



## IDAHO DEPARTMENT OF EDUCATION 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 IDE and the Contractor for the acquisition of Property and includes, but is not limited to, the IDE’s solicitation of bids, proposals, or quotations; the Contractor’s resulting bid, proposal, or quotation as accepted by the IDE; and the contract purchase order.

1.2. “Contractor” means the party to the Agreement providing the Property to the IDE 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. “IDE” means the 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 IDE 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. This Agreement shall terminate on the date set forth in Paragraph 2, unless terminated earlier by mutual written agreement, or pursuant to one of the following:

2.1 For Cause. Contractor default occurs if the Contractor fails to perform any of the covenants or conditions of this Agreement or the Contractor fails to prosecute the work so as to endanger performance of this Agreement, and the Contractor does not cure such defects in performance within ten (10) days after receipt of written notice from the Agency. If the Contractor remains in default or noncompliance at the end of that period, then the Agency may terminate this Agreement, and may pursue any legal, equitable and other remedy available to the Agency. The Agency may terminate this Agreement for cause and without any notice if the Contractor becomes insolvent or voluntarily or involuntarily bankrupt, or if a receiver or other liquidating officer is appointed for substantially all of the business of the Contractor, or if the Contractor makes an assignment for the benefit of creditors. Upon any termination for cause, the Contractor shall be liable for all expenses incurred by the Agency



due to termination, including, but not limited to, the costs of procuring substitute performance, attorneys fees, court costs, and other losses.

2.2 For Convenience. The Agency may terminate this Agreement for its convenience at any time upon 10 business days written notice. Upon such termination, the Agency's sole obligation shall be to pay for services satisfactorily rendered to the date of termination. All affected future rights and liabilities of the parties shall thereupon cease within ten (10) calendar days after notice to the Contractor of termination under this section, and the Agency shall not be liable for any penalty, expense, or liability, or for general, special, incidental, consequential, or other damages resulting from such termination.

2.3 For Fiscal Necessity. This Agreement shall in no way bind or obligate the Agency or the State of Idaho beyond the terms of a specific appropriation or grant of funds from any private or public funding entity, including but not limited to the State of Idaho's Legislature or the United States government. The Agency reserves the right in its sole judgment to terminate this Agreement in whole or in part under any of the following conditions: the funding entity does not appropriate or grant sufficient funds for payment of this Agreement; the funding entity reduces, cancels, withdraws, eliminates, or requires return of any amount of the funds necessary for this Agreement; or the Agency is required by law to discontinue or make a material alteration to the program to which this Agreement is applicable. Immediately upon the Agency's written notice to Contractor of termination for fiscal necessity, all rights and liabilities created by this Agreement shall terminate as of the effective date of the notice, except for terms denoted herein as surviving termination. The Agency shall not be liable for any general, special, incidental, consequential, or other damages, penalties, expenses, or liabilities resulting from such termination, including but not limited to the Contractor's losses arising out of work completed prior to or after the notice of termination. Any subsequent request by the Agency for the Contractor to invoice the Agency for unpaid work completed up to the date of termination shall not be construed as a guarantee or offer to pay such invoices, but rather a good faith attempt by the Agency to obtain funds from the funding entity. Absent actual receipt of funds designated for payment of this Agreement, the Agency shall have no obligation to pay any sums to Contractor after issuance of the notice of termination for fiscal necessity and shall not be required to use funds from other source to pay the Contractor.

Upon notice of termination by the Agency, the Contractor shall: (i) promptly discontinue all work, unless the termination notice directs otherwise; and (ii) promptly deliver or otherwise make available to the Agency or its designee all the Agency data (including historical data), all the Agency Confidential Information, and all completed reports, estimates, summaries and such other information and materials in the Contractor's possession as may have been accumulated by the Contractor in performing the Agreement, whether or not previously provided to the Agency. If applicable, the Contractor shall cooperate in good faith with transition to the Agency's new vendor with minimum disruption to the Agency. Upon termination, the Agency may, in its sole and exclusive discretion, take over the work or



award another party a contract to complete the work contemplated by this Agreement.

2.4 Remedies. In addition to all other remedies available to the Agency under law or equity, the Agency may, at its sole discretion, take or require any of the following remedial actions if the Contractor's performance is in material breach of any warranty, term, condition, covenant or obligation under the Agreement: (a) require the Contractor to take corrective action to ensure that performance conforms to Agreement requirements; (b) reduce payment to reflect the reduced value of the performance received; (c) require the Contractor to subcontract all or part of the service at no additional cost to the Agency; (d) withhold payment or require payment of actual damages caused by the deficiency; (e) withhold payment or require payment of liquidated damages, if liquidated damages are provided for in the Agreement; (f) secure the deficient products or services and deduct the costs of products or services from payments to the Contractor under the Agreement; (g) terminate the Agreement pursuant to any termination provisions within the Agreement; or (h) obtain injunctive relief. These remedies are cumulative to the extent they are not inconsistent, and the Agency may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever. Under Idaho Code section 6-1604, the Agency does not have authority to agree to and does not agree to waive the authority of a court of competent jurisdiction to impose punitive or exemplary damages against the Contractor for its acts or omissions under this Agreement.

3. 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 IDE in writing or provided for in the Agreement, prices shall not increase between the prior term and a renewal term. The IDE 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.

4. Confidentiality.

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

4.2. 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 IDE to any third party, except for the



following:

4.2.1. With the IDE's prior written consent.

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

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

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

4.3.1. Is or was in the possession of Contractor before being furnished by the IDE, 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 IDE.

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

4.3.3. Becomes available to Contractor on a non-confidential basis from a source other than the IDE, provided that such source is not known by Contractor to be subject to a confidentiality agreement with or other obligation of secrecy to the IDE.

5. Security of Student Data.

5.1. 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 IDE. 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.

5.2. 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.

5.3. 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 IDE. The Contractor shall immediately (within twelve (12) hours) notify the IDE 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.

5.4. Transfer and Destruction. At the conclusion of this Agreement, the Contractor shall transfer to the IDE 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 IDE 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 IDE describing the student data destroyed, date of destruction, and method of destruction.

5.5. 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.

6. Intellectual Property and Ownership of Materials. The IDE shall retain all ownership rights in any information or materials provided to the Contractor by the IDE 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 IDE and shall not be disclosed by Contractor to any third party without the prior, written consent of the IDE. 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 IDE all right, title, and interest in the Intellectual Property and require its employees and subcontractors to do the same.

7. Patent and Copyright Indemnity.

7.1. 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 advisory counsel at its own expense; and (iii) that the State shall cooperate with Contractor in a reasonable way to facilitate settlement or defense of any claim or suit.

7.2. 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.

7.3. 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.

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



this Agreement.

9. Independent Contractor. The Contractor's status under the Agreement shall be that of an independent contractor, and not that of an agent or employee. The Contractor shall not be permitted to act or speak for the IDE in any capacity unless the IDE specifically requests or authorizes in writing the Contractor to do so. The 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 IDE 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.

10. 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 IDE. Failure to provide a certificate of worker's compensation insurance may, at the IDE's option, result in termination of the Agreement or in a contract price adjustment to cover the IDE's cost of providing worker's compensation insurance required by law. Provision of workers' compensation insurance by the IDE 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.

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

12. Equipment, Tools, Materials, or Supplies. Unless otherwise provided for in the Agreement, the Contractor shall supply, at its sole expense, all equipment, tools, materials or supplies to accomplish the work to be performed.

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

14. General Indemnification.

14.1. 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.

14.2. 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 the State to indemnify, defend, and save harmless. 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).

14.3. 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).

15. 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.

16. No Authority to Bind the IDE. The Contractor has no authority to enter into contracts or agreements on behalf of the IDE. 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 IDE and Contractor in any respect.



17. 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 IDE will not accept the marking of an entire record as exempt. In addition, the IDE 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 IDE 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 IDE shall constitute a complete waiver of any and all claims for damages caused by any such release. If the IDE honors a claim of exemption by the Contractor, the Contractor shall provide the legal defense for such claim.

18. Records and Audits.

18.1. 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.

18.2. Access. The Contractor shall permit the IDE or any duly authorized agent of the IDE 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 IDE 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.

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

19.1. 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.

19.2. 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.



19.3. 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.

19.4. Effect of Non-Compliance. As provided in Idaho Code section 67-1027, the IDE 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 IDE's assignment and payment processes pursuant to Idaho Code section 67-1027.

20. 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.

21. Changes and Modifications. Except as provided herein for ministerial changes, the Agreement may be modified or amended only upon written consent of the IDE and the Contractor. In the event the IDE discovers or is notified of a typographical or other ministerial or clerical error in the Agreement, the IDE 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 IDE will make a copy of the corrected Agreement available to the Contractor upon the effectiveness of the correction.

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

23. 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.

24. Governing Law, Severability, and Survival.

24.1. 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.



24.2. 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.

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

25. 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.

26. Subcontracting. Unless otherwise allowed by the State in this Agreement, Contractor shall not, without written approval from the IDE, enter into any subcontract relating to the performance of this Agreement or any part thereof. Approval by the IDE of Contractor's request to subcontract or acceptance of or payment for subcontracted work by the IDE 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 IDE 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.

27. No Personal Liability. Contractor specifically understands and agrees that in no event shall any official, officer, employee or agent of the State or the IDE 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.

28. Force Majeure. Neither the Contractor nor the IDE 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.

29. Headings. All headings in this Agreement are inserted for convenience only and shall



not affect the meaning of any provision of this Agreement.

30. Criminal Background Check. If the 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 IDE 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 IDE reserves the right to terminate this Agreement without incurring any liability for payment to Contractor.

31. 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 IDE may, at its discretion, terminate this Agreement without liability to the IDE, or deduct from the agreed upon price or consideration, or otherwise recover, the full amount of any commission, percentage, brokerage, or contingency fee.

32. 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 IDE shall notify the Contractor of any state or federal determination of noncompliance.

33. 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 IDE as the sponsoring agency and shall not be released without prior written approval of the IDE. Contractor shall not, prior to, in the course of, or after performance under the Agreement, use the State's or the IDE'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.

34. 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.

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



36. 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 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.

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

37.1. 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;

37.2. 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;

37.3. 45 C.F.R. 90, which prohibits discrimination on the basis of age;

37.4. Executive Order 11246, as amended, which prohibits discrimination on the basis of sex;

37.5. Idaho Code section 67-5909, which prohibits discrimination on the basis of race, color religion, sex, national origin, age, or disability; and

37.6. To the extent applicable,

37.6.1. Section 306 of the Clean Air Act;

37.6.2. Section 508 of the Clean Water Act;

37.6.3. 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;



37.6.4. Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974;

37.6.5. Title IX of the Education Amendments of 1972, which prohibits sex discrimination in any education program or activity receiving federal financial assistance;

37.6.6. 43 C.F.R. 17, which prohibits discrimination in federally assisted programs of the Department of the Interior; and

37.6.7. 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.

38. 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 and that Contractor will not assign or seek to assign the Agreement or License to a person or entity operating in violation of this statute. The terms in this section defined in Idaho Code section 67-2346 shall have the meaning defined therein. Upon discovering that a contract fails to comply with the provisions of this section, the contracting authority shall have a period of ninety (90) days to obtain the certification. After such time, any contract continuing to violate the provisions of this section shall be void as against public policy.

39. Certification Concerning Ownership or Operation by China. Pursuant to Idaho Code section 67-2359, Contractor certifies that it is not currently owned or operated by the government of China and will not for the duration of the Contract be owned or operated by the government of China and that Contractor will not assign or seek to assign the Agreement or License to a person or entity operating in violation of this statute.. The terms in this section defined in Idaho Code section 67-2359 shall have the meaning defined therein. Upon discovering that a contract fails to comply with the provisions of this section, the contracting authority shall have a period of ninety (90) days to obtain the certification. After such time, any contract continuing to violate the provisions of this section shall be void as against public policy.

40. Certification Concerning Boycott of Certain Industries. Pursuant to Idaho Code section 67-2347A, 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 Contract engage in, a boycott of any individual or company because the individual or company (1) engages in or supports the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, minerals, hydroelectric power, nuclear energy, or agriculture; or (2) engages



in or supports the manufacture, distribution, sale, or use of firearms, as defined in section 18-3302(2)(d), Idaho Code, The definitions in Idaho Code section 67-2347A shall apply to the terms in this provision. Contractor further certifies that Contractor will not assign or seek to assign the Agreement or License to a person or entity operating in violation of this statute. Upon discovering that a contract fails to comply with the provisions of this section, the contracting authority shall have a period of ninety (90) days to obtain the certification. After such time, any contract continuing to violate the provisions of this section shall be void.

41. Disclosure of Abortion Related Matters. The IDE is subject to the No Public Funds for Abortion Act, Idaho Code title 18, chapter 87 (the “Act”) and State employees who intentionally violate the provisions of the Act are subject to criminal prosecution. By executing this Agreement, Contractor certifies that it is not and will not for the duration of the Agreement be an abortion provider or affiliate abortion provider as those terms are defined in Idaho Code § 18-8702. The State of Idaho may immediately terminate at its convenience the Agreement upon receipt of information that a contract is in violation of the terms of this section.