFP will receive a score of zero (0). **Determination of similar will be made by using the information provided by the reference in Section II of the Reference Questionnaire, General Information, and any additional information provided by the reference, or otherwise obtained by the State.** It is in the State's sole discretion as to whether or not any references will be contacted for clarification or for additional information.

REFERENCES MUST BE RECEIVED BY THE RFP LEAD, DIRECTLY FROM THE REFERENCE, IN ORDER TO BE CONSIDERED.

1. Offerors must complete the following information on page 2 of the "Reference's Response To" document before sending it to the Reference for response.
 - a. Print the name of your reference (company/organization) on the "REFERENCE NAME" line.
 - b. Print the name of your company/organization on the "OFFEROR NAME" line.
 - c. Be certain that the RFP closing date and time in Instruction 5, on the following page, is correct.
2. Send the "Reference Response To" document to your references to complete.

NOTES: It is the Offeror's responsibility to follow up with its references to ensure timely receipt of all questionnaires. Offerors may e-mail the RFP Lead prior to the RFP closing date to verify receipt of references.

References are not scored by a Technical Proposal evaluation committee. References will provide scores via the reference questionnaires and the RFP Lead will enter the scores for qualifying references into a spreadsheet that will calculate averaged scores.

**REFERENCE QUESTIONNAIRE
REFERENCE'S RESPONSE TO:
24-4509**

REFERENCE NAME (Company/Organization): _____

OFFEROR (Vendor) NAME (Company/Organization): _____ has submitted a Proposal to the State of Idaho, State Department of Education, to provide the following services: Adaptive Supplemental English Language Learner Program. We've chosen you as one of our references.

INSTRUCTIONS

1. Complete **Section I. RATING** using the Rating Scale provided.
2. Complete **Section II. GENERAL INFORMATION** (*This section is for information only and will not be scored.*)
3. Complete **Section III. ACKNOWLEDGEMENT** by manually signing and dating the document. (*Reference documents must include an actual signature.*)
4. E-mail or fax **THIS PAGE** and your completed reference document, **SECTIONS I through III** to:

RFP Lead: SDE Chief Procurement Officer

E-mail: procurement@sde.idaho.gov
5. This completed document **MUST** be received no later than June 30, 2023 at 5PM Mountain Time. Reference documents received after this time will not be considered. **References received without an actual signature will not be accepted.**
6. DO **NOT** return this document to the Offeror (Vendor).
7. In addition to this document, the State may contact references by phone or e-mail for further clarification, if necessary.

Section I. RATING

Using the Rating Scale provided below, rate the following numbered items by circling the appropriate number for each item:

Rating Scale	
Category	Score
Poor or Inadequate Performance	0
Below Average	1 – 3
Average	4 – 6
Above Average	7 - 9
Excellent	10

Circle **ONE** number for each of the following numbered items:

1. Rate the overall quality of the vendor’s services:

10 9 8 7 6 5 4 3 2 1 0

2. Rate the response time of this vendor:

10 9 8 7 6 5 4 3 2 1 0

3. Rate how well the agreed upon, planned schedule was consistently met and deliverables provided on time.
(This pertains to delays under the control of the vendor):

10 9 8 7 6 5 4 3 2 1 0

4. Rate the overall customer service and timeliness in responding to customer service inquiries, issues and resolutions:

10 9 8 7 6 5 4 3 2 1 0

5. Rate the knowledge of the vendor’s assigned staff and their ability to accomplish duties as contracted:

10 9 8 7 6 5 4 3 2 1 0

6. Rate the accuracy and timeliness of the vendor’s billing and/or invoices:

10 9 8 7 6 5 4 3 2 1 0

7. Rate the vendor’s ability to quickly and thoroughly resolve a problem related to the services provided:

10 9 8 7 6 5 4 3 2 1 0

8. Rate the vendor's flexibility in meeting business requirements:

10 9 8 7 6 5 4 3 2 1 0

9. Rate the likelihood of your company/organization recommending this vendor to others in the future:

10 9 8 7 6 5 4 3 2 1 0

Section II. GENERAL INFORMATION

1. Please include a brief description of the services provided by this vendor:

2. During what time period did the vendor provide these services for your business?

Month: _____ Year: _____ to Month: _____ Year: _____

Section III. ACKNOWLEDGEMENT

I affirm to the best of my knowledge that the information I have provided is true, correct, and factual:

Signature of Reference

Title

Print Name

Phone Number

Email Address

Date

ATTACHMENT 3 – SIGNATURE PAGE

Signatures. Unless otherwise stated above, this Agreement is effective on the date of last signature:

Contractor's Legal Business Name	Tax ID#	
Contractor's Authorized Representative's Printed Name	Title	
Signature		Date

SDE Authorized Representative's Printed Name	Title	
Signature		Date



SDE Special Terms and Conditions for Solicitations

1. Definitions. Unless the context clearly requires otherwise, the definitions set forth in the SDE General Terms and Conditions shall apply to terms used in these SDE Special Terms and Conditions for Solicitations.

2. Priority of Documents. The Agreement consists of and precedence is established by the order of the following documents: 1) the contract purchase order; 2) the SDE's solicitation of bids, proposals, or quotations; 3) the Contractor's bid, proposal, or quotation as accepted by the SDE. The solicitation and the Contractor's bid, proposal, or quotation as accepted by the SDE are incorporated into the Agreement by this reference. The documents set forth above are complementary and what is required by one shall be binding as if required by all. In the case of any conflict or inconsistency arising under the Agreement documents, a document identified with a lower number in this section shall supersede a higher numbered document to the extent necessary to resolve any such conflict or inconsistency. Provided, however, that in the event an issue is addressed in one of the above-mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur. Where terms and conditions specified in the Contractor's bid, proposal, or quotation differ from the terms in the solicitation, the terms and conditions in the solicitation shall apply. Where terms and conditions specified in the Contractor's bid, proposal, or quotation supplement the terms and conditions in the solicitation, the supplemental terms and conditions shall apply only if specifically accepted by the SDE in writing.

3. Application of Certain Laws. The provisions of IDAPA 38.05.01.112, Contract Terms - Policies and Limitations, shall apply to the provisions of the Agreement.

4. Notices. Any notice given in connection with the Agreement 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 stated below. Either party may change its address by giving notice of the change in accordance with this paragraph.

4.1. **Contractor:**

4.2. SDE: Idaho State Department of Education
Attention:
650 State Street
Boise, ID 83702

5. Insurance Requirements. The Contractor shall obtain and maintain insurance at its own expense as required herein for the duration of the Agreement, and comply with all limits, terms, and conditions stipulated. Policies shall provide, or be endorsed to provide, all required coverage. The Contractor shall provide certificates of insurance or certified endorsements as applicable for the insurance required. The Contractor shall not commence work under the Agreement until satisfactory evidence of all required insurance is provided to the State of Idaho.

All insurance, except for workers compensation and professional liability/errors and omissions, shall be endorsed to name the State of Idaho and SDE as Additional Insured.

All insurance shall be with insurers rated A-, VII, or better in the latest Best's Rating Guide, and be in good standing and authorized to transact business in Idaho. The coverage provided by such policies shall be primary. Policies may contain deductibles, but such deductibles shall not be deducted from any damages due the State of Idaho.

If any of the liability insurance required for the Agreement is arranged on a "claims-made" basis, "tail coverage" will be required at the completion or termination of the Agreement for a duration of twenty-four (24) months thereafter. Continuous "claims-made" coverage will be acceptable in lieu of "tail-coverage" provided the retroactive date is on or before the effective date of the Agreement, or twenty-four-months "prior acts" coverage is provided. Contractor will be responsible for furnishing certification of "tail coverage" or continuous "claims-made" coverage.

By requiring insurance herein, the State of Idaho does not represent that coverage and limits will necessarily be adequate to protect the Contractor, and such coverage and limits shall not be deemed as a limitation on the Contractor's liability under the indemnities granted to the State of Idaho.

Contractor shall maintain insurance in amounts not less than the following:

5.1. Commercial general liability ("CGL") with a limit of not less than \$1,000,000 each occurrence, and \$1,000,000 annual aggregate, if defense is outside the limits. If defense is inside the limits, the limit must be \$2,000,000 each occurrence, and \$2,000,000 aggregate. If necessary, a commercial umbrella or excess policy may be used to meet the limits required, providing the CGL is listed on the underlying insurance in the umbrella or excess policy, and the umbrella/excess policy meets the requirements above for acceptable carriers.

5.2. Automobile liability including owned, non-owned, and hired liability with a limit of not less than \$1,000,000 each occurrence, and \$1,000,000 aggregate. If necessary, a commercial umbrella or excess policy may be used to meet the limits required, providing the automobile is listed on the underlying insurance in the umbrella or excess policy, and the umbrella/excess policy meets the requirements above for acceptable carriers.

5.3. Workers compensation insurance in amounts as required by statute in all states in

which the Contractor performs work, and employers' liability with a limit of \$100,000 bodily injury by accident-each accident, \$100,000 bodily injury by disease-each employee, \$500,000 bodily injury by disease-policy limit.

5.4. Professional liability insurance covering any damages caused by an error, omission, or any negligent acts. Combined single limit per occurrence shall not be less than \$1,000,000, or the equivalent. Annual aggregate limit shall not be less than \$2,000,000.

5.5. Cyber insurance covering claims resulting from wrongful acts committed in the performance of, or failure to perform, all services under the Agreement, including, without limitation, claims, demands, and any other payments related to electronic or physical security, breaches of confidentiality, and invasion of or breaches of privacy. This coverage is to include Internet media liability including cloud computing and mobile devices, for protection of private or confidential information whether electronic or non-electronic, network security and privacy; privacy against liability for system attacks, digital asset loss, denial or loss of service, introduction, implantation or spread of malicious software code, security breach, unauthorized access and use; including regulatory action expenses; and notification and credit monitoring expenses with at least the following minimum limits: each occurrence – \$3,000,000; network security/privacy liability – \$3,000,000; breach response/notification sublimit – a minimum limit of 50% of the policy aggregate; technology products E&O – \$3,000,000.

6. Liability. The Contractor's liability for damages to the SDE for any cause whatsoever may not be limited or capped for the following:

6.1. Patent and copyright indemnity required by the Agreement;

6.2. Liquidated damages assessed under the Agreement;

6.3. Claims for personal injury, including death;

6.4. Claims for damage to real property or tangible or intangible property arising from the Contractor's acts or omissions under the contract;

6.5. The insurance coverage required by the Agreement;

6.6. Damages arising from the gross negligence or willful misconduct of the Contractor, its employees, its subcontractors, or its agents; and,

6.7. Government fines and penalties not imposed by the SDE.



SDE General Terms and Conditions

1. Definitions. Except as defined otherwise in this Agreement, the following terms shall have the following meanings, whether capitalized or not, unless the context requires otherwise:

1.1. "Agreement" means the agreement between the SDE and the Contractor for the acquisition of Property and includes, but is not limited to, the SDE's solicitation of bids, proposals, or quotations; the Contractor's resulting bid, proposal, or quotation as accepted by the SDE; and the contract purchase order.

1.2. "Contractor" means the party to the Agreement providing the Property to the SDE and identified as the Contractor in the Agreement.

1.3. "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.

1.4. "SDE" means the State of Idaho Department of Education, the agency of the State and party to the Agreement receiving the Property provided by the Contractor and identified as the SDE in the Agreement.

1.5. "State" means the State of Idaho including each board, commission, department, agency or office of the State of Idaho, unless the context indicates that it means one or more other states of the United States.

2. Termination and Remedies.

2.1. Termination for Contractor Default. The SDE may terminate the Agreement, any order issued pursuant to the Agreement, 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 SDE. If the default or non-compliance is not capable of cure or if the cure requires more than thirty (30) calendar days, the SDE may provide notice of termination without a cure period. The SDE shall not be required to provide advance written notice or a cure period and may immediately terminate this Agreement in whole or in part if the SDE, 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 Agreement.

2.1.1. If the Agreement is terminated for default or non-compliance, the Contractor will

be liable for any costs resulting from the SDE's award of a new contract and any damages incurred by the SDE. The SDE, 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.

2.1.2. Unless provided otherwise in the Agreement, upon termination by the SDE for default or non-compliance, Contractor shall: (a) promptly discontinue all work, unless the termination notice directs otherwise; (b) promptly return to the SDE any property provided by the SDE pursuant to this Agreement; 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 Agreement, whether completed or in process, which the Contractor is obligated by the Agreement or law to provide to the SDE upon completion. Upon termination by the SDE for default or non-compliance, the SDE may take over the work and may award another party a contract to complete the work contemplated by this Agreement.

2.2. Termination for Convenience. The SDE may terminate this Agreement for its convenience in whole or in part, upon thirty (30) calendar days' written notice to the Contractor, if SDE determines it is in the SDE's best interest.

2.2.1. After receipt of a notice of termination for convenience, and except as directed by the SDE, the Contractor shall immediately proceed with the following obligations, as applicable, regardless of any delay in determining or adjusting any amounts due under this clause. The Contractor shall:

2.2.1.1. Stop work;

2.2.1.2. Place no further subcontracts for materials, services, or facilities, except as necessary to complete the continuing portion of the Agreement;

2.2.1.3. Terminate all subcontracts to the extent they relate to the work terminated; and

2.2.1.4. Settle all outstanding liabilities and termination settlement proposals arising from the termination of subcontracts.

2.2.2. Unless otherwise set forth in the Agreement, if the Contractor and the SDE fail to agree on the amount to be paid because of the termination for convenience, the SDE will pay the Contractor the following amounts; provided that in no event will total payments exceed the amount payable to the Contractor if the Agreement had been fully performed:

2.2.2.1. The Agreement price for deliverables or services accepted by the SDE and not previously paid for, adjusted for any savings on freight and other charges; and

2.2.2.2. The total of:

2.2.2.2.1. The reasonable costs incurred in the performance of the work

terminated, including initial costs and preparatory expenses allocable thereto, but excluding any cost attributable to deliverables or services paid or to be paid;

2.2.2.2. The reasonable cost of settling and paying termination settlement proposals under terminated subcontracts that are properly chargeable to the terminated portion of the Agreement; and

2.2.2.3. Reasonable storage, transportation, demobilization, unamortized overhead, and capital costs, and other costs reasonably incurred by the Contractor in winding down and terminating its work.

2.2.3. The Contractor shall use generally accepted accounting principles, or accounting principles otherwise agreed to in writing by the parties, and sound business practices in determining all costs claimed, agreed to, or determined under this section.

2.3. Remedies. In addition to any remedies available to the SDE under law or equity, the SDE 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 requirements of the Agreement:

2.3.1. Require the Contractor to take corrective action to ensure that performance conforms to the requirements of the Agreement;

2.3.2. Reduce payment to reflect the reduced value of the performance received;

2.3.3. Require the Contractor to subcontract all or part of the service at no additional cost to the SDE;

2.3.4. Withhold payment or require payment of actual damages caused by the deficiency;

2.3.5. Withhold payment or require payment of liquidated damages, if liquidated damages are provided for in the Agreement;

2.3.6. Secure the deficient products or services and deduct the costs of products or services from payments to the Contractor under the Agreement;

2.3.7. Require Contractor to remove, at its sole expense, any non-conforming or deficient products or services from the SDE's premises;

2.3.8. Terminate the Agreement pursuant to any termination provisions within the Agreement.

These remedies are cumulative to the extent the remedies are not inconsistent, and the SDE may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

3. Renewal Options. Notwithstanding any other provision in the Agreement limiting or

providing for renewal of the Agreement, upon mutual, written agreement by the SDE and Contractor, the Agreement may be extended under the same terms and conditions for a term equal to the time interval of the initial term, or such shorter period of time as agreed to by the SDE and the Contractor.

4. 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 SDE in writing or provided for in the Agreement, prices shall not increase between the prior term and a renewal term. The SDE may accept a price increase during a term as provided in the Agreement or upon submission of evidence by the Contractor that Contractor's costs have increased due to unforeseeable causes beyond the control and without the fault or negligence of the Contractor.

5. Confidentiality.

5.1. Collection and Ownership. Pursuant to the Agreement, Contractor may collect, or the SDE may disclose to Contractor, financial, personnel or other information that the SDE regards as proprietary or confidential ("Confidential Information"). Such Confidential Information shall belong solely to the SDE. The SDE may require that Contractor's officers, employees, agents, or subcontractors agree in writing to the obligations contained in this section. The SDE may require that Confidential Information be returned to the SDE upon termination of this Agreement subject to Contractor's document retention procedures as required by law.

5.2. Use. Contractor shall use such Confidential Information only in the performance of its services under the Agreement and shall not disclose Confidential Information or any advice given by it to the SDE to any third party, except for the following:

5.2.1. With the SDE's prior written consent.

5.2.2. Under a valid order of a court or governmental agency of competent jurisdiction and then only upon timely notice to the SDE unless prohibited by such order.

5.2.3. In response to any electronic discovery, litigation holds, discovery searches and expert testimonies related to the SDE's data under the Agreement, or which in any way might reasonably require access to the SDE's data and then only upon timely notice to the SDE, unless prohibited by law from making such contact.

5.3. Limitation. Confidential Information shall not include data or information that:

5.3.1. Is or was in the possession of Contractor before being furnished by the SDE, 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 SDE.

5.3.2. Becomes generally available to the public other than as a result of disclosure by Contractor.

5.3.3. Becomes available to Contractor on a non-confidential basis from a source other

than the SDE, provided that such source is not known by Contractor to be subject to a confidentiality agreement with or other obligation of secrecy to the SDE.

6. Security of Student Data.

6.1. Prohibition of Disclosure. The Contractor acknowledges that data received, transmitted, or originating under this Agreement may contain confidential, personally identifiable student data subject to the federal Family Educational Rights and Privacy Act (“FERPA”), the Idaho Student Data Accessibility, Transparency and Accountability Act of 2014 (“Idaho Student Data Act”), or other privacy laws, and that disclosure to or use by third parties would be damaging and is expressly prohibited under this Agreement without the prior written permission of the SDE. Any such student data shall be used only for purposes of this Agreement, and any other uses of such student data not specifically set forth in this Agreement are strictly prohibited.

6.2. Definition of Student Data. In addition to those definitions provided in FERPA, and any other applicable state or federal law, and pursuant to the Idaho Student Data Act, “student data” shall mean data collected and/or reported at the individual student level, and shall include, but not be limited to, (1) state and national assessment results, including information on untested public school students; (2) course taking and completion, credits earned and other transcript information; (3) course grades and grade point average; (4) date of birth, grade level and expected graduation date/graduation cohort; (5) degree, diploma, credential attainment and other school exit information such as general educational development and drop-out data; (6) attendance and mobility; (7) data required to calculate the federal four (4) year adjusted secondary cohort graduation rate, including sufficient exit information; (8) discipline reports limited to objective information sufficient to produce the federal annual incident reports, children with disabilities disciplinary reports and discipline reports including students involved with firearms; (9) remediation; (10) special education data; (11) demographic data and program participation information; and (12) files, documents, images or data containing a student's educational record that are stored in or transmitted through a cloud computing service.

6.3. Confidentiality and Notice. The Contractor agrees to hold any such student data in strictest confidence, not to make use thereof other than for the performance of this Agreement, to release it only to authorized employees and agents requiring such information, and shall not release or disclose it to any other party without the prior written consent of the SDE. The Contractor shall immediately (within twelve (12) hours) notify the SDE of any known or reasonably suspected unauthorized disclosures of student data. The Contractor shall also ensure that all subcontractor agreements specifically include the provisions of this section.

6.4. Transfer and Destruction. At the conclusion of this Agreement, the Contractor shall transfer to the SDE any student data in its possession, custody, or control obtained or created pursuant to this Agreement. No later than thirty (30) days following the conclusion of this Agreement, provided the Contractor has transferred to the SDE all student data in its possession, custody, or control obtained or created pursuant to this Agreement, the Contractor shall destroy all copies of any such student data in its possession, custody, or control and provide written notice to the SDE describing the student data destroyed, date of destruction, and method of destruction.

6.5. Penalty. The Contractor acknowledges and understands that any violation of this section regarding security of student data, in addition to constituting a breach of this Agreement, may subject the Contractor to a civil penalty under the terms of the Idaho Student Data Act.

7. Intellectual Property and Ownership of Materials. The SDE shall retain all ownership rights in any information or materials provided to the Contractor by the SDE for purposes of this Agreement. Additionally, subject to any interests of the U.S. government, all documents, reports, memoranda, summaries, presentations, surveys, and any other materials of any kind created by Contractor pursuant to this Agreement (“Intellectual Property”) shall be the exclusive property of the SDE and shall not be disclosed by Contractor to any third party without the prior, written consent of the SDE. To the extent that any Intellectual Property constitutes a “work” within the meaning of the U.S. Copyright Laws, 17 U.S.C. § 101, *et seq.*, it shall be a “work made for hire.” Provided, however, that in the event that a court or tribunal of competent jurisdiction determines that the Intellectual Property is not a “work made for hire” as a matter of law, the Contractor shall assign and convey to the SDE all right, title, and interest in the Intellectual Property and require its employees and subcontractors to do the same.

8. Patent and Copyright Indemnity.

8.1. 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 Agreement. Contractor shall pay all damages and costs finally awarded and attributable to such claim, but such defense and payments are conditioned on the following: (i) that Contractor shall be notified promptly in writing by the State of any notice of such claim; (ii) 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 the State may select at its own expense advisory counsel; and (iii) that the State shall cooperate with Contractor in a reasonable way to facilitate settlement or defense of any claim or suit.

8.2. 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: (i) 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; (ii) the modification of the Property unless such modification was disclosed in the Solicitation or the specifications; or (iii) the use of the Property not in accordance with Contractor's previously established specifications unless such use was disclosed in this Agreement.

8.3. 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 they become non-infringing, or to grant the State a full refund for the purchase price of the Property and accept their return.

9. Contractor's Performance. All work done by the Contractor shall be of the highest professional standard and shall be performed to the SDE's reasonable satisfaction. The detailed manner and method of performing the work is under the control of Contractor, with the SDE being interested only in the results obtained. The SDE and Contractor agree that Contractor is an "Independent Contractor" as defined by law as to all work performed under this Agreement.

10. Independent Contractor. The Contractor's status under the Agreement 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. The Contractor shall exonerate and indemnify the SDE and the State and hold them 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, worker's compensation, and income tax laws with respect to the Contractor or Contractor's employees engaged in performance under the Agreement.

11. Workers' Compensation Insurance. The Contractor shall maintain worker's compensation insurance as required by law and shall provide certificate of same if requested by the SDE. Failure to provide a certificate of worker's compensation insurance may, at the SDE's option, result in termination of the Agreement or in a contract price adjustment to cover the SDE's cost of providing worker's compensation insurance required by law. Provision of workers' compensation insurance by the SDE 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 Agreement. 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.

12. Reimbursement of Expenses. The SDE shall not be liable to Contractor for any expenses paid or incurred by Contractor unless otherwise agreed to in writing by the SDE.

13. Equipment, Tools, Materials, or Supplies. Contractor shall supply, at its sole expense, all equipment, tools, materials or supplies to accomplish the work to be performed.

14. Fringe Benefits. Because Contractor is engaged in its own independent contracting business, Contractor is not eligible for, nor entitled to, and shall not participate in, any of the SDE's or the State's pension, health, or other fringe benefit plans.

15. General Indemnification.

15.1. 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 Agreement 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 Agreement.

15.2. Actions on Tender; Limitations. 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 this Agreement. 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 therefor, shall reimburse Contractor for reasonable defense costs attributable to the defense provided by any Special Deputy Attorney General appointed pursuant to subsection 15.3 (Requirements of Defense).

15.3. 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).

16. Authority to Conduct Business in Idaho and 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 Agreement. 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 Agreement. 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.

17. No Authority to Bind the SDE. The Contractor has no authority to enter into contracts or agreements on behalf of the SDE. This Agreement does not create a partnership between the parties and nothing contained in this Agreement shall be interpreted to create an employer-employee, master-servant, or principal-agent relationship between the SDE and Contractor in any respect.

18. Public Records. Pursuant to the Idaho Public Records Act, Idaho Code section 74-101 *et seq.*, 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 documents 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 SDE will not accept the marking of an entire record as exempt. In addition, the SDE will not accept a legend or statement on one (1) page that all, or substantially all, of the record is exempt from disclosure. The Contractor shall indemnify and defend the SDE for honoring the Contractor's designation of exemption or for the Contractor's failure to designate a record as exempt. The Contractor's failure to designate as exempt any record or portion of a record that is released by the SDE shall constitute a complete waiver of any and all claims for damages caused by any such release. If the SDE honors a claim of exemption by the Contractor, the Contractor shall provide the legal defense for such claim.

19. Records and Audits.

19.1. Maintenance. The Contractor shall maintain a complete file of all records, documents, communications, and other written materials that pertain to the delivery of the Property under this Agreement and shall maintain such records for a period of five (5) years after termination of this Agreement or final payment, whichever is later, or for such further period as may be necessary to resolve any matters that may be pending.

19.2. Access. The Contractor shall permit the SDE or any duly authorized agent of the SDE to audit, inspect, examine, excerpt, copy, or transcribe the Contractor's records during the term of this Agreement and for a period of five (5) years following termination of this Agreement or final payment, whichever is later, to assure compliance with the terms of this Agreement or to evaluate Contractor's performance under this Agreement. The Contractor shall also permit the SDE or its agent to monitor all activities conducted by it pursuant to this Agreement. As the monitoring agency may determine in its sole discretion, such monitoring may include internal evaluation procedures, examination of data, special analyses, on-site checks, or other reasonable procedures.

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

20.1. Application of Idaho Statutes. Assignments, mergers, consolidations, and changes of the Contractor under this Agreement are subject to the provisions of Idaho Code section 67-1027.

20.2. 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 Idaho State Board of Examiners.

20.3. 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 Idaho State Board of Examiners.

20.4. Effect of Non-Compliance. As provided in Idaho Code section 67-1027, the SDE shall not be obligated to pay the assignee until the assignment is recognized by the Idaho State Board of Examiners and no damages shall accrue to Contractor or the assignee arising from the SDE's assignment and payment processes pursuant to Idaho Code section 67-1027.

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

22. Changes and Modifications. Except as provided herein for ministerial changes, the Agreement may be modified or amended only upon written consent of the SDE and the Contractor.

In the event the SDE discovers or is notified of a typographical or other ministerial or clerical error in the Agreement, the SDE 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 SDE will make a copy of the corrected Agreement available to the Contractor upon the effectiveness of the correction.

23. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements or understandings between the SDE and the Contractor. This Agreement may not be modified without the written consent of the parties.

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

25. Governing Law, Severability, and Survival.

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

25.2. Severability. If any part of this Agreement is declared invalid or becomes inoperative for any reason, such invalidity or failure shall not affect the validity and enforceability of any other provision.

25.3. Survival. Any termination, cancellation, or expiration of the Agreement notwithstanding, provisions which are intended to survive and continue shall survive and continue.

26. 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 Agreement. For the duration of the Agreement, Contractor shall maintain in effect and have in its possession all licenses and certifications required by federal, state, and local laws and rules.

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

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

The SDE reserves the right to terminate this Agreement 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 SDE to continue such payments, or requires any return or "give-back" of funds required for the SDE to continue payments, or if the Executive Branch of the State of Idaho 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.

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

30. Force Majeure. Neither the Contractor nor the SDE shall be liable for or deemed to be in default for any delay or failure to perform under the Agreement 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 Agreement 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.

31. Headings. All headings in this Agreement are inserted for convenience only and shall not affect the meaning of any provision of this Agreement.

32. Criminal Background Check. If Contractor or its employees, agents, or representatives will have unsupervised contact with Idaho public school children when performing any duty required by this Agreement, then Contractor or its employees, agents, or representatives shall submit to a criminal background check performed pursuant to Idaho Code section 33-130. Said criminal background check results shall be accessible to the SDE prior to performance of this Agreement. Failure of the Contractor or its employees, agents, or representatives to submit to such criminal

background check or failure to pass such criminal background check shall constitute a material breach of the Agreement, and the SDE reserves the right to terminate this Agreement without incurring any liability for payment to Contractor.

33. Kickbacks. Contractor certifies and warrants that no gratuities, kickbacks, or contingency fees were paid in connection with this Agreement, nor were any fees, commissions, gifts, or other considerations made contingent upon the award of this Agreement. If the Contractor breaches or violates this warranty, the SDE may, at its discretion, terminate this Agreement without liability to the SDE, or deduct from the agreed upon price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

34. Assumption of Risk. The Contractor shall assume the risk of any loss of state or federal funding, either administrative or program dollars, due to its failure to comply with state or federal requirements. The SDE shall notify the Contractor of any state or federal determination of noncompliance.

35. Publicity and Use of the State of Idaho Name. Any publicity given to the program or services provided herein, including, but not limited to, notices, information, pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for Contractor and related to the services and work to be performed under this Agreement, shall identify the SDE as the sponsoring agency and shall not be released without prior written approval of the SDE. Contractor shall not, prior to, in the course of, or after performance under the Agreement, use the State's or the SDE'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.

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

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

38. 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 [No. 82-73-0019K]). The State will furnish exemption certificates upon written request by the Contractor. If Contractor is required to pay any taxes incurred as a result of doing business with the State, it shall be solely responsible for the payment of those taxes. If, after the effective date of the Agreement, an Idaho political subdivision assesses, or attempts to assess, personal property taxes not applicable or in existence at the time the Agreement becomes effective, the State will be responsible for such personal property taxes, after reasonable time to appeal. In no event shall the State be responsible for personal property taxes affecting items subject to the Agreement at the time it becomes effective.

39. Compliance with Certain Laws. The Contractor shall comply with the provisions of:

- 39.1. Titles VI and VII of the Civil Rights Act of 1964, which prohibits discrimination against any employee or applicant for employment or applicant or recipient of services on the basis of race, religion, color, or national origin;
- 39.2. Section 504 of the Rehabilitation Act of 1973 or the Americans with Disabilities Act of 1990, as applicable, which prohibit discrimination on the basis of disabilities;
- 39.3. 45 C.F.R. 90, which prohibits discrimination on the basis of age;
- 39.4. Executive Order 11246, as amended, which prohibits discrimination on the basis of sex;
- 39.5. Idaho Code section 67-5909, which prohibits discrimination on the basis of race, color religion, sex, national origin, age, or disability; and
- 39.6. To the extent applicable,
 - 39.6.1. Section 306 of the Clean Air Act;
 - 39.6.2. Section 508 of the Clean Water Act;
 - 39.6.3. Executive Order 11738, which provides for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to federal contracts, grants, or loans;
 - 39.6.4. Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974;
 - 39.6.5. Title IX of the Education Amendments of 1972, which prohibits sex discrimination in any education program or activity receiving federal financial assistance;
 - 39.6.6. 43 C.F.R. 17, which prohibits discrimination in federally assisted programs of the Department of the Interior; and
 - 39.6.7. The Single Audit Act of 1984, which allows funds provided under this Agreement to be used to pay for compliance with the Single Audit Act in proportion to other funding sources available under this Agreement.
40. Certification Concerning Boycott of Israel. Pursuant to Idaho Code section 67-2346, if payments under the Agreement exceed one hundred thousand dollars (\$100,000) and Contractor employs ten or more persons, Contractor certifies that it is not currently engaged in, and will not for the duration of the Agreement 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.



SDE Special Terms and Conditions for Cloud Services

1. **Subscription.** During the term of the Agreement, the SDE may access and use the Contractor's service described in the functional and technical specifications set forth in the Agreement and the service's documentation (the "Specifications"), including without limitation all software included in and used to provide the service (the "Service").

2. **Definitions.** Unless the context clearly requires otherwise, the definitions set forth in the SDE General Terms and Conditions shall apply to terms used in these SDE Special Terms and Conditions for Cloud Services. In addition, the following terms shall have the following meanings when used in these SDE Special Terms and Conditions for Cloud Services:

2.1. "Anonymize" means removal of Personal Information and any information reasonably likely to identify a company or other business entity; provided such revised data does not include and is not subject to any key.

2.2. "Personal Information" means information that identifies, relates to, describes, is reasonably capable of being associated with, could reasonably be used to infer information about, or could reasonably be linked, directly or indirectly, with an individual person or household.

2.3. "SDE Data" means all information processed or stored through the Service by SDE or on SDE's behalf. SDE Data includes, without limitation, information provided by the SDE's employees and other users and by other third parties, other information generated through use of the Service by or on the SDE's behalf, and copies of all such information rendered onto paper or other non-electronic media. The Contractor recognizes and agrees that SDE Data may contain Personal Information and Student Data as defined in the SDE General Terms and Conditions, even if the presence of such information or data is not disclosed and even if such information or data is not labeled or otherwise identified.

2.4. "Update" means an enhancement, repair, patch, or fix to the Service.

3. **Data Ownership and License.** The Contractor recognizes and agrees that the SDE possesses and retains all right, title, and interest in and to SDE Data, and the Contractor's use and possession thereof is solely on the SDE's behalf. The SDE hereby grants the Contractor a limited license to reproduce and otherwise manage SDE Data during the Term solely as specifically authorized below in these SDE Special Terms and Conditions for Cloud Services.

4. **Service Failure or Damage.** In the event of failure of or damage to the Service caused by the Contractor, the Contractor shall restore the Service within twenty-four (24) hours after the

failure or damage is sustained, unless otherwise specified in the Agreement, or agreed to in writing by the SDE.

5. Uptime Guarantee. The Service shall be available twenty-four (24) hours per day, seven (7) days per week, and three hundred sixty-five (365) days per year (excepting reasonable downtime for maintenance).

6. Updates. The Contractor shall give a minimum forty-eight (48) hour advance written notice (or as otherwise identified in the Agreement) to the SDE of any Updates that may impact availability or performance of the Service. The Contractor must provide Updates to the SDE at no additional cost when Contractor makes such Updates generally available to its users. No Update or other change to the Service may decrease or otherwise negatively impact the Service's functionality or adversely affect the SDE's use of or access to the Service.

7. Use and Disclosure of Data. The Contractor may access and use SDE Data solely as necessary to provide the Service to the SDE, and unless it receives the SDE's prior written consent, the Contractor: (1) shall not access or use SDE Data for any purpose other than to provide the Service; and (2) shall not give any third party access to SDE Data, except subcontractors subject to section 17 (Employees and Subcontractors) of these SDE Special Terms and Conditions for Cloud Services. Notwithstanding the provisions above of this section, the Contractor may disclose SDE Data as required by applicable law or by proper legal or governmental authority. The Contractor shall give the SDE prompt notice of any such legal or governmental demand and reasonably cooperate with the SDE in any effort to seek a protective order or otherwise to contest such required disclosure, at the SDE's expense. No revision of the Contractor's privacy policy will alter the SDE's rights and remedies in these SDE Special Terms and Conditions for Cloud Services.

8. Aggregate/Anonymized Data. Notwithstanding section 7 (Use and Disclosure of Data) of these SDE Special Terms and Conditions for Cloud Services, the SDE hereby authorizes the Contractor: (1) to Anonymize SDE Data and to combine it with data from other customers into a new aggregate dataset; and (2) to use such Anonymized SDE Data as a component of such new aggregate dataset for any legal business purpose, including without limitation for distribution to third parties. Without limiting the generality of the requirements for Anonymized data below, the Contractor shall: (a) implement technical safeguards that prohibit reversal of Anonymization of SDE Data; (b) implement business processes that specifically prohibit such reversal or recreation; (c) make no attempt to achieve such reversal; and (d) implement reasonable business processes to prevent inadvertent release of Anonymized SDE Data.

9. Injunction and Enforcement. The Contractor agrees that: (1) no adequate remedy exists at law if it fails to perform or breaches any of its obligations in these SDE Special Terms and Conditions for Cloud Services; (2) it would be difficult to determine the damages resulting from its breach of these SDE Special Terms and Conditions for Cloud Services, and such breach would cause irreparable harm to the SDE; and (3) a grant of injunctive relief provides the best remedy for any such breach, without any requirement that the SDE prove actual damage or post a bond or other security. The Contractor waives any opposition to such injunctive relief or any right to such proof, bond, or other security. The Contractor's obligations in these SDE Special Terms and Conditions for Cloud Services (without limitation) apply likewise to the Contractor's successors,

including without limitation to any trustee in bankruptcy. (This section does not limit either party's right to injunctive relief from breaches not listed.)

10. Privacy and Security Law Compliance. The Contractor shall comply with all applicable laws and regulations, governing the Contractor's access to, use of, and handling of SDE Data.

11. Approved Region and Data Centers. The Contractor shall not transfer SDE Data (or allow its subcontractors to transfer SDE Data): outside the United States unless it receives the SDE's prior written consent.

12. SDE Access. The SDE may access and copy any SDE Data in the Contractor's possession at any time. The Contractor shall reasonably facilitate such access and copying promptly after the SDE's request, provided the Contractor may charge its reasonable then-standard fees for any such access and copying or for any related deconversion of data.

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

14. Deletion. Except as required by applicable law, the Contractor shall not erase SDE Data or any copy thereof without the SDE's prior written consent. Further, the Contractor shall: (1) halt SDE Data deletion promptly if the SDE informs the Contractor that any SDE Data is subject to electronic discovery or otherwise relevant to potential litigation; (2) at such times as the SDE may request (including without limitation as a result of Consumer Requests made mandatory by applicable law), promptly erase all SDE Data from all systems under the Contractor's control and direct and ensure erasure by any and all of its subcontractors that have access to SDE Data; and (3) within thirty (30) days of termination (including without limitation expiration) of the Agreement, erase all SDE Data in the Contractor's possession or control, including without limitation in the possession or control of its subcontractors, subject to the Contractor's rights above (if any) in section 8 (Aggregate/Anonymized Data) of these SDE Special Terms and Conditions for Cloud Services. In erasing SDE Data as required by the Agreement, the Contractor shall leave no data readable, decipherable, or recoverable on its computers or other media or those of its subcontractors, using the best erasure methods commercially feasible. Promptly after any erasure of SDE Data or any part of it, the Contractor shall certify such erasure to the SDE in writing.

15. General Security. Without limiting the generality of its obligations elsewhere in these SDE Special Terms and Conditions for Cloud Services, the Contractor shall exercise commercially reasonable efforts to prevent unauthorized exposure or disclosure of SDE Data.

16. InfoSec Program. the Contractor shall maintain, implement, and comply with a written data and information security program (the "InfoSec Program") that requires administrative, technical, and physical safeguards appropriate: (1) to protect the security and confidentiality of SDE Data; (2) to protect against anticipated threats or hazards to the security or integrity of SDE Data; and (3) to protect against unauthorized access to or use of SDE Data. The Contractor shall likewise ensure that the InfoSec Program includes and requires compliance with the following (without

limitation): (4) guidelines on the proper disposal of SDE Data after it is no longer needed to carry out the purposes of the Agreement, consistent with the requirements section 14 (Deletion) of these SDE Special Terms and Conditions for Cloud Services; (5) access controls on electronic systems used to maintain, access, or transmit SDE Data; (6) access restrictions at physical locations containing SDE Data; (7) encryption of electronic SDE Data consistent with then-current nationally recognized encryption standards; (8) least privilege principles for access to SDE Data, supplemented either by dual control procedures or segregation of duties; (9) regular testing and monitoring of electronic systems accessing or storing SDE Data; and (10) procedures to detect actual and attempted attacks on or intrusions into the systems containing or accessing SDE Data. The Contractor shall review the InfoSec Program and all other SDE Data security precautions regularly, but no less than annually, and update them to comply with applicable laws, regulations, technology changes, and best practices.

17. Employees and Subcontractors. The Contractor shall not permit any of its employees, subcontractors, or subcontractor employees to access SDE Data except to the extent that such individual or company needs access to facilitate the Service and is subject to a reasonable written agreement with the Contractor, or in case of employees, a reasonable written employment policy protecting such data, with terms consistent with those of these SDE Special Terms and Conditions for Cloud Services. Further, the Contractor shall not allow any individual to access SDE Data except to the extent that he or she has received a clean report with regard to each of the following:

17.1. Verifications of education and work history;

17.2. A seven (7)-year all residence criminal offender record information check; and

17.3. A seven (7)-year federal criminal offender record information check. (A clean report refers to a report with no discrepancies in education or work history and no criminal investigations or convictions related to felonies or to crimes involving identity theft or other misuse of sensitive information.)

However, subsections 17.2 and 17.3 do not apply to the extent that applicable law forbids the required record information check, provided the Contractor notifies the SDE of such restriction. Without limiting the generality of the Contractor's obligations related to subcontractors and their employees, the Contractor shall exercise reasonable efforts to ensure that each subcontractor complies with the terms of the Agreement related to SDE Data. As between the Contractor and the SDE, the Contractor shall pay any fees or costs related to each subcontractor's compliance with such terms.

18. Audits. The Contractor shall retain a certified public accounting firm to perform an annual audit of the Service's data protection features and to provide a SOC 2 Type II report, pursuant to the then-current standards of the American Institute of Certified Public Accountants (the "AICPA"). If the AICPA revises its relevant reporting standards, the Contractor shall retain such accounting firm to provide the report that then most resembles a SOC 2 Type II report. In addition, the Contractor shall annually conduct its own internal security audit and address security gaps. The Contractor shall give the SDE a copy of the most current report from each audit listed above in this section within thirty (30) calendar days of the effective date of the Agreement and thereafter annually within thirty (30) business days of completion of thereof.

19. SDE Testing. If requested by the SDE, the Contractor shall, on a quarterly basis: (1) permit security reviews by the SDE on systems storing or processing SDE Data and on the Contractor policies and procedures relating to the foregoing, including without limitation the InfoSec Program; and (2) permit testing of all security processes and procedures during the term of the Agreement, including without limitation penetration tests. Notwithstanding the foregoing, the Contractor is not required to permit any review or inspection that may compromise the security of the Contractor's other customers' data.

20. Audit and Test Results. Any report or other result generated through the tests or audits required by section 18 (Audits) or 19 (SDE Testing) of these SDE Special Terms and Conditions for Cloud Services will be the Contractor's Confidential Information pursuant to section 5 (Confidentiality) of the SDE General Terms and Conditions. If any audit or test referenced above uncovers deficiencies or identifies suggested changes in the Contractor's provision of the Service, the Contractor shall exercise reasonable efforts promptly to address such deficiencies and changes, including without limitation by revising the InfoSec Program.

21. Data Incidents. The Contractor shall implement and maintain a program for managing unauthorized disclosure of, access to, or use of SDE Data (a "Data Incident"). In case of a Data Incident, or if the Contractor suspects a Data Incident, the Contractor shall: (1) promptly, and in any case within forty-eight (48) hours, notify the SDE by telephone, in person, or by other real-time, in-person communication; (2) cooperate with the SDE and law enforcement agencies, where applicable, to investigate and resolve the Data Incident, including without limitation by providing reasonable assistance to the SDE in notifying injured third parties; and (3) otherwise comply with applicable laws governing data breach notification and response, including Idaho Code section 28-51-105. In addition, if the Data Incident results from the Contractor's breach of the Agreement or negligent or unauthorized act or omission, including without limitation those of its subcontractors or other agents, the Contractor shall (a) compensate the SDE for any reasonable expense related to notification of consumers and (b) provide one (1) year of credit monitoring service to any affected individual. The Contractor shall give the SDE prompt access to such records related to a Data Incident as the SDE may reasonably request, and such records will be the Contractor's Confidential Information pursuant to section 5 (Confidentiality) of the SDE General Terms and Conditions; provided the Contractor is not required to give the SDE access to records that might compromising the security of the Contractor's other customers. This section does not limit the SDE's other rights or remedies, if any, resulting from a Data Incident.

22. Warranties. The Contractor warrants that:

22.1. During the term of the Agreement, the Service will perform materially as described in the Specifications;

22.2. The Contractor is the owner of the Service and of each and every component thereof, or the recipient of a valid license thereto;

22.3. The Contractor has and will maintain the full power and authority to provide the Service described in the Agreement (a) without the further consent of any third party and (b) without conditions or requirements not set forth in the Agreement;

22.4. The Service is the Contractor's own original work, without incorporation of text, images, software, or other assets created by third parties, except to the extent that the SDE consents in writing;

22.5. The Contractor employs and will employ industry standard or better protections to prevent unauthorized disclosure of or access to personally identifiable information the SDE provides to the Service;

22.6. The Contractor will comply with those laws governing the privacy and security of such information and generally applicable to data processors in the jurisdictions in which the Contractor does business;

22.7. The Contractor will perform professional services in a professional and workmanlike manner;

22.8. The Contractor has the full right and authority to enter into, execute, and perform its obligations under the Agreement and no pending or threatened claim or litigation known to the Contractor would have a material adverse impact on its ability to perform as required by the Agreement;

22.9. The Service and any media used to distribute it contain no viruses or other computer instructions or technological means intended to disrupt, damage, or interfere with the use of computers or related systems;

22.10. The Service will comply with all applicable laws, including without limitation federal, national, state, provincial, and local; and

22.11. The Service does not infringe, misappropriate, or otherwise violate any intellectual property right or other right of any third party.

23. Breach of Warranty of Function. In case of breach of the warranty in subsection 22.1, the Contractor shall: (a) repair the Service; (b) replace the Service with a software or service of substantially similar functionality; or (c) if such attempts do not succeed after thirty (30) days, refund all amounts paid by the SDE for the Software, in which case the SDE shall promptly cease all use of the Service. The preceding sentence, in conjunction with the SDE's right to terminate the Agreement where applicable, states the SDE's sole remedy and the Contractor's entire liability for breach of the warranty in subsection 22.1.

24. Breach of Intellectual Property Warranties. In case of breach of the warranties in subsection 22.2 or 22.3, the Contractor, at its own expense, shall promptly:

24.1. Secure for the SDE the right to continue using the Service;

24.2. Replace or modify the Service to make it non-infringing, provided such modification or replacement does not materially degrade any functionality listed in the Specifications; or

24.3. If such remedies are not commercially practical in the Contractor's reasonable opinion, refund the fee paid for the Service for every month remaining in the term of the Agreement following the date after which the SDE ceases using the Service.

If the Contractor exercises its rights pursuant to subsection 24.3, the SDE shall promptly cease all use of the Service. This section, in conjunction with the SDE's right to terminate the Agreement where applicable, states the SDE's sole remedy and the Contractor's entire liability for breach of the warranties in subsections 22.2 and 22.3.

25. Breach of Professional Services Warranty. In case of breach of the warranty in subsection 22.7, the Contractor, at its own expense, shall promptly re-perform the professional services in question. The preceding sentence, in conjunction with the SDE's right to terminate the Agreement where applicable, states the SDE's sole remedy and the Contractor's entire liability for breach of the warranty in subsection 22.7.