

Terms and Conditions of the Nevada System of Higher Education on Behalf of the Institution Named on the Order (“NSHE”)

(1) **GENERAL** The provision of materials, supplies and/or services by Supplier (together, the “Products”) described in the NSHE Purchase Order (the “Order”), any other documents incorporated by reference, and the executed agreement, if any, constitute the “Agreement.” The provision of Products is governed by the terms and conditions set forth herein. As used herein, the term “Supplier” includes vendors, suppliers, or contractors and its sub-contractors at any tier. No other terms or conditions will be binding upon the parties unless accepted in writing or set forth on the face of the Order. Performance hereunder, constitutes Supplier’s unqualified acceptance of the Agreement and acknowledgment that Supplier has read and fully understands all terms and conditions.

(2) **ADDITIONS/CHANGES** No extra work, additions, alterations, including changes in price will be paid by NSHE unless agreed to and performed pursuant to and in accordance with a written revision to the PO.

(3) **RELATIONSHIP** Supplier is an independent contractor of NSHE and is not an employee, partner, joint-venturer, or franchisee. Supplier will defend, indemnify and hold NSHE harmless from any claim to the contrary.

(4) **PACKING & SHIPPING** All items shall be packaged, marked and otherwise prepared in accordance with good commercial practices to obtain lowest transportation rates consistent with NSHE Purchasing’s shipping instructions. Order numbers must appear on all packing slips, shipping documents, labels, and invoices. “All shipments are F.O.B. destination, or for International shipments DDP destination; and time is of the essence. Supplier shall bear all risk of loss on items covered by the Order until final acceptance by NSHE.

(5) **EXPORT CONTROL REQUIREMENTS** Before furnishing goods, software, services or technical data that are on the U.S. Munitions List (22 C.F.R. pt. 121) or in the 500- or 600-series Export Control Classification Numbers of the Commerce Control List (15 C.F.R. pt. 774), Seller will notify Buyer that such items are export-controlled. Seller will ship export-controlled items only after Buyer’s Export Controls Officer has furnished written confirmation that Buyer is prepared to accept delivery of such items.

(6) **INSPECTION** All items covered by the Order may be inspected and tested by NSHE at reasonable times and places and with Supplier’s reasonable assistance. No inspection, tests, approval (including design approval), or acceptance of items shall relieve Supplier from responsibility for latent defects, material misstatements or omissions, or Supplier’s warranty obligations.

(7) **INVOICING & PAYMENT** Supplier shall submit invoice(s) as instructed on the face hereof immediately upon delivery or completion of the order. Invoices are payable net thirty (30) days from NSHE’s acceptance of invoice. As an entity of the State of Nevada, NSHE is tax-exempt pursuant to the Nevada Revised Statutes. The NSHE State Tax Exempt Number is RCE-000-441. The Federal Tax ID number is 88-6000024.

(8) **PROMPT PAYMENT DISCOUNT** Supplier’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.

(9) **PRICE WARRANTY.** Supplier warrants that the price(s) for the Products 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 Supplier reduces its price(s) for such Products during the term of the Order, Supplier agrees to reduce the price(s) hereof accordingly. Supplier warrants that price(s) shown on the Order shall be complete and no additional charges of any type shall be added without express written consent from NSHE.

(10) **WARRANTIES** Supplier warrants that items furnished hereunder will: (i) be free from material defects in design, material and workmanship; (ii) be suitable for any particular purposes made known to Supplier in advance; (iii) substantially conform with any related sample, model, documentation, description, labeling or literature supplied by Supplier to NSHE, (iv) comply with all applicable NSHE policies and (v) substantially conform to any specific requirements of the Order. Unless otherwise agreed in writing, all hardware and items are transferred to NSHE free and clear of all liens and encumbrances. Unless designated as “reconditioned” or “used” on the Order, all Products are warranted to be new. Where applicable, Products will conform to the accessibility requirements of WCAG 2.0 AA standards. Services are warranted by Supplier to be performed in a professional and workmanlike manner in substantial compliance with applicable specifications.

(11) **LIABILITY** The Supplier, in performance of agreement shall release and discharge the Nevada System of Higher Education and the Board of Regents from liability for, and assume the risk of, loss or damage to property of the Supplier.

(12) **INDEMNIFICATION** Supplier will defend, indemnify, and hold harmless NSHE, its Regents, officers, employees, and agents (“Indemnitees”), from and against all losses, expenses (including, without limitation, reasonable attorneys’ fees and costs), damages, and liabilities of any kind resulting from or arising out of the Agreement an/or the acts or omissions of Supplier, its officers, employees, agents, sub-suppliers, or anyone directly or indirectly employed by Supplier, or any person or persons under Supplier’s direction and control.. Supplier shall defend, indemnify and hold Indemnitees harmless from all losses, expenses (including without limitation, reasonable attorneys’ fees and costs), damages, and liabilities of any kind arising from any claim that the Products or use thereof, infringe any third party patent, copyrights, or otherwise violate intellectual property rights, if any. NSHE agrees to provide Supplier with prompt notice of any such claim or action and to permit Supplier to defend any claim or action, and that NSHE will cooperate fully in such defense. NSHE retains the right to participate in the defense against any such claim or action, and the right to consent to any settlement, which consent will not unreasonably be withheld.

(13) **PROPRIETARY RIGHTS AND CONFIDENTIALITY OF INFORMATION** All proprietary or confidential information obtained by Supplier from NSHE in connection with the Order is received in confidence, shall remain the property of NSHE and shall be used and disclosed by Supplier only to the extent necessary for the performance of the Order. Remedies at law being inadequate, the provisions of this Section may, in addition to other relief, be enforced by a temporary or permanent injunction without necessary of posting bond.

Supplier acknowledges that, pursuant to NRS 239.010, information or documents received by NSHE may be open to public inspection and copying. NSHE has a legal obligation to disclose such information unless a particular record is made confidential by law or a common law balancing of interests. Supplier may label specific parts of an individual document as a “trade secret” or “confidential” in accordance with NRS 333.333, provided that Supplier thereby shall have the right and obligation to indemnify and defend NSHE against third party claims for honoring such a designation. In the event a public records request is received, NSHE shall promptly give written

notice of the request to Supplier and Supplier shall, within four (4) days, provide written legal justification for not disclosing the requested information or documentation, which justification is not binding on NSHE but will be considered by NSHE before responding to the request. If no such justification is timely received, NSHE shall promptly comply with the public records request pursuant to NRS 239.

(14) NOTICES All legal notices shall be sent certified mail, return receipt requested, to the Director of the Purchasing Office shown on Exhibit A.

(15) INSURANCE – LIABILITY FOR INJURY INSURANCE – LIABILITY FOR INJURY Supplier shall procure and maintain the following insurance during the term of the Order: (i) Commercial General Liability insurance including coverage for premises -operations, products-completed operations and personal injury in the amount of \$1,000,000 per occurrence and \$2,000,000 annual aggregate, (ii) Automobile Liability Insurance in the amount of \$1,000,000 combined single limit, and (iii) Workers Compensation insurance, (iv)for professional services: Professional Liability coverage of not less than \$1,000,000 per occurrence and \$2,000,000 in annual aggregate, and (v) for software or cloud based services: Cyber Liability insurance with limits of not less than \$1,000,000 per occurrence and an annual aggregate of \$2,000,000. The Supplier shall provide NSHE with certificates of insurance evidencing the required insurance prior to the effective date of the Order. NSHE shall be named as an additional insured.

(16) CHOICE OF LAW & FORUM The parties agree that the laws of the State of Nevada shall govern the validity, construction, interpretation, and effect of this Agreement. Any and all disputes arising out of or in connection with the Agreement shall be litigated only in a court of competent jurisdiction in the county in which the work is performed or the ordered goods are delivered, and Supplier hereby expressly consents to the jurisdiction of said court. The United Nations convention on contracts for international sale of goods and the Unfair Contracts Act in the United Kingdom shall not apply to this agreement. Notwithstanding anything to the contrary herein and regardless of choice of law, NSHE 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 Nevada Revised Statutes (“N.R.S.”) Chapter 41.

(17) COMPLIANCE WITH LAWS & POLICIES In performance of the Order, Supplier shall comply with any and all applicable federal, state, and local laws, rules, ordinances and regulations (“Laws”), and all materials, work, and/or services furnished hereunder shall be produced or furnished in full and complete compliance therewith. Without limiting the foregoing, Supplier represents and warrants that it holds a Nevada state business license, or that Supplier is not required to obtain a state business license pursuant to NRS 76.100(7)(b).

(18) RECOVERY OF FEES AND COSTS In the event that NSHE is required to take legal action to enforce its rights under this Purchase Order, NSHE shall be entitled, as a prevailing party, to recover its full attorney’s fees and costs. This provision applies to all forms of legal action, including but not limited to mediation, arbitration and litigation.

(19) TERMINATION NSHE may at any time by written notice suspend or cancel the Order or any part thereof without cause. An equitable adjustment in price and/or delivery schedule, as determined by NSHE in good faith, for Products completed or in process will be paid to Supplier. In the event of Supplier’s default hereunder, NSHE may exercise any or all legal rights available, at law or in equity. A breach or default may be declared with or without termination. The Supplier’s obligations that by their terms would ordinarily survive a termination of a PO shall survive.

(20) FORCE MAJEURE Neither party shall be held responsible for any losses resulting if the fulfillment of any terms or provisions of this Agreement are delayed or prevented by any cause not within the control of the party whose performance is interfered with, and which by the exercise of reasonable diligence, said party is unable to prevent and for which said party gave notice...

(21) SEVERABILITY Any part, provision, representation or warranty expressed herein that is prohibited or held to be void or unenforceable shall be ineffective to the extent of such unenforceability without invalidating the remaining provisions hereof. Any such instance of unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by applicable law, the parties hereto waive any provision of law that prohibits or renders void or unenforceable any provision hereof.

(22) SOFTWARE & DATA Supplier shall use commercial anti-virus software to remove viruses capable of being detected in software prior to shipping. Supplier must safeguard all information of a personal or confidential nature that the Supplier has access to through work with software or data. All software and electronic equipment must meet the applicable accessibility standards set forth in the Web Content Accessibility Guidelines (WCAG) 2.0 Level AA, Section 508 of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act of 1990, as amended.

(23) HAZARDOUS SUBSTANCE AND ENVIRONMENTAL LAW “Hazardous Substance” means, hazardous substance as defined by applicable law. Supplier shall notify NSHE in writing prior to delivery of every article ordered or supplied under the Order or stored or used by Supplier on NSHE property that contains Hazardous Substances and provide the Material Safety Data sheets therefor. Hazardous substances shall be conspicuously labeled and properly handled and disposed of at all times, in accordance with Laws. NSHE shall be able to, at all times, inspect any Hazardous Substances introduced onto or intended to be introduced onto NSHE property by Supplier.

(24) PCI SECURITY COMPLIANCE The Supplier must comply with the Payment Card Industry Data Security Standard (PCI DSS). The PCI Data Security Standard requirements apply to all payment card network members, merchants and service providers that store, process or transmit cardholder data. The requirements apply to all methods of credit card processing; the most comprehensive and demanding of which apply to e-commerce websites, and retail POS systems that process credit cards over the Internet. PCI official website at: <https://www.pcisecuritystandards.org>.

(25) NON-DISCRIMINATION IN EMPLOYMENT Supplier shall not employ or contract with any firm or organization that is unfit or unskilled in the work to be performed. Supplier shall not discriminate or allow discrimination against any employee or applicant for employment because of sex, gender, sexual orientation, gender identity, veteran’s status, religion, age, disability, race, color, creed, ethnicity, or national origin. Supplier shall comply with and shall require all subcontractors to comply with all applicable federal, state and local laws and executive orders regarding employment.

(26) CERTIFICATION REGARDING DEBARMENT, SUSPENSION OR INELIGIBILITY FOR AWARD The Supplier certifies that it is not suspended, debarred or ineligible from entering into contracts with the Executive Branch of the Federal Government, or is in receipt of a notice of proposed debarment from any federal or state agency or local public body.

TERMS APPLYING TO FEDERALLY FUNDED ORDERS

FEDERAL FUNDING NSHE is a recipient of federal funds from various federal agencies. For Agreements funded with Federal Government Contract funds, Supplier shall comply with and agrees to flow-down to all subcontracts the following provisions, as amended, which are incorporated herein by reference. Without limiting the foregoing, compliance includes filing of any required certifications. .

The following provisions apply regardless of the amount of the order:

1. Prohibition of Segregated Facilities FAR 52.222-21
2. Previous Contracts & Compliance Reports FAR 52.222-22
3. Hazardous Material Identification and Material Safety Data (when applicable) FAR 52.223-3
4. Restrictions on Certain Foreign Purchases FAR 52.225-13
5. Restrictive Markings on Technical Data (when applicable) DFAR 52.227-7013
6. Access to Records, White House Office of Management & Budget Circular A-110.48(d).
7. Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements 37 CFR part 401.
8. Equal Employment Opportunity 41 C.F.R. Part 60; Executive Order 11246; Executive Order 11375.
9. Clean Air Act and the Federal Water Pollution Control Act 42 U.S.C. 7401-7671q; 33 U.S.C. 1251-1387

The following provisions apply if the amount of the order exceeds \$2,000.00

1. Davis-Bacon Act 40 U.S.C. 276a to a-7; 29 CFR 5
2. Copeland "Anti-Kickback" Act 18 U.S.C. 874; 29 CFR Part 3 & §5.5(a)

The following provisions apply if the amount of the order exceeds \$10,000.00:

1. Walsh-Healey Public Contracts Act FAR 52.222-20
2. Equal Opportunity FAR 52.222-26
3. Affirmative Action for Workers with Disabilities FAR 52.222-36
4. Procurement of recovered materials 2 CFR§200.322

The following provisions apply if the amount of the order exceeds \$25,000.00:

1. Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters obtained prior to award FAR 52.209-5
2. Affirmative Action for Special Disabled and Vietnam Era Veterans FAR 52.222-35
3. Employment Reports on Disabled Veterans and Veterans of the Vietnam Era FAR 52.222-37
4. Clean Air and Water FAR 52.223-2
5. Debarment and Suspension; Executive Orders 12549 & 12689; 2 CFR 180

The following provisions apply if the amount of the order exceeds \$100,000.00:

1. Anti-Kickback Procedures FAR 52.203-7
2. Limitations on Payments to Influence Certain Federal Transactions FAR 52.203-12
3. Audit and Records - Negotiation (if order was entered into by negotiation) FAR 52.215-2
4. Utilization of Small Business Concerns FAR 52.219-8
5. Drug-Free Workplace FAR 52.223-6
6. Toxic Chemical Release Reporting FAR 52.223-14
7. Authorization and Consent FAR 52.227-1
8. Notice and Assistance Regarding Patent and Copyright Infringement FAR 52.227-2
9. Responsibility for Supplies FAR 52.246-16
10. Contract Work Hours and Safety Standards Act 40 CFR 3701 et. seq.
11. Byrd Anti-Lobbying Amendment 31 U.S.C. 1352; FAR 52.203-11

The following provision applies if the amount of the order exceeds \$500,000.00:

Small Business Subcontracting Plan (does not apply to small business concerns) FAR 52.219-9

The following provision applies if the amount of the order exceeds \$550,000.00:

Price Reduction for Defective Cost or Pricing Data (if order was entered into by negotiation, when applicable) FAR 52.215-12, FAR 52.215-13

Exhibit A
Addresses for Legal Notices

Business Center North

- Desert Research Institute
- Great Basin College
- Truckee Meadows Community College
- University of Nevada, Reno
- Western Nevada College

To: Director, BCN Purchasing
Mail Stop 0242, Building 137
1664 North Virginia Street
Reno, NV 89557

Business Center South

- College of Southern Nevada

To: Director of Purchasing, CSN
3200 East Cheyenne Avenue
North Las Vegas, 89030-4228

- Nevada State College
- University of Nevada, Las Vegas

To: Director of Purchasing and Contracts, UNLV
4505 S. Maryland Parkway
Las Vegas, NV 89154-1033