

ATTACHMENT C

IDSTF AGREEMENT TERMS AND CONDITIONS

Rev. 2026-02-18

1. **IDSTF PROGRAM AND PURPOSE OF AGREEMENT.** The Industry-Driven Skills Training Fund (IDSTF) of the Idaho Department of Labor (IDOL) works to scale efforts to support training opportunities for full-time employees and supplement employers' training efforts while not supplanting or competing with money available through other existing training programs. The purpose of this Agreement is to set forth the terms and conditions for employers who participate in that program.

2. **EMPLOYER'S RESPONSIBILITIES.** Employer agrees to:
 - A. Provide skills training in advanced manufacturing, mineral extraction, nuclear energy – or be an employer contributing to construction activities of identified industry partners and providing skills training in career pathways toward middle- to high- skilled occupations;

 - B. Ensure that employees being trained with IDSTF funds are full-time employees, at least 17 years old, and not currently enrolled in secondary school within a local educational agency (training of temporary or part-time employees shall not be supported with IDOL funding);

 - C. Provide training in accordance with the Training Plan, pay the full cost of training, and meet Training Plan milestones prior to reimbursement;

 - D. Timely submit all reports and other documentation in the form required by IDOL;

 - E. Pay when due all wages, salaries, obligations or other indebtedness to all persons employed, or providing goods and services, pursuant to this Agreement;

 - F. Pay when due, all employment-related taxes and benefits for trainees, which may include, without limitation, federal and state income tax withholding, social security contributions, worker's compensation and unemployment insurance premiums, health and life insurance premiums, pension contributions, and similar items;

 - G. Pay when due all valid claims, penalties, interest, and costs that may be assessed against the Employer under the laws or regulations of any governmental agency as a result of work performed under, or any breach of, this Agreement;

- H. Obtain union concurrence if the occupation for which training is being conducted is covered by a collective bargaining agreement;
 - I. List any new job openings created through the use of IDOL funds with the IDOL's nearest local office;
 - J. Ensure that trainees included in Quarterly Reimbursement Requests are enrolled in IDOL's IdahoWorks system before requesting reimbursement;
 - K. Create an IdahoWorks employer account before requesting reimbursement; and
 - L. Independently verify whether it is required by Idaho law to register its business entity or assumed business name with the Idaho Secretary of State and, if required to do so, register with the Idaho Secretary of State and remain in good standing during the term of this Agreement.
3. **CONFLICT OF INTEREST.** The Employer warrants and agrees that no person in its employment, directly or through subcontract, will receive any direct or indirect private financial interest in the Agreement. The Employer will not hire or subcontract with any person having such conflicting interest(s).
4. **COMMISSIONS AND FEES PROHIBITED.** The Employer warrants and agrees that no person or agency has been employed or retained to solicit or secure this Agreement for a commission, percentage, brokerage or contingent fee to be paid from IDOL funds or from any other source. For breach of this covenant, IDOL shall have the right to terminate this Agreement without liability, or at its discretion, to deduct from the Agreement said cost or consideration, or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee.
5. **RELATIONSHIP OF THE PARTIES.**
- A. Employer's status under this Agreement shall be that of an independent contractor, and not that of a partner, agent, or employee of IDOL. IDOL is interested only in the quality of services provided and the final results to be achieved; Employer is solely responsible for the conduct and control of the work. Employer shall supply, at its sole expense, all equipment, tools, materials, or supplies to accomplish the work to be performed unless otherwise agreed to in writing by IDOL.
 - B. IDOL shall not be liable for any of Employer's expenses unless otherwise agreed to in writing by IDOL.
 - C. Notwithstanding the foregoing, the Employer agrees that the work and materials to be performed or provided by the Employer are subject to

continuing scrutiny, inspection, auditing, and approval by IDOL as being services or activities that meet the requirements of this Agreement.

6. **COOPERATION REQUIRED.** The Employer shall cooperate fully, and coordinate its work under the Agreement, with all governmental agencies, including without limitation IDOL.
7. **DEBARMENT.** The Employer certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in public procurement or contracting by any governmental department or agency.
8. **SUBCONTRACTING.** Employer may not subcontract or assign any portion of its performance hereunder without the prior written consent of IDOL and, notwithstanding any approved subcontract or assignment, shall remain responsible for all performance pursuant to the provisions of this Agreement. Any change in control of the Employer resulting from a merger, consolidation, stock transfer or asset sale shall be deemed an assignment or transfer for purposes of this Agreement that requires IDOL's prior written approval.
9. **AVAILABILITY OF FUNDING.**
 - A. All funding and payments made pursuant to this Agreement are contingent upon the availability of federal training funds authorized under section 169(c) of the Workforce Innovation and Opportunity Act (WIOA) and section 414(c) of the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA), as amended (codified at 29 U.S.C. 3224a).
 - B. In the event funding to IDOL is reduced or terminated or IDOL no longer has sufficient funds or a positive balance, the financial participation of IDOL shall be reduced accordingly or terminated at the discretion of IDOL.
 - C. This Agreement 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 Legislature or the United States Congress. In the event the Legislature of the State of Idaho or the United States Congress, or the state or federal Executive, fails, neglects, or refuses to appropriate or disburse such funds as may be required and designated to continue payments for this Agreement, this Agreement may, at the discretion of IDOL, be immediately terminated upon written notice to Employer by IDOL.
10. **COST CATEGORIES AND BUDGET GUIDELINES.**

- A.** The total cost to IDOL for the performance of this Agreement shall not exceed the amount agreed upon herein as the maximum payment to the Employer for the work, services, activities and materials to be provided.
 - B.** Employer's reimbursable expenditures pursuant to this Agreement are limited to permitted training and related costs only, which may include, without limitation: training seminars, tuition, fees, instructor wages and benefits, travel at State of Idaho per diem rates, reasonable equipment lease and rental costs for training/presentation, rent of training facilities, reasonable cost of both pre-training and post-training assessment of trainees, costs of curriculum development, and authorized training equipment (as listed in Attachment B - Budget and Training Plan).
 - C.** Ineligible expenditures include, without limitation, the cost of preparing the training proposal, trainees' salaries, and unauthorized equipment.
 - D.** All trainee travel must be itemized in Attachment B – Budget and Training Plan. No trainee travel will be reimbursed with Agreement funds for any purpose unless specified in Attachment B – Budget and Training Plan .
- 11. ACCOUNTING SYSTEM.** The Employer shall establish and maintain a financial management system in accordance with generally accepted accounting principles that provides for:
 - A.** Accurate, current, and complete disclosure of the financial results of Agreement activities;
 - B.** Accounting records that are supported by source documentation and provide for proper allocation among the allowable expenditures; and
 - C.** Fiscal accounts maintained in a manner sufficient to permit the reports required by IDOL to be prepared therefrom.
- 12. REIMBURSEMENT OF AUTHORIZED EXPENSES.**
 - A.** IDOL shall reimburse the Employer for authorized training expenses pursuant to Idaho Code section 67-2302 within sixty (60) days of receipt of the Employer's duly completed quarterly reimbursement forms and narrative reports, or final invoice, provided Employer's performance meets the requirements of the Agreement. Untimely reimbursement requests may be denied. IDOL will not allow reimbursement for training provided by the Employer that is not specifically authorized by this Agreement.
 - B.** Training costs will be paid to the Employer in two reimbursement payments totaling no more than 80% of the Employer's total training costs per employee as provided in the Agreement.

- C. The Employer agrees that if IDOL determines that payments were incorrectly reported or paid to Employer, IDOL may adjust the payments accordingly. The Employer will, upon written notification, immediately refund any overpayments made to the Employer. The Employer further agrees that IDOL shall have the right to withhold any or all subsequent payments under this Agreement with the Employer until the overpaid amounts are recovered.

13. RECORD KEEPING.

- A. The Employer shall maintain a complete file of all records, documents, communications and other written materials which pertain to the delivery of goods or services under this Agreement, which shall, without limitation, sufficiently and properly reflect all direct costs of any nature expended in the performance of this Agreement. Employer shall maintain such records for a period of five (5) years after termination of this Agreement or final payment, whichever is later; provided, however, if an audit, litigation or other action involving Employer's records is initiated before the five (5) year period has expired, the records shall be retained until all issues arising out of such actions are resolved.
- B. The Employer agrees that in the case of the termination of the existence of the Employer by bankruptcy or any other reason, all program and fiscal records related to this Agreement in the Employer's possession shall be provided to IDOL and shall become the property of IDOL.
- C. The Employer agrees that the accounting, reporting and record keeping requirements specified in this Agreement are a material element of performance and that if, in the opinion of IDOL, the Employer's record keeping practices and/or reporting to IDOL are not conducted in a timely and satisfactory manner, IDOL may, in addition to all other available remedies up to and including termination, withhold part or all payments under this Agreement until such deficiencies have been remedied. In the event that payments are withheld, IDOL agrees to notify the Employer of the deficiencies that must be corrected in order to bring about the release of withheld payments.

14. MONITORING AND AUDITING.

- A. IDOL may monitor and audit Employer's performance under this Agreement. This may include, without limitation: formal auditing activities; monitoring, tracking, and documenting Employer performance relative to the Agreement; and ensuring receipt of participant (employee) data from the Employer within established time frames to ensure IDOL can submit required quarterly Agreement reports to the federal government.

- B.** The Employer shall allow IDOL or any duly authorized agent of IDOL to inspect, examine, excerpt, copy, and transcribe the Employer's records during the term of this Agreement and any document retention period prescribed by this Agreement to assure compliance with the terms of this Agreement or to evaluate Employer's performance under this Agreement.
- C.** If it is discovered through monitoring or auditing that the Employer is in default of this Agreement, the Employer may be subject to sanctions which may include, without limitation, warnings, audits, temporary suspension of payments, suspension, and termination.

15. FINAL ACCOUNTING, FINAL PAYMENT AND REPAYMENT.

- A.** The Employer shall submit to IDOL an invoice marked "FINAL" no later than thirty (30) days after the termination date of this Agreement. Notwithstanding any terms and conditions or other provisions contained in the final invoice or any accompanying correspondence, the final invoice constitutes the Employer's final request for reimbursement and upon its payment by IDOL a release by which the Employer does release and discharge IDOL, its officers, agents and employees from any and all obligations to make reimbursements under the terms and conditions of this Agreement. Both the Employer and IDOL understand that all payments are provisional and are subject to adjustment as a result of an adverse audit finding concerning this Agreement. In the event that the Employer fails to submit either a final invoice or request for a no-cost extension within the time frame established above, IDOL shall consider the last regular invoice to be the final invoice and the date of the invoice to be the Agreement's completion date. Both the Employer and IDOL agree that IDOL will not deem any costs submitted for reimbursement after the final invoice to be allowable and reimbursable by IDOL and that such invoices will not be paid.
- B.** In the event that the Employer has received any amount pursuant to this Agreement in excess of that to which it was entitled, the Employer shall, within thirty (30) days of written notice of such overpayment, repay the overpayment to IDOL. The Employer agrees that IDOL shall have the right to withhold any or all subsequent payments under this Agreement until overpaid amounts are recovered.

- 16. POLITICAL ACTIVITIES.** No funds received from IDOL shall be used directly or indirectly for any political activity. The Employer shall not directly or indirectly cause or attempt to cause any person to make a contribution of a thing of value, including services, for the benefit of any political cause, candidate or any political party, by means of the denial or deprivation or the threat of the denial or deprivation of any employment or benefits funded pursuant to this Agreement.

17. **LOBBYING PROHIBITED.** Funds provided under this Agreement shall not be used to support or defeat governmental candidates in any election or to support or defeat any national, state, county or municipal legislation, citizen initiatives, ordinances or policies.
18. **THEFT, EMBEZZLEMENT, IMPROPER INDUCEMENT, OBSTRUCTION OF INVESTIGATIONS, INCIDENT REPORTS.** The Employer agrees to adhere to the following provisions:
 - A. The Employer shall not embezzle, willfully misapply, steal or obtain by fraud any of the monies, funds, assets, or property provided by this Agreement;
 - B. The Employer shall not induce any trainee to give up any money or any other thing of value under threat of dismissal;
 - C. The Employer shall not willfully obstruct or impede any investigation, audit, or inquiry arising from activities under this Agreement;
 - D. The Employer shall immediately report to IDOL all alleged or suspected incidents of fraud, abuse, or other criminal activity relating to the performance of this Agreement; and
 - E. The Employer shall not solicit or accept gratuities, favors or other things of monetary value relating to the performance of this Agreement, except as expressly authorized herein.
19. **WRITTEN ANTI-DISCRIMINATION POLICIES.** The Employer shall at all times maintain and adhere to written policies prohibiting unlawful discrimination against any trainee, including without limitation policies against sexual discrimination and harassment.
20. **COMPLIANCE WITH LEGAL REQUIREMENTS.** In its performance hereunder, the Employer shall comply with all applicable federal, state and local laws and regulations. For the duration of the Agreement, the Employer shall maintain in effect and have in its possession all licenses and certifications required by federal, state and local laws and rules.
21. **ANTI-DISCRIMINATION LAWS.** Employer agrees and assures as a material term of this Agreement that, in its performance under this Agreement, it will comply fully with: the nondiscrimination and equal opportunity provisions of Titles VI and Title VII of the Civil Rights Act of 1964, as amended, which prohibits discrimination on the bases of race, color, religion, sex, and national origin; Section 504 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended, which prohibit discrimination against qualified individuals with disabilities; the Age Discrimination Act of 1975, as amended, which prohibits

discrimination on the basis of age; Title IX of the Education Amendments of 1972, as amended, which prohibits discrimination on the basis of sex in education programs; and all other federal, state and local laws, and all applicable requirements imposed by regulations implementing those laws.

- 22. OSHA Requirements.** IDOL and its officers, employees and agents assume no responsibility with respect to any accident, illness or claims arising out of any work, services, or activities undertaken due to or with the assistance of funds provided under this Agreement. The Employer is expected to take reasonable steps to insure or protect itself and its personnel. Health and safety standards established under state and federal law, otherwise applicable to the working conditions of the Employer's employees, shall be equally applicable to the working conditions of the Employer's trainees.
- 23. SAFE WORKPLACES.** Trainees involved or engaged in work pursuant to this Agreement shall not be required or permitted to work, be trained or receive services in buildings or surroundings or under conditions that are unsanitary, hazardous or dangerous to their safety or health.
- 24. ACKNOWLEDGEMENT.** The Employer must acknowledge IDOL in all press releases and materials created using funds provided by IDOL.
- 25. PUBLIC RECORDS.** Employer acknowledges that IDOL is subject to the provisions of the Idaho Public Records Act, Title 74, Chapter 1, Idaho Code, and the reporting requirements of Idaho Code section 67-1085A. IDOL is required to comply with such laws. If Employer claims any portion of the Agreement, or any document relating to its performance hereunder, contains confidential information, trade secrets, or is otherwise exempt from disclosure under the Idaho Public Records Act or other law, it is Employer's responsibility to provide a copy of the relevant portion of the Agreement or document that has been fully redacted into a form that can be produced to any requesting individual and/or submitted to the Idaho State Controller in accordance with Idaho Code section 67-1085A(2), -(7). Employer's failure to provide a redacted copy shall constitute a complete waiver of any and all claims for damages caused by such release. In the event IDOL must defend any claim related to Employer's redaction and assertion of Confidential Information, trade secret, or other exemption from disclosure, Employer shall indemnify, defend, and hold harmless IDOL against all damages and losses, including but not limited to any penalties, fines, attorney fees, and other costs of litigation, arising out of or relating to Employer's claim of confidential information, trade secret, or other exemption from disclosure.
- 26. INDEMNIFICATION.**

 - A.** Employer shall indemnify, defend, and hold harmless IDOL, its officers, agents and employees from and against any and all liability, claims, damages,

losses, expenses, actions, settlements, attorneys' fees, costs, and suits whatsoever caused by: Employer's or approved subcontractor's acts or omissions arising out of or relating to this Agreement; or Employer's failure to comply with any state or federal statute, law, regulation, or rule; or Employer's failure to pay all employment-related taxes and benefits; or Employer's material breach of any term or warranty hereunder.

- B.** Upon receipt of IDOL's tender of indemnity and defense, Employer shall immediately take all reasonable actions necessary, including, without limitation, providing a legal defense for IDOL. Employer'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 IDOL. Employer shall not be required to hold IDOL harmless for damages attributed to IDOL in a final order issued by a court of competent jurisdiction.
- C.** Any legal defense provided by Employer to IDOL must be free of any conflicts of interest, even if retention of separate legal counsel for IDOL is necessary. Any attorney appointed to represent IDOL 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). IDOL must approve all settlement offers and agreements made on its behalf and may attend any settlement or alternative dispute resolution proceedings.

27. LIMITATIONS ON LIABILITY; IMMUNITY. Nothing in this Agreement shall extend the tort responsibility or liability of IDOL or the State of Idaho beyond the limits of liability established by the Idaho Tort Claims Act, Idaho Code sections 6-901 et seq., or constitute a waiver or repudiation of any constitutional or statutory immunity or other statutory protection or limitation against liability applicable to IDOL, the State of Idaho, or its officials, employees and agents.

28. SUSPENSION. IDOL may, upon ten (10) days written notice to the Employer, suspend this Agreement in whole or in part if it is determined that suspension is in the best interest of IDOL, or if the Employer has materially failed to comply with the terms and conditions of this Agreement or is otherwise in default. No costs and obligations incurred by the Employer following receipt of notice of suspension, or during any period of suspension, shall be allowable, except that IDOL may, at its discretion, allow necessary and proper costs that the Employer could not reasonably avoid. Appropriate adjustments to payments under the suspended Agreement will be made either by withholding payments or by not allowing the Employer credit for disbursements that are made in liquidation of authorized obligations incurred during the period of suspension. Suspension of the Agreement shall remain in effect until the Employer has taken corrective action to the satisfaction of IDOL, or given

assurances satisfactory to IDOL that corrective action will be taken, or until IDOL terminates the Agreement.

29. TERMINATION.

- A. **By Mutual Agreement.** This Agreement shall terminate upon mutual written agreement signed by the authorized representatives of each of the parties.
- B. **For Cause.** Employer default for cause occurs if the Employer fails to perform any of the terms and conditions of this Agreement or the Employer fails to prosecute the work so as to endanger performance of this Agreement, and the Employer does not cure such defects in performance within ten (10) days after receipt of written notice from IDOL. If the Employer remains in default or noncompliance at the end of that period, then IDOL may terminate this Agreement, and may pursue any legal, equitable and other remedy available to IDOL. IDOL may terminate this Agreement for cause and without any notice if the Employer 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 Employer, or if the Employer makes an assignment for the benefit of creditors. Upon any termination for cause, the Employer shall be liable for all expenses incurred by IDOL due to termination, including, but not limited to, the costs of procuring substitute performance, attorneys fees, court costs, and other losses.
- C. **For Convenience.** IDOL may terminate this Agreement for its convenience at any time upon thirty (30) days' prior written notice to the Employer. Upon such termination, IDOL's sole obligation shall be to pay for services satisfactorily rendered to the date of termination. IDOL shall not be liable for any penalty, expense, or liability, or for general, special, incidental, consequential, or other damages resulting from such termination.
- D. **For Fiscal Necessity.** This Agreement shall in no way bind or obligate IDOL or the State of Idaho beyond the terms of any appropriation or grant of funds from the State of Idaho's Legislature or the United States government. IDOL reserves the right in its sole judgment to immediately 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 payments under this Agreement; the funding entity reduces, cancels, withdraws, eliminates, or requires return of any amount of the funds necessary for this Agreement; or IDOL is required by law to discontinue or make a material alteration to the program to which this Agreement is applicable. IDOL 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 Employer's losses arising out of work completed prior to or after the notice of termination. Any subsequent request

by IDOL for the Employer to invoice IDOL 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 IDOL to obtain funds from the funding entity. Absent actual receipt of funds designated for payment of this Agreement, IDOL shall have no obligation to pay any sums to Employer after issuance of the notice of termination for fiscal necessity, and shall not be required to use funds from any other source to pay the Employer.

- E. Health and Safety Defaults.** If events or acts constituting a default of the Employer represent a threat to the lives, safety, health or well-being of any person, IDOL may immediately declare this Agreement terminated without notice and an opportunity to cure.
 - F. Additional Termination Rights.** This Agreement may be terminated in whole or in part by IDOL at any time due to insufficient funds or a negative balance in IDOL, or due to unforeseen circumstances that would require a major modification to the project.
 - G. Effect of Termination Notice.** Upon receipt of notice of termination, the Employer shall not incur new obligations for the remaining period of this Agreement and shall cancel as many outstanding obligations as possible. IDOL may, however, if funding exists, allow full credit for non-cancellable obligations, properly incurred without bad faith, prior to the effective date of the termination.
- 30. EMPLOYER'S RESPONSIBILITIES UPON TERMINATION.** Upon notice of termination by IDOL, the Employer shall: (i) promptly discontinue all work, unless the termination notice directs otherwise; and (ii) promptly deliver or otherwise make available to IDOL or its designee all IDOL data (including historical data), all IDOL Confidential Information, and all completed reports, estimates, summaries and such other information and materials in the Employer's possession as may have been accumulated by the Employer in performing the Agreement, whether or not previously provided to IDOL; and (iii) provide in writing to IDOL a final invoice as required herein. If applicable, the Employer shall cooperate in good faith with transition to IDOL's new vendor with minimum disruption to IDOL. Upon termination, IDOL 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.
- 31. ENTIRE AGREEMENT.** This Agreement embodies the whole and entire agreement of the parties relating to the subject matter hereof, and the parties agree that there are no promises, provisions, terms, conditions, or obligations, other than those set forth herein. This Agreement supersedes all previous communications, representations, or agreements, either verbal or written, between the parties.

- 32. AMENDMENT.** Except as expressly provided herein, this Agreement may not be released, discharged, changed, or modified except by an instrument in writing signed by a duly authorized representative of each of the parties.
- 33. CHANGES AND MODIFICATIONS.**
- A.** IDOL may request changes in the general scope of this Agreement, but such changes shall be limited to changes that would expedite achievement of the objectives and would not require substantive changes to the training plan.
 - B.** If any change under this section causes an increase or decrease in the cost or time required of the Employer for the performance of any part of the work under this Agreement, an equitable adjustment to the mutual satisfaction of all parties may be made and the Agreement shall be modified in writing accordingly.
 - C.** Certain Agreement modifications may be required due to new legislation or material changes in circumstances. If the Employer cannot comply with the revised requirements within ten (10) days of receipt of the notice of revision from IDOL, the Agreement may be immediately terminated upon written notice to the Employer.
- 34. GOVERNING LAW AND VENUE.** This Agreement shall be governed by the laws of the State of Idaho without reference to its conflict of laws provisions. The exclusive venue for any suit or action brought to enforce any provision of this Agreement, or remedy any alleged breach thereof, shall be in the courts of the State of Idaho, in and for the Fourth Judicial District, and the County of Ada, and the Employer hereby expressly submits to the personal jurisdiction of said courts.
- 35. SEVERABILITY.** If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.
- 36. NOTICES.** Except as otherwise provided herein, all notices required under this Agreement shall be in writing and delivered personally, by email, or by first class U.S. mail, postage prepaid, to each party at the address listed in the Agreement. Either party may change the notice address by notifying the other party in writing. Notices shall be deemed received upon receipt of same or within three (3) calendar days of deposit in the U.S. Mail, whichever is earlier. Notices sent by email shall be deemed received on the date of the email transmission.

- 37. WAIVERS.** The failure of Employer or IDOL to insist upon strict performance of any of the terms and conditions of this Agreement shall not be construed to be a waiver or relinquishment of any such term or condition, but the same shall be and remain in full force and effect unless such waiver is evidenced by a written waiver or relinquishment of such term or condition by the waiving and relinquishing party. Any such written waiver or relinquishment of any failed performance, breach or default of this Agreement shall not be construed as, or deemed to be, a waiver or relinquishment of any subsequent failed performance, breach, or default.
- 38. HEADINGS.** The captions and headings contained herein are for convenience and reference only and are not intended to define or limit the scope of any provision of this Agreement.
- 39. NO PRESUMPTION FROM DRAFTING.** There shall be no presumption or rule of construction applied to this Agreement based upon the party drafting the Agreement or any particular provision of the Agreement.
- 40. REMEDIES CUMULATIVE.** Any remedies described herein are cumulative to other remedies available at law and equity to the extent the remedies are not inconsistent, and IDOL may pursue any remedy or remedies singly, collectively, successively, or in any order whatsoever.
- 41. 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 the Employer employs ten or more persons, the Employer 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.
- 42. OWNERSHIP OR OPERATION BY CHINA.** Pursuant to Idaho Code section 67-2359, the Employer certifies that it is not currently owned or operated by the government of China and will not for the duration of the Agreement be owned or operated by the government of China.
- 43. DISCLOSURE OF ABORTION RELATED MATTERS.** The State 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. This provision is included in the Agreement to aid in compliance with the Act. The State requests that the Employer disclose, unless the Employer is within one of the exemptions provided in the Act, if it or an affiliate is or becomes, during the term of the Agreement, an abortion provider and if it will use State facilities or public funds to provide, perform, participate in, promote, induce, assist, counsel in favor, refer or train a person for an abortion related activity.

44. BOYCOTT OF CERTAIN INDUSTRIES. Pursuant to Idaho Code section 67-2347A, the Employer certifies that it is not currently engaged in, and will not for the duration of the Agreement 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 Idaho Code section 18-3302(2)(d).

45. DOMESTIC PREFERENCE FOR PROCUREMENTS. The Employer should, to the greatest extent practicable and consistent with law, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). For purposes of this section:

A. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

B. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

Pursuant to the Build America, Buy America Act (BABAA), Public Law 117-58, title IX, subtitle A, none of the funds made available for a Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States.

46. 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, in addition to any other available remedies available at law and equity, the prevailing party shall be entitled to recover reimbursement for reasonable attorneys' fees and costs, in the amount determined by the court, including reasonable attorneys' fees and costs on appeal.

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