



**BUSINESS CENTER SOUTH
THE NEVADA SYSTEM OF HIGHER EDUCATION ("NSHE"), ON BEHALF OF THE
UNIVERSITY OF NEVADA, LAS VEGAS ("UNLV")**

**INVITATION FOR BID NO. 5195-DC CHERRY CREEK SUPERCOMPUTER
UPGRADE AND EXPANSION ("IFB")**

RELEASE DATE: Monday, March 23, 2015

LAST DAY FOR QUESTIONS: Tuesday, March 24, 2015 at 5:00pm PDT

LAST DAY FOR ADDENDA : Wednesday, March 25, 2015 at 5:00pm PDT

OPENING DATE, TIME and LOCATION: Monday, March 30, 2015 at 3:00pm PDT
University of Nevada, Las Vegas
4505 Maryland Parkway
Campus Services Building, Room 235
Las Vegas, NV 89154-1033

Sealed bids, subject to the terms, conditions and specifications herein stipulated and/or attached hereto, will be publicly opened as stated above ("Bid(s)"). **All Bids must be received on or before the opening date and time to be considered.** Bids may be mailed or hand delivered to the address above. Please go to <http://maps.unlv.edu/> to view a map of the UNLV campus.

If you should have any questions regarding this IFB, fax or e-mail your questions directly to:

Donna Cruzado, Senior Purchasing Analyst
Donna.cruzado@unlv.edu
Phone: (702) 895-0968
Fax: (702) 895-3859

Companies wishing to do business with UNLV and submit a responsive Bid ("Bidders") must first register as a supplier at the following website: <https://supplierregistration.purchasing.unlv.edu/>. If you need assistance or have questions please send your inquiries to Supplier.Registration@unlv.edu.

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SECTION A
SUBMISSION INSTRUCTIONS

UNLV invites you to submit a Bid on the material and/or services specified within this IFB. Please read carefully all instructions, general terms and conditions, purchase order terms and conditions, scope of work and/or specifications, pricing response form, Bid response form, sample insurance if applicable, and Minimum Contract Terms, if applicable. Failure to comply with the instructions, terms and conditions, scope of work and/or specifications, of the IFB may result in your Bid being declared non-responsive.

1. BID PREPARATION AND SUBMISSION

- a) Bidders are expected to examine the entire IFB document including any attachments. Failure to do so will be at the Bidder's risk.
- b) If it becomes necessary to revise any part of this IFB, a written addendum will be posted on <http://go.unlv.edu/purchasing/solicitations> and available for all Bidders to download. UNLV is not bound by any oral representations, clarifications, or changes made in the written specifications by UNLV employees, unless such clarification or change is provided to Bidders in written addendum form from the Purchasing Department.
- c) Prices shall be submitted as requested in this IFB. When units are identified, the price for each unit Bid shall be shown. All prices shall include packing unless otherwise specified. A total shall be entered in the Amount column for each item bid. In case of error in extension of price, the unit price will prevail.
- d) **Bids are to be submitted on the pricing response form provided or true copies thereof** and must be manually signed by pen. If any erasures or changes appear on the form, each such correction must be initialed by the person signing the Bid. Bidders shall include with their Bid forms the necessary documents or attachments as required in this document. **All figures must be written in ink or typewritten.** If there are discrepancies between unit prices quoted and extensions, the unit price will prevail.
- e) Each Bid, acknowledging all addenda issued must be sealed and submitted in an envelope with the pricing and Bid response form and **MUST** indicate the name of the Bidder, Bid number, title as listed on the first page of the IFB, and date and time of opening on the outside of the envelope. **Telegraph, facsimile, email or telephone Bids will not be considered.**
- f) No responsibility will attach to UNLV or any official or employee thereof, for the pre-opening of, post-opening of, or the failure to open, a Bid not properly addressed and identified.
- g) Alterations, modifications or variations may not be considered unless authorized by this IFB document or by an addendum.
- h) When not otherwise specified, Bidder must definitely state time of proposed delivery. Days must be calculated in consecutive calendar days.
- i) All equipment or supplies shall be new, and of the manufacturer's current model unless specified herein.
- j) Any irregularities or lack of clarity in the IFB should be brought to the attention of the Purchasing Department, as soon as possible so an addendum may be furnished to all Bidders.
- k) Altering the IFB document and Bid form may render the Bid null and void.

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- l) All Bidders, by signing the **Bid Response Form**, certify that they agree to the terms and conditions set forth in this IFB and attached Minimum Contract Terms unless otherwise stated.
- m) UNLV accepts no responsibility or liability for any costs incurred by a responding firm/company prior to the execution of the Contract.
- n) UNLV reserves the right to contract for less than all of the goods/services identified herein.

2. BRAND NAME (OR EQUAL) TO ESTABLISH STANDARD

- a) Unless stated otherwise within this IFB, wherever in the IFB any item required to be furnished is mentioned by a brand name or a manufacturer's name is given, it is intended to establish a standard of quality or type of material desired and not to restrict the use of other materials which are of equal quality or type. Bidders who do not specify a different manufacturer or number will be required to furnish items exactly as specified.
- b) If the specifications of each item you are bidding are the same as those stated in the IFB, write in "AS SPECIFIED" where it states "STATE MANUFACTURER". If the specifications of the item you are bidding are similar to or equal to but not identical, list the name of the manufacturer and the item's model or stock number. **IF A SUBSTITUTE ITEM IS BID, TWO (2) COPIES OF COMPLETE SPECIFICATIONS OF THE SUBSTITUTE ITEM SHOULD ACCOMPANY THE BID. THIS IS NECESSARY IN ORDER TO HAVE YOUR SUBSTITUTE ITEM CONSIDERED. THE UNLV TAKES NO RESPONSIBILITY IN EVALUATING YOUR SUBSTITUTE ITEM IF THE SPECIFICATIONS ARE NOT INCLUDED.**
- c) UNLV alone shall determine if a substitute item is equal to what was requested and the decision will be final.
- d) UNLV reserves the right to consider Bids not in exact accordance with the specifications.

3. DISCLOSURE RESTRICTIONS

- a) The contents of your Bid or other information submitted to UNLV are subject to public release, upon request, after the Contract award.
- b) **Bids are not to contain confidential/proprietary information.** UNLV is subject to the Nevada Public Records Law. Bids must contain sufficient information to be evaluated without reference to any confidential or proprietary information. Any Bids submitted that is marked "confidential" or "proprietary," or that contains materials so marked, may be returned to the Bidder and not be considered.

4. LATE BIDS

Formal, advertised invitations for bids indicate a time by which the Bids must be received in the Purchasing Department. Bids received after that time will be rejected or returned unopened upon request by, and at the expense of the Bidder. Bidder is responsible for ensuring third party deliveries arrive at the time and place as indicated in this IFB.

5. PUBLIC OPENING OF BIDS

Bids will be opened and read publicly at the time and place indicated in the IFB. Prospective Bidders, their authorized agents and other interested parties are invited to be present. The total sum read shall be subject to the provisions of determination of the lowest Bid as outlined under the "Award of Contract" paragraph. Information read is subject to verification.

6. **WITHDRAWAL OF BID**

Any prospective Bidder may request withdrawal of a posted, sealed Bid prior to the scheduled Bid opening time provided the request for withdrawal is submitted to the Purchasing Department in writing, or presents themselves in person with proper identification to the Purchasing Department and verbally requests the Bid be withdrawn and signs for its receipt.

SECTION B
GENERAL TERMS AND CONDITIONS

1. **ACCEPTANCE PERIOD**

The Bidder agrees to a minimum of 90 calendar day acceptance period from the date of public opening.

2. **APPROPRIATIONS**

The terms of this Contract are contingent upon sufficient appropriations and authorizations being made by UNLV for the performance of this Contract. If sufficient appropriations and authorizations are not made by UNLV, this Contract shall terminate, without penalty, upon written notice being given by UNLV to the Contractor. UNLV's decision as to whether sufficient appropriations are available shall be accepted by Contractor and shall be final.

3. **AWARD OF CONTRACT**

- a) Award shall be made to the lowest responsive and responsible Bidder after giving due consideration to price, quality, availability, conformance to specifications, financial capability and service, including such things as life cycle cost, if applicable, all in the best interests of the requesting department and UNLV.
- b) UNLV may accept any item or group of items of any Bids unless the Bidder qualifies its Bid by specific limitations.
- c) UNLV reserves the right to award by item, groups of items, or all items, or to reject any and all Bids in whole or in part, and to waive minor irregularities and omissions, whereby the best interests of UNLV would be served.
- d) UNLV reserves the right to award on a multi year basis and, if in the best interest of UNLV, to award to multiple contractors.
- e) A signed purchase order mailed (or otherwise furnished) to the successful Bidder within the time for acceptance specified in the Bid, results in a binding contract without further action by either party and/or a formal Contract may be entered into between the successful Bidder(s) and UNLV.
- f) If applicable, the terms and conditions contained in the attached Minimum Contract Terms or, in the sole discretion of UNLV, terms and conditions substantially similar to those contained in the Minimum Contract Terms, will constitute and govern any agreement that results from this IFB. If Bidder takes exception to any terms or conditions set forth in the contract, Bidder will submit a specific list of the exceptions as part of its response to this IFB. Bidder's exceptions will be reviewed by UNLV and may result in disqualification of Bidder's offer as non-responsive to this IFB. If Bidder's exceptions do not result in disqualification of Bidder's response, then UNLV may consider Bidder's exceptions when UNLV evaluates the Bidder's response.
- g) If after the award of an item or items has been made to a Bidder and a purchase order is issued to that Bidder for the item or items awarded; the Bidder fails to furnish the items as listed on the purchase order, that Bidder may be removed from our Bidder list for a period of one year.
- h) Any governmental, state, or public entity within the State of Nevada or outside the State may utilize this IFB at their option to obtain goods or services at the agreed upon price(s) throughout the term of the resulting contract with the authorization of the successful Bidder(s) ("Contractor(s)"). UNLV is not liable for the obligations of the governmental entity which joins or uses the resulting contract.

4. **COMPLIANCE**

Bidders are required to comply with all OSHA, EPA, ADA and any and all other relevant state and federal standards, codes and regulations that may apply.

5. **CONFIDENTIAL TREATMENT OF INFORMATION**

Bidders shall preserve in strict confidence any information obtained, assembled or prepared in connection with the performance of this Bid.

6. **CONFLICT OF INTEREST**

Persons or firms submitting a Bid in response to this IFB are certifying that they have had no contact with an employee or member of the NSHE/UNLV in any manner which would give that company or person submitting such an offer, any advantage over any other company or person submitting an offer. Employees and members of the NSHE/UNLV shall not receive any compensation, in any manner or form, nor have any vested interest, directly or indirectly, of any kind or nature inconsistent with loyal service to the public. A violation of any of the above shall be just cause for rejection of that particular offer without further consideration.

7. **DEFAULT OF CONTRACT**

In case of default of the selected Contractor, UNLV may procure the articles or services from the other sources and hold the Contractor responsible for any excess cost occasioned thereby; provided, that if public necessity requires the use of materials or supplies not conforming to the specifications they may be accepted and payment therefore shall be made at the proper reduction in price.

8. **DISQUALIFICATION OF BIDDERS**

Bidders may be disqualified and rejection of Bids may be recommended by the Purchasing Department for any of (but not limited to) the following causes:

- a) Failure to use the Bid form furnished by UNLV.
- b) Lack of signature by an authorized representative on the Bid form.
- c) Failure to properly complete the Bid.
- d) Evidence of collusion among Bidders.
- e) Unauthorized alteration of Bid form.
- f) Failure to submit requested documents required in Bid terms, conditions and specifications.
- g) Failure to furnish proof of receipt of any addendum pertaining to that particular bid project.
- h) Any Bidder who has defaulted on prior contracts or is guilty of misrepresentation by any member of that particular firm.
- i) UNLV reserves the right to waive any minor informality or irregularity.

9. **FAILURE TO FURNISH AT SPECIFIED PRICE**

If a successful Bidder fails to furnish any item at the price specified in the IFB, whether such failure is due to a mistake of fact by the Bidder or any other reason, the Director of Purchasing UNLV, may cause the name of such Bidder to be removed from the list containing the names of prospective Bidders to whom invitations to bid are mailed, for such period of time, not exceeding 1 year or less than 6 months, or the payment of a penalty of 5 percent of total bid price of all items on which bid was submitted, as the Director of Purchasing may determine.

10. **FREIGHT TERMS**

- a) Successful Bidder must ship goods using a UNLV FED EX account number. Prices submitted must not include freight.
- b) Any Bid submitted with alternate shipping terms other than as stated above may be cause for disqualification of the Bid.

11. **INSPECTION AND ACCEPTANCE**

Inspection and acceptance will be made at destination.

12. **PAYMENT TERMS**

Payments shall be made within thirty days of acceptance of the related invoice, unless otherwise stated. Should the acceptance of such invoices be in doubt, the successful Bidder shall not be due any interest or penalty on any unpaid amounts.

13. **PROMPT PAYMENT DISCOUNTS**

The offered discount of a successful Bidder will not form a part of the award evaluation. In connection with any discount offered, time will be computed from the date of delivery of the equipment or supplies at destination or from the date the correct invoice is received by UNLV, whichever is later. Payment is deemed to be made for the purpose of earning the discount the date the UNLV check is mailed.

14. **PROTESTS**

Any Bidder, offeror or contractor who is allegedly aggrieved in connection with the solicitation or award of a contract may protest. The protest must be submitted in writing to the Director of Purchasing, within seven (7) days after such aggrieved person knows or should have known of the facts giving rise thereto. If the protest is not resolved by mutual agreement, the Director of Purchasing will promptly issue a decision in writing to the Protester. If the protestant wishes to appeal the decision rendered by the Director of Purchasing, such appeal must be made in writing to the Senior Vice President for Finance & Business within five (5) days of the receipt of the decision by the Director of Purchasing. The decision of the Senior Vice President for Finance & Business will be final. The Senior Vice President for Finance & Business need not consider protests unless this procedure is followed.

To be considered, all Protests must identify the following:

- 1) The name, address, and telephone number of the protester,
- 2) The signature of the protester,
- 3) Identification of the solicitation title and number being protested,
- 4) A detailed statement of the legal and factual grounds of the protest, including copies of relevant documents, and
- 5) The form of relief requested.

15. **SAMPLES**

Bidders may be required to furnish a sample of the product being bid after the Bid opening for further evaluation. Bidders will be responsible for any charges involved in shipping and picking up their samples.

16. **SMALL AND LOCAL BUSINESS CONCERNS REPORTING REQUIREMENTS**

UNLV supports equal opportunity for minority owned, women-owned, and other small disadvantaged business enterprises (MWDBE) to compete for contracts awarded by UNLV. UNLV also supports efforts to encourage local businesses to compete for UNLV contracts. In addition, UNLV supports finding opportunities for such (MWDBE) and local business concerns to participate as subcontractors or Tier 2 suppliers in large contracts. A "tier 2 supplier" or subcontractor is a supplier who is contracted for goods or services with the prime contractor, and may include, but is not limited to (MWDBE) and local business enterprises.

a) In compliance with NSHE policy, a Bidder responding to any IFB for the purchase of goods or services that is **anticipated to exceed \$1,000,000 at any time during the life of the contract** shall provide the following reporting information in its Bid:

(1) Bidder's historical and anticipated commitment to Tier 2 MWDBE and local business enterprises. At a minimum, Bidder must provide historical information for the most recently completed fiscal year (July 1 through June 30) and their anticipated commitment to the current fiscal year in which this IFB is issued.

(2) A listing of Tier 2 suppliers, including local and MWDBE suppliers, that will be given the opportunity to be considered and/or utilized as subcontractors for any work performed as a result of this IFB. The listing must include the following information:

- The name, city and state
- Type of Tier 2 status (local, women owned, minority/and or disadvantaged)
- Any certification of such status including the entity granting the certification if applicable

(3) This is a reporting requirement and will not be used for evaluating any Bid. However, failure to provide a complete Bid in response to this IFB could result in rejection of the submittal as incomplete.

b) Any award from this IFB that results in a contract for goods or services that is **anticipated to exceed \$1,000,000 at any time during the life of the contract** will require the Bidder to provide, at a minimum, annual reports listing expenditures with MWDBE and Local Subcontractors. These reports pertain only to expenditures that are directly attributable to the UNLV prime Contract. The report shall contain the following information:

- The name, city and state; type of Tier 2 status (local, women owned, minority/and or disadvantaged); and any certification of such status including the entity granting the certification if applicable. If a business concern meets more than one definition (e.g. local and women-owned, or minority and women owned), that should be identified
- A description of the goods or services purchased
- The amount of expenditures with the subcontractor attributed to the prime contract for the most recent completed fiscal year (July 1 through June 30)
- The reporting information must be available to UNLV by September 15

c) Definitions

- (1) Definition of Local Business Enterprise. "Local Business Enterprise" is intended to mean a business concern that is a) owned 51% or more by Nevada residents, b) is headquartered in Nevada, or c) a majority of employees of the business are Nevada residents.
- (2) Definition of Disadvantaged Business Enterprise (DBE). "Disadvantaged Business Enterprise" is intended to mean a business concern owned by a minority or woman that is at least fifty-one percent (51%) unconditionally owned by one or more minority or women individuals who are both socially and economically disadvantaged, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals. Individuals who certify that they are a member of named groups, i.e. African Americans, Hispanic Americans, American Indians and Alaska Natives (Eskimos and Aleuts) and Asian and Pacific Island Americans are to be considered socially and economically disadvantaged.
- (3) Definition of Minority Business Enterprise (MBE). "Minority Business Enterprise" is intended to mean a business concern owned by one or more minority individuals that is at least fifty-one percent (51%) unconditionally owned by one or more minority individuals, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals. Individuals who certify that they are a member of named groups, i.e. African Americans, Hispanic Americans, American Indians and Alaska Natives (Eskimos and Aleuts) and Asian and Pacific Island Americans are to be considered socially and economically disadvantaged.
- (4) Definition of Women-Owned Business Enterprise (WBE). "Women-Owned Business Enterprise" is intended to mean a business concern owned by one or more women that is at least fifty-one percent (51%) unconditionally owned by one or more women, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals.
- (5) Definition of Disabled Veteran Business Enterprise (DVBE). "Disabled Veteran Business Enterprise" is intended to mean a business concern of which at least 51% of the ownership interest is held by one or more veterans with service-connected disabilities; that is organized to engage in commercial transactions; and that is managed and operated on a day-to-day basis by one or more veterans with service-connected disabilities. This includes a business which meets the above requirements that is transferred to the spouse of a veteran with a service-connected disability upon the death of the veteran, as determined by the United States Department of Veterans Affairs.
- (6) Definition of Small Business Enterprise (SBE). "Small Business Enterprise" is intended to mean a business concern which performs a commercially useful function, is not owned and controlled by individuals designated as minority, women, veterans, or physically-challenged, and where gross annual sales does not exceed \$2,000,000.

- d) All Bidders, by signing this Bid, certify that they are an Equal Opportunity/Affirmative Action Employer, unless otherwise stated.

17. **SUSTAINABILITY**

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- a) A key focus of UNLV is to minimize the impact the procurement of goods and services has on the local environment. UNLV is committed to sustainable economic, social, and environmental practices in all operations which UNLV is involved. It is important that Bidders share this commitment as well. Therefore, sustainable goods and services should be offered whenever available and specifically when required in the bidding documents.
- b) UNLV may request the successful Bidder to provide reports related to sustainability on all goods and services provided in response to this IFB. Reports may include, but are not limited to: sustainable attributes of each product or service, the dollar and percentage amount spent on sustainable or environmentally preferred products and services, and the total amount spent by UNLV.
- c) All electronic equipment UNLV purchases must be Energy Star rated (or, if there is no Energy Star rating for the desired equipment, energy efficient models or substitutes are preferred). The requirement to purchase Energy Star rated equipment will improve UNLV's energy and financial performance while distinguishing our institution as an environmental leader.

18. TAXES, LICENSES AND PERMITS

- a) It is the Bidders responsibility for securing all required licenses, permits and insurance necessary for the proper execution and completion of the work involved. UNLV is exempted from paying state, local and federal excise taxes.
- b) Companies conducting business for profit in Nevada are required to have a current Nevada business license pursuant to NRS 76.100 (1) unless the entity is either a) a non-profit corporation or b) meets the requirements for an exemption and has filed the appropriate notice of exemption with the Nevada Secretary of State. The Bidder certifies that it has a current Nevada business license or it is exempt and agrees to provide immediate notice to UNLV's Purchasing department in the event the license is no longer valid.
- c) NSHE/UNLV is exempt from Nevada State sales tax as provided by Nevada Revised Statutes 372.325 and 374.330. The NSHE/UNLV State Tax Exempt Number is RCE-000-441. The Federal Tax ID number is 88-6000024.

19. EQUAL EMPLOYMENT OPPORTUNITY

UNLV is an Equal Opportunity/Affirmative Action educator and employer committed to achieving excellence through diversity. All qualified applicants will receive consideration for employment without regard to, among other things, race, color, religion, sex, age, creed, national origin, ethnicity, religion, gender, marital status, pregnancy, political affiliation, veteran status, physical or mental disability, sexual orientation, genetic information, gender identity, gender expression, or any other factor protected by anti-discrimination laws. UNLV employs only United States citizens and individuals lawfully authorized to work in the United States. Women, under-represented groups, individuals with disabilities, and veterans are encouraged to apply.

SECTION C
PURCHASE ORDER TERMS AND CONDITIONS

1. **ADDITIONS/CHANGES**

No extra work, additions, alterations, including changes in price will be paid by UNLV unless agreed to and performed pursuant to and in accordance with a written revision to the order.

2. **BUSINESS LICENSE REQUIREMENT**

A person conducting business for profit in Nevada are required to have a current Nevada business license pursuant to NRS 76.100 (1) unless the entity is either a) a non-profit corporation or b) meets the requirements for an exemption and has filed the appropriate notice of exemption with the Nevada Secretary of State. The Contractor certifies that it has a current Nevada business license or it is exempt and agrees to provide immediate notice to UNLV's Purchasing department in the event the license is no longer valid. For contracts in excess of \$25,000, a business license number and information demonstrating good standing with the State of Nevada is required.

3. **CANCELLATIONS**

UNLV reserves the right to cancel this order without cause at any time. An equitable adjustment in price and/or delivery schedule will be negotiated for products completed or in process at the time of the cancellation, but in no event shall UNLV be required to pay more than contractor's actual cost of labor and supplies consumed to the point of cancellation.

4. **CONFLICTING TERMS**

The above terms and conditions may only be modified by UNLV with the exception of clauses which may be in conflict with any Bid, proposal or contract pertaining to this project. Bid, proposal or contract terms and conditions will take precedence.

5. **DEBARMENT/SUSPENSION STATUS**

The Contractor certifies that it is not suspended, debarred or ineligible from entering into contracts with the Executive Branch of the Federal Government, or in receipt of a notice of proposed debarment from any State agency or local public body.

6. **DELIVERY**

Delivery must be made within the time stated and only to the destination stated on this order. If Contractor fails to deliver on time, UNLV reserves the right to purchase elsewhere, and may reject goods and services not delivered or furnished on the date specified on the order.

7. **GOVERNING LAW**

Seller agrees that the laws of the State of Nevada shall govern the validity, construction, interpretation, and effect of this order. Any and all disputes arising out of or in connection with the order shall be litigated only in the 8th Judicial District Court in and for Clark County, State of Nevada, and Contractor hereby expressly consents to the jurisdiction of said court.

8. **HAZARDOUS MATERIALS**

Contractors furnishing supplies which contain hazardous materials must label each container listing the identity of such material. Each carton or package must also be identified on the outside with the appropriate hazard warning. Contractors must furnish the necessary MSDS for each chemical, substance or product listed on the order. The Purchase Order Number must appear on all MSDS material pertaining thereto.

9. **INDEMNIFICATION**

Vendor/Contractor, shall indemnify, defend and hold harmless NSHE/UNLV from and against any and all liabilities, claims, losses, lawsuits, judgments and or expenses, including attorney fees, arising either

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directly or indirectly from any act or failure to act by the Seller or any of its officers, employees and agents, which may occur during or which may arise out of the performance of this order.

10. INSURANCE

All Contractors performing work on UNLV premises are required to provide evidence of coverage for Worker's Compensation, General Liability; Automobile Liability and Professional Liability if applicable all in the minimum limits as required.

11. INVOICES

Submit invoice(s) as instructed on the face hereof immediately upon delivery or completion of order. The purchase order number must be referenced on the invoice.

12. NON-DISCRIMINATION

The Contractor shall not employ or contract with any firm or organization that is unfit or unskilled in the work to be performed. Contractor shall not discriminate or allow discrimination against any employee or applicant for employment because of sex, sexual orientation, religion, age, disability, race, color, creed, or national origin. Contractor shall comply with and shall require its subcontractors to comply with the applicable provisions of Title 28 and Title 53 of the Nevada Revised Statutes.

13. PRICE WARRANTY

Contractor warrants that the price(s) for the items or services sold hereunder are not less favorable than those extended to any other customer (whether government or commercial) for the same or similar items or services in similar quantities. In the event the Contractor reduces its price(s) for such items or services during the term of this order, Contractor agrees to reduce the price(s) hereof accordingly. Contractor warrants that price(s) shown on this order shall be complete and no additional charges of any type shall be added without express written consent from UNLV.

14. PROMPT PAYMENT DISCOUNT

Contractor's prompt payment discount is to be calculated from date of receipt of shipment, completion of services or date of receipt of correct invoice, whichever is later.

15. PURCHASE ORDER NUMBERS

UNLV purchase order numbers must appear on all packing slips, shipping documents, labels, and invoices.

16. QUANTITY AND QUALITY

The quantity term stated on this order shall be complied with strictly, as stated. The Contractor warrants that all goods, materials, or work furnished are of reasonable average quality and would meet such a standard of description in the trade.

17. STANDARDS AND REGULATIONS – FEDERAL AND STATE

In performance of the order, Contractor shall comply with any and all federal, state and local laws, rules, ordinances and regulations, and all materials and work or services furnished hereunder shall be produced or furnished in full and complete compliance therewith.

18. TAX EXEMPTION

NSHE/UNLV is exempt from Nevada State sales tax as provided by Nevada Revised Statutes 372.325 and 374.330. The NSHE/UNLV State Tax Exempt Number is RCE-000-441. The Federal Tax ID number is 88-6000024.

19. TERMINATION FOR DEFAULT

In the event of the Seller's default hereunder, NSHE/BCS may exercise any or all legal rights available, both at law or in equity. The prevailing party shall be entitled to attorneys' fees and costs. A breach or

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default may be declared with or without termination. The Contractor's obligations that by their terms would ordinarily be expected to survive a termination or an order will survive indefinitely.

20. **WARRANTY**

Contractor expressly warrants that all items or services covered by this order will conform to the drawings, specifications or samples (if any) or other description furnished by UNLV. All items or services will be fit and sufficient for the purpose intended as an implied warranty of merchantability.

SECTION D
SCOPE OF WORK/SPECIFICATIONS

The Successful Bidder shall provide and install the upgrade and expansion of UNLV's Cherry Creek Supercomputer. Bids must be for the exact Intel make and model specified below unless otherwise stated. Substitution of any components will not be considered unless otherwise stated.

UNLV will only consider Bidders who meet the following minimum requirements:

1. Intel authorized dealer
2. Minimum of five (5) years experience in installing supercomputer of similar specifications.

The following are the specifications of the current Cherry Creek supercomputer:

- (48) Supermicro F627G3-F, (72) Intel Xeon E5-2697v2 12C 2.7GHz, (144) Intel Xeon Phi 7120P
- Cores: 576 CPU + 8,784 MIC = 9,360 cores
 - Theoretical Peak (TFLOP/s): 24.9 CPU + 180.3 MIC = 205.2 TFLOP/s
 - Power: 74 kW
 - Memory: 6,144 System + 2,304 MIC = 8,448 GB Interconnect: Intel True Scale
 - 1 x 12800-40 (12800-040-UHP)
 - 3 x 18-port Leafs (12800LF18)
 - 48 x 1-port HCA (QLE7340CK) w/ cables

The specifications for the upgrade are as follows:

- (24) Intel S2600GL, (48) Intel Xeon E5-2697v2 12C 2.7GHz, (48) Intel Xeon Phi 7120P or Intel equivalent or better
- Cores: 576 CPU + 2,928 MIC = 3,504 cores
 - Theoretical Peak (TFLOP/s): 12.4 CPU + 58 MIC = 70.4 TFLOP/s
 - Power: 23 kW
 - Memory: 3,072 System + 768 MIC = 3,840 GB Interconnect: Intel True Scale
 - 1 x 18-port Leaf (12800LF18)
 - 5 x 12200 Switch (12200BS23)
 - 24 x 1-port HCA (QLE7340CK) w/ cables
 - Professional Services: On-site Installation of Upgrade

The specifications for the expansion are as follows:

- (48) additional nodes with equivalent or better performance than the existing Supermicro, (96) Intel Xeon E5-2640v3 8C 2.6GHz, (192) Intel Xeon Phi 5110P or Intel equivalent or better
- Cores: 768 CPU + 10,944 MIC = 11,712 cores
 - Theoretical Peak (TFLOP/s): 32 CPU + 192.5 MIC = 224.5 TFLOP/s
 - Power: 68 kW
 - Memory: 6,144 System + 1,536 MIC = 7,680 GB Interconnect: Intel True Scale
 - 48 x 1-port HCA (QLE7340CK) w/ cables
 - Professional Services: On-site Installation of Expansion

Delivery and installation must be completed within twenty one (21) days of issuance of a purchase order. Freight terms are stated under Section B, #10.

Bidders must provide standard next business day warranty and maintenance for three (3) years from complete installation and start-up of the upgrade and expansion.

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Bidders must review the terms and conditions contained in Exhibit B, Minimum Contract Terms. The terms and conditions contained in Exhibit B, Minimum Contract Terms or, in the sole discretion of UNLV, terms and conditions substantially similar to those contained in the Minimum Contract Terms, will constitute and govern any agreement that results from this IFB. If Bidder takes exception to any terms or conditions set forth in the contract, Bidder will submit a specific list of the exceptions as part of its response to this IFB. Bidder's exceptions will be reviewed by UNLV and may result in disqualification of Bidder's offer as non-responsive to this IFB. If Bidder's exceptions do not result in disqualification of Bidder's response, then UNLV may consider Bidder's exceptions when UNLV evaluates the Bidder's response.

SECTION E

PRICING RESPONSE FORM

Provide pricing for each of the items listed below. Note that award shall be made to the lowest responsive and responsible Bidder after giving due consideration to price, quality, availability, conformance to specifications, financial capability and service, including such things as life cycle cost, if applicable, all in the best interests of the requesting department and UNLV.

ITEM #	DESCRIPTION	QUANTIT Y	UNIT	UNIT PRICE	TOTAL PRICE
PART 1. UPGRADE					
1	Intel S2600GL	24	EA		
2	Intel Xeon E5-2697v2 12C 2.7GHz	48	EA		
3	Intel Xeon Phi 7120P	48	EA		
4	Cores: 576 CPU + 8,784 MIC = 9,360 cores	1	LOT		
5	Theoretical Peak (TFLOP/s): 24.9 CPU + 180.3 MIC = 205.2 TFLOP/s	1	LOT		
6	Memory: 3,072 System + 768 MIC = 3,840 GB Interconnect: Intel True Scale	1	LOT		
7	18-port Leaf (12800LF18)	1	EA		
8	12200 Switch (12200BS23)	5	EA		
9	1-port HCA (QLE7340CK) w/ cables	24	EA		
10	Onsite installation of upgrade	1	LOT		
				SUBTOTAL FOR PART 1 \$	
PART 2. EXPANSION					
1	Additional nodes	48	EA		
2	Intel Xeon E5-2640v3 8C 2.6GHz	96	EA		
3	Intel Xeon Phi 5110P	192	EA		
4	Cores: 768 CPU + 10,944 MIC = 11,712 cores	1	LOT		
5	Theoretical Peak (TFLOP/s): 32 CPU + 192.5 MIC = 224.5 TFLOP/s	1	LOT		
6	Memory: 6,144 System + 1,536 MIC = 7,680 GB Interconnect: Intel True Scale	1	LOT		
7	1-port HCA (QLE7340CK) w/ cables	48	EA		
8	Onsite installation of expansion	1	LOT		
				SUBTOTAL FOR PART 2 \$	
				GRAND TOTAL \$	

UNLV continuously strives to encourage protecting the environment through energy efficiency recognizing innovative products that meet the key principles associated with categories eligible for the ENERGY STAR label. If your product fits the ENERGY STAR label, please list details that match EPA/ENERGY STAR competencies and appropriate roles; and provide specifications of energy consumption and requirements for the system. (*Attaching separate documentation is acceptable.)

[illegible]



EXHIBIT B
MINIMUM CONTRACT TERMS FOR THE IFB
FOR THE UNIVERSITY OF NEVADA, LAS VEGAS

These Minimum Contract Terms set forth the minimum contract terms and conditions that will be applicable to a Contract resulting from this IFB. The final Contract will include details specific to the scope of this IFB, and any services which are excluded, due to existing agreements or replacement agreements thereof. It is important to **note any objections** to these Minimum Contract Terms (**including all insurance requirements**), since the final Contract will be longer and contain more, rather than less terms and conditions than the following:

This Contract # _____ ("Contract") is made effective as of the date last signed below by any authorized signatory (the "Effective Date") by and between the Board of Regents of the Nevada System of Higher Education ("NSHE"), on behalf of the University of Nevada, Las Vegas, **(INSERT DEPARTMENT NAME)**, ("UNLV or UNLV") and **(INSERT NAME OF COMPANY), a (INSERT STATE AND MANNER OF ORGANIZATION, E.G. CORPORATION, LIMITED LIABILITY COMPANY), (INSERT EIN #)** ("Contractor"), and is based on the following facts:

UNLV requires the upgrade and expansion of the Cherry Creek Supercomputer.

On March 23, 2015, UNLV issued its Invitation for Bid #5195-DC (the "**BID**") seeking proposals from qualified contractors to provide these services.

On _____, 20____, Contractor submitted a proposal ("**Proposal**") in response to the RFP. The Proposal was later modified by Contractor's "Best and Final Offer" on _____, 20____.

On _____, 20____, UNLV selected Contractor's Best and Final Offer as the one best suiting its needs.

Based on the foregoing Recitals, and for other valuable consideration, the parties agree as follows:

AGREEMENT

ARTICLE I
TERM

A. INITIAL TERM

The Contract shall commence as of the Effective Date and remain in effect for **(INSERT # OF YEARS)** years, unless otherwise terminated in accordance with this Contract ("**Initial Term**" or "**Term**").

B. CONTRACT EXTENSION

Without renewing the Term of this Contract, UNLV shall have the right to extend this Contract for up to ninety (90) calendar days from its expiration date of the then applicable Term for any reason. Should UNLV exercise its right to extend this Contract for ninety (90) days beyond the expiration of this Contract, Contractor shall be entitled to receive consideration as provided for in this Contract, pro-rated for the period for which UNLV requests additional services.

ARTICLE II

SCOPE OF CONTRACT

Contractor shall provide the services as further described in Exhibit A, **as modified by Contractor's Best and Final Offer, attached as Exhibit B ADD AS APPLICABLE** (the "Services" which shall include any applicable Deliverable(s)).

This Contract, together with all attachments, addenda, and exhibits, **the RFP, the Contractor's Best and Final Offer (including all modifications, but not including any legal terms and conditions), and the Proposal (including all modifications, but not including any legal terms and conditions) [INSERT AS APPLICABLE. DO NOT INCLUDE "BEST AND FINAL," UNLESS THERE IS A BEST AND FINAL] MAKE SURE THIS IS THE CASE** between the parties and supersedes all previous agreements, whether written or oral between the parties with respect to the subject matter hereof, whether express or implied and shall bind the parties unless the same be in writing and signed by the parties. The parties further understand and agree that the other party and its agents have made no representations or promises with respect to this Contract, except as in this Contract expressly set forth. In the event of conflict among any of the terms and conditions set forth in any of the preceding documents, the terms and conditions of such documents shall govern in the following order of precedence: **(1) this Contract, (2) the RFP, (3) Contractor's Best and Final Offer (including all modifications, but not including any legal terms and conditions), and (3) the Proposal (including all modifications, but not including any legal terms and conditions) [ADD OR DELETE AS APPLICABLE ONLY INCLUDE "BEST AND FINAL" IF THERE IS ONE! NOTE- IF THE CONTRACTOR'S PROPOSAL INCLUDES A SAMPLE CONTRACT, LET THE ATTORNEY REVIEWING IT KNOW SINCE THIS SAMPLE CONTRACT MAY NEED TO BE EXCLUDED.]** Contractor agrees to be bound by any warranties and representations made by Contractor in the Proposal and shall notify UNLV immediately if there are any material changes to the warranties and representations set forth by Contractor in its Proposal, as applicable.

UNLV may, at its sole option, develop additional job-specific scopes of work ("**Scopes of Work**" or "**SOW**"). In the event that UNLV elects to request additional services from Contractor, additional scope, schedule, and compensation will be negotiated with Contractor. Nothing in this Contract shall be construed as guaranteeing Contractor that any additional Scopes of Work will be actually requested.

ARTICLE III CONSIDERATION

The amount to be paid to Contractor for work performed under this Contract is \$_____. Pricing shall be firm for the term of the Contract.

Except as expressly provided for herein, all Contractor prices are inclusive of expenses.

In the event that UNLV requests additional services from Contractor during the Term of this Contract or during any allowable Renewal Term(s), payments shall be made as agreed to between Contractor and UNLV but in no case will payments for such additional services be made until such services are performed and accepted by UNLV. Any such payments and any such payment schedules shall be as negotiated between UNLV and Contractor prior to the commencement of any work or Services.

All payments shall be made within thirty (30) days of acceptance of the related invoice. Should the acceptance of such invoices be in doubt, Contractor shall not be due any interest or penalty on any unpaid amounts.

ARTICLE IV DEFAULT

A. DEFAULT BY CONTRACTOR

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UNLV shall provide Contractor written notice of any material breach of this Contract. Should Contractor fail to cure such material breach within ten (10) business days following receipt of written notice, UNLV shall have the right at its sole discretion, in addition to all other applicable remedies at law or in equity, to terminate further performance of this Contract. On the effective date of the termination, Contractor shall terminate all work and take all reasonable actions to mitigate expenses, and Contractor shall immediately refund UNLV a pro-rata amount of any advance or prepaid unearned monies. In case of default by Contractor, the UNLV reserves the right to hold Contractor responsible for any actual, consequential or incidental damages.

B. DEFAULT BY UNLV

Contractor shall provide UNLV written notice of any material breach of this Contract. Should UNLV fail to cure such material breach within ten (10) business days following receipt of written notice, Contractor shall have the right, in addition to all other applicable remedies at law or in equity, to terminate further performance of this Contract. Notwithstanding the foregoing, on the date of termination for a material breach by UNLV, Contractor shall terminate all work and take all reasonable actions to mitigate expenses. Notwithstanding anything to the contrary herein and regardless of choice of law, UNLV hereby asserts and shall be entitled to claim sovereign immunity and be entitled to all applicable liability limits and statutory protections, including, but not limited to those set forth in NRS Chapter 41.

**ARTICLE V
INSURANCE, LIABILITY & INDEMNIFICATION**

A. INSURANCE

Contractor shall be fully responsible for and shall indemnify UNLV for any acts or omissions of any contractors, subcontractors, design builders, subdesign builders, architects, subarchitects, engineers, consultants, subconsultants, service providers, and vendors engaged by Contractor to perform any of the Services (collectively, "**Subcontractor(s)**"). Contractor (which for the purposes of this Article shall include Subcontractor(s)) is required, at its sole expense, to procure, maintain, and keep in force for the duration of this Contract, work, Services or event, the following insurance coverage conforming to the minimum requirements specified below unless a change is specifically agreed to in writing by UNLV. The required insurance shall be in effect on or prior to the commencement of the Contract, work, Services or event by Contractor and shall continue in force as appropriate until the latter of:

- Final acceptance, or
 - Such time as the insurance is no longer required under the terms of this Contract.
- 1) Commercial General Liability –
 - Must be on a per occurrence basis.
 - Shall be at least as broad as Insurance Services Office ("**ISO**") form CG 00 01 10 01 and shall cover liability arising from premises, operations, independent contractors, Subcontractors, completed operations, personal injury, products, and liability assumed under this Contract.
 - Limits of Liability: \$1,000,000 per occurrence and \$2,000,000 annual aggregate.
 - 2) Automobile Liability – For Services not exceeding \$1,000,000 the minimum limit of liability required is a Combined Single Limit ("**CSL**") of \$500,000 per occurrence. For Services exceeding \$1,000,000 the minimum limit of liability required is a CSL of \$1,000,000 per occurrence. Coverage shall include owned, non-owned, and hired vehicles and be written on ISO form CA 00 01 10 01 or a substitute providing equal or broader liability coverage.
 - 3) Workers' Compensation - Employers Liability Limits shall be at least \$100,000 per occurrence and for occupational disease. Workers' Compensation is required by law for anyone with employees. Sole proprietors and corporate officers can waive coverage with mandatory affidavit available from UNLV. If

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providing services, Contractor shall provide proof of Workers' Compensation insurance as required by NRS 616B.627 or proof that compliance with the provisions of Nevada Revised Statutes, Chapter 616A-D and all other related chapters, is not required.

- 4) Subrogation must be waived against "The Board of Regents of the Nevada System of Higher Education."
- 5) "The Board of Regents of the Nevada System of Higher Education" must be named as an Additional Named Insured on all primary and excess / umbrella liability policies (excluding professional liability) affording the broadest possible coverage. Endorsements shall be submitted to allow blanket addition as required by the Contract or individualized endorsement naming NSHE/UNLV as an additional insured.
- 6) Insurance maintained by Contractor shall apply on a first dollar basis without application of a deductible or self-insured retention and shall not exceed \$5,000 per occurrence unless otherwise specifically agreed to in writing by UNLV. Such approval shall not relieve Contractor from the obligation to pay any deductible or self-insured retention.
- 7) Policy Cancellation / Change in Policies and Conditions Notifications
Contractor shall:
 - Have each of its insurance policies endorsed to provide ten (10) days' notice for non-payment of premium;
 - Specify that the policies cannot be canceled, non-renewed, coverage and / or limits reduced or coverage materially altered that can affect UNLV without sixty (60) days' prior written notice to UNLV and the notices required by this paragraph shall be sent by certified mail to UNLV;
 - Send to UNLV a facsimile copy of the policy cancellation and / or change of policy and conditions notice in this paragraph to UNLV within three (3) business days upon its receipt;
 - Provide UNLV with renewal or replacement evidence of insurance no less than thirty (30) days before the expiration or replacement of the required insurance until such time as the insurance is no longer required by UNLV; and
 - Immediately notify UNLV in writing and immediately replace such insurance or bond with insurance or bond meeting this Contract's requirements if at any time during the period when insurance is required by this Contract, an insurer or surety fails to comply with the requirements of this Contract.
- 8) Ensure the Primary Policy complies as follows–
 - Contractor and parties contracting directly with UNLV must have its policy endorsed to reflect that its insurance coverage is primary over any other applicable insurance coverage available.
 - Any Contractor's insurance or self-insurance available to UNLV shall be in excess of and non-contributing with any insurance required.
- 9) Ensure the Loss Policy complies as follows– "The Board of Regents of the Nevada System of Higher Education" shall be named as loss payee as respects its interest in any property that Contractor has an obligation to insure on behalf of UNLV.
- 10) Ensure that its insurance policies be -
 1. Issued by insurance companies authorized to do business in the State of Nevada or eligible surplus line insurers acceptable to the State of Nevada and having agents in the State of Nevada upon whom service of process may be made; and
 2. Currently rated A.M. Best as A - IX or better.

11) Provide Evidence of Insurance Requirements

Prior to the start of any work, Contractor must provide the following documents to UNLV:

- Certificate of Insurance: The ACORD 25 Certificate of Insurance form or a form substantially similar must to show evidence the insurance policies and coverage required of Contractor;
- Additional Insured Endorsement: Original Additional Insured Endorsement(s) signed by an authorized insurance company representative(s);
- Policy Cancellation Endorsement;
- Waiver of Subrogation Endorsement;
- Endorsement reflecting Contractor insurance policies are primary over any other applicable insurance; and
- Loss Payee Endorsement.

B. OFFICIALS, OFFICERS, AGENTS, REGENTS AND EMPLOYEES OF NSHE/UNLV NOT PERSONALLY LIABLE

In no event shall any official, officer, regent, employee, or agent of NSHE/UNLV in any way be personally liable or responsible for any obligation contained in this Contract, whether expressed or implied, nor for any statement, representation or warranty made or in connection with this Contract.

C. INDEMNIFICATION

Contractor shall indemnify, defend and hold harmless NSHE/UNLV, its officers, regents, employees, and agents from and against any and all liabilities, claims, losses, demands, actions, causes of actions, fines, penalties, debts, lawsuits, judgments, costs and/or expenses, arising either directly or indirectly from any act or failure to act by Contractor or any of its officers, employees, agents, or Subcontractors, which may occur during or which may arise out of the performance of this Contract (collectively, "**Claim(s)**"). NSHE/UNLV will be entitled to employ separate counsel and to participate in the defense of any Claim at its sole discretion and expense. Contractor shall not settle any Claim or threat thereof without the prior written approval of NSHE/UNLV, whose consent shall not be unreasonably withheld, where the settlement would require payment of funds by NSHE/UNLV or admit or attribute to NSHE/UNLV any fault or misconduct.

**ARTICLE VI
MISCELLANEOUS PROVISIONS**

A. APPROPRIATIONS

The terms of this Contract are contingent upon sufficient appropriations and authorizations being made by UNLV for the performance of this Contract. If sufficient appropriations and authorizations are not made by UNLV, this Contract shall terminate, without penalty, upon thirty (30) calendar days' written notice being given by UNLV to Contractor, and Contractor shall immediately refund UNLV any pre-paid or advance unearned payments it made to Contractor.

B. ASSIGNS AND SUCCESSORS

Contractor shall not assign, transfer, or delegate any rights, obligations, or duties under this Contract without the prior written consent of UNLV. Notwithstanding the foregoing, Contractor shall be fully responsible to UNLV and shall indemnify UNLV for any acts or omissions of any Subcontractors hired by Contractor, regardless of whether UNLV consented to the use of any such Subcontractors.

C. COMPLIANCE

Contractor warrants and agrees that it will at all times during the Term(s), comply with all applicable local, state and federal standards, codes, statutes and regulations, including, but not limited to, OSHA, EPA, ADA, HIPAA, and provide upon request, proof of compliance with the foregoing.

D. CONFIDENTIALITY

Contractor acknowledges and agrees that it is to keep all confidential information secure and is not to disseminate or use any materials and/or data that belongs to UNLV, whether originals or copies. Contractor acknowledges that UNLV would be materially harmed if such confidentiality is not maintained and any referenced material and/or data was disseminated in any form without UNLV's prior written approval.

E. DEBARMENT/SUSPENSION STATUS

By signing the Contract, Contractor certifies that it is not suspended, debarred or ineligible from entering into contracts with the Executive Branch of the Federal Government, or in receipt of a notice of proposed debarment from any state agency or local public body. Contractor agrees to provide immediate notice to UNLV in the event of being suspended, debarred or declared ineligible by any state or federal department or agency, or upon receipt of a notice of proposed debarment during the Term of this Contract.

F. EQUAL EMPLOYMENT OPPORTUNITY

UNLV is an Equal Opportunity/Affirmative Action educator and employer committed to achieving excellence through diversity. By signing this Contract, Contractor certifies that it and its Subcontractors do not discriminate against any employee or applicant for employment or person to whom it provides services because of race, sex, color, creed, ethnicity, religion, age, marital status, pregnancy, gender, gender identity, gender expression, genetic information, veteran's status, national origin, physical or mental disability, or any other factor protected by anti-discrimination laws, and that it complies with all applicable federal, state and local laws and executive orders regarding employment. In the event Contractor or its Subcontractors are found guilty by an appropriate authority to be in violation of any such federal, state, or local law, UNLV may declare Contractor in breach of this Contract and immediately terminate this Contract, and Contractor shall immediately refund UNLV any prepaid or advance unearned monies that UNLV paid to Contractor.

G. GOVERNING LAW

The parties agree that the laws of the State of Nevada shall govern the validity, construction, interpretation, and effect of this Contract, excluding any laws or principals regarding the conflict or choice of laws. Any and all disputes arising out of or in connection with this Contract shall be litigated in a court of competent jurisdiction in Clark County, State of Nevada, and Contractor expressly consents to the jurisdiction of said court.

H. HEADINGS AND INTERPRETATION

The headings in this Contract are for purposes of convenience and reference only and shall not in any way define, limit, extend or otherwise affect the meaning or interpretation of any of the terms hereof. The words "will" and "shall" denote a mandatory requirement or obligation.

I. INDEPENDENT CONTRACTOR

Contractor expressly agrees that Contractor's employees and/or Subcontractors shall not be treated or considered as the servants and employees of UNLV, it being the intention of the parties that Contractor shall be and remain an independent contractor, and that nothing contained in this Contract shall be construed inconsistent with that status. Contractor covenants and agrees to save and hold harmless UNLV from and

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against any and all damages, claims, costs or expenses whatsoever, due to the existence of any applicable labor/employment codes, ordinances, and of any and all claims, costs and expenses in connection therewith under any claim or subrogation provided by said applicable codes, ordinances or otherwise.

J. MODIFICATION

No alteration, modification, amendment, or supplement to this Contract or any of its provisions shall be effective, enforceable or binding unless made in writing and duly signed by the parties.

K. NOTICES

Written notices required under this Contract shall be sent certified mail, return receipt requested, to:

UNLV as follows: Director of Purchasing and Contracts
University of Nevada, Las Vegas
4505 S. Maryland Parkway
Las Vegas NV 89154-1033

Contractor as follows:

(INSERT NAME AND ADDRESS OF CONTRACTOR)

L. OWNERSHIP OF MATERIALS

By signing this Contract, Contractor acknowledges that any materials and/or UNLV customer/user data that may result from its efforts, as related to this Contract, are the property of UNLV and, as such, may not be disseminated in any form whatsoever to any person, group or organization without the prior written authorization of UNLV. As applicable, Contractor shall provide good title to any applicable Deliverable(s), and Contractor shall execute any additional documents necessary to secure or renew UNLV's rights in and to any applicable Deliverable(s). Contractor warrants that it is either the owner of all methodologies used and/or Deliverable(s) transferred/licensed (as applicable) hereunder or that it has all appropriate licenses or permissions necessary to perform the Services and/or transfer/license the Deliverable(s) (as applicable).

M. TAXES, LICENSES AND PERMITS

It is the Contractor's responsibility to secure all required licenses, permits, franchises, lawful authority and insurance necessary for the proper execution and completion of the Services to be performed hereunder. Contractor warrants and agrees that it is, and shall remain for the duration of this Contract, a duly organized, validly existing entity, in good standing, with all the requisite power, permissions, licenses, permits, franchise, insurance and authorities necessary to provide the goods and/or Services. UNLV is exempt from paying state, local and federal excise taxes as provided by Nevada Revised Statutes ("NRS"). The NSHE/UNLV State Tax Exempt Number is RCE-000-441. The Federal Tax ID number is 88-6000024.

Companies conducting business for profit in Nevada are required to have a current Nevada business license pursuant to NRS 76.100(1) unless the entity is either a) a non-profit corporation or b) meets the requirements for an exemption and has filed the appropriate notice of exemption with the Nevada Secretary of State. Contractor certifies that it has a current Nevada business license or it is exempt and agrees to provide immediate notice to UNLV in the event the license is no longer valid.

N. TERMINATION FOR CONVENIENCE

UNLV shall have the right at any time to terminate further performance of this Contract, in whole or in part, for any reason by providing Contractor with thirty (30) calendar days' written notice. Such termination shall be

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effected by written notice from UNLV to Contractor, specifying the extent and effective date of the termination. On the effective date of the termination, Contractor shall terminate all work and take all reasonable actions to mitigate expenses. Contractor shall submit a written request for incurred costs performed through the date of termination, and shall provide any substantiating documentation requested by UNLV. In the event of such termination, UNLV agrees to pay Contractor within thirty (30) calendar days after acceptance of invoice.

O. SEVERABILITY

In the event any one or more of the provisions of this Contract shall for any reason be held to be invalid, illegal, or unenforceable, such provision(s) shall be treated as severable, leaving the remaining provisions of this Contract unimpaired, and the Contract shall be construed as if such invalid, illegal or unenforceable provision(s) were not present.

P. USE OF UNIVERSITY NAME AND/OR LOGO IN ADVERTISING

Contractor acknowledges and agrees that it shall not use the name of the Board of Regents of the Nevada System of Higher Education; University of Nevada, Las Vegas; Nevada State College; or any other NSHE logos, marks, trademarks, trade names, trade dress, slogans, or other indicia of ownership of the foregoing (collectively, "**Marks**"). Contractor further acknowledges and agrees that the Marks are the sole property of NSHE and that it shall not use any of the Marks in its advertising, or in the production of any materials related to this Contract, without the prior written approval of UNLV.

Q. WAIVER

A failure or delay of either party to enforce at any time any of the provisions of this Contract shall not be construed to be a waiver of a party's right to enforce strict compliance of such provisions(s) of this Contract.

R. SMALL AND LOCAL BUSINESS CONCERNS REPORTING REQUIREMENTS

- 1) UNLV supports equal opportunity for minority owned, women-owned, and other small disadvantaged business concerns ("**MWDBE**") to compete for contracts awarded by UNLV. UNLV also supports efforts to encourage local businesses to compete for UNLV contracts. In some situations, MWDBE and local business concerns may not have the depth or full capability to meet all the requirements of large contracts. Nevertheless, UNLV supports finding opportunities for such MWDBE and local business concerns to participate as Subcontractors or Tier 2 suppliers in large contracts.
- 2) If the purchase of goods or Services is **anticipated to exceed \$1,000,000 at any time during the life of the Contract**, Contractor must provide, at a minimum, annual reports listing expenditures with MWDBE and Local Business Enterprises (as defined below). These reports pertain only to expenditures that are directly attributable to the UNLV prime Contract. The report must be available to UNLV by September 15th of the applicable Contract year, and should contain the following information:
 - a) The name, city and state; type of Tier 2 status (local, women owned, minority/and or disadvantaged or Local Business Enterprise); and any certification of such status including the entity granting the certification if applicable. If a business concern meets more than one definition (e.g. local and women-owned, or minority and women owned), that should be identified;
 - b) A description of the goods or services purchased; and
 - c) The amount of expenditures with the Subcontractor attributed to the prime Contract for the most recent completed fiscal year (July 1 through June 30).
- 3) Definitions:

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Definition of Local Business Enterprise. "Local Business Enterprise" is intended to mean a business concern that is a) owned 51% or more by Nevada residents, b) is headquartered in Nevada, or c) a majority of employees of the business are Nevada residents.

Definition of Disadvantaged Business Enterprise (DBE). "Disadvantaged Business Enterprise" is intended to mean a business concern owned by a minority or woman that is at least fifty-one percent (51%) unconditionally owned by one or more minority or women individuals who are both socially and economically disadvantaged, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals. Individuals who certify that they are a member of named groups, i.e. African Americans, Hispanic Americans, American Indians and Alaska Natives (Eskimos and Aleuts) and Asian and Pacific Island Americans are to be considered socially and economically disadvantaged.

Definition of Minority Business Enterprise (MBE). "Minority Business Enterprise" is intended to mean a business concern owned by one or more minority individuals that is at least fifty-one percent (51%) unconditionally owned by one or more minority individuals, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals. Individuals who certify that they are a member of named groups, i.e. African Americans, Hispanic Americans, American Indians and Alaska Natives (Eskimos and Aleuts) and Asian and Pacific Island Americans are to be considered socially and economically disadvantaged.

Definition of Women-Owned Business Enterprise (WBE). "Women-Owned Business Enterprise" is intended to mean a business concern owned by one or more women that is at least fifty-one percent (51%) unconditionally owned by one or more women, or a publicly owned business that has at least fifty-one percent (51%) of its stock unconditionally owned by one or more such individuals and that has its management and daily business controlled by one or more such individuals.

Definition of Disabled Veteran Business Enterprise (DBE). "Disabled Veteran Business Enterprise" is intended to mean a business concern of which at least 51% of the ownership interest is held by one or more veterans with service-connected disabilities; that is organized to engage in commercial transactions; and that is managed and operated on a day-to-day basis by one or more veterans with service-connected disabilities. This includes a business which meets the above requirements that is transferred to the spouse of a veteran with a service-connected disability upon the death of the veteran, as determined by the United States Department of Veterans Affairs.

Definition of Small Business Enterprise (SBE). "Small Business Enterprise" is intended to mean a business concern which performs a commercially useful function, is not owned and controlled by individuals designated as minority, women, veterans, or physically-challenged, and where gross annual sales does not exceed \$2,000,000.

S. JOINDER

Any governmental, state, or public entity within the State of Nevada may utilize this Contract at its option to obtain goods or services at the agreed upon price(s) throughout the term of the resulting contract with the authorization of Contractor. NSHE/UNLV is not liable for the obligations of the governmental entity which joins or uses the resulting contract.

T. AUDIT

Contractor agrees to maintain and preserve its books and records in accordance with generally accepted accounting procedures for a minimum of three (3) years, or longer if required by an applicable law or regulation. Upon UNLV's request, during the Term or for a period of two (2) years thereafter, Contractor shall in a timely manner, allow UNLV, UNLV's internal auditor or a third party auditor retained by UNLV to audit and

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analyze Contractor's compliance with the provisions of this Contract, and shall cooperate with any competent regulatory body and shall allow such other access to Contractor's premises and relevant records where required by legal processes or applicable laws or regulations.

V. SUSTAINABILITY

- a) A key focus of UNLV is to minimize the impact the procurement of goods and services has on the local environment. UNLV is committed to sustainable economic, social, and environmental practices in all operations involving UNLV. It is important that Contractor share this commitment as well. Therefore, sustainable goods and services should be offered whenever available or specifically when required in the Contract.
- b) UNLV may request Contractor to provide reports related to sustainability on all goods and services provided. Reports may include, but are not limited to: sustainable attributes of each product or service, the dollar and percentage amount spent on sustainable or environmentally preferred products and services, and the total amount spent by UNLV.
- a) All electronic equipment UNLV purchases must be Energy Star rated (or, if there is no Energy Star rating for the desired equipment, energy efficient models or substitutes are preferred). The requirement to purchase Energy Star rated equipment will improve UNLV's energy and financial performance while distinguishing our institution as an environmental leader.

X. NO MALWARE WARRANTY

Contractor warrants and represents that to the best of its knowledge and belief, that the links, data, CD-Roms, products, Deliverables and materials provided hereunder are free of viruses, trojans, use-driven destruction mechanisms, disabling devices, and malware, and that all products, CD-Roms, Deliverables, data and materials provided do not infringe on the intellectual property rights of any third party.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed as of the Effective Date.

(TYPE IN THE NAME OF THE CONTRACTOR. BOTH THE PREAMBLE AND THE SIGNATURE LINE MUST MATCH AND INCLUDE INC., LLC, AND/OR DBA AS APPLICABLE. IF THE ENTITY IS A SOLE PROPRIETOR, WRITE- SOLE PROPRIETOR JOE SMITH DBA JOE'S CRAB SHACK OR JOE SMITH DBA JOE'S CRAB SHACK. DO NOT ASSUME THAT A COMPANY IS A NEVADA COMPANY, CHECK WHAT STATE IT IS REGISTERED IN. DOUBLECHECK THAT THE CONTRACT NUMBER AND EIN ARE BOTH CORRECT. MAKE SURE YOU AREN'T USING FOOTERS/HEADERS FROM A PREVIOUS CONTRACT.)

APPROVED:

BY:

(TYPE IN NAME OF APPROVER)

Date

THE BOARD OF REGENTS OF THE NEVADA SYSTEM OF HIGHER EDUCATION, ON BEHALF OF THE UNIVERSITY OF NEVADA, LAS VEGAS

RECOMMENDED:

Bid # **5195-DC**

BY:

**TYPE IN NAME & TITLE OF PERSON FROM DEPARTMENT
AUTHORIZED TO SIGN**

Date

BY:

Gerry J. Bomotti, Senior Vice President for Finance and Business

Date

-AND/OR-

BY:

John Valery White, Executive Vice President and Provost

Date

APPROVED:

BY:

Len Jessup, President

Date

APPROVED AS TO LEGAL FORM:

BY:

Elda Luna Sidhu, General Counsel

Date