

STATE OF IDAHO CONTRACT TERMS AND CONDITIONS

ARTICLE 1 – GENERAL TERMS AND CONDITIONS

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

- 1.1.1. “Agency” means the board, commission, department, agency, or office of the State receiving the Property provided by the Contractor pursuant to this Contract.
- 1.1.2. RESERVED
- 1.1.1. RESERVED
- 1.1.2. “Data Breach” means any unauthorized access to or acquisition of Non-Public State Data following a Security Incident that compromises the security, confidentiality, or integrity of the Non-Public State Data, or the ability of the State to access the Non-Public State Data.
- 1.1.3. “Non-Public State Data” means State Data that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the State because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information. Non-Public State Data includes, but is not limited to, Personal State Data.
- 1.1.4. “Personal State Data” means State Data, which alone or in combination with other data, includes information relating to an individual that identifies the individual by name, identifying number, mark, or description that can be readily associated with a particular individual and which is not a public record. Personal State Data includes but is not limited to the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver’s license, passport); financial account information, including account number, credit or debit card numbers; Protected Health Information (PHI) relating to a person; or education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv).
- 1.1.5. “Property” means goods, services, parts, supplies, and equipment, both tangible and intangible, including but not limited to, designs, plans, programs, systems, techniques, and any rights or interests in such property.
- 1.1.6. “Protected Health Information (PHI)” means individually identifiable health information held or transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI also includes but may not be limited to information that is a subset of health information, including demographic information collected from an individual, and 1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and 2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; and a) that identifies the individual; or b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

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

1.2. Term

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

1.3. Price

- 1.3.1. Price. The pricing for this Contract is included in **Exhibit B – Price Sheet.**
- 1.3.2. Price Increases. Prices must remain firm for the first one (1) year term of this Contract. Thereafter the Contractor may request adjustments to prices no more frequently than annually. Each time that the Contractor wishes to adjust prices, the Contractor must submit a written request to the Purchasing Activity no later than sixty (60) calendar days prior to the desired date for implementing the adjusted prices. The Purchasing Activity reserves the right to require written justification for the requested adjustments of prices from the Contractor. The written justification must satisfy the Purchasing Activity that an adjustment of prices is needed, or the request may be rejected in whole or part, and

prices shall not be adjusted (except in part, if allowed by IDJC) for the next one (1) year period.

1.3.3.

1.4. Termination and Remedies

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

1.4.2. Effect of Termination

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

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

1.4.3. Remedies. In addition to any remedies available to the State under law or equity, the State may, at its sole discretion, take or require one (1) or more of the following remedial actions if the Contractor's performance is deficient and does not comply with this Contract requirements: 1) require the Contractor to take corrective action to ensure that performance conforms to Contract requirements; 2) reduce payment to reflect the reduced value of the performance received; 3) require the Contractor to subcontract all or part of the service at no additional cost to the State; 4) withhold payment or require payment of actual damages caused by the deficiency; 5) withhold payment or require payment of liquidated damages, if liquidated damages are provided for in this Contract; 6) secure the deficient products or services and deduct the costs of products or services from payments to the Contractor under this Contract; 7) require the Contractor to

remove, at its sole expense, any non-conforming or deficient Property from the State's premises; or 8) terminate this Contract pursuant to any termination provisions within this Contract. These remedies are cumulative to the extent the remedies are not inconsistent, and the State may pursue any remedy or remedies singly, collectively, successively or in any order whatsoever.

1.5. Changes and Modifications

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

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

1.7. Contract Relationship; Workers' Compensation Insurance

- 1.7.1. Independent Contractor. Contractor's status under this Contract shall be that of an independent contractor, and not that of an agent or employee. Contractor is solely liable for all labor, taxes, insurance, required bonding, and other expenses, except as specifically stated herein. Contractor shall exonerate, indemnify and hold the State harmless from and against and assume full responsibility for payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, social security, workman's compensation and income tax laws with respect to Contractor or Contractor's employees engaged in performance under this Contract.
- 1.7.2. Client Not Responsible for Workers' Compensation. Because the Contractor is engaged in its own independent contracting business and is not an employee of the Agency, the Agency will not obtain workers' compensation insurance for the Contractor or its employees. The Contractor agrees to obtain workers' compensation coverage as required

by law for itself and employees, and to furnish a copy of its certificate of workers' compensation insurance to the Agency upon request. Failure to provide proof of insurance may be cause to terminate this Contract.

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

1.9. General Indemnification and Insurance

- 1.9.1. Contractor's Indemnification. Contractor shall indemnify, defend, and save harmless the State, its officers, agents, employees, and volunteers from and against any and all liability, claims, damages, losses, expenses, actions, settlements, attorneys' fees, and suits whatsoever caused by, arising out of, or in connection with Contractor's acts or omissions under this Contract or Contractor's failure to comply with any state or federal statute, law, regulation, or rule during performance or applicable to the performance of this Contract.
- 1.9.2. Actions on Tender; Limitation. Upon receipt of the State's tender of indemnity and defense, Contractor shall immediately take all reasonable actions necessary, including, but not limited to, providing a legal defense for the State, to begin fulfilling its obligation to indemnify, defend, and save harmless the State. Contractor's indemnification and defense liabilities described herein shall apply regardless of any allegations that a claim or suit is attributable in whole or in part to any act or omission of the State under this Contract. Contractor shall not be required to hold the State harmless for damages attributed to the State in a final order issued by a court of competent jurisdiction. If it is determined by a final judgment that the State's negligent act or omission is the sole proximate cause of a suit or claim, the State, to the extent funds are legally available therefore, shall reimburse Contractor for reasonable defense costs attributable to the defense provided by any Special Deputy Attorney General appointed pursuant to section 1.9.3.
- 1.9.3. Requirements of Defense. Any legal defense provided by Contractor to the State under this section must be free of any conflicts of interest, even if retention of separate legal counsel for the State is necessary. Any attorney appointed to represent the State must first qualify as and be appointed by the Attorney General of the State of Idaho as a Special Deputy Attorney General pursuant to Idaho Code Sections 67-1401(13) and 67-1409(1).
- 1.9.4. Insurance. Contractor shall furnish and maintain insurance coverages as set forth on **Exhibit C – Insurance Requirements** of this Contract.

1.10. Patent and Copyright Indemnity

- 1.10.1. Indemnity. Contractor shall indemnify and hold the State harmless and shall defend at its own expense any action brought against the State based upon a claim of infringement of a United States' patent, copyright, trade secret, or trademark for Property purchased

under this Contract. Contractor shall pay all damages and costs finally awarded and attributable to such claim, but such defense and payments are conditioned on the following: 1) that Contractor shall be notified promptly in writing by the State of any notice of such claim; 2) that Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise and State may select at its own expense advisory counsel; and 3) that the State shall cooperate with Contractor in a reasonable way to facilitate settlement or defense of any claim or suit.

- 1.10.2. Limitation. Contractor shall have no liability to the State under any provision of this clause with respect to any claim of infringement that is based upon: 1) the combination or utilization of the Property with machines or devices not provided by the Contractor other than in accordance with Contractor's previously established specifications unless such combination or utilization was disclosed in the Solicitation or the specifications; 2) the modification of the Property unless such modification was disclosed in the Solicitation or the specifications; or 3) the use of the Property not in accordance with Contractor's previously established specifications unless such use was disclosed in the Solicitation or the specifications.
- 1.10.3. Option to Replace, Modify, or Refund. Should the Property become, or in Contractor's opinion be likely to become, the subject of a claim of infringement of a United States' patent, the Contractor shall, at its option and expense, either procure for the State the right to continue using the Property, to replace or modify the Property so that it becomes non-infringing, or to grant the State a full refund for the purchase price of the Property and accept its return.

1.11. Billing

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

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

- 1.12.1. Application of Idaho Statutes. Assignments, mergers, consolidations, and changes of the Contractor under this Agreement are subject to the provisions of Idaho Code sections 67-1027 and 67-9230.
- 1.12.2. Consent to Assign. Contractor shall not assign this Contract, or its rights, obligations, or any other interest arising from this Contract, or delegate any of its performance obligations, without the express written consent of the Purchasing Administrator and the Idaho Board of Examiners.
- 1.12.3. Consent to Change of Contractor. Any entity into which Contractor may be merged or with which it may be consolidated, any entity resulting from any merger or consolidation to which Contractor is a party, or any entity succeeding to the business of Contractor shall not become the successor of Contractor without first obtaining the prior written approval of the Purchasing Administrator and the Idaho State Board of Examiners.

1.12.4. Effect of Non-Compliance. At the option of the Purchasing Administrator, transfer without approval required by this section shall cause the annulment of this Contract. All rights of action for any breach of this Contract are reserved to the State notwithstanding such annulment. As provided in Idaho Code section 67-1027, the State shall not be obligated to pay the assignee until the assignment is recognized by the Idaho Board of Examiners and no damages shall accrue to Contractor or the assignee arising from the State's assignment and payment processes pursuant to Idaho Code sections 67-1027 and 67-9230.

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

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

1.15. State's Confidential Information

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

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

1.15.2.1. With the State's prior written consent;

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

- 1.15.2.3. In response to any electronic discovery, litigation holds, discovery searches and expert testimonies related to the State's data under this Contract, or which in any way might reasonably require access to the State's data and then only upon timely notice to the State, unless prohibited by law from making such contact.
- 1.15.3. Limitation. Confidential Information shall not include data or information that:
 - 1.15.3.1. Is or was in the possession of Contractor before being furnished by the State, provided that such information or other data is not known by Contractor to be subject to another confidentiality agreement with or other obligation of secrecy to the State;
 - 1.15.3.2. Becomes generally available to the public other than as a result of disclosure by Contractor; or
 - 1.15.3.3. Becomes available to Contractor on a non-confidential basis from a source other than the State, provided that such source is not known by Contractor to be subject to a confidentiality agreement with or other obligation of secrecy to the State.

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

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

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

The State reserves the right to terminate this Contract in whole or in part (or any order placed under it) if, in its sole judgment, the Legislature of the State of Idaho fails, neglects, or refuses to appropriate

sufficient funds as may be required for the State to continue such payments, or requires any return or “give-back” of funds required for the State to continue payments, or if the Executive Branch mandates any cuts or holdbacks in spending, or if funds are not budgeted or otherwise available, or if the State discontinues or makes a material alteration of the program under which funds were provided. The State shall not be required to transfer funds between accounts in the event that funds are reduced or unavailable.

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

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

For notice to the Agency, the address, phone and facsimile number are:

Idaho Department of Juvenile Corrections
Attn: Purchasing Agent
954 W. Jefferson St.
Boise, ID 83702
OR
P.O. Box 83720
Boise, ID 83720-0285
Phone: 208-334-5100
Fax: 208-334-5120

Additionally, for notice to the Agency, the email address to use is jason.urquhart@idjc.idaho.gov, courtesy copied to amy.anderson@idjc.idaho.gov.

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

1.21. Required Certifications.

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

engaged in, and will not for the duration of this Contract engage in, a boycott of goods or services from Israel or territories under its control. The terms in this section defined in Idaho Code section 67-2346 shall have the meaning defined therein.

- 1.21.2. Ownership or Operation by China. Pursuant to Idaho Code section 67-2359, Contractor certifies that it is not currently owned or operated by the government of China and will not for the duration of this Contract be owned or operated by the government of China. The terms in this section defined in Idaho Code section 67-2359 shall have the meaning defined therein.
- 1.21.3. Boycott of Various Industries. Pursuant to Idaho Code section 67-2347A (effective July 1, 2024), if payments under this Contract exceed one hundred thousand dollars (\$100,000) and Contractor employs ten (10) or more persons, Contractor certifies that it is not currently engaged in, and will not for the duration of this Contract engage in, a boycott of any individual or company because the individual or company: a) engages in or supports the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, minerals, hydroelectric power, nuclear energy, or agriculture; or b) engages in or supports the manufacture, distribution, sale, or use of firearms. The terms in this section defined in Idaho Code section 67-2347A shall have the meaning defined therein, including through reference to another section of Idaho Code.
- 1.21.4. No Public Funds for Abortion Act Acknowledgement Receipt. The Purchasing Authority certifies that it has sent a letter to Contractor identifying the Purchasing Authority's obligations under Idaho's No Public Funds for Abortion Act, and the Purchasing Authority has received an acknowledgement from the Contractor.

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

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

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

1.25. Entire Agreement; Headings

- 1.25.1. Complete Statement of Terms. This Contract constitutes the entire agreement between the State and Contractor and shall supersede all previous proposals, oral or written, negotiations, representations commitments, and all other communications between the parties.
- 1.25.2. Conflicting and Supplemental Terms. Unless specifically accepted by the Purchasing Authority in writing, terms in documents outside of this Contract shall be of no force and effect.
- 1.25.3. Headings. All headings in this agreement are for convenience only and shall not affect the meaning of any provision hereof.

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

1.27. Severability; Survival

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

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

1.29. Electronic Signature; Counterparts

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

1.30. Priority of Documents. This Contract consists of and precedence is established by the order of the following documents:

1. The state of Idaho-issued document that the parties sign to execute this Contract;
2. The state of Idaho sourcing event (Solicitation); and,
3. The Contractor's signed quote.

The documents set forth above are complementary and what is required by one shall be binding as if required by all. However, in the case of any conflict or inconsistency arising under the documents, a lower numbered document 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 any Quote, bid or Proposal from the Contractor differ from the terms or conditions in the State of Idaho Contract Terms and Conditions, the terms and conditions in the State of Idaho Contract Terms and Conditions shall apply. Where terms and conditions specified in any Quote, bid or Proposal from the Contractor supplement the terms and conditions in the State of Idaho Contract Terms and Conditions, the supplemental terms and conditions shall apply only if specifically accepted by the Agency in writing.

1.31 Delivery. The Contractor must deliver weighted blankets to the Juvenile Correction Center (JCC) that placed the order within thirty (30) calendar days after an order is placed.

Each individual shipment must be accompanied with a packing slip located on the container (not in the container) which provides, at a minimum, the following information: name of person that placed the order, purchase order number (if ordered using a purchase order), ship to and bill to information, and the quantity and sizes of weighted blankets in the container. If a packing slip is not included, the order may be rejected (in part or whole), and, if so, the Contractor must, at its expense, pick up weighted blankets that the JCC rejects. For each occurrence, the Contractor must do this within seventy-two (72) hours of notification by the JCC.

As orders are placed under the Contract, the Contractor shall deliver weighted blankets meeting the specifications found within **Exhibit A - Specifications**, FOB Destination, to each JCC listed in this section, coordinating delivery with the identified contact or designee. Contacts and locations are:

JCC-Lewiston, 140 Southport Ave., Lewiston, ID 83501
Contact: Melinda Sonnen
Phone: 208-799-5116
Fax: 208-799-5086
Email: melinda.sonnen@idjc.idaho.gov

JCC-Nampa, 1650 11th Ave. North, Nampa, ID 83687
Contact: Michaela Millstein
Phone: 208-465-8443
Fax: 208-465-8484
Email: michaela.millstein@idjc.idaho.gov

JCC-Saint Anthony, 2220 E. 600 N., Saint Anthony, ID 83445
Contact: Karen Muir
Phone: 208-624-3462
Fax: 208-624-0973
Email: karen.muir@idjc.idaho.gov

1.32 Backorders. IDJC reserves the right to cancel backordered weighted blankets (weighted blankets that aren't delivered within thirty (30) calendar days after an order is placed) from orders and purchase those weighted blankets outside of the Contract. The right to purchase outside of the

Contract also applies when the Contractor identifies before delivery that weighted blankets won't be delivered within thirty (30) calendar days. Additionally, the right to cancel weighted blankets from an order and to purchase outside of the Contract also applies when weighted blankets are rejected due to not meeting quality standards (see section 1.34, Quality and Returns), specifications or both.

1.33 Substitutions. Substitutions of weighted blankets ordered must not occur unless approved by the JCC in advance. Substitution must be a like item of equal or greater quality to the weighted blanket ordered, meeting or exceeding specifications and charged to the JCC at the price of the weighted blanket ordered or less. If the Contractor's proposed substitution is not of equal or lesser price than the ordered weighted blanket, or (in the sole discretion of the JCC) a like weighted blanket of equal or greater quality then the JCC may disapprove the substitution. If the JCC disapproves the substitution, the JCC may cancel the order and purchase the weighted blankets for the then current order outside of the Contract.

1.34 Quality and Returns.

1.34.1 IDJC has an interest in the weighted blankets that it provides to the juveniles in its custody are of sufficient quality so that the juveniles that use those items are satisfied with them. Because of this interest, IDJC requires that the Contractor provide weighted blankets that are of first-rate quality. **"Seconds" or flawed weighted blankets are not acceptable.**

1.34.2 The Contractor must, at its expense, pick up weighted blankets that IDJC rejects due to not meeting the quality requirements in the Contract, due to not meeting specifications or both. For each occurrence, the Contractor must do this within seventy-two (72) hours of notification by IDJC.

1.35 Invoices. The Contractor must submit invoices to the contact (see section 1.31, Delivery) for the JCC to which delivery was made after orders are delivered. The minimum information that must appear on each invoice is:

- 1.35.1 Contract number;
- 1.35.2 JCC name;
- 1.35.3 Item manufacturer and model number;
- 1.35.4 Sizes for each weighted blanket delivered;
- 1.35.6 Item unit price;
- 1.35.7 Item extended price (unit price times quantity delivered);
- 1.35.8 Total invoiced;
- 1.35.9 Delivery date; and,
- 1.35.10 Any backorder information.

1.36 Customer Service. The Contractor must provide unlimited phone and email access to customer service throughout the entire term of the Contract, available for contact for no less than 9:00 a.m. to 5:00 p.m. Mountain time every Monday through every Friday, excepting federal holidays (business days). The Contractor's phone for customer service must have voice mail. Customer service issues include but are not limited to quality, backorders, returns and inquiries about order status.

Response time to calls and emails must be by the next business day after IDJC has placed the call or has sent the email. If calls are made or emails are sent to the Contractor between 3 p.m. and 8 a.m. Mountain time during the days contemplated in this section 1.36, the Contractor must respond no later than 2 p.m. Mountain time the next business day.

1.37 Ordering Method. No later than fifteen (15) calendar days after the Contract is awarded, the Contractor must provide an email address that can be IDJC can use to place orders. Orders will be placed without a purchase order, and without use of a government credit card.

ARTICLE 2 – TERMS APPLICABLE TO THE PURCHASE OF GOODS

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

2.1. Property – Goods

- 2.1.1. Specifications. Contractor shall deliver all Property in accordance with **Exhibit A – Specifications.** Contractor’s failure to deliver the Property as provided in this Contract is a material breach of this Contract.
- 2.1.2. New and Unused Property. Unless otherwise provided in the Specifications, all Property delivered by Contractor shall be new, unused, not previously installed or demonstrated, and shall be within current production inventory of the manufacturer or actively being marketed by the Contractor.
- 2.1.3. Components. Unless otherwise provided in the Specifications, all Property delivered by Contractor shall:
 - 2.1.3.1. Include all components and accessories that the manufacturer identifies or lists as “standard.”
 - 2.1.3.2. Include all components, hardware and parts necessary for complete and proper assembly, installation and operation of the Property.

2.2. Acceptance

- 2.2.1. No Installation of Property. When this Contract does not require installation, Acceptance shall occur fourteen (14) calendar days after delivery, unless the State has notified the Contractor in writing that the Property does not meet the specifications.
- 2.2.2. Installed Property. When this Contract requires installation, acceptance shall occur fourteen (14) calendar days after completion of installation, unless the State has notified the Contractor in writing that the products(s) delivered does not meet the specifications or that the Property is not installed correctly.
- 2.2.3. Revocation of Acceptance. The State may revoke acceptance as provided by Idaho Code section 28-2-608 and as provided in Paragraph 2.3 of this Article 2. Upon revocation, the State shall deliver written notice of revocation to Contractor specifying the defect or nonconformance, whether the Contractor is permitted to cure the defect or nonconformance and the time period for cure, if permitted.

2.2.4. Effect of Rejection or Revocation of Acceptance. If the State rejects the Property or revokes acceptance of the Property, Contractor shall refund all payments the State made to the Contractor for the Property and shall, at no cost to the State, remove the Property in the State's possession as provided in the notice of rejection or revocation. If no date of removal is specified, Contractor shall remove the Property within fourteen (14) calendar days of the notice.

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

2.4. Warranty. Contractor warrants that the Property shall conform to or exceed this Contract's requirements and shall be fit for ordinary use, of good quality, with no material defects. Contractor's warranty shall include replacement, repair, and any associated labor for the period of time required by the specifications or by the standard manufacturer or Contractor provided warranty, whichever is longer. If Contractor is not the manufacturer of the Property, Contractor shall ensure that the full, unadulterated, and undiminished manufacturer warranty is provided by the manufacturer to the State at no additional cost to the State. If a conflict or inconsistency exists between the manufacturer's warranty and Contractor's warranty, the warranty that provides the greatest benefit and protection to the State shall prevail.

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

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

ARTICLE 3 – TERMS APPLICABLE TO THE PURCHASE OF SERVICES

RESERVED

**ARTICLE 4 – TERMS APPLICABLE TO THE PURCHASE OF TECHNOLOGY
RESERVED**

**ARTICLE 5 - TERMS APPLICABLE TO STATEWIDE CONTRACTS
RESERVED**