



**CONTRACT TO PROVIDE 3D CONE BEAM COMPUTED TOMOGRAPHY (CBCT) MACHINE
FOR THE UNIVERSITY OF NEVADA, LAS VEGAS**

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, School of Dental Medicine (SDM) ("**UNLV**") and _____ ("**Contractor**"), and is based on the following facts:

UNLV desires Contractor to provide 3D CONE BEAM COMPUTED TOMOGRAPHY (CBCT) MACHINE

On March 2, 2016 UNLV issued its Invitation for Bid No. 5217-CP (the "IFB") seeking proposals from qualified contractors to provide _____ services in connection with the _____.

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. RENEWAL TERM

Upon mutual written agreement this Contract may be renewed for four (4) additional one (1) year terms ("**Renewal Term(s)**" or "**Term(s)**"). **THE STANDARD RENEWAL IS 4 ONE YEAR Terms; HOWEVER, THIS MAY VARY DEPENDING ON THE TYPE OF CONTRACT.**

C. CONTRACT EXTENSION

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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

CHOOSE #1 OR #2 AND DELETE THE OTHER

#1 Contractor shall provide the following services ("**Services**" (including any applicable Deliverables)):

#2 [ALTERNATIVE]

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)). **[IF THERE ARE DELIVERABLES, SUCH AS REPORTS, OR MARKETING MATERIALS, DEFINE AS XXX SHALL CONSTITUTE THE DELIVERABLES]**

ADD THE BELOW TO BOTH #1 AND #2 ABOVE

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]** constitutes the entire agreement **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) (4) 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

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will be actually requested. **IF THIS CONTRACT IS A FIRM AWARD AND NO ADDITIONAL SCOPES OF WORK WILL BE ALLOWED DELETE THIS PARAGRAPH**

ARTICLE III CONSIDERATION

(INSERT FORMULA FOR DETERMINING HOW THE CONTRACTOR WILL BE PAID)

The amount to be paid to Contractor for work performed under this Contract

1) [shall not exceed X **(INCLUDE COST OF EXPENSES)**]

or

2) [is estimated to be X [, but UNLV is not required to purchase a minimum amount or quantity of work or Services hereunder] **(ADD THIS SENTENCE ONLY IF NO MINIMUM SPEND)**]

or

3) [The amount to be paid to Contractor for work performed under this Contract is estimated to be \$X. The total amount for Contractor's Proposal shall not exceed X. Notwithstanding the foregoing, UNLV, at its sole discretion may request additional Y at the same unit pricing.]

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

IF THIS CONTRACT IS A FIRM AWARD AND NO ADDITIONS WILL BE ALLOWED DELETE HIGHLIGHTED SECTION BELOW

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. **[DEFINE HOW THIS WILL WORK AND HOW THE CONTRACTOR WILL BE COMPENSATED. IF APPLICABLE, PUT IN AN HOURLY RATE, OR AN HOURLY RATE TO BE NEGOTIATED BY THE PARTIES BUT NOT TO EXCEED X. ALWAYS SPECIFY IF EXPENSES WILL BE PAID OR NOT].**

[IF APPLICABLE INCLUDE PRICE ESCALATION IF NOT APPLICABLE DELETE THIS SECTION. IT'S ALWAYS BEST TO ALLOW NO PRICE INCREASE FOR ANY RENEWAL TERM.]

Prices are to remain firm for the Initial Term of this Contract. In the event Contractor would like to request a price increase the following procedures apply.

- 1) Contractor should send a written notice requesting an increase a minimum of ninety (90) calendar days prior to the expiration of the then current Contract Term.
- 2) Contractor should submit with the request, supporting documentation which may include updated manufacturer's list prices, copies of applicable indexes, etc. Other documentation may be required.
- 3) Any allowable price increases will take effect at the beginning of the new Contract Term.
- 4) UNLV alone shall determine whether a price increase will be allowed for the applicable Renewal Term, but in no event shall any Renewal Term unit prices for any Services or materials increase by more than five percent (5%) above the price of the proceeding Term.

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- 5) In the event of a decrease, Contractor is responsible for passing along the savings to UNLV.

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

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

REVIEW RMS WEBSITE TO ENSURE THAT THE AMOUNTS ARE CORRECT AND ADD ANY ADDITIONAL INSURANCE REQUIRED FOR THIS CONTRACT (PROFESSIONAL LIABILITY, CRIME INSURANCE, ETC.). OBTAIN RMS APPROVAL IF NECESSARY.

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:

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- 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.

[ASK MICHAEL MEANS- MAY NEED FOR CONSULTING ETC.]

Professional Liability coverage of not less than \$1,000,000 per occurrence and \$2,000,000 in annual aggregate.

[Insert if Contractor will (or could if we asked for additional services) have access to any sensitive UNLV data or UNLV User Data]

Cyber Liability insurance with limits of not less than \$1,000,000 per occurrence and an annual aggregate of \$2,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security.

- 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 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,

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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 show evidence the insurance policies and coverage required of Contractor;

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- Additional Insured Endorsement: Original Additional Insured Endorsement(s) signed by an authorized insurance company representative(s);
- 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.

ONLY USE THIS PARAGRAPH IF VENDOR INSISTS ON NSHE INDEMNIFYING THEM

To the extent permitted by Nevada Law (including NRS 41.0305 to NRS 41.039) (**ADD – “..and regardless of choice of law,” if you are cutting and pasting into a vendor document**), NSHE/UNLV shall indemnify, defend, and hold harmless Contractor from and against any and all liabilities, claims, losses, lawsuits, judgments, and/or expenses, arising either directly or indirectly from any act or failure to act by NSHE/UNLV or any of its officers or employees, which may occur during or which may arise out of the performance of this Contract. NSHE/UNLV will assert the defense of sovereign immunity as appropriate in all cases, including malpractice and indemnity actions. NSHE/UNLV's indemnity obligation for actions sounding tort is limited in accordance with the provisions of NRS 41.035.

**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.

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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.

[ADD THE BELOW LANGUAGE IF YOU THINK IT IS POSSIBLE THAT CONTRACTOR WILL GET UNLV USER DATA TO COMPLY WITH NSHE REQUIREMENTS. IF THERE IS PUSHBACK YOU MAY REMOVE, ONLY IF YOU CONFIRM THAT CONTRACTOR WILL HAVE NO ACCESS TO UNLV USER DATA]

Contractor acknowledges and agrees that during the Term of this Contract, it may have access to nonpublic personal information relating to an identifiable individual (such as name, postal address, financial information, email address, telephone number, date of birth, Social Security number, or any other information that is linked or linkable to an individual) of UNLV alumni, employees, and students (collectively, "**UNLV User Data**"). Contractor acknowledges and agrees that UNLV User Data is highly sensitive and to afford it the maximum security Contractor can provide using commercially acceptable standards, no less rigorous than it protects its own customer and employee data. Contractor must abide by and agree to UNLV's Acceptable Use of Computing and Information Technology Resources Policy provided at <http://oit.unlv.edu/about-oit/policies>. Contractor agrees to comply with all applicable laws and regulations relating to privacy, including, but not limited to the Family Educational Rights and Privacy Act ("**FERPA**") and the Gramm-Leach-Bliley Act ("**GLBA**").

[ADD FOLLOWING IF THERE IS A BAA ATTACHED-] and, the Health Information Technology for Economic and Clinical Health Act ("**HITECH**"); the Health Insurance Portability and Accountability Act of 1996, Public Law 104-19 1 ("**HIPAA**") and regulations promulgated by the U.S. Department of Health and Human Services (the "**HIPAA Regulations**"). Contractor also agrees to comply with all laws and regulations as set forth in more detail in Exhibit X of this Contract which Contractor shall contemporaneously execute.

[ADD THE FOLLOWING INSTEAD IF THERE IS HEALTH INFORMATION BUT THE CONTRACT IS A COOPERATIVE AGREEMENT WITH ANOTHER NSHE INSTITUTION AND

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SO NO BAA IS NEEDED-] To the extent applicable to this Contract, Contractor and UNLV agree to comply with the Health Insurance Portability and Accountability Act of 1996, as codified at 42 USC 1320d (“**HIPAA**”) and any current and future regulations promulgated thereunder including without limitation the federal privacy regulations contained in 45 C.F.R. Parts 160 and 164 (the “**Federal Privacy Regulations**”), and the federal standards for electronic transactions contained in 45 C.F.R. Parts 160 and 162, all collectively referred to herein as “HIPAA Requirements.”, including the Health Information Technology for Economic and Clinical Health Act (“**HITECH**”) that was adopted as part of the American Recovery and Reinvestment Act of 2009. Contractor and UNLV agree not to use or further disclose any Protected Health Information (as defined in 42 USC 1320d), other than as permitted by HIPAA Requirements and the terms of this Agreement. Contractor and UNLV shall make their internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary of Health and Human Services to the extent required for determining compliance with the Federal Privacy Regulations.

Contractor shall immediately inform UNLV by telephone at (702) 895-1886, by email at informationsecurityoffice@unlv.edu, and in writing at the notice address of any information security incident, suspected unauthorized access, or breach involving UNLV User Data of which Contractor becomes aware. **OPTION 1:** [Except as prohibited by law, Contractor agrees to immediately destroy all confidential data and UNLV User Data received hereunder upon termination or expiration of this Contract.] **(OPTION 2:** [In the event of termination or expiration of this Contract for any reason, Contractor shall provide UNLV with an extract of all UNLV customer/user data in a text-based format, such as a MySQL database export or a set of CSV files as soon as practicable, but in no event later than thirty (30) days after termination. Contractor agrees to stipulate to an entry of injunctive relief without posting bond, in order to prevent or remedy a breach of this Section. Contractor acknowledges and agrees that any violation of this Section is a material breach of this Contract, and entitles UNLV to immediately terminate this Contract without penalty and receive a pro-rata refund of any prepaid unearned monies paid by UNLV. This Section shall survive termination of this Contract.

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

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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. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Contract shall refer to this Contract as a whole and not to any particular. The words "including," "including without limitation," and words of similar import shall not be deemed restrictive but rather shall be deemed illustrative examples.

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 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)

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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) **(DEFINE- X Report(s), or Study, etc. shall constitute a "Deliverable(s)" somewhere in the Contract, putting it in the Scope is fine)**, 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).

[ADD IF UNLV IS RECEIVING OWNERSHIP OF A STUDY, DOCUMENT, OR OTHER DELIVERABLE. DEFINE DELIVERABLE. IF A CONSULTING CONTRACT AND THE DEPARTMENT DOESN'T REQUEST A SPECIFIC FINAL REPORT, ETC., YOU MAY WANT TO PUT THE FOLLOWING IN THE SCOPE- Consultant shall participate in conference calls with UNLV and/or provide details of its findings via written summaries, charts, or reports as may be requested by UNLV. Any such written summaries, charts, findings, final reports or media summaries shall constitute a Deliverable(s).]

Contractor acknowledges and agrees that the Deliverable(s), for purposes of copyright law, are deemed a "work made for hire" basis as so defined within the meaning of the Copyright Act (Title 17 of the United States Code) and that, as between Contractor and UNLV, the Deliverable(s) and all reproductions thereof shall be the sole and exclusive property of UNLV free from any claims by Contractor or anyone deriving rights through them. Contractor hereby grants, sells, assigns, and transfers unto UNLV, its successors, and assigns, all and any of Contractor's interest, right, title, and other intellectual property rights without limitation in and to the Deliverable(s), as well as the right to secure and renew any applicable copyrights in the original and in all derivative works in the United States and all other countries of the world, the right to redistribute the Deliverable(s) in any form and the right to sue for past, present, and future infringement of such rights, in the name of UNLV. If, for any reason, the Deliverable(s) are not deemed to be a "work made for hire," this Contract shall operate as an irrevocable assignment of all rights thereto to UNLV, its successors, and assigns. And if for any reason the Deliverables are not designated as an assignment or a "work made for hire" then Contractor grants to UNLV, its successors, and assigns, a perpetual, exclusive, royalty-free, license to use, copy, make, and redistribute the Deliverable(s) throughout the universe.

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

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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 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.

[REPLACE THE ABOVE PARAGRAPH AND USE THE BELOW PARAGRAPHS ONLY IF IT IS LIKELY UNLV WILL ALLOW CONTRACTOR TO USE MARKS TO ADVERTISE OR PROMOTE A SEMINAR OR EVENT, ETC. IT IS BEST TO DETAIL WHO WILL NEED TO APPROVE WHAT AND HOW.]

Contractor acknowledges and agrees that the name of the Board of Regents of the Nevada System of Higher Education; University of Nevada, Las Vegas; Nevada State College; and any other NSHE logos, marks, trademarks, trade names, trade dress, slogans, or other indicia of ownership of the foregoing (collectively, “**Marks**”) are the sole property of NSHE/UNLV, and shall only be used in accordance with this Contract. UNLV hereby grants Contractor a non-exclusive, non-transferrable, revocable, limited license to use the Marks solely for the purposes of performing the Services set forth herein and not for Contractor’s own promotional purposes

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without the prior written approval of UNLV. Contractor may only display the Marks in the manner approved in advance by UNLV **[IT IS BEST TO SPELL OUT IN THE CONTRACT OR STATEMENT OF WORK WHAT THE APPROVAL PROCESS IS OR TO ATTACH THE PERMITTED MARKS THAT CAN BE USED]** and the license to use the Marks shall terminate the earlier of i) the conclusion of the applicable XXXX **[ONLY USE i) IF THERE IS A SHORT-TERM PROMOTION OR EVENT THAT IS SHORTER THAN THE CONTRACT TERM, OTHERWISE DELETE i)];** ii) the termination of this Contract, or iii) UNLV's written revocation of the use of the Marks (email acceptable).

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:

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

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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 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.

(ONLY ADD IN THE BELOW SECTION IF THERE WILL BE CONTRACTORS ON CAMPUS THAT ARE ROUTINELY PROVIDING SERVICES IN UNLV OFFICES, AT THE STUDENT UNION OR OTHER SUCH AREA IN CLOSE PROXIMITY TO STUDENTS OR FACULTY OR USING UNLV EQUIPMENT OR FACILITIES.)

U. FITNESS FOR DUTY, INSPECTION, AND LOANED ITEMS OR FACILITIES

Contractor shall ensure that it has engaged sufficient personnel with the expertise required for the successful provision of Services to comply with all the requirements set forth in the Contract or any applicable Scopes of Work or SOW. Contractor shall ensure that all Contractor personnel providing the Services (which shall include Contractor principals and Subcontractors) shall: i) report for work in a manner fit to do their job when providing Services for UNLV or on UNLV owned, leased, or operated property ("**Premises**") and ii) shall not be under the influence of or in possession of any alcoholic beverages or of any controlled substances (as defined by NRS 453.146 or any applicable federal law or statute) when providing Services for UNLV or on UNLV Premises (except as properly prescribed to them by a physician and provided that it does not affect their ability to safely and proficiently provide the Services). Searches by UNLV representatives may be made of persons, personal effects, lockers, or other storage areas on UNLV Premises to detect evidence of unlawful substances or prohibited items which must not be brought onto UNLV Premises. Any supplies, equipment, tools, items, vehicles, carts, or facilities shall be loaned solely as a convenience to Contractor and are provided "as is" without any representations as to the condition, suitability for use, freedom from defect, or hazards.

(ADD BELOW IF THIS IS A THE CONTRACTOR IS SUPPLYING ELECTRONICS, ETC. OR THIS A BIG CONTRACT THAT IS THE SUBJECT OF AN RFP OR IFB)

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

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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.

[ONLY ADD IN BELOW IF PURCHASING SOFTWARE OR APPLICATION OR SOFTWARE DEVELOPMENT SERVICES]

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.

[ONLY ADD IN BELOW IF CONTRACTOR WILL BE HOSTING SENSITIVE DATA OR PPI. WE CAN USUALLY AGREE THAT IT WILL BE STORED IN EUROPE OR TAKE OUT THE COUNTRY REQUIREMENT CLAUSE AND INSTEAD ALLOW US TO TERMINATE IF THEY MOVE IT TO A COUNTRY OR PROVIDER THAT IS NOT ACCEPTABLE]

Y. DATA STORAGE

All UNLV User Data stored by Contractor shall be stored in the U.S. or Canada; encrypted at rest; and logically separated from Contractor's other customer data. All UNLV User Data shall be stored by Contractor in a SAS 70 or SSAE 16 (or better) certified facility. **GOOD TO INSERT THE NAME OR LOCATION OF CURRENT PROVIDER HERE.** Contractor shall notify UNLV in writing at least five (5) days before UNLV User Data is relocated to another facility and provide UNLV with the address and name of the new facility. In the case of an emergency, Contractor shall promptly notify UNLV if the UNLV User Data has been relocated and provide the address of the new facility. Contractor shall have the capacity to leverage encryption to protect data and virtual machine images during transport across and between networks and hypervisor instances; to manage encryption keys on behalf of UNLV; and shall maintain key management procedures. Any websites used to access or provide the Services shall be HTTPS using SSL encryption.

Z. UPTIME (OPTIONAL, USE IF SERVICES ARE PROVIDE ONLINE, ESPECIALLY IF IT IS IMPORTANT THOSE SERVICES CAN BE ACCEESED OFTEN. IT CAN BE USED WITH SLA CREDITS)

For the avoidance of doubt and notwithstanding anything to the contrary herein, UNLV shall be entitled to terminate this Contract and be entitled to a pro-rata refund in the event that the website or online Services has less than a 99.5 % uptime for any given month or for six or more consecutive days

CONTRACT NUMBER (INSERT #)

aa. PCI COMPLIANCE (RARELY APPLICABLE, USE ONLY IF CREDIT CARD REFERENCE DATA IS USED. IF CREDIT CARD DATA IS PROCESSED ANY DIFFERENTLY LET CONTRACTS COUNSEL KNOW BECAUSE DIFFERENT LANGUAGE MAY BE REQUIRED. CREDIT CARD PROCESSING VENDORS ARE REVIEWED BY CAMPUSGUARD VIA CHRIS VITON)

Contractor acknowledges and agrees that its systems, software and Services are compatible with the web merchant gateway vendor Authorize.net. Contractor shall encrypt all credit card data processed under the Contract, and pass any funds) via UNLV's merchant gateway vendor (currently Authorize.net, but subject to change). Contractor warrants and represents that it will only have access to and store credit card reference data, rather than actual credit card data. Contractor represents that it (and any solutions provided) is and shall remain throughout the Term, PCI compliant with the Payment Card Industry Data Security Standard ("PCI DSS"), as may be amended or revised from time to time. In the event that Contractor is no longer PCI compliant, Contractor shall promptly notify UNLV in writing, and UNLV shall have the option to terminate the Services with no penalty.

bb. REMOTE ACCESS (IF CONTRACTOR'S ONLY ACCESS TO PII IS THROUGH REMOTE ACCESS FOR TROUBLESHOOTING)

All remote access to UNLV systems shall be monitored by the UNLV and Contractor shall immediately disconnect the access to UNLV systems after providing the requested assistance. In no event shall Contractor keep or download any UNLV data or UNLV User Data from the systems except as necessary and only for the duration necessary to provide the Services.

cc. MAINTENANCE (ONLY ADD THIS CLAUSE IF CONTRACTOR RESERVES RIGHT TO CHANGE MAINTENANCE TERMS)

In the event that Contractor reserves the right to alter Support/Maintenance/support from time to time, such alterations shall not result in (i) diminished support from the level of Support/Maintenance/support set forth in this Contract, or if the support terms are instead set forth online and referenced herein, as set forth online at the date of execution of this Contract; (ii) materially diminished obligations for Contractor; (iii) materially diminished UNLV's rights; or (iv) higher fees during the then-current Term. Contractor shall provide UNLV with thirty (30) days' prior written notice of any permitted material changes to the Support/Maintenance/support contemplated.

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:

CONTRACT NUMBER (INSERT #)

BY:

(TYPE IN NAME OF APPROVER)

Date

TO BE USED IF CONTRACT IS TO BE APPROVED BY SHARRIE

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

RECOMMENDED:

BY:

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

Date

APPROVED:

BY:

Sharrie Mayden, C.P.M., Director of Purchasing and Contracts

Date

TO BE USED IF CONTRACT IS TO BE APPROVED BY GERRY

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

RECOMMENDED:

BY:

**TYPE IN NAME & TITLE OF PERSON FROM DEPARTMENT
AUTHORIZED TO SIGN – IF PROVOST- HAVE 2 APPROVERS –GERRY AND PROVOST**

Date

APPROVED:

BY:

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

Date

TO BE USED IF CONTRACT IS TO BE APPROVED BY PRESIDENT

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

RECOMMENDED:

BY:

CONTRACT NUMBER (INSERT #)

**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:

Nancy B. Rapoport, Executive Vice President and Provost

Date

APPROVED:

BY:

Len Jessup, President

Date

APPROVED AS TO LEGAL FORM:

BY:

Elda Luna Sidhu, General Counsel

Date

TO BE USED IF CONTRACT IS TO BE APPROVED BY CHANCELLOR

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

RECOMMENDED:

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:

Nancy B. Rapoport, Executive Vice President and Provost

Date

BY:

CONTRACT NUMBER (INSERT #)

Len Jessup, President

Date

APPROVED AS TO LEGAL FORM:

By:

Elda Luna Sidhu, General Counsel

Date

APPROVED:

Daniel Klaich, Chancellor

Date