IDAHO STATE UNIVERSITY SPECIAL TERMS AND CONDITIONS FOR CUSTOMIZED SOFTWARE AND RELATED SERVICES

1. **DEFINITIONS:** Unless the context clearly requires otherwise, the definitions set forth in the *Idaho State University Standard Contract Terms and Conditions* shall apply to terms used in these *Idaho State University Special Terms and Conditions for Customized Software and Related Services*. In addition, the following terms shall have the following meanings when used in these *Idaho State University Special Terms and Conditions for Customized Software and Related Services*:

    A. Customized Software – Software that is designed and created for Idaho State University or modified for Idaho State University and related documentation, including training manuals, flowcharts, data dictionaries, user manuals and operation manuals. The modification of Software shall include alteration of the object code or source code of the Software.

    B. Software – 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 operating systems, assemblers, compilers, interpreters, data management systems, utility programs, and ADPE Maintenance/Diagnostics programs.

    C. Update – An update, upgrade, enhancement, repair, patch or fix to Customized Software produced by or for the Contractor and offered for use, purchase, or license to Contractor's customers.

2. **SOFTWARE LICENSE:** Contractor grants Idaho State University a perpetual, nontransferable, irrevocable, and nonexclusive license to use, maintain, and enhance the Customized Software.

    A. Idaho State University's license includes the right to all Updates. The payments paid by Idaho State University under the Agreement shall be the sole source of payment for Updates during the term of the Agreement. Following the termination or expiration of the Agreement, the Contractor may charge Idaho State University the lesser of the lowest fee charged to other recipients of the Update or a commercially reasonable fee for the Update. Contractor shall provide notice to Idaho State University when an Update is offered to Contractor's customers.

    B. Idaho State University is permitted to make a single archive copy of the Customized Software. The archive copy shall contain the same copyright notice and proprietary markings that are on the original Customized Software.

    C. At the option and expense of Idaho State University, Contractor shall establish a Software escrow on terms reasonably acceptable to Idaho State University.

3. **CONTRACTOR REPRESENTATIONS AND WARRANTIES:** Contractor represents and warrants that:

    A. The Contractor has the right and authority to make the modifications to Software, if any, made for Idaho State University under the Agreement.

    B. The Customized Software does not infringe upon a United States' patent, copyright, trade secret or trademark.

    C. The Contractor will provide Property under the Agreement in a timely and workmanlike manner.

    D. The Contractor shall maintain network security that, at a minimum, includes network firewall provisioning, intrusion detection, and regular third party vulnerability assessments, and that conforms to generally recognized industry standards and best practices that the Contractor applies to its own network.

E. The Contractor shall provide, maintain, and support its Software or Customized Software and subsequent updates, upgrades, and bug fixes such that the Software or Customized Software is, and remains secure from vulnerabilities.

F. The Contractor shall preserve the confidentiality, integrity, and accessibility of Idaho State University data with administrative, technical, and physical measures that conform to generally recognized industry standards and best practices that the Contractor applies to its own processing environment, including but not limited to timely application of patches, fixes, and updates to operating systems and applications.

G. All Idaho State University data will be stored, processed, and maintained solely on designated target servers and that no Idaho State University data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, unless that device or storage medium is in use as part of the Contractor's designated backup and recovery processes and encrypted.

H. The Contractor shall ensure that any and all electronic transmission or exchange of system and application data with Idaho State University and/or any other parties expressly designated by Idaho State University shall take place via secure means (using HTTPS or SFTP or equivalent) and in accordance with data re-use in J. below.

I. The Contractor shall store all Idaho State University backup data as part of its designated backup and recovery processes in encrypted form, using a commercially supported encryption solution, and any data defined as "personally identifiable information" stored on any portable or laptop computing device or any portable storage medium will likewise be encrypted. Encryption shall be deployed with no less than a 128-bit key for symmetric encryption and a 1024 or larger bit key length for asymmetric encryption.

J. The Contractor shall only use Idaho State University data expressly and solely for the purposes enumerated in the agreements with Idaho State University, and data shall not be distributed, repurposed, or shared across other applications, environments, or business units of the Contractor unless specifically agreed to in writing by Idaho State University.

K. The Contractor hereby warrants that the products or services to be provided under this agreement comply with Idaho State University accessibility requirements, and will provide equal and effective access to all individuals in accordance with federal and state laws and regulations, including, but not limited to the Americans with Disabilities Act of 1990 as amended, and Sections 504 and 508 of the Rehabilitation Act of 1973 as amended. Contractor agrees to promptly respond to and resolve any complaint regarding accessibility of its products or services that are brought to its attention. Contractor further agrees to defend, indemnify, and hold harmless Idaho State University and the State of Idaho from any claim arising out of its failure to comply with the previously mentioned requirements. Failure to comply with these requirements shall constitute a breach and be grounds for termination of this agreement.

4. ACCEPTANCE: When the Agreement does not include installation, acceptance shall occur ninety (90) days after delivery of the Customized Software to Idaho State University. When the Agreement includes installation, acceptance shall occur ninety (90) days after the completion of installation by the Contractor. Acceptance shall not occur if Idaho State University notifies the Contractor in writing within the applicable ninety (90) day period that the Customized Software does not satisfy the terms of the Agreement or otherwise fails to pass test procedures or programs established under the Agreement.

5. SOFTWARE WARRANTY:
A. The Contractor warrants that:

(i) The tapes, diskettes or other media containing the Customized Software will be free of defects in materials and workmanship under normal use for ninety (90) days from the delivery date.

(ii) For one (1) year following acceptance, as more particularly described in section 4, the Customized Software will perform in accordance with the specifications and acceptance criteria set forth in the Agreement.

(iii) The Customized Software is not incompatible with the Software and hardware used by Idaho State University and described in the Agreement. Incompatibility shall include the creation of errors in data, the loss of data, the inability to access data, and delays and stoppages in the performance of work by the Contractor or Idaho State University arising from the Customized Software.

B. Contractor shall repair or replace, within a commercially reasonable time and at its sole cost and expense, all Customized Software failing to comply with the warranties provided in this section 5. If the Contractor fails to repair or replace the Customized Software within a commercially reasonable time, Idaho State University may, in its sole discretion, act to repair or replace the Customized Software and the Contractor shall reimburse Idaho State University for all costs incurred by Idaho State University to repair or replace the Customized Software.

C. EXCEPT AS STATED IN THIS SECTION 5, CONTRACTOR MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AND SPECIFICALLY DISCLAIMS ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6. OWNERSHIP OF MATERIALS AND INFORMATION: Except as specifically provided otherwise in the Agreement, Idaho State University shall own and retain all rights to hardware and other goods purchased by Idaho State University under the Agreement and to information, materials, procedures, processes and data developed, derived, documented, stored, or furnished by the Contractor under the Agreement. Upon termination of the Agreement, the Contractor shall erase, destroy, and render unrecoverable all Idaho State University data and shall certify in writing that these actions have been completed within thirty (30) days of termination or seven (7) days of written request unless otherwise agreed by the parties in writing.

7. INSURANCE: Contractor shall maintain cyber liability insurance with limits not less than $2,000,000 per occurrence or claim, $2,000,000 aggregate. Coverage shall include, but not be limited to claims involving infringement of intellectual property such as infringement of copyright, trademark, trade dress, invasion of privacy, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion, and failure of network security. The policy shall provide coverage for breach response costs, regulatory fines and penalties, and credit monitoring expenses. If Contractor maintains broader coverage and/or higher limits, Idaho State University shall be entitled to such broader coverage and/or higher limits maintained by the Contractor. Any available insurance in excess of the specified minimum limits of insurance and coverage shall be available to Idaho State University. The date of inception of the policy must be no later than the first date of the anticipated work under the Agreement. It shall provide coverage for the duration of the Agreement and shall have an expiration date no earlier than thirty (30) days after the anticipated completion of the contract. The policy shall provide an extended reporting period of not less than twenty-four (24) months from the expiration date of the policy, if the policy is not renewed.

8. BREACH NOTIFICATION: Contractor shall comply with all applicable laws, rules, and regulations that require the notification of individuals in the event of an unauthorized release of personally identifiable information or other event requiring notification. In the event of a breach of any of Contractor's security obligations, or other event requiring notification under applicable law, Contractor agrees to notify Idaho State University by telephone and e-mail of such event within twenty-four (24) hours of discovery, and assume responsibility for informing all such individuals in accordance with applicable law, rules, and regulations.

9. INDEMNIFICATION: Contractor shall defend, indemnify, and hold Idaho State University and the State of Idaho harmless from and against any liability, loss, claim, damage, cost, fines, penalties, or expense (including reasonable attorneys' fees and credit monitoring) arising out of or in connection with the Contractor's, or its third party service providers' failure to meet its obligations under this Agreement for risks that include, but are not limited to theft, loss or misuse of data, and release of personally identifiable information.

10. AUDIT: Idaho State University or an appointed audit firm has the right to audit Contractor and the Contractor's subcontractors or affiliates that provide a service for the processing, transport, or storage of Idaho State University's data. Idaho State University will provide a minimum of ten (10) business days notice to the Contractor. The Contractor shall allow the auditors access to the materials and/or the site, and make all necessary employees or subcontractors available. Audits shall be conducted at Idaho State University's expense, except where the audit reveals material noncompliance with contract specifications, in which case the cost will be borne by the Contractor.