



IDAHO DEPARTMENT OF EDUCATION SPECIAL TERMS AND CONDITIONS FOR IDAHO PUBLIC ENTITIES

1. Definitions. Unless the context clearly requires otherwise, the definitions set forth in the General Terms and Conditions shall apply to terms used in these Special Terms and Conditions for Idaho Public Entities. In addition, the following terms shall have the following meanings when used in these Special Terms and Conditions for Idaho Public Entities:

1.1. “Employee” is defined as set forth in Idaho Code section 6-902.

1.2. “Political Subdivision” means any city, county, school district, highway district, port authority, taxing district, municipal corporation, Community College, or other political subdivision created by or pursuant to statute or other act of the Idaho legislature.

1.3. “Public Entity” means any State of Idaho Agency or Political Subdivision.

1.4. “State of Idaho Agency” means any State of Idaho officer, board, commission, department, division, bureau, authority, Institution, or other state agency created by or pursuant to statute or other act of the Idaho legislature.

1.5. “Institution” means Boise State University, Idaho State University, Lewis-Clark State College, or the University of Idaho.

1.6. “Community College” means the College of Eastern Idaho, North Idaho College, College of Southern Idaho, and College of Western Idaho.

2. Insurance. If the Contractor is a Public Entity, notwithstanding any term in the General Contract Terms and Conditions or the Agreement, the following shall apply:

2.1. State of Idaho Agency Insurance: If the Contractor is a State of Idaho Agency, insurance requirements in the Agreement shall be satisfied by the comprehensive liability plan provided through the Risk Management Program established under Idaho Code section 67-5733 *et seq.* and evidence of participation in workers’ compensation provided by the State Insurance Fund.

2.2. Political Subdivision Insurance: If the Contractor is a Political Subdivision, insurance requirements in the Agreement may be evidenced by a Certificate of Financial Responsibility or other evidence of a self-insurance or a pooled or cooperative insurance program for Public Entities. If any coverage required by the Agreement is provided by private insurers or the State Insurance Fund, the Political Subdivision shall provide



coverage and evidence of coverage as set forth in the General Terms and Conditions and Addendum: Insurance Requirements for Political Subdivisions with Private Insurers.

3. Contract Relationship. If the Contractor is a Public Entity, the indemnification and save harmless obligations set forth in section 8 (Independent Contractor) of the General Terms and Conditions shall apply only to the extent permitted by Idaho Code section 59-1015.

4. Allocation of Risk. If the Contractor is a Public Entity, the following terms shall replace section 13 (General Indemnification) of the General Terms and Conditions:

4.1. State of Idaho Agency Contractors: The Contractor and the IDE shall be responsible only for the acts, omissions, or negligence of such Public Entity's own Employees. The parties acknowledge that all parties participate in the State of Idaho Risk Management Program comprehensive liability plan utilizing the Retained Risk Account ("Risk Program"). Each of the parties is obligated to notify the Division of Risk Management and the other party upon receipt of notice or in the event it has knowledge of any claim or damage arising out of the Agreement.

Nothing in the Agreement shall extend the tort responsibility or liability of any Public Entity beyond that required by the Idaho Tort Claims Act, Idaho Code section 6-901 *et seq.* Any covered third party tort liability claim, suit, or loss arising from the Agreement shall be allocated to the parties by the Division of Risk Management for purposes of the respective loss experiences and subsequent allocation of self-insurance assessments.

Each party shall be responsible for damage to property of the other parties caused by its Employees in the performance of the Agreement. If property damage arises in the performance of the Agreement and is covered by the Risk Program, the Division of Risk Management shall charge the damage or loss to the responsible State of Idaho Agency's loss history, and the responsible party shall pay the deductible, if any.

If a property claim or damage is not covered by the Risk Program, the responsible Idaho Public Agency shall pay the costs arising from such claim or damage to the extent funds are legally available therefore. If a claim or damage arises from more than one party's performance of the Agreement or is not allocable to any party, each party shall pay the costs to such party arising from the claim or damage.

4.2. Political Subdivision Contractors: The Contractor and the IDE shall be responsible only for the acts, omissions, or negligence of such Public Entity's own Employees. Nothing in the Agreement shall extend the tort responsibility or liability of any Public Entity beyond that required by the Idaho Tort Claims Act, Idaho Code section 6-901 *et seq.* Each party shall be responsible for damage to property of the other party caused by its Employees in the performance of the Agreement. If a property claim or



damage is not covered by the party's self-insurance or other property coverage, the responsible party shall pay the costs arising from such claim or damage to the extent funds are legally available therefore. If a claim or damage arises from more than one party's performance of the Agreement or is not allocable to any party, each party shall pay the costs to such party arising from the claim or damage.

5. Patent and Copyright Indemnity. If the Contractor is a Public Entity, the indemnification and save harmless obligations set forth in section 6 (Patent and Copyright Indemnity) of the General Terms and Conditions shall apply only to the extent permitted by Idaho Code section 59-1015.

6. Limitations. If the Contractor is a Public Entity, the following shall apply: nothing in this Agreement shall be construed as limiting or expanding the statutory or regulatory responsibilities of the parties in performing functions granted to them by law. Each and every provision of this Agreement is subject to the laws and regulations of the State of Idaho and to the laws and regulations of the United States.

7. Ownership of Materials.

7.1. If the Contractor is an Institution or Community College, notwithstanding any term in the General Contract Terms and Conditions or the Agreement, any intellectual property developed under this Agreement will become the property of the Institution or Community College, but will be licensed to the IDE at no charge for its non-commercial use in perpetuity. A copy of all such materials shall be submitted to the IDE upon completion of the work.

7.2. If the Contractor is a Public Entity other than an Institution or Community College, notwithstanding any term in the General Contract Terms and Conditions or the Agreement, any intellectual property developed under the Agreement shall be jointly owned by the IDE and the Public Entity. The Public Entity will provide the IDE with a copy of all such materials upon completion of the work.



IDAHO DEPARTMENT OF EDUCATION ADDENDUM: INSURANCE REQUIREMENTS FOR POLITICAL SUBDIVISIONS WITH PRIVATE INSURERS

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 Idaho Department of Education 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. The 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.

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

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.



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.

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.

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. 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.