LEWIS-CLARK STATE COLLEGE STANDARD CONTRACT TERMS AND CONDITIONS

1. **Authority for Purchases:** Purchases by Lewis-Clark State College are governed by Idaho Code Section 67-9225 "Procuring and Purchasing by State Institution of Higher Education" and by Lewis-Clark State College Purchasing Policy 4.111.
2. **Definitions:** Unless the context requires otherwise, all terms not defined below shall have the meanings defined in Idaho Code Section 67-9203 or Idaho Administrative Procedures Act Rules ("IDAPA") 38.05.01.011. For purposes of this Agreement, the following terms shall be defined as follows:

   Agreement: Any college-written contract, lease, purchase order, including Solicitation or specification documents and the accepted portions of the Bid or Proposal or other submission for the acquisition of Property. An Agreement shall also include any amendments or subsequent agreement entered into and mutually agreed upon by both parties in writing.
   Bid: A written offer that is binding on the Contractor to perform an Agreement to purchase or supply Property in response to a Solicitation. For purposes of this Agreement, the Bid shall include written questions and responses conducted as part of the solicitation process.
   Contractor: A vendor or service provider to which the college has awarded an Agreement.
   Property: Goods, services, parts, supplies, and/or equipment, both tangible and intangible, including, but not exclusively, designs, plans, programs, systems, techniques and any rights and interest in such Property.
   Proposal: A written response, including pricing information, to a Solicitation that describes the solution or means of providing the Property requested and which Proposal is considered an offer to perform in full response to the Solicitation. Price may be an evaluation criterion for Proposals, but will not necessarily be the predominant basis for the Agreement award. For purposes of this Agreement, the Proposal shall include written questions and responses conducted as part of the solicitation process.
   Quote / Quotation: An offer to supply Property in response to a Request for Quotation and generally used for small or emergency purchases.
   Solicitation: An Invitation to Bid, a Request for Proposals, or a Request for Quotation issued by the college for the purpose of soliciting Bids, Proposals, or Quotes to perform an Agreement.
   College: Lewis-Clark State College, an Idaho state institution of higher education.
3. **Relationship:** The parties understand and agree that each is an independent contractor engaged in the operation of its own respective business, that neither party shall be considered to be the agent, master, or servant of the other party for any purpose whatsoever and that neither has any general authority to enter into any contract, assume any obligations, or to make any warranties or representations on behalf of the other. It is distinctly and particularly understood and agreed between the parties hereto that the college is in no way associated or otherwise connected with the performance of any service under this Agreement on the part of the Contractor or with the employment of labor or the incurring of expenses by the Contractor. Said Contractor is an independent contractor in the performance of each and every part of this Agreement, and solely and personally liable for all labor, taxes, insurance, required bonding, and other expenses, except as specifically stated herein, and for any and all damages in connection with the operation of this Agreement, whether it may be for personal injuries or damages of any other kind. The Contractor shall exonerate, defend, indemnify and hold the college harmless from and against and assume full responsibility for payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, social security, workers' compensation and income tax laws with respect to the Contractor or Contractor's employees engaged in performance under this Agreement. The Contractor will maintain any applicable workers' compensation insurance as required by law and will provide certificate of same if requested. There will be no exceptions made to this requirement and failure to provide a certification of workers' compensation insurance may, at the college's option, result in cancellation of this Agreement or in a contract price adjustment to cover the college's cost of providing any necessary workers' compensation insurance. The Contractor must provide either a certificate of workers' compensation insurance issued by a surety licensed to write workers' compensation insurance in the State of Idaho, as evidence that the Contractor has in effect a current Idaho workers' compensation insurance policy, or an extraterritorial certificate approved by the Idaho Industrial Commission from a state that has a current reciprocity agreement with the Industrial Commission. The college does not assume liability as an employer.
4. **Notices:** All notices and other communications are to be in writing, addressed to the other party at the address set forth herein (or to such other address that may be designated by the receiving party from time to time in accordance with this section). Such notices may be delivered (i) in person, with the date of notice being the date of personal delivery, (ii) by United States mail, postage prepaid for certified or registered mail, with return receipt requested, with the date of notice being the date of the postmark on the return receipt, (iii) by fax, with oral confirmation and the date of notice being the date of the fax, (iv) by nationally recognized delivery service such as Federal Express, with the date of notice being the date of delivery as shown on the confirmation provided by delivery service.
5. For notice to the college, the address and facsimile number are:

   Lewis-Clark State College
   Purchasing Department
   500 8th Ave
   Lewiston, ID 83501
   Email: purch@lcsc.edu
   Facsimile: 208-792-2077

For notice to the Contractor, the address or facsimile number shall be that which is included in the Contractor's Quote, Bid or Proposal.

6. **Prices:** Prices shall not fluctuate for the period of the Agreement and any renewal or extension, unless otherwise specified by the college in the bidding documents or other terms of the Agreement. Prices include all costs associated with shipping and delivery F.O.B. Destination, if domestic shipment; or DDP Destination (Incoterms 2010), if international shipment. If installation and/or training is required by the college or specified in the college's solicitation documents, pricing shall include all charges associated with a complete installation and/or training at the location specified.
7. **Shipping and Delivery:** All orders will be shipped directly to the college at the location specified by the Agreement, on an F.O.B. Destination freight prepaid and allowed basis with all transportation, unloading, uncrating, drayage, or other associated delivery and handling charges paid by the Contractor. "F.O.B. Destination." unless otherwise specified in the Agreement or solicitation documents, shall mean delivered to the college Receiving Dock or Store Door Delivery Point. The Contractor shall deliver all orders and complete installation and/or training, if required, within the time specified in the Agreement. Time for delivery commences at the time the order is received by the Contractor. Unless otherwise agreed, international orders will be shipped DDP Destination Incoterms 2010.
8. **Installation and Acceptance:** When the purchase price does not include installation and/or training, unless otherwise stated in the Solicitation or Agreement, acceptance shall occur fourteen (14) calendar days after delivery; unless the college has notified the Contractor in writing that the order does not meet the college's specification requirements or otherwise fails to pass the Contractor's established test procedures or programs. When installation and/or training is included, acceptance shall occur fourteen (14) calendar days after completion of installation and/or training; unless the college has notified the Contractor in writing that the order does not meet the college's specification requirements or otherwise fails to pass the Contractor's established test procedures or programs. If an order is for support or other services, acceptance shall occur fourteen (14) calendar days after completion, unless the college has notified the Contractor in writing that the order does not meet the college's requirements or otherwise fails to pass the Contractor's established test procedures or programs.
9. **Risk of Loss:** Risk of loss and responsibility and liability for loss or damage will remain with Contractor until delivered to the college Receiving Dock or Store Door Delivery Point when responsibility will pass to the college except as to latent defects, fraud, and Contractor's warranty obligations. Such loss, injury or destruction shall not release the Contractor from any obligation under this Agreement.
10. **Taxes:** The college is generally exempt from payment of state sales and use taxes and from personal property tax for property purchased for its use. The college is generally exempt from payment of federal excise tax under a permanent authority from the District Director of the Internal Revenue Service (Chapter 32 Internal Revenue Code [No. 82-73-0019K]). Exemption certificates will be furnished as required upon written request by the Contractor. If the Contractor is required to pay any taxes incurred as a result of doing business with the college, Contractor shall be solely and absolutely responsible for the payment of those taxes.
11. **Method of Payment:** The college payment terms are NET 30. Payment for work under this Agreement will be initiated upon submission of a request for payment directly to:

    Lewis-Clark State College
    Accounts Payable
    500 8th Ave
    Lewiston, ID 83501
    Coap@lcsc.edu

    The purchase order number must be noted on all requests for payment. By signing this Agreement, and by submitting a request for payment to Lewis-Clark State College, the Contractor certifies that (i) the amount for which payment is requested is correct, just, and proper; (ii) the amount claimed is legally due to the Contractor; (iii) no part of the amount for which payment is requested has been paid; (iv) the request for payment is only for performance in accordance with the terms and conditions of the parties' agreement; (v) the request for payment is made in good faith, and (vi) the documentation supporting this request for payment is accurate and complete to the best of the Contractor's knowledge and belief.
12. **Purchase Order Numbers:** The Contractor shall clearly show the college's purchase order numbers on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.
13. **Contractor Responsibility:** The Contractor is responsible for furnishing and delivery of all Property included in this Agreement, whether or not the Contractor is the manufacturer or producer of such Property. Further, the Contractor will be the sole point of contact on contractual matters, including payment of charges resulting from the use or purchase of Property.
14. **Conforming Property:** The Property shall conform in all respects with the specifications or the college's Solicitation. In the event of non-conformity, and without limiting any other remedy available to the college, the college shall have no financial obligation in regard to the non-conforming goods or services.
15. **Insurance Requirements:** Contractor shall, at its sole cost and expense, procure and maintain throughout the term of this Agreement insurance of the types and with the limitations indicated on the Certificate of Insurance Requirements, unless this requirement is waived in writing by the college prior to execution of this Agreement. Prior to the commencement of the term of this contract, the Contractor shall deliver or fax to the college the completed certificate(s) of insurance.
16. **Indemnification/Save Harmless:** Contractor shall defend, indemnify and hold harmless the college, the Idaho State Board of Education, the State of Idaho, and all of their employees, agents, and representatives from and against any and all liability, claims, damages, costs, expenses, and actions, including reasonable attorney fees, caused by or that arise from the negligent or wrongful acts or omissions of Contractor, its employees, agents, or subcontractors (the "Contractor Parties") under this Agreement that cause death or injury or damage to property or arising out of a failure to comply with any state or federal statute, law, regulation or act. Contractor Parties shall have no indemnification liability under this section for death, injury, or damage arising solely out of the negligence or misconduct of the college. Any purported cap or other limitations or exclusions of liability on the part of Contractor Parties shall not apply to damages or liabilities arising from (i) personal injury, death or damage to real or tangible personal property caused by Contractor's or Contractor Parties' negligent acts or omissions or willful misconduct in performing its obligations under the Agreement or (ii) the grossly negligent acts or omissions or willful misconduct of Contractor Parties in performing its obligations under the Agreement.

17. **Limit of college's Liability:** Notwithstanding anything to the contrary contained in this Agreement or in any other Agreement or writing

between the Parties related hereto, nothing shall be deemed to constitute a waiver by college of any privilege, protection, or immunity otherwise afforded it under the Idaho Constitution, Idaho Tort Claims Act, or any other applicable law or a waiver of its sovereign immunity, which is hereby expressly retained. Specifically, the college's liability is at all times subject to the limits of liability contained in the Idaho Tort Claims Act, Idaho Code Sections 6-901 through 6-929, inclusive (the "Idaho Tort Claims Act"). Any obligation on behalf of the college to provide indemnification or hold harmless any other party is at all times subject to the maximum extent permitted by Idaho law, including Idaho Code Section 59-1016, and the limitations of liability contained in the Idaho Tort Claims Act. Furthermore, the college shall at no time be liable for more than the pro rata share of the total damages awarded in favor of a claimant that is directly attributable to the negligent or otherwise wrongful acts or omissions of the college or its employees.

18. **Work for Hire**: Contractor hereby assigns to college or college's designee, for no additional consideration, all of Contractor's rights, including copyrights, in all deliverables and other works prepared by Contractor under this Agreement. Contractor shall, and shall cause its employees and agents to, promptly sign and deliver any documents and take any actions that the college reasonably requests to establish and perfect the rights assigned to college or its designee under this provision. The college hereby grants to Contractor a nonexclusive royalty-free license to use the same rights solely for academic purposes. Such license shall not be assignable or sub licensable.
19. **Commodity Status:** It is understood and agreed that any item offered or shipped shall be new and in first-class condition and that all containers shall be new and suitable for storage or shipment, unless otherwise indicated by the college in the specifications. Demonstrators, previously rented, refurbished, or reconditioned items are not considered "new" except as specifically provided in this section. "New" means items that have not been used previously and that are being actively marketed by the manufacturer or Contractor. The items may contain new or minimal amounts of recycled or recovered parts that have been reprocessed to meet the manufacturer's new product standards. The items must have the college as their first customer and the items must not have been previously sold, installed, demonstrated, or used in any manner (such as rentals, demonstrators, trial units, etc.). The new items offered must be provided with a full, unadulterated, and undiminished new-item warranty against defects in workmanship and materials. The warranty is to include replacement, repair, and any labor for the period of time required by other specifications or for the standard manufacturer or vendor warranty, whichever is longer.
20. **Termination for Default:** The college may terminate the Agreement (and/or any order issued pursuant to the Agreement) when the Contractor has been provided written notice of default or non-compliance and has failed to cure the default or non-compliance within a reasonable time, not to exceed thirty (30) calendar days. If the Agreement is terminated for default or non-compliance, Contractor will be responsible for any costs resulting from the college's placement of a new contract and any damages incurred by the college. The college, upon termination for default or non-compliance, reserves the right to take any legal action it may deem necessary including, without limitation, offset of damages against payment due. Failure by the college to take such action shall not be deemed a waiver of any right or remedy the college otherwise has under this Agreement or applicable law.
21. **Force Majeure:** Neither party shall be liable or deemed to be in default for any Force Majeure delay in shipment or performance occasioned by unforeseeable causes beyond the control and without the fault or negligence of the parties, including, but not restricted to, acts of God or the public enemy, fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, or unusually severe weather, provided that in all cases the Contractor shall notify the college promptly in writing of any cause for delay and the college concurs that the delay was beyond the control and without the fault or negligence of the Contractor. The period for the performance shall be extended for a period equivalent to the period of the Force Majeure delay. Matters of the Contractor's finances shall not be a Force Majeure.
22. **Compliance with Law, Licensing and Certifications:** Contractor shall comply with all requirements of federal, state and local laws and regulations applicable to Contractor or to the Property provided by the Contractor pursuant to this Agreement. For the duration of the Agreement, the Contractor shall maintain in effect and have in its possession all licenses and certifications required by federal, state and local laws and rules.
23. **Confidential Information:** Pursuant to this Agreement, Contractor may collect, or the college may disclose to Contractor, financial, personnel or other information that the college regards as proprietary or confidential ("Confidential Information"). Confidential Information shall belong solely to the college. Contractor shall use such Confidential Information only in the performance of its services under this Agreement and shall not disclose Confidential Information or any advice given by Contractor to the college to any third party, except with the college's prior written consent or under a valid order of a court or governmental agency of competent jurisdiction and then only upon timely notice to the college. The college may require that Contractor's officers, employees, agents or subcontractors agree in writing to the obligations contained in this section. Confidential Information shall be returned to the college upon termination of this Agreement. The confidentiality obligation contained in this section shall survive termination of this Agreement. Confidential Information shall not include data or information that:
    - Is or was in the possession of Contractor before being furnished by the college, provided that such information or other data is not known by Contractor to be subject to another confidentiality agreement with, or other obligation of secrecy to, the college;
    - Becomes generally available to the public other than as a result of action or omission by Contractor; or
    - Becomes available to Contractor on a non-confidential basis from a source other than the college, provided that such source is not known by Contractor to be subject to a confidentiality agreement with, or other obligation of secrecy to, the college.
24. **Patents and Copyright Indemnity:**
    - Contractor shall indemnify and hold harmless the college, the Idaho State Board of Education, the State of Idaho, and all of their employees, agents, and representatives (the "college Parties") and shall defend at its own expense any action brought against the college Parties based upon a claim of infringement of a United States' patent, copyright, trade secret, or trademark for Property purchased under this Agreement. Contractor will pay all damages and costs finally awarded and attributable to such claim, but such defense and payments are conditioned on the following: (i) that Contractor shall be notified promptly in writing by the college of any notice of such claim; (ii) that Contractor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise and the college may select at its own expense advisory counsel; and (iii) that the college shall cooperate with Contractor in a reasonable way to facilitate settlement or defense of any claim or suit.
    - Contractor shall have no liability to the college under any provision of this clause with respect to any claim of infringement that is based upon: (i) the combination or utilization of the Property with machines or devices not provided by the Contractor other than in accordance with Contractor's previously established specifications unless such combination or utilization was disclosed in the specifications; (ii) the modification of the Property unless such modification was disclosed in the specifications; or (iii) the use of the Property not in accordance with Contractor's previously established specifications unless such use was disclosed in the specifications.
    - Should the Property become, or in Contractor's opinion be likely to become, the subject of a claim of infringement of a United States' patent, the Contractor shall, at its option and expense, either procure for the college the right to continue using the Property, replace or modify the Property so that it becomes non-infringing, or grant the college a full refund for the purchase price of the Property and accept its return.

25. **Public Records:** Pursuant to Idaho's Public Records Act, Title 74, Chapter 1, Idaho Code, as may be amended from time to time (the "Public Records Law") information or documents received from the Contractor may be open to public inspection and copying unless exempt from disclosure. If the Contractor believes information provided to the college is exempt from disclosure under the Public Records Law, the Contractor shall clearly designate individual documents or portions thereof as "exempt" and shall indicate the proposed basis for such exemption. The college will not accept the marking of an entire document as exempt. In addition, the college will not accept a legend or statement on one (1) page that all, or substantially all, of the document is exempt from disclosure. The college does not warrant or otherwise promise that information marked as such will in fact be exempt under the Public Records Law. The Contractor shall indemnify and defend the college Parties against all liability, claims, damages, losses, expenses, actions, attorney fees and suits whatsoever for honoring such a designation or for the Contractor's failure to designate individual documents as exempt. The Contractor's failure to designate as exempt any document or portion of a document that is released by the college shall constitute a complete waiver of any and all claims for damages caused by any such release. If the college receives a request for materials claimed exempt by the Contractor, the Contractor shall provide the legal defense for such claim.
26. **Anti-Discrimination Clause:** The Contractor hereby agrees to be bound by the terms and conditions of Section 504 of the Rehabilitation Act of 1974 and to the applicable provisions and requirements of the Americans with Disabilities Act of 1990, as may be amended or modified from time to time, and as such provisions are applicable to the college. The Contractor shall comply with pertinent amendments to such laws made during the term of the Agreement and with all federal and state rules and regulations implementing such laws. If applicable, the Contractor must include this provision in every subcontract relating to this Agreement. Specifically, Contractor hereby agrees to use good faith efforts to ensure that the Property is fully accessible for individuals with disabilities and enables the college to fully comply with all applicable requirements of the aforementioned laws, regulations, and requirements. In the event the Property fails to meet the requirements of this section, the college shall provide written notice to Contractor detailing requirements to bring the Property into compliance. If Contractor fails to correct the deficiency and enable the college to fully comply with the laws, regulations and requirements set forth herein as detailed in such notice, within thirty (30) days of receiving such notice, the college may elect to terminate this contract without further notice and without penalty. In the event the college terminates the Agreement under this Section, Contractor agrees to compensate the college for any and all costs associated with securing replacement Property that fully complies with the requirements set forth herein, payable upon receipt of an invoice from the college detailing such costs.
27. **Equal Employment Opportunity Clause:** Acceptance of this Agreement binds the Contractor to the terms and conditions of Section 601, Title VI, Civil Rights Act of 1964, in that "No person in the United States shall, on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance." In addition, "No otherwise qualified handicapped individual in the United States shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance" (Section 504 of the Rehabilitation Act of 1973). Furthermore, for contracts involving federal funds, the applicable provisions and requirements of Section 402 of the Vietnam Era Veterans Readjustment Assistance Act of 1974, Section 701 of Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967 (ADEA), 29 USC Sections 621, et seq., the Age Discrimination Act of 1975, Title IX of the Education Amendments of 1972, U.S. Department of Interior regulations at 43 CFR Part 17, and the Americans with Disabilities Action of 1990, are also incorporated into this Agreement. Specifically, the Contractor and any Subcontractor shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a), and 60-741.5(a) where applicable. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or veteran status. The Contractor shall comply with pertinent amendments to such laws made during the term of the Agreement and with all federal and state rules and regulations implementing such laws. The Contractor must include this provision in every subcontract relating to this Agreement.
28. **Restrictions and Warranties – Illegal Aliens:** The Contractor acknowledges that this Agreement is subject to Executive Order 2009-10 [https://adminrules.idaho.gov/rules/2010/EXOOrders/out/000910-exo.pdf]; it does not knowingly hire or engage any illegal aliens or persons not authorized to work in the United States within the United States; it takes steps to verify that it does not hire or engage any illegal aliens or persons not authorized to work in the United States within the United States; and that any misrepresentation in this regard or any employment of persons not authorized to work in the United States within the United States constitutes a material breach and shall be cause for the imposition of civil penalties and/or termination of this Agreement.
29. **Nonresident Aliens:** If the contractor is a nonresident alien individual, partnership or corporation, the contractor or his/her representative expressly covenants and agrees to cooperate fully with college's staff to provide necessary documentation to determine proper withholding, if any, of U.S. taxes from payment to contractor, including without limitation for maintenance or warranty work, in accordance with Internal Revenue Code and the Federal Regulations promulgated there under. Nonresident alien contractors are subject to 30% tax withholding.
30. **Contractor Certifications:** The college is prohibited by state law from entering into certain contractual agreements. Contractor hereby certifies that: (i) pursuant to Idaho Code Section 67-2346 and 67-2347A, if payments under the Agreement exceed one hundred thousand dollars ($100,000) and it employs ten or more persons, it is not currently engaged in, and will not for the duration of the Agreement engage in, a boycott of goods or services from Israel or territories under its control; or a boycott of any individual or company because the individual or company (a) engages in or supports the exploration, production, utilization, transportation, sale, or manufacture of fossil fuel-based energy, timber, minerals, hydroelectric power, nuclear energy, or agriculture; or (b) engages in or supports the manufacture, distribution, sale, or use of firearms, as defined in section 18-3302(2)(d), Idaho Code; (ii) pursuant to Idaho Code Section 67-2359, it is not currently owned or operated by the People's Republic of China and will not for the duration of the Agreement be owned or operated by the People's Republic of China; and (iii) it is not an abortion provider or an affiliation of an abortion provider under the No Public Funds for Abortion Act. The terms in this section defined in Idaho Code Section 67-2346, Idaho Code Section 67-2359, and in Title 18, Chapter 87, Idaho Code, respectively, shall have the meanings defined therein. Contractor hereby certifies that it is not currently suspended, debarred, or otherwise excluded from federal or state procurement and non-procurement programs. Information available at https://sam.gov.
31. **Subcontracting:** Unless otherwise allowed by the college in this Agreement, the Contractor shall not, without written approval from the college, enter into any subcontract relating to the performance of this Agreement or any part thereof. Approval by the college of Contractor's request to subcontract or acceptance of or payment for subcontracted work by the college shall not in any way relieve the Contractor of any responsibility under this Agreement. The Contractor shall be and remain liable for all damages to the college caused by negligent performance or non-performance of work under the Agreement by Contractor's subcontractor or its subcontractor.
32. **Assignment:** Contractor shall not assign any of its obligations under this Agreement without the advance written consent of the college. Any unauthorized assignment shall be void. The college shall have the right, but not the obligation, to terminate this Agreement without waiver of any other right or remedy, upon notice of Contractor's assignment or subcontract in violation of this Agreement.

33. **Use of the college's Name:** Contractor shall not, prior to, in the course of, or after performance under this Agreement, use college's name in any advertising or promotional media, including press releases, as a customer or client of Contractor without the prior written consent of the college.
34. **Termination for Fiscal Necessity:** The college is a government entity of the State of Idaho in the United States, and this Agreement shall in no way or manner be construed so as to bind or obligate the State of Idaho or the college beyond the term of any particular appropriation of funds by the State of Idaho's Legislature or the United States government as may exist from time to time. College's payment obligation shall be terminable in the event of a non-appropriation or materially reduced appropriation or allotment of funding by the State of Idaho's Legislature or the United States government, a significant or material reduction in funding receipts from the State of Idaho or the United States government, and/or a required "holdback" or "clawback" in spending issued by the Governor of the State of Idaho, the President of the United States, or their designees (each, a "Nonappropriation Event"). Upon the occurrence of any Nonappropriation Event, the college reserves the right to immediately terminate this Agreement in whole or in part (including any order placed under it) if, in the college's sole judgment, such Nonappropriation Event causes the college to be unable to fulfill its obligations under this Agreement, by providing written notice to Contractor of the occurrence of a Nonappropriation Event and a date of termination. The Agreement shall automatically be terminated on the stated termination date, or if no date is stated, on the 10th calendar day following the date of notice and all affected future rights and liabilities of the Parties hereto shall thereupon cease.
35. **Official, Agent and Employees of college Not Personally Liable:** In no event shall any official, officer, employee or agent of the college be in any way personally liable or responsible for any covenant or agreement herein contained whether expressed or implied, nor for any statement, representation or warranty made herein or in any connection with this Agreement.
36. **Governing Law:** This Agreement shall be construed in accordance with and governed by the laws of the State of Idaho. Any action to enforce the provisions of this Agreement shall be brought in State district court in Nez Perce County, Idaho. Federal grants and contracts shall also comply with the provisions of OMB Circular A-21(j) 32.
37. **Entire Agreement; Severability:** This Agreement shall be binding upon the parties hereto and their respective successors and assigns. This Agreement constitutes the full, complete, and entire Agreement between the parties, and supersedes all prior understandings, agreements, or arrangements between the parties with respect to the subject matter hereof. In the event any term of this Agreement is held to be invalid or unenforceable by a court, the remaining terms of this Agreement will remain in force.
38. **No Other Terms:** Where terms and conditions specified in the Contractor's response or other writing differ from those specifically stated in this Agreement, the terms and conditions of this Agreement shall apply. The college hereby specifically objects to and rejects any terms and conditions that are in conflict with these terms and conditions. In the event college honors one or more terms in Contractor's purchase order or other writing that conflict with this Agreement, such action does not constitute college's acceptance of any other terms in such writing or purchase order. In the event of any conflict between these standard terms and conditions and any special terms and conditions, these standard terms and conditions will govern. Any reference to terms and conditions other than these Lewis-Clark State College Standard Contract Terms and Conditions in any subsequent invoice, purchase order, or other writing, shall be void.
39. **Interpretation and Priority of Documents**: The Agreement consists of and precedence is established by the order of the following documents:
    (1) The Purchase Order;
    (2) The Lewis-Clark State College Standard Contract Terms and Conditions;
    (3) The Solicitation; and
    (4) The Contractor's Quote, Bid or Proposal, as accepted by the college.

    The Solicitation and the Contractor's Quote, Bid or Proposal as accepted by the college are incorporated into the Agreement and made part hereof by this reference. The parties intend to include all items necessary for proper completion of the Agreement's requirements. The documents set forth above are complementary and what is required by one shall be binding as if required by all. However, in the case of any conflict or inconsistency arising under the documents, a lower numbered document shall supersede a higher numbered document to the extent necessary to resolve any such conflict or inconsistency (for example, the Purchase Order shall supersede the Lewis-Clark State College Standard Contract Terms and Conditions). Provided, however, that in the event an issue is addressed in one of the above-mentioned documents but is not addressed in another of such documents, no conflict or inconsistency shall be deemed to occur.

    Where terms and conditions specified in the Contractor's Quote, Bid or Proposal differ from the terms in the Solicitation, the terms and conditions in the Solicitation shall apply. Where terms and conditions specified in the Contractor's Quote, Bid or Proposal supplement the terms and conditions in the Solicitation, the supplemental terms and conditions shall apply only if specifically accepted by the college in writing.
40. **Non-Waiver:** The failure of any party, at any time, to enforce a provision of this Agreement shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of such party thereafter to enforce each and every provision hereof.
41. **Attorney Fees:** In the event that any action, suit, or other legal administrative proceeding is instituted or commenced by either party hereto against the other party arising out of or related to this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing party in addition to other available remedies, provided, however, the college's liability is limited to the extent permitted by law and that which is identified in the Idaho Tort Claims Act.
42. **Modification/Amendment:** No modification or amendment to this Agreement shall be valid unless it is made in writing signed by the authorized representatives of the parties.
43. **Counterparts:** The Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.