REQUEST FOR PROPOSAL

RFP #UCSDH112619

Revenue Cycle Performance Assessment and Optimization

RELEASE DATE: November 26, 2019
DUE DATE: December 11, 2019 by 3:00 pm (PST)

RFP Administrator: Brad Ouellet

Email: bouellet@health.ucsd.edu

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Deviation from Specifications

Any deviation from the specifications shall be identified and fully described. UC San Diego Health reserves the right to accept or reject quotations on each item separately, or as a whole, and to waive any irregularities in the Proposal; irregularities may, however, render the Proposal non-responsive.

Public Disclosure

Responses to Become Public Records: All materials submitted in response to this solicitation become a matter of public record and shall be regarded as public record.

Designation of Confidential Information

The Regents of the University of California (The Regents) will recognize as confidential only those elements in each response, which are trade secrets as that term is defined in the law of California and which are clearly marked as “TRADE SECRET,” “CONFIDENTIAL” or “PROPRIETARY.” Vague designations and blanket statements regarding entire pages or documents are insufficient and shall not bind The Regents to protect the designated matter from disclosure.

The California Public Records Act limits The Regents’ ability to withhold prequalification and bid data to trade secrets or records, the disclosure of which is exempt or prohibited pursuant to federal or state law. If a submittal contains any trade secrets that a Contractor does not want disclosed to the public or used by The Regents for any purpose other than evaluation of the Contractor’s eligibility, each sheet of such information must be marked with the designation “Confidential.” The Regents will notify the Vendor of data so classified of any request to inspect such data so that the Vendor will have an opportunity to establish that such information is exempt from inspection in any proceeding to compel inspection.

The Regents Not Liable for Required Disclosure

The Regents shall not in any way be liable or responsible for the disclosure of any records if they are not plainly marked “TRADE SECRET,” “CONFIDENTIAL,” or “PROPRIETARY,” or if disclosure is required by law or by an order of the court.
SECTION 1: GENERAL INFORMATION

UC San Diego Health is seeking proposals from qualified firms to perform an assessment of Revenue Cycle processes and operations, implement changes to optimize performance, and introduce strategies to ensure continued and sustained improvement in accordance with the terms set forth in this Request for Proposal (RFP). Emphasis shall be placed on achieving short term realizable benefits as well as longer term sustained improvements. Focus areas should include charge capture, patient access, coding and billing workflows, Epic deployment assessment, and an overall improvement in cash collections.

1.1 Introduction

UC San Diego Health is one of five academic medical centers of the University of California. Collectively, UC Health academic medical centers comprise the fourth largest health care delivery system in California and train nearly 50 percent of the state’s medical students and medical residents.

As part of a public trust organization, UC Health serves as a safety net for individuals in need. Nearly 60 percent of UC patients are covered by Medicare, Medi-Cal, or lack health insurance.

To fulfill our mission, UC San Diego Health currently maintains a two-campus strategy, integrating research, teaching, and clinical care at locations in Hillcrest and La Jolla. Each medical complex supports acute in-patient care and a spectrum of outpatient primary and specialty medical and surgical services, including ambulatory and emergency patient care.

Our three hospitals operate under one license with a current combined capacity of 808 beds: UC San Diego Medical Center in Hillcrest (390 beds), Jacobs Medical Center (364 beds) and Sulpizio Cardiovascular Center (54 beds).

UC San Diego Medical Center – Hillcrest

UC San Diego Medical Center in Hillcrest, established in 1966, currently serves as a core clinical teaching site for UC San Diego School of Medicine and the focal point for community service programs. It houses several specialty care centers that allow the urban campus to serve as a major tertiary and quaternary referral center for San Diego, Riverside and Imperial counties. These care centers include the area’s only Regional Burn Center, a Comprehensive Stroke Center, and one of only two Level I Trauma Centers in the county. The campus is also home to the Owen Clinic, among the nation’s top HIV care programs.

UC San Diego Health – La Jolla

The La Jolla campus, located on the eastern portion of the main campus, is home to Jacobs Medical Center, which opened in 2016, and Moore’s Cancer Center, the primary site for outpatient oncology care and the region’s only National Cancer Institute-designed Comprehensive Cancer Care Center, with nearly 350 medical and radiation oncologists, surgeons and researchers. The La Jolla campus also includes Shiley Eye Institute, a multi-specialty vision center with the region’s only facility dedicated to children, as well as Sulpizio Cardiovascular Center, the region’s first comprehensive cardiovascular center and the global leader in pulmonary thromboendarterectomy (PTE), an operation for removing blood clots from the pulmonary arteries to treat chronic pulmonary hypertension. The PTE operation was first performed at UC San Diego Health and is now systematically employed at select health care centers around the world.
Ambulatory care is provided at both campuses, as well as in the surrounding communities of Chula Vista, Encinitas, Kearny Mesa, Rancho Bernardo, Scripps Ranch, and Vista, where we maintain clinics and service locations. Our physicians also provide care to patients at Rady Children’s Hospital San Diego and the VA San Diego Healthcare System. UC San Diego Health has developed partnerships with other medical providers to offer services as diverse as proton therapy for cancer to at-home hospice care. These combined sites and partnerships enable UC San Diego Health to offer highly specialized services and a continuum of care that can heal and comfort our patients.

1.2 Revenue Cycle Management

The UC San Diego Health Revenue Cycle organization oversees revenue cycle functions for all of the UC San Diego Health clinical delivery enterprise including inpatient, ambulatory, and professional activities that generate approximately $1.9B in annual net revenues. Revenue Cycle includes 630 FTE’s performing the functions of Financial Clearance (referrals and authorizations), admitting, Radiology, Lab and Emergency Department registration, Financial Counseling, Coding, Health Information Management, Charge Capture and Revenue Integrity, Chargemaster Maintenance, Billing and Collections, Cash Application Management, Provider Enrollment, Patient Billing and Customer Service. Also included within the revenue cycle is a continuous improvement function that includes training, business analysis, and project management.

Annual Statistics

1. Inpatient admissions: 33,000
2. Emergency room visits: 82,000
3. Clinic visits: 918,000
4. Surgeries: 28,000
5. Payer mix based on patient days:
   a. Medicare: 36%
   b. Medi-Cal and uninsured: 39%
   c. Commercial insurance: 23%
   d. Other: 2%
SECTION 2: RFP INFORMATION

2.1 Issuing Office

This RFP is issued by the UC San Diego Health Procurement Services department.

2.2 Scope

This RFP contains the instructions governing proposals to be submitted and material to be included therein. Mandatory requirements within must be met to be eligible for consideration.

2.3 Projected Schedule of Activities

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>RFP emailed to prospective Bidders</td>
<td>11/26/2019</td>
</tr>
<tr>
<td>Bidder Questions Due/Answers Published</td>
<td>12/6/2019/12/9/2019</td>
</tr>
<tr>
<td>RFP Response Submission Deadline</td>
<td>12/11/2019 by 4:00 PM Pacific</td>
</tr>
<tr>
<td>Vendor Presentations (optional)</td>
<td>12/12/2019 – 12/13/2019</td>
</tr>
<tr>
<td>Evaluations Completed</td>
<td>12/16/2019</td>
</tr>
<tr>
<td>Contract Award</td>
<td>12/19/2019</td>
</tr>
</tbody>
</table>

UC San Diego Health reserves the right to modify the schedule to meet the needs of the University.

2.4 Invitation to Bid/Respond and Responsibilities of Bidders

UC San Diego Health is hereby contacting prospective Bidders who have an interest or are known to do business relevant to this RFP. All interested individuals/firms who were not contacted are invited to submit a Proposal in accordance with the policies, procedures and dates as set forth herein.

In the event of "no bid," please sign bid, indicating "No Bid" and return to RFP Administrator.

2.5 Inquiries

Prospective Bidders may make e-mail inquiries concerning this RFP to obtain clarification of contractual or technical requirements. Inquiries must be made before the Bidder Questions Due date of 12/6/19 by 3:00 p.m. (PST) and must be directed solely to the RFP Administrator.

To ensure impartial treatment of all Vendors, questions and answers to inquiries will be forwarded to all prospective Bidders as an Addendum to this RFP.

2.6 Addendum or Supplement to RFP

UC San Diego Health may modify the RFP prior to the date set for receipt of Proposals, by issuance of addenda, sent by e-mail to all Vendors who receive a copy of this RFP from the University. Addenda
will be clearly marked as such and only issued by UC San Diego Health Procurement Services. Each addendum will be numbered consecutively and will become part of this RFP.

Any Vendor who fails to receive such addenda shall not be relieved of any obligation under this Proposal as submitted.

No oral or written statements made by UC San Diego Health personnel shall be considered an addendum to this RFP unless the statements are contained in a written document identified as a written addendum to this RFP.

2.7 Proposal Submission

A. Bidders are required to submit an electronic copy of the response to this RFP in PDF format; physical copies of a proposal will not be accepted. Use Attachment 2: Proposal Form and Attachment 3: Pricing Schedule. Any supplemental documents should be clearly identified using the file name in the response field of the corresponding item in the Proposal Form.

B. The Proposal package must be emailed on or before 12/11/19 by 4:00 PM Pacific to the RFP Administrator Brad Ouellet bouellet@health.ucsd.edu, using subject line: RFP #UCSDH112619.

C. Proposals received after the RFP closing date shall stand rejected unless the delay is due to negligence of UC San Diego Health. It is the Bidder’s sole responsibility to assure that its Proposal is received on or before the RFP closing date.

D. A Bidder may withdraw a Proposal at any time prior to the fixed deadline for receipt of Proposals, 12/11/19 by 4:00 PM Pacific by submitting a written retraction signed by the Vendor or its authorized agent to the RFP Administrator. Bidder may thereafter submit a new or modified Proposal prior to such date and time set for receipt of Proposals.

E. Proposals in the possession of UC San Diego Health at the closing time for receipt of Proposals are considered final and will be held as an irrevocable offer for one hundred eighty days (180) from that date.

F. UC San Diego Health reserves the right to reject any and all Proposals and to waive informalities and minor irregularities in Proposals received, and to accept any portion of a Proposal or all items bid if deemed in the best interest of UC San Diego Health to do so.

G. Any restrictions on the use of data contained within a Proposal must be clearly stated in the Proposal itself and the indication of enclosed proprietary information clearly marked on the outside of the sealed Proposal package. Proprietary information submitted in response to this Request for Proposal will be handled in accordance with applicable State of California Public Records Act regulations.

2.8 News Releases

Any information, photographs, plans, drawings or news releases pertaining to this procurement or any part of the subject shall not be released without prior written approval of UC San Diego Health Procurement Services.

2.9 Response Material Ownership
All material submitted regarding this RFP becomes the property of UC San Diego Health and will only be returned to the Bidder at UC San Diego Health’s option.

2.10 Incurring Costs

All labor, materials, and miscellaneous costs incurred and expended by a participating Vendor in order to respond and produce and perform the submittal requirements of this RFP shall be borne entirely by the individual Vendor. In participating in this RFP process, each participating Vendor assume all risks, liability, and responsibility for all of the costs it incurs and expends in connection with this RFP. In responding to the RFP, the participating Vendor agrees that it will indemnify and hold harmless UC San Diego Health against any charges, costs, or claims that may arise as a result of their participation in this RFP.

2.11 Acceptance of Proposal Content

The contents of the successful Bidder’s Proposal will become contractual obligations of the Bidder if UC San Diego Health takes acquisition action in reliance thereon. Failure of the successful Bidder to accept these obligations in a purchase agreement, purchase order, delivery order or similar acquisition contract may result in cancellation of the award and such Bidder may be removed from future solicitations. UC San Diego Health may, at its option, enter into negotiations with the successful Bidder, but neither party shall have any contractual obligations to, unless or until, a written contract is signed by both parties or UC San Diego Health takes acquisition action in reliance upon the Bidder’s response. Under these conditions, UC San Diego Health reserves the right to enter into negotiations with the next ranking Bidder on the same terms and conditions as set forth herein. UC San Diego Health reserves the right to reject all Proposals received in response to this request for any reason or for no reason.

2.12 Acceptance Time

UC San Diego Health intends to make a bid selection for contract negotiation within the period indicated within this document.

2.13 Additional Data

Bidder must submit any additional information or data not requested in this RFP, which the Bidder believes must be considered in the evaluation of a response.

2.14 Basis of Award

Award shall be made to responsive, responsible Bidder(s) who meet specifications and technical requirements, and provide the best overall value to UC San Diego Health. Proposals will be awarded points by the evaluators based on the quality, completeness, alignment with the stated objectives, and perceived ability to achieve the objectives of this RFP. Additional points will be awarded for the relative competitiveness of the proposed pricing. The bidder receiving the most points shall be declared the “Best Value” proposal. See Exhibit F: Best Value Award for an explanation of the UC Best Value Award methodology.

UC San Diego Health reserves the right to accept, reject, or waive any irregularities in any bid proposal; and award a contract after reviewing, evaluating and comparing all bid proposals.
2.15 Bidder Selection

Participation in this RFP process is not intended to be exclusionary. UC San Diego Health has made every reasonable attempt to ensure that all Bidders capable of supplying that which is listed in this RFP have received a copy of the RFP.

2.16 Specification Requirements

All Proposals must address all requested information in detail. Evaluation of the extent to which Proposals meet specifications will be performed SOLELY and determined SOLELY by UC San Diego Health.

2.17 Required Submittals

Proposals shall be prepared in a straightforward and concise manner. Emphasis should be placed on the conformance to the RFP instructions, responsiveness to the RFP requirements, and completeness and clarity of content. Proposals should include a Table of Contents that give page numbers and should be in sufficient detail to facilitate easy reference to all requested information.

Proposal shall be signed by an individual who is authorized to bind the Vendor contractually and shall show the name of the company and the bid identification number RFP #UCSDH112619. Any unsigned Proposal shall be rejected.

Submittals include, but are not limited to:

- Completed Attachments 2 and 3 per Section 2.7
- Qualifying criteria per Section 2.21
- Completed signature page per Section 2.28

2.18 RFP Distribution

UC San Diego Health is the agency authorized to distribute Proposals. Distribution of Proposals to parties other than those specifically designated by UC San Diego Health is not authorized. Failure to observe this guideline may result in Vendor disqualification.

2.19 Disclosure of Information

All information and material submitted to UC San Diego Health in response to this RFP may be reproduced by UC San Diego Health for purpose of providing copies to authorized personnel involved in the evaluation of the Proposals but shall be exempt from public inspection under the California Public Records Act until such time as an Agreement is executed. Once an Agreement is executed, the California Public Records Acts limits UC San Diego Health’s ability to withhold data or trade secrets, as defined by statute. If a Vendor’s Proposals contain any such trade secrets that the Vendor does not want disclosed to the public, subsequent to the execution of the agreement, each sheet of such information must be marked by the Vendor as a “trade secret.” If, after the agreement is executed, a third party requests a copy of any Vendor’s Proposal and such documents contain material marked “trade secret,” UC San Diego Health shall withhold that information if it meets the statutory definition of trade secret and the Vendor agrees to defend, indemnify and hold harmless the University in any subsequent legal action based on its withholding.
UC San Diego Health shall have the right to use and disclose information marked as a “trade secret” under the following conditions:

1. Such information was already in possession of UC San Diego Health.
2. Such information has entered the public domain other than by UC San Diego Health’s breach of any agreement to keep it confidential.
3. Such information is requested or obtained lawfully from a third party.
4. Such information has been provided to a third party without confidentiality obligations.

2.20 Vendor Presentations

The purpose of Vendor presentations is to allow a short overview of Proposals with an emphasis on questions presented by UC San Diego Health personnel to clarify written Proposals.

2.21 Bidder Qualifying Criteria

A. Bidder must have recent and successful experience, as evidenced by satisfactory references, assessing, optimizing, and implementing sustained improvements in the Revenue Cycle function of large academic medical centers; strong Epic EMR experience, and the financial stability and resources to provide services.

B. The University requires the following to qualify Vendors:

- References from three (3) or more institutions of comparable size and complexity to UC San Diego Health, with which Bidder has had a substantial involvement in providing similar services. For each reference, state contact name, e-mail address and telephone number; and include partnership number of years, structure of business relationship, and brief description of the nature and outcome of each project.

- UC San Diego Health may request additional information to determine Bidder’s ability to successfully meet the requirements of this RFP and Bidder shall furnish all such information for this purpose as requested by UC San Diego Health. UC San Diego Health reserves the right to reject any Proposal if the evidence submitted by, or investigation of, such Bidder fails to satisfy UC San Diego Health that such Bidder is properly qualified to carry out the contract and to complete the work specified.

C. Bidder will be evaluated based on qualifying information provided, including but not limited to the items listed below:

- Demonstrated competence and professional qualifications.

- Experience with projects and organizations of similar size, type and complexity.

- Proposed approach and demonstrated understanding of scope by responsiveness to information required in this RFP.

- Project team and expertise of personnel.

- Implementation plan and timeframe, training and support.
• Demonstrated track record of acceptable performance on similar projects to be evaluated from comments of Bidder references.

• Value added services proposed.

2.22 Specific Terms and Conditions

A. UC San Diego Health will issue a UC Health Professional Services Agreement, Exhibit A, to the successful Bidder as a result of this RFP.

B. UC Health Terms and Conditions, Exhibit B, apply to any resulting contract.

C. Successful Bidder shall be required to agree to the terms and conditions of Appendix - HIPAA Business Associate, Exhibit C. The UC HIPAA BAA is non-negotiable as it contains language to comply with stringent California Privacy/Breach laws.

D. Successful Bidder shall complete the Compliance Questionnaire, Exhibit D as part of the award that results from this RFP.

E. Appendix – Data Security and Privacy, Exhibit E, as attached, applies to any resulting contract.

F. Any contract issued as a result of this RFP will incorporate all requirements and provisions of the RFP.

2.23 RFP Terms and Conditions

A. The terms and conditions for this RFP and the resulting agreement are those stated in this RFP and its enclosures. Proposed changes and/or modifications to the terms and conditions are not invited and may cause the Bidder’s Proposal to be rejected.

B. UC San Diego Health reserves the right to request additional services as needed throughout the duration of contract.

C. Bidder agrees to extend pricing and services to any UC location or UC affiliate under the terms and conditions set forth in an Agreement awarded in response to Bidder’s proposal.

D. Successful Bidder must meet insurance requirements as outlined in Article 9 of Exhibit B, Insurance, prior to commencement of services unless a certificate of insurance is in force and on file in UC San Diego Health Procurement Services as a result of a previous order. All the required policies shall name The Regents of the University of California as an additional insured, shall be in a form as issued by an insurer approved by the University, and shall contain an endorsement requiring not less than thirty (30) days written notice to the University prior to any cancellation or modification thereof. Thereafter, a certificate evidencing the renewal of each such policy shall be furnished to the University at least ten (10) days prior to the expiration of the term of policy. Failure to comply with this requirement may result in cancellation of any order resulting from this RFP.

E. UC San Diego Health retains the right to cancel the order at any time, resulting from this RFP, for convenience without penalty to the University.
F. Bidder shall be solely responsible for the conduct and control of the work to be performed by Bidder under this Agreement. Bidder’s services for UC San Diego Health shall be performed in accordance with currently approved methods and ethical standards applicable to Bidder’s professional capacity.

G. Bidder has prime contract responsibility; subcontractors may be used, but the prime Contractor must accept full responsibility for the subcontractor’s performance. All subcontractors must be identified by the Contractor, and the Contractor must describe the type of contractual arrangement with all subcontractors. Prime Contractor shall be responsible for meeting all terms and conditions of this agreement. UC San Diego Health reserves the right to approve/disapprove all subcontractors.

H. In the event that UC San Diego Health determines that an employee of the Bidder or a subcontractor hired by Bidder is unqualified, unruly or in any way endangering the project, Bidder shall remove the employee/subcontractor at the request of the University. This provision shall apply to all Bidder personnel.

I. Contractor, and any subcontractors performing work hereunder, shall maintain accounts, records, documents and other evidence (“Records”) detailing all elements of their Proposal costs and supporting all charges made by them under any contract resulting from this RFP. These records shall be retained by the Contractor and subcontractor for a period of seven (7) years from the date of the expirations of any resulting contract. The system of accounts employed by the Contractor and the subcontractors hereunder shall be satisfactory to the University, shall be in accordance with generally accepted accounting principles consistently applied, and shall be subject to inspection and audit by the University and any of its duly authorized representatives at all reasonable times and places.

J. Bidders may not distribute any announcement or news release regarding this project without written approval by UC San Diego Health. Any materials to be provided to regulatory agencies, other entities, or to the public shall be submitted to UC San Diego Health for review and distribution unless otherwise directed by a University technical representative.

2.27 Offshore Workers

Vendor represents and warrants, under penalty of perjury, that Services performed hereunder by Vendor and any subcontractor will be performed solely by workers located within the United States. In the event any portion of Services are performed outside of the United States that are not described in the Addendum by Vendor or any sub-contractor, the Agreement shall immediately terminate for non-compliance, and Vendor and any subcontractor forfeits all penalties to UC in an amount equal to the amount paid by UC for the percentage of work performed with workers outside the United States. Further, in the event the Agreement is terminated for noncompliance pursuant to this Section, Vendor shall be responsible for UC’s reasonable and foreseeable costs arising from the termination. Vendor acknowledges that UC is legally prohibited from spending any funds on training service contract employees located outside the United States or training service contract employees who plan to relocate outside the United States as part of the service contract, if that service contract will displace a UC employee.

2.24 Final Acceptance/Payment Terms

UC San Diego Health will agree to final acceptance of any product or service only after the deliverable(s) or services have been accepted and approved by an authorized official. Burden of proof
regarding disputes as to accuracy of invoices shall fall upon the Vendor. UC San Diego Health shall not unreasonably withhold relevant materials and records necessary to resolve such disputes.

UC San Diego Health payment terms are Net 30. No payment will be made in advance of work performed, except as otherwise specified in the resulting agreement.

2.25 Late Interest Charges

Payments for University purchased services for any future Agreement shall not be subject to any late or interest charges.

2.26 Ethics

Vendor shall exercise extreme care and due diligence to prevent any action or conditions which could result in conflict with the best interest of UC San Diego Health.

Throughout the term of any subsequent Agreement, Vendor shall not accept any employment or engage in any work, which creates a conflict of interest with UC San Diego Health or in any way compromises the work to be performed under this RFP or subsequent Agreement. Vendor and/or its employees shall not offer gifts, entertainment, payment, loans, or other gratuities or consideration to UC San Diego Health employees, their families, other Vendors, subcontractors, or other third parties for the purpose of influencing such persons to act contrary to the UC San Diego Health’s interest or for personal gain. Vendor shall immediately notify UC San Diego Health of any and all such violations of this clause upon becoming aware of such violations.

2.27 Penalty for Collusion

If at any time it is discovered that the person(s), contractor, or corporation to which an Agreement has been awarded has, in presenting a Proposal, colluded with any other party(ies), the University reserves the right to immediately cancel or terminate the awarded Agreement, and the Vendor shall be liable to UC San Diego Health for all losses incurred and/or damage which UC San Diego Health may have suffered.

2.28 Certifications/Signature

Bidder shall not maintain or provide racially segregated facilities for employees at any establishment under the Bidder’s control. Bidder agrees to adhere to the requirements set forth in Executive Orders 11246 and 11375, and with respect to activities occurring in the State of California, to the California Fair employment and Housing Act Government Code section 2900 et seq.). Expressly, the Bidder shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, medical condition, marital status, age, physical and mental handicap in regard to any position for which the employee or applicant for employment is qualified, or because he or she is a disabled veteran or veteran of the Vietnam era. Bidder shall further specifically undertake an outreach effort in regards with the hiring, promotion and treatment of minority group persons, women, the handicapped, and disabled veterans and veterans of the Vietnam era. Bidder shall communicate this policy in both English and Spanish to all persons as concerned within its company, with outside recruiting services and the minority community at large. Bidder shall provide the University on request a breakdown of it labor force by groups, specifying the above characteristics within job categories, and shall discuss with the University its policies and practices relating to its programs.
2.29 Certification

I certify that I am authorized to sign for this offer on behalf of the organization I represent, and agree to all terms and conditions described herein.

_____________________________________  _______________________________________
Date                                             Authorized Signature

________________________________________
Company Name

________________________________________
Address

________________________________________
City/State/Zip Code

________________________________________
Print Name of Signatory

________________________________________
Telephone Number with Area Code

________________________________________
Fax Number with Area Code

________________________________________
Federal Employer Identification Number

________________________________________
Email Address

________________________________________
Web Address
SECTION 3: ATTACHMENTS

Attachment 1 – Specifications/Scope of Work

Attachment 2 – Proposal Form

Attachment 3 – Pricing Schedule

Exhibit A – UC Health Professional Services Agreement

Exhibit B – UC Health Terms and Conditions

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Exhibit F – Best Value Award
Attachment 1: SPECIFICATIONS/SCOPE OF WORK

UC San Diego Health has defined two phases for this engagement. Phase I is the assessment phase. UC San Diego Health anticipates that a final report will be issued at the end of Phase I of this engagement which will include specific findings from the scope of work and detailed work plans to be implemented to achieve the goals stated in Paragraph 1, General Instructions, of this RFP and a description of the resources required (UC San Diego Health and Bidder) to implement the plans identified. Phase II of this engagement is implementation of the agreed upon services defined in Phase I.

Phase I

The scope of work in Phase I should include a current state assessment, a description of the desired state (leading practice), a detailed implementation plan to achieve the desired state, and reporting and monitoring tools for each functional area identified. In addition, the final report will include a quantification of the financial returns expected as a result of the changes implemented. The financial return will be specific to each section of the plan, include the timing of the return and address the method by which it was calculated.

1. The functional areas included in the scope of work are:
   - Inpatient Surgeries, Outpatient Surgeries, Clinic Visits, Inpatient Admissions, Other Procedures
   - Authorization Management; Inpatient Services; Outpatient Services, Pre-certification, Patient Registration; New Patient Registration, Pre-registration; Pre-admitting; Demographic Updates
   - Visit Processing; ER Visits, Short Inpatient Stays, Observation Visits, Scheduled Inpatient Admissions, Unscheduled Inpatient Admissions
   - Financial Counseling; Insurance Verification, Self-Pay Evaluation, Patient Estimates and Payment Plans
   - Patient Data Services: Coding Review, Coding Completeness, Coding Transfer to Bills
   - Revenue Generation: Areas affecting processes referred to in Section 2.E below, Charge Master, system interfaces and late charges
   - Billing Edits and Billing Efficiency – review of billing edits, clean claim percentage and denials.

2. Deliverables

   Phase I deliverables included in this scope of work are briefly described as a final report containing:

   A. Current State by Functional Area — Policies and procedures, variability in the processes across similar functional areas, and current measurements of performance that are available.

   B. Desired State by Functional Area — Recommended changes in process and functional areas under review.

   C. Implementation Plan by Functional Area — Includes resources (UC San Diego Health and on-site vendor support), sequencing, dependencies, and a transition plan that facilitates hand offs to
functional areas. Separately identify time frame(s) for completion of Phase I and Phase II. The plans should be very detailed and actionable based on consultant’s knowledge gained during the first part of this engagement.

D. Reporting and Monitoring Tools by Functional Area — Optimization of current monitoring tools.

E. Revenue Generation Review — The vendor will identify services in the ancillary, surgical, and procedural areas that are not being charged for, or are not being charged in a manner that optimizes revenue for the services provided.

F. Financial Return to UC San Diego Health — Explain the major sources of financial return based on successful completion of this project. The expected timing of the return needs to be explicit along with the method by which it was calculated.

**Phase II**

In Phase II, the scope of work includes the onsite assistance required to implement the plan for improvement. It is anticipated that UC San Diego Health’s agreement on the vendor’s “Implementation Plan by Functional Area” will form the basis of the second phase of this engagement. UC San Diego Health reserves the right, at its own discretion, to expand or limit the scope of work to complete the project as required.
This master agreement ("Agreement") to furnish certain professional services described herein and the documents referenced herein ("Services") is made by and between UC Health, an operating subdivision of the Regents of the University of California, a California public corporation ("UC"), with location at 1111 Broadway, 14th Floor, Oakland, California 94607, acting for the benefit of UC Locations [and UC Affiliate Locations] as defined herein, which become Customers (as defined herein), and the supplier, [NAME OF SUPPLIER] ("Supplier"), a corporation, located at [ADDRESS OF SUPPLIER]. UC and Supplier shall individually be referred to as "Party" and collectively "Parties." Any defined terms not defined herein shall have the meaning ascribed to such term in the Master Terms and Conditions ("Terms and Conditions"). [NOTE TO BUYER: THE TERMS AND CONDITIONS AND TEMPLATE STATEMENT OF WORK MUST BE INCLUDED AS APPENDICES TO THIS AGREEMENT.]

1. UC Health and Scope of Customers

(a) UC Health represents five academic medical centers located at the Davis, Irvine, Los Angeles, San Diego, and San Francisco campuses, as well as UC’s seventeen health professional schools and associated research programs, and student health and counseling centers.

(b) UC Locations.

“UC Location” used herein shall mean: (i) any University of California campus, medical center, affiliated national laboratory, or program, as further described at http://www.universityofcalifornia.edu/uc-system/parts-of-uc; (ii) any entity that, after the full execution of this Agreement, is acquired or created by any location referenced in (i); and (iii) any entity that merges into or consolidates with any location referenced in (i) and, after such merger or consolidation, the surviving entity is a location as referenced in (i).

UC represents that it is comprised of individual campuses and medical centers across the state of California, including UC Locations, which are all part of the University of California system and none of which is a distinct legal entity.

Supplier agrees to perform the Services listed and as priced in Appendix B or elsewhere in this Agreement to each UC Location executing a Statement of Work, the form of which is attached to this Agreement as Appendix C. By execution of such Statement of Work, such UC Location on the one hand, and Supplier, on the other hand, shall be deemed, respectively, to have executed the Agreement (with appropriate changes to the signature block) as Parties.

Each UC Location that enters into a Statement of Work is referred to as a “Customer.”

[IF THE TERMS OF THE AGREEMENT WILL BE EXTENDED TO UC AFFILIATE LOCATIONS, INCLUDE SUBSECTION C:]

(c) UC Affiliate Locations.

The terms of this Agreement will be extended to UC Affiliate Locations. Accordingly, each UC Affiliate Location that enters into a Purchase Order is also referred to as a “Customer” under this Agreement.
“UC Affiliate Location” as used herein shall mean: (i) any school, campus, facility, healthcare provider or payer, or entity that is not a UC Location and that is, in whole or in part, owned or controlled by, or under common ownership with, UC, or that is managed, in whole or in part, by UC; (ii) any entity that, after the full execution of this Agreement, merges into or consolidates with any UC Location referenced in Section 1(a)(i) of this Agreement and which UC designates as a UC Affiliate Location; (iii) any entity into which any UC Location or UC Affiliate Location merges or consolidates and, after such merger or consolidation, the surviving entity is not a UC Location or UC Affiliate Location, and which UC designates as a UC Affiliate Location; (iv) any entity that merges into or consolidates with a UC Affiliate Location and, after such merger or consolidation, the surviving entity is a UC Affiliate Location; and (v) any entity, other than those described above, that UC and Supplier may agree in writing may be a UC Affiliate Location.

UC has entered, or will enter, into agreements with UC Affiliate Locations which seek, through collaboration, to combine health care delivery services, procurement and/or contracting activities with efforts to obtain the best value goods and services while reducing total acquisition costs. UC and each of the UC Affiliate Locations are separate and distinct entities. As such, each administrative unit and campus under the control of UC, and each administrative unit and campus under the control of any of the UC Affiliate Locations, is financially separate and each shall be responsible for its respective individual commitments, financial or otherwise, and none shall be responsible for performance or non-performance of any of the others. Each administrative unit and campus under the control of a UC Affiliate Location is financially separate from all other UC Affiliate Locations, and from their respective units and campuses. Each UC Affiliate Location shall be responsible for its respective individual commitments, financial or otherwise, and none shall be responsible for performance or non-performance of any of the other UC Affiliate Locations or their respective administrative units or campuses. No fiduciary responsibility exists between UC and any UC Affiliate Location or the respective units and campuses of such UC Affiliate Locations. No fiduciary responsibility exists between UC Affiliate Locations, or their respective units and campuses. Accordingly, each of the UC Affiliate Locations is fully and solely responsible for its obligations (and the obligations of the administrative units and campuses under its control) under such UC Affiliate Location’s Statement of Work, and under the Agreement with respect to such Statement of Work. Any change to a Statement of Work shall be applicable only to such UC Affiliate Location and to such Statement of Work.

At the request of any UC Location, Supplier agrees to perform the Services listed and as priced in Appendix B or elsewhere in this Agreement to each UC Affiliate Location executing a Statement of Work. By execution of such Statement of Work, each UC Affiliate Location on the one hand, and Supplier, on the other hand, shall be deemed, respectively, to have executed the Agreement (with appropriate changes to the signature block) as Parties.

For the avoidance of doubt, UC is not responsible for the acts or omissions of any UC Affiliate Location. UC Affiliate Locations shall remain liable for each such UC Affiliate Location’s compliance or non-compliance with the terms of this Agreement as it pertains to the Statement of Work of such UC Affiliate Location.

In the event Supplier will have access to PHI as defined in Section 31 of the Terms and Conditions, UC Affiliate Location Customers may require Supplier to execute and deliver a HIPAA business associated agreement with respect to performance of Services for such Customer.

(d) Unless otherwise provided in the Agreement, UC, through Customers, will not be obligated to purchase a minimum amount of Services from Supplier. Neither UC nor any Customer will be penalized, monetarily or otherwise, for not achieving any projected net purchases.
(e) Supplier will make available to any Customer its improved pricing basis, terms or conditions resulting from increased usage or aggregation of activity by multiple Customers. All contractual administration issues (e.g., terms and conditions, extensions and renewals), operational issues, fiduciary responsibility, payment issues, performance issues and liabilities, and disputes involving individual Customers will be addressed, administered, and resolved by each Customer. Any delay in payment or other operational issue involving one Customer will not adversely affect any other Customer. Each Customer shall be fully and solely responsible to Supplier for the fulfillment of such Customer’s obligations under the applicable Statement of Work. Without limiting the generality of the foregoing, a Customer’s breach of its obligations under the Agreement or applicable Statement of Work will subject such Customer to the applicable corrective action, or termination pursuant to Section 2 of this Agreement, but otherwise will have no adverse impact on the other Customers or on their respective Statements of Work or the Agreement, or other UC Locations.

(f) No Customer shall amend, alter or otherwise modify the terms of this Agreement, including the Incorporated Documents as defined herein. All modifications, amendments and alterations to this Agreement, including the Incorporated Documents, shall be mutually agreed to between UC and Supplier. All other modifications, amendments and alterations shall be null and void. In the event a Customer desires to add terms that do not amend, alter or otherwise modify any term contained in this Agreement, including the Incorporated Documents, such terms may be incorporated into the Statement of Work or other agreement directly between Supplier and such Customer.

2. Term of Agreement/Termination of Statement of Services

a) [Buyer: Select one of the following alternatives – note that if the Supplier is a health care provider or is otherwise in a position to make or influence referrals, the agreement should not be for less than one year. If the agreement is terminated with or without cause prior to the end of the first year of the agreement, then the parties must not enter into a similar contract until the one year term has passed. Please consult a UC attorney or compliance officer as needed.]

The term of the Agreement will be for three (3) years from Date through Date (“Initial Term”) and is subject to earlier termination as provided below. UC Health will have the sole option to renew for two successive one-year periods (Renewal Term) under the same terms and conditions.

The term of the Agreement will be from Date and through Date and is subject to earlier termination as provided below. It may be extended upon the mutual written agreement of the Parties.

The term of the Agreement will commence on Date and is subject to termination for convenience or in the case of a breach as provided below. Otherwise, it will remain in force until terminated by either Party with at least ___ calendar days’ written notice. [Buyer: Number of days will depend on goods and services, and time needed to obtain replacement if necessary.]

b) UC may terminate the Agreement for convenience by giving Supplier at least ___ calendar days' written notice. [Buyer: UC standard is 30 days; subject to negotiation.]

c) UC or Supplier may terminate the Agreement for cause by giving the other Party at least ___ days' notice to cure a breach of the Agreement (Cure Period). If the breaching party fails to cure the breach within the Cure Period, the non-breaching party may immediately terminate the Agreement. [Buyer: UC standard is 15 days; subject to negotiation.]
d) Each Customer may terminate a Statement of Work, and the Agreement with respect to such Statement of Work and Customer only, by giving Supplier at least ___ calendar days’ written notice.

e) Each Customer or Supplier may terminate a Statement of Work, and the Agreement with respect to such Statement of Work and Customer only, for cause, by giving the other party written notice least the length of the Cure Period to cure the breach. If the breaching party fails to cure the breach within the Cure Period, the non-breaching party may immediately terminate the Agreement.

f) If a Customer terminates all of such Customer’s Statement(s) of Work, the Agreement, with respect to such Customer, will immediately terminate. If Customer terminates one of its Statements of Work, the Agreement with respect to such Statement of Work also will terminate, and the Agreement, with respect to all other ongoing Statement(s) of Work of Customer, if applicable, shall remain in full force and effect. Notwithstanding anything in the Agreement, Supplier’s right to terminate a Customer pursuant to Section 2(e) of this Agreement only extends to that particular Customer, and not to any other UC Location or UC Affiliate Location which is also a Customer.

g) In the event of termination by a Customer, such Customer shall be relieved of all obligations to Supplier, except for outstanding payments due consistent with Article 3 of the Terms and Conditions. In the event of termination by UC, UC and each Customer shall be relieved of all obligations to Supplier, except for outstanding payments due consistent with Article 3 of the Terms and Conditions.

3. Purchase Order; No Advance Payments

Each Customer shall purchase the Services described in Appendix B through a Statement of Work, completed in the form of Appendix C. Unless otherwise provided in the Agreement, Supplier may not begin providing Services until Customer approves and executes a Statement of Work for the Services. No payments will be made in advance of work performed, except as specified in the Agreement.

4. Invoices and Pricing

a. All invoices must be itemized according to the Statement of Work and include the Agreement and/or Statement of Work number, payment remittance instructions, Customer name, and a description of the Services performed [Buyer: Customize as appropriate the invoice information required. Please note typically stricter requirements (e.g., time sheets) for medical director services and similar agreements with suppliers providing clinical services]. UC payment terms are net 60 unless otherwise stated in the Agreement. Unless the Agreement is amended in writing, the total price for Services may not exceed $______.

b. For purposes of calculating UC and Customers’ use of Supplier’s Services and purchase price of such Services, Supplier shall aggregate, and UC and each Customer shall get the benefit of, all net purchases of Services made by all Customers. Supplier will review, on a quarterly annual basis, the combined net purchases of Services for all Customers during the term of this Agreement and shall make appropriate changes and adjustments to pricing to reflect the pricing for which Customers qualify in accordance with Appendix B and the terms of this Agreement. [Buyer: Each UC Location must be able to identify the costs in which that UC Location is solely incurring.]

[IF SUPPLIER IS PROVIDING CLINICAL SERVICES, ADD AS APPLICABLE:]

c. Clinical Invoicing and Fees, Where Supplier is providing Services through one or more health care professionals (each,
a “Supplier Clinician”), the following apply:

(1) Supplier shall invoice Customer on a _____ [e.g., weekly/bi-weekly] basis at the rates specified in Appendix B. The weekly billing period shall be from Sunday through the following Saturday. In addition to the information provided about in Section 4(a) of this Agreement, all invoices shall also contain personnel name, personnel type (e.g., RN, LVN, MD), date worked, shift worked, total hours worked, hourly rate, total charge, cost center worked, overtime. Each Customer may request that invoices directed to such Customer contain additional specified information.

(2) All invoices submitted to a Customer dated six (6) months prior to the date of last invoice shall be void and not payable by such Customer. All invoices must be completed per Customer policy and directed to the correct location.

(3) There will be no volume or early payment rates. The rates are set during the term of the Agreement or Statement of Work unless amended in writing.

(4) There is a flat rate for twelve (12) hour shifts.

(5) Overtime shall be paid by Supplier to its Supplier Clinicians in compliance with the requirements of this Agreement, and applicable federal and state laws and regulations regarding wages and hours.

(6) Holiday rates listed on the rate schedule shall be applicable on the following holidays only for the shifts with start times that occur on the actual calendar day: New Year’s Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day.

(7) If a license or certification is required for Services being provided, Supplier Clinicians reporting to a Customer assignment with an expired license/certification will not be scheduled to work until proof of current license/certification is provided. Supplier will cover the Clinician’s wages owed at no charge to Customer. If the Supplier cannot find a replacement within fifteen (15) minutes, Supplier shall pay Customer two (2) hours at regular rate for the assignment in effect. This payment shall be as liquidated damages and not as a penalty, as the Parties agree it would be impossible to readily determine the nature and extent of damages so caused.

(8) If Customer cancels an assignment two (2) hours or more prior to the start of an assignment, Customer will incur no liability. It will be the responsibility of Supplier to contact and inform the affected Supplier Clinician of such changes in schedule.

(9) If Supplier or Supplier Clinician cancels less than two (2) hours before the start of an assignment and Supplier can find a replacement personnel who can start at the assigned time, no penalty will be incurred. If Supplier or Supplier Clinician cancels less than two (2) hours before the start of an assignment and Supplier can find a replacement but the Supplier Clinician is not available until after the start of the original assignment, Supplier shall pay Customer two (2) hours at the regular rate set forth in Exhibit 1 to the Statement of Work to allow for the expense of patient care coverage and to allow time for the Supplier Clinician to arrive at the assignment. If Supplier is unable to fill the assignment, Supplier shall pay Customer two (2) hours at the regular rate for the assignment in effect. This payment shall be as liquidated damages and not as a penalty, as the Parties agree that it would be impossible to determine the nature and extent of damages so caused.

(10) When Customer places a request with Supplier less than one (1) hour before the start of an assignment, and the Supplier Clinician reports to work within one (1) hour of the scheduled time, Customer shall pay the Supplier the full amount as though the Supplier personnel had arrived at the scheduled time. Should the Supplier Clinician arrive more than one (1) hour past the scheduled time, Customer shall pay the Supplier only for the hours actually worked. When Customer places a request at the time the shift begins or within one (1) hour of the beginning of the shift, if the Supplier Clinician reports to Customer within one (1) hour of request, Supplier will be paid for the full shift.

(11) All hours worked, for calculation of fees, shall exclude the time the Supplier Clinician are required to Supplier or Customer’s staffing office to verify licensure and certification. Supplier Clinician are required to sign in and sign out at Customer’s designated area for Supplier Clinician. Any Supplier Clinician reporting to Customer must have his or her Supplier picture identification (ID). Any Clinician reporting without the proper ID will, at the discretion of the Customer, be sent home.
d. Clinical Services Billing and Claims Reimbursement.

[Buyer: Choose one of the following, as applicable, when clinical services or other services that are eligible for patient or third party payor reimbursement are being performed. Not that allowable compensation will likely differ depending on which option is selected. Please consult with UC compliance or counsel as needed.]

Supplier shall bill and collect from patients and third party payors for the Services provided by Supplier Clinicians under this Agreement. Customer shall be responsible for billing and collection of all amounts owing on account of the institutional or non-physician component of all services provided to its patients. Customer and Supplier each shall be entitled to retain all such amounts that they collect hereunder, respectively.

[OR]

(1) Customer shall provide all billing services relating to the operation of Customer’s facilities, and, to the extent allowable by law and the policies and procedures of any third party payor involved (including the Medicare and Medi-Cal programs), Customer shall bill in Customer’s name, for all services rendered to patients at Customer’s facilities, including, but not limited to, technical and ancillary services, and professional [specialty] medical services provided by Supplier Clinicians to patients at Customer’s facilities. To the extent it is not legally allowable for Customer to bill for such services in its own name, Customer shall bill in Supplier’s name and under Supplier’s provider number for such services, specifically including services to Medicare and Medi-Cal patients. The Parties acknowledge that all payor reimbursement and payments shall be made directly to Customer (through formal assignments or otherwise) or, if made to Supplier, shall be immediately remitted to Customer. Supplier shall have, upon reasonable request, appropriate access to Medicare claims submitted by Customer for the billing of professional services provided by Supplier and Supplier Clinicians under this Agreement.

(2) To the extent permitted, Supplier and Supplier Clinicians shall assign to Customer all rights to receive payments for all clinical Services and on-call coverage rendered pursuant to this Agreement by Supplier at Customer’s facilities. Supplier Clinicians will complete all necessary paperwork, applications, and/or documentation to effectuate automatic assignments under all governmental (including Medicare and Medi-Cal) and commercial payor programs. If the payments and reimbursements are not automatically assigned to Customer through the establishment of formal assignments under applicable government and commercial programs, Supplier shall immediately remit all such payments directly to Customer (under procedures determined by Customer).

(3) Supplier agrees to provide Customer will all billing information for Services rendered by Supplier Clinicians, including, but not limited to, the name of the patient, the date of service, the nature and extent of Services provided, and any supporting medical and non-medical information necessary to bill such Service and to obtain payment and/or reimbursement. Such information shall be provided by Supplier to the Customer’s billing or business office after the applicable medical services are rendered. The applicable treating Supplier physician shall be responsible for providing the appropriate diagnosis, procedure code, and the visit/encounter severity level associated with each patient visit or encounter. Both Parties acknowledge that they may be jointly and severally liable to the Medicare program for any overpayments made for Supplier Clinicians’ professional Services rendered pursuant to this Agreement, but such acknowledgement does not in any way alter their respective obligations to each other.

(4) Customer shall use its best efforts to collect the fees and/or charges billed for the Services rendered by Supplier Clinicians. However, Customer does not guarantee that the fees and charges billed on behalf of Supplier Clinicians shall be collectible. In the event Supplier believes the Customer is not meeting commercially reasonable billing and collection standards, then Supplier may request the Customer administration to review compliance with commercially reasonable billing and collection standards. If the Customer administration finds that the Customer is not in compliance with commercially reasonable billing standards, such lack of compliance shall not be deemed to be a breach under this
Agreement; provided, that the Customer administration shall take action to remedy the noncompliance, including, but not limited to, selecting an unrelated billing and collection company to assess and, if necessary, to perform billing and collection services on behalf of the Customer at market prevailing rates.

5. Notices

As provided in the Terms and Conditions, notices may be given by overnight delivery or by certified mail with return receipt requested, at the addresses specified below. [Buyer: Delete the notice block below, as appropriate, when the Services are not subject to an Appendix – Data Security, and/or Appendix – Business Associate. If the Services are subject to an Appendix – Data Security, for a local contract, the suggested contact is your Information Security Officer, or, for systemwide contracts, Jon Good at OP. If the Services are subject to an Appendix – Business Associate, the suggested contact is the Systemwide Privacy Officer (Roslyn Martorano at OP).]

To UC, regarding confirmed or suspected Breaches as defined under Appendix – Data Security and Privacy:

<table>
<thead>
<tr>
<th>Name</th>
<th>Jon Good</th>
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<tbody>
<tr>
<td></td>
<td>Director of Information Security,</td>
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<tr>
<td></td>
<td>University of California Office of the President</td>
</tr>
<tr>
<td>Phone</td>
<td>(510) 987-0518</td>
</tr>
<tr>
<td>Email</td>
<td><a href="mailto:jon.good@ucop.edu">jon.good@ucop.edu</a></td>
</tr>
<tr>
<td>Address</td>
<td>415-20th Street, 3rd Floor</td>
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<tr>
<td></td>
<td>Oakland, CA 94612-2901</td>
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To UC, regarding Breaches or Security Incidents as defined under Appendix – HIPAA Business Associate:

<table>
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<tr>
<th>Name</th>
<th>Jon Good</th>
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<td>Oakland, CA 94612-2901</td>
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</tbody>
</table>

To UC, regarding contract issues not addressed above:
Notices pertaining to a specific Statement of Work or Customer shall be directed to the address specified in such Statement of Work.

To Supplier:

6. Intellectual Property, Copyright and Patents [Select One]

/___/ The Services involve Work Made for Hire

/___/ The Services do not involve Work Made for Hire

7. Patient Protection and Affordable Care Act (PPACA) [Select one]

/___/ Because the Services involve temporary or supplementary staffing, they are subject to the PPACA warranties in the Terms and Conditions.

/___/ The Services do not involve temporary or supplementary staffing, and they are not subject to the PPACA warranties in the Terms and Conditions.

8. Prevailing Wages [Check if Prevailing Wage requirement does not apply]

/___/ Supplier is not required to pay prevailing wages when providing the Services.

9. Fair Wage/Fair Work

/___/ Supplier is not required to pay the UC Fair Wage (defined as $13 per hour as of 10/1/15, $14 per hour as of 10/1/16, and $15 per hour as of 10/1/17) when providing the Services.

10. Federally Funded Contracts; Grants and Cooperative Agreements [Buyer: Include this section ONLY if you have knowledge of the contract/agreement number.]
a) For federally-funded contracts, the contract number is: ___________________.

b) For contracts funded by a grant or cooperative agreement, the grant or cooperative agreement number is: ___________________.

11. Restriction Relating to Consulting Services or Similar Contracts – Follow-on Contracts

Please note a Supplier that is awarded a consulting services or similar contract cannot later submit a bid or be considered for any work “required, suggested, or otherwise deemed appropriate” as the end product of the Services (see California Public Contract Code Section 10515).

12. Insurance and Indemnification

In addition to the Indemnification provided in the Terms and Conditions and Incorporated Documents, as applicable, Supplier shall, at its own expense, indemnify, hold harmless and defend UC, each Customer and each of their employees and agents from and against any employment claims arising out of the Agreement, including any discrimination, workers’ compensation or unpaid wage claims brought by Supplier personnel against UC or Customers, as applicable.

Supplier shall deliver the Certificate of Insurance to UC, by mail or overnight delivery, and as requested by any Customer. Additionally, this requirement will be considered satisfied if a PDF version of the Certificate of Insurance is sent by Email and includes the following text in the Subject field: CERTIFICATE OF INSURANCE – [Buyer: Insert Supplier name].


[Buyer: Use this section to add provisions that apply to the specific type of services – for instance, research, photography, advertising, event hosting, etc.]

a. Description of Services

The Services available to Customers under this Agreement are identified in Appendix B to this Agreement.

[buyer: If no Appendix B is included, provide an overview and background of services available to be rendered to UC Locations and UC Affiliate Locations.]

b. Key Personnel

Supplier’s Account Manager is listed below, is subject to UC approval, and has overall responsibility for managing the UC/Supplier relationship:

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<tr>
<th>Name</th>
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<tr>
<td>Phone</td>
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<td>Email</td>
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<td>Address</td>
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</table>
Subcontractors authorized to render Services under this Agreement [Buyer: Names should be listed only if Agreement permits use of subcontractors]:

<table>
<thead>
<tr>
<th>Name of Subcontractor</th>
<th>Services the Subcontractor will perform</th>
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Supplier’s Account Management Team is:

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<tr>
<th>Name</th>
<th>Phone</th>
<th>Email</th>
<th>Address</th>
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</table>

Customer’s Project Manager, responsible for acceptance/rejection of project results/deliverables, shall be identified in the Statement of Work for such Customer or otherwise provided to Supplier in writing.

c. Reporting Requirements

[Buyer: Identify any key reports that should be produced by Supplier or critical reporting events.]

Supplier agrees to provide other reports as reasonably requested by each Customer during the Term of the Agreement and any extension(s) to the Term at no additional cost to each Customer.

d. Service Level Agreement

[Buyer: Any critical SLAs should be stated here.]

The minimum service standards set forth above recognize that occasional errors are likely; however, Supplier further agrees to use its best efforts to achieve 100% of service levels. Should the service levels fall below the minimum standards and Supplier does not take corrective action within fourteen (14) days following Customer written notification, UC and/or each
Customer reserves the right to terminate the Agreement immediately. A Customer’s termination of this Agreement shall terminate only the Statement of Work of such Customer.

e. Pricing, Compensation and Payment Terms
[Buyer: outline payment schedule and/or invoicing schedule as needed.]

With respect to Customers that are UC Locations, Supplier will submit invoices directly to UC Accounts Payable Departments at each UC Location, unless UC notifies the Supplier otherwise by amendment to the Agreement. To this extent the Agreement applies and extends to UC Affiliate Locations, with respect to Customers that are UC Affiliate Locations, Supplier will submit invoices to the appropriate office or individual of such UC Affiliate Location.

UC Locations will normally pay invoices within sixty (60) days of receipt of a correct, undisputed invoice.

f. Changes to the Services
UC may desire to change the Services following execution of the Agreement. If so, UC will submit a written Amendment to Supplier describing the changes in appropriate detail. If an Amendment does not require Supplier to incur any additional material costs or expenses, then Supplier will make the modification within ten (10) business days of Supplier’s receipt of UC’s Amendment. If an Amendment does require that Supplier incur additional material costs or expenses, then Supplier in good faith will provide UC with a written, high level, non-binding assessment of the costs and expenses and the time required to perform the modifications required by the Amendment, within ten (10) business days of Supplier’s receipt of UC’s Amendment. UC will notify Supplier in writing within ten (10) business days after receipt of Supplier’s response to the Amendment as to whether UC wishes Supplier to implement the Amendment based on the response. UC will compensate Supplier for implementation of an Amendment in accordance with the terms and conditions of the relevant Amendment and Supplier’s response to the Amendment, if any. Supplier’s implementation of an Amendment will not delay the performance of Services and/or the delivery of deliverables not reasonably affected by an Amendment.

g. No Mandatory Use
Supplier is advised that because there is no mandatory use policy at UC Locations and UC Affiliate Locations, as applicable to the Agreement, Supplier may still see some competition at any given UC Location and/or UC Affiliate Location, as applicable, for any given service.

h. Additional Terms
[Buyer: If recording devices will be allowed, add the following: Supplier will use recording devices in discussions with Customer employees only when Customer and the employees so authorize; this authorization must be in writing. If applicable, Supplier’s use of recording devices in such discussion is proposed as follows:]

[insert terms]

Insurance Requirements [Buyer: insert terms, if needed or different from basic levels in T&Cs]

14. Records about Individuals

Records created pursuant to the Agreement that contain personal information about individuals (including statements made by or about individuals) may become subject to the California Information Practices Act of 1977, which includes a right of access by the subject individual. While ownership of confidential or personal information about individuals is subject to negotiated agreement between Customer and Supplier, records will normally become the applicable Customer’s property, and subject to state law and UC and other Customer policies, as applicable, governing privacy and access to files. When collecting the information, Supplier must inform the individual that the record is being made, and the purpose of the record. Use of recording devices in discussions with employees is permitted only as specified in the Statement of Work.
15. Access to Protected Health Information or Medical Information

/___/ It is NOT anticipated that the Supplier will require access to PHI as defined in the Terms and Conditions.

/___/ It is anticipated that the Supplier will require access to PHI as defined in the Terms and Conditions.

16. Supplier and Customer Duties

a. The Parties agree to treat in a nondiscriminatory manner any and all patients receiving medical benefits or assistance under any federal healthcare program.

b. Supplier shall provide basic orientation in Customer’s policies and procedures to its personnel assigned to perform Services.

c. Supplier warrants that each personnel sent to Customer is capable of performing the Services of such position with or without accommodation and it competent to professionally perform the Services for which Customer has requested. In the event an accommodation is necessary, Supplier shall bear the cost of the accommodation. Supplier shall immediately notify Customer in the event Supplier has reason to believe the personnel cannot safely or competently perform Services as requested by the Customer.

d. If, in the sole discretion of Customer’s administration, Supplier personnel is deemed incompetent, negligent, has engaged in misconduct or poses a threat to health and safety of patients or others, Customer may require Supplier personnel to leave Customer’s premises. There shall be no amount owed Supplier for any hours worked by said removed personnel. The said personnel shall be placed on a “Do Not Send” status permanently unless Customer directs Supplier otherwise. Supplier shall use its best efforts to provide a replacement for the remainder of the removed personnel’s initial or renewal term, which is applicable, within seventy-two (72) hours of such personnel’s removal.

e. Supplier shall require that each of its personnel performing Services for a Customer shall, bring with him or her at each occasion they are sent to Customer, positive picture identification, including at least a valid California Driver’s License or Driver’s License of another State or registration certification from a State; current, valid license to practice medicine in the State of California or other State in which Services may be provided, or other valid professional license, as applicable to the Services being provided; BLS certification as required by the position; and proper picture name badge identification as provided by the Supplier. Customer will not pay for any personnel who come to Customer without the required identification documents.

f. Supplier shall provide Customer with a list of all personnel approved by Supplier to render Services at Customer, and shall update the list as appropriate. Customer and Supplier shall then mutually agree on a list of personnel who may provide Services to Customer.

g. Supplier shall participate in Customer’s improvement program in the following manner:
   (1) Attend quarterly performance review meetings with Customer representative;
   (2) Submit quarterly performance improvement reports to the Customer’s designated contact; and
   (3) Provide Customer with competency evaluations of each personnel providing Services to Customer.

h. Responsibilities of the Customer
   (1) Customer reserves the right to screen interview and accept or reject personnel that Supplier provides.
   (2) Customer shall provide to each Supplier personnel assigned to Customer an overview of the unit in which the Supplier personnel will work.
(3) Customer shall notify Supplier representative of any unsatisfactory performance or conduct of any personnel provided by Supplier.

(4) Customer will make available all sign-in sheets to Supplier each Monday for pick-up or fax (after 12 pm).

(5) Customer reserves the right not to utilize any Supplier personnel who has been employed by such Customer or any UC Location. UC Location Customers will not utilize an employee who has been terminated from duties at any UC Location.

i. Representations of the Parties
   (1) Supplier agrees not to enter into any contract with Supplier personnel which may have the effect of obligating UC or any Customer in any way, except with the prior written express consent of UC or such Customer.
   
   (2) Customer will not knowingly solicit or recruit personnel employed by the Supplier who perform Services at such Customer. This clause does not restrain personnel from Supplier contacting Customer for purposes of seeking employment from Customer. In the event that the former Supplier personnel becomes an employee of Customer, no fee shall be owed by such Customer to Supplier.

   (3) Any person who is on the payroll of Supplier and assigned to work on a temporary or indefinite basis with Customer shall not be eligible for benefits provided by Customer regardless of whether such person is a common law employee, a “leased” employee (as defined in Section 414(n) of the Internal Revenue Code of 1986, as amended), or otherwise, of Customer. Benefits include, but are not limited to, holiday pay, sick pay, vacation pay, bereavement pay, and any other health benefits, retirement plans and insurance.

[FOR CLINICAL SERVICES: ADD AS APPLICABLE:]
17. Professional Standards and Qualifications

[ADD ANY OF THE BELOW, AS APPLICABLE TO THE SERVICES PROVIDED]

j. Supplier shall maintain on file for each of its personnel referred to a Customer the following information, and shall provide Customer with verification of such information upon request:
   (1) Copy of current, valid and unlimited license to practice medicine in the State of California or other state in which Services may be provided, as applicable;
   
   (2) Copy of current, valid Basic Life Support (BLS) certification, as required for the performance of Services;
   
   (3) Copy of current valid and unlimited Drug Enforcement Administration (“DEA”) registration number and any applicable State drug permit;
   
   (4) Copy of required specialty and other certifications;
   
   (5) Copy of annual health certification which includes demonstration of immunity to measles, rubella, Hepatitis B, and proof of annual negative PPD or chest x-ray every four (4) years;
   
   (6) Pre-employment background check consisting of lawful background investigation for employees performing Services for a Customer;
   
   (7) Competency and/or annual performance evaluations;
   
   (8) Job description;
   
   (9) Completion of orientation and in-service training requirements, including but not limited to mandatory annual Joint Commission (TJC) in-services, prior to assignment to Customer;
   
   (10) Any exams administered including but not limited to medication tests specific to the area of assignment (e.g., medicine/surgery, critical care, etc.)
   
   (11) Continuing education classes taken within the last twenty-four (24) months;
   
   (12) Signed Customer confidentiality agreement, as required by Customer;
(13) A completed and current Supplemental Agency Nursing Services (“SANS”) document (or department-specific document);
(14) Additional documents as requested.

k. Supplier shall require each of its personnel to perform and promptly document the performance of Services and/or his or her discharge of other professional medical duties in accordance with: (i) requirements of UC’s or Customer’s medical Staff, including, the medical staff bylaws, rules and regulations, and policies, as applicable; (ii) UC’s or Customer’s policies and procedures, as applicable; (iii) all federal, state, and local laws, rules and regulations, including, without limitation, those generally applicable to participation in government healthcare programs and/or otherwise required for physicians practicing medicine in the State of California; (iv) professionally recognized standards, (v) applicable accreditation standards and requirements, including, those established by TJC and (vi) requirements imposed by third-party payors.

l. Supplier shall provide Customer with verification that each of its personnel performing Services for Customer has had at least one (1) year of successful clinical experience within the last year in the area in which he or she will be assigned.

m. Supplier shall use its best efforts to assign the same personnel consistently to the same Services. This is in keeping with Customer’s staffing needs to provide for maximum continuity in patient care.

n. Supplier shall provide in-service programs in BLS, fire and safety, infection control, blood borne pathogens and hazardous waste as well as other programs required by local, state and federal regulatory agencies, with mandatory attendance as mandated by TJC for all Supplier personnel. Supplier shall provide Customer, upon its request, with verification of completion by Supplier personnel of in-service training and shall retain documented evidence of compliance activities for a minimum of three (3) years after Services are provided hereunder.

o. All personnel supplied by Supplier to Customers shall be screened by Supplier in accordance with the policies and procedures and relevant standards as published by TJC, and applicable regulations. Supplier shall be fully responsible for reviewing the background and qualifications of each personnel whom Supplier provides to Customer. Supplier warrants there is no disciplinary action against any personnel sent to any Customer.

p. During the term of the Agreement, Supplier shall require that, for each personnel of such Supplier referred to Customer, that such individual:
   (1) maintains a currently valid and unlimited license to practice medicine in the State of California or other state in which Services may be provided;
   (2) maintains a current, valid BLS certification, as required for the performance of Services;
   (3) maintains a currently valid and unlimited DEA registration number and any applicable State drug permit;
   (4) maintains the unrestricted ability to fully participate in federal health care programs, as defined in 42 U.S.C. § 1320a-7b(f), as amended from time to time, including, without limitation, the Medicare and Medi-Cal programs;
   (5) establishes and maintains active medical staff membership and appropriate privileges at the applicable Customer hospital, as applicable and required by such Customer;
   (6) maintains faculty appointment at UC, and if required by a UC Affiliate Location Customer, at such UC Affiliate Location, to the extent this Agreement applies or extends to UC Affiliate Locations;
   (7) remains board eligible or board certified in the specialty or subspecialty required in order to provide the applicable Services;
   (8) maintains professional liability insurance coverage in the coverage amounts and upon the terms required by UC, or as otherwise may be required by a UC Affiliate Location Customer, to the extent this Agreement applies or extends to UC Affiliate Locations;
(9) participates with Customer in all managed care arrangements involving Medicare, Medi-Cal and other governmental health care programs;
(10) participates in and accepts calls from Customer’s Emergency Department call rotation without compensation from such Customer hospital;
(11) abides by UC’s Code of Conduct and any applicable codes of conduct of UC Affiliate Location Customer, to the extent applicable and to the extent this Agreement applies or extends to UC Affiliate Locations; and
(12) participates in continuing education as necessary to maintain licensure, professional competence and skills commensurate with the standards of the UC medical community, or UC Affiliate Location community, as applicable, to the extent this Agreement applies or extends to UC Affiliate Locations.
(13) receives a clearance from the Customer’s human resources department prior to commencing any work under this Agreement. The clearance may consist of background check, health screening, substance abuse screening, and execution of a confidentiality statement. If required, the background check will consist of a federal sanction search against the Office of Inspector General (OIG) and the General Services Administration (GSA). In addition, if the personnel of Supplier will be working in patient care areas, training on safety and infection control is required.

All costs incurred for the completion of any the requirements set forth in this Section shall be the responsibility of Supplier or Supplier’s personnel, and not the responsibility of UC or Customer.

18. Amendments to UC Terms and Conditions

The UC Terms and Conditions are hereby amended as follows:

[Buyer: Indicate in this section which T&C provisions are deleted or amended. This will address T&C provisions with which the Supplier takes exception.]

19. Amendment to Appendix – Data Security and Privacy

The UC Appendix – Data Security is hereby amended as follows:

[Buyer: Indicate in this section which Appendix – Data Security provisions are deleted or amended. This will address provisions with which the Supplier takes exception.]

20. Amendments to Appendix – HIPAA Business Associate

The UC Appendix – HIPAA Business Associate is hereby amended as follows:

[Buyer: Indicate in this section which Appendix – Business Associate provisions are deleted or amended. This will address provisions with which the Supplier takes exception.]
21. Incorporated Documents

The following documents are incorporated and made a part of the Agreement by reference as if fully set forth herein, listed in the order of precedence following the Agreement:

a. UC Terms and Conditions, dated __________ - Appendix A
c. Template Statement of Work – Appendix C
d. [If applicable: HIPAA Business Associate – Appendix D ]
e. [If applicable: Appendix – Data Security and Privacy – Appendix E ]
f. [Buyer: List others, with all incorporated documents being in order of precedence]

UC and each Customer enters into this Agreement conditioned upon its terms and the terms of Incorporated Documents in the order of precedence as provided above controlling the transaction contemplated by the Parties and superseding any and all other terms and conditions. By accepting payment from UC and any UC Location, Supplier agrees and understands that UC's terms and conditions control the transaction and supersedes any and all other terms and conditions Supplier may put forth. There may also be special terms and conditions in an invitation to bid or request for proposal which may apply to this Agreement. UC Affiliate Locations may also enter into specific terms and conditions with Supplier with respect to the provision of Services to such UC Affiliate Location.
22. Entire Agreement

The Agreement and its Incorporated Documents contain the entire Agreement between the parties and supersede all prior written or oral agreements with respect to the subject matter. The Agreement is signed below by the Parties’ duly authorized representatives.

It is understood by Supplier that this Agreement is not exclusive. UC and each Customer has, and will continue to have, or may have, other relationships with other suppliers for the provision of Services similar to the Services provided herein, with no minimum guarantee of the utilization of Supplier’s Services. To the extent required by Section 70713 of Title 22 of the California Code of Regulations, UC shall retain professional responsibility of Services provided by Supplier’s personnel to UC or UC Locations.

Each Party agrees that a signed facsimile, signed PDF or the electronic transmission of signature(s), in whole or in counterparts, constitutes valid signature(s) and is fully enforceable in accordance with its terms. A Customer will be deemed to have agreed to the terms of this Agreement (including the Terms and Conditions) upon execution of a Statement of Work.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

(Signature – Responsible Administrative Official)

(Printed Name, Title)

(Date)

(Signature – Program Review Official)

(Printed Name, Title)

(Date)

[SUPPLIER NAME]

(Signature)

(Printed Name, Title)

(Date)
ARTICLE 1 – GENERAL
The equipment, materials, or supplies ("Goods") and/or services ("Services") furnished by Supplier (together, the "Goods and Services") and covered by the UC Purchase Order ("PO") and/or other agreement (which, when combined with these Terms and Conditions and any other documents incorporated by reference, will constitute the "Agreement") are governed by the terms and conditions set forth herein. As used herein, the term "Supplier" includes Supplier and its sub-suppliers at any tier. As used herein, “UC” refers to The Regents of the University of California, a corporation described in California Constitution Art. IX, Sec. 9, on behalf of the UC Locations identified in the Agreement and/or the PO. UC and Supplier individually will be referred to as “Party” and collectively as “Parties.” Any defined terms not defined in these Terms and Conditions of Purchase will have the meaning ascribed to such term in any of the other documents incorporated in and constituting the Agreement. No other terms or conditions will be binding upon the Parties unless accepted by them in writing. Written acceptance or shipment of all or any portion of the Goods, or the performance of all or any portion of the Services, covered by the Agreement, will constitute Supplier's unqualified acceptance of all of the Agreement’s terms and conditions. The terms of any proposal referred to in the Agreement are included and made a part of the Agreement only to the extent the proposal specifies the Goods and/or Services ordered, the price therefor, and the delivery thereof, and then only to the extent that such terms are consistent with the terms and conditions of the Agreement.

UC Health represents five academic medical centers located at the Davis, Irvine, Los Angeles, San Diego, and San Francisco campuses, as well as UC’s medical and health professional schools, and associated research programs, and student health and counseling centers.

A. Additional UC Locations.
   1. As used herein, “Additional UC Location” shall mean: (i) any UC campus, medical center, affiliated national laboratory, or program, as further described at http://www.universityofcalifornia.edu/uc-system/parts-of-uc; (ii) any entity that, after the full execution of this Agreement, is acquired or created by any location referenced in (i); and (iii) any entity that merges into or consolidates with any location referenced in (i) and, after such merger or consolidation, the surviving entity is a location as referenced in (i).

2. Supplier agrees to provide the Goods and/or Services described in the Agreement and as priced in this Agreement to any Additional UC Location executing a UC Health Statement of Work (SOW), the form of which is attached to this Agreement as Attachment B, or submitting a PO to Supplier. By execution of such Statement of Work or PO, such Additional UC Location on the one hand, and Supplier, on the other hand, shall be deemed, respectively, to have executed the Agreement (with appropriate changes to the signature block) as Parties, with such Additional UC Location taking on the obligations of the UC Location and Supplier taking on its obligations to such Additional UC Location.

3. Any change to a SOW or PO shall be applicable only to such UC Location and to such SOW or PO. Each UC Location is financially separate and each shall be fully and solely responsible for its respective individual commitments, financial or otherwise, and no shall be responsible for performance or non-performance of any of the others. Any delay in payment or other operational issue involving one UC Location shall not adversely affect any other UC Location, and any breach of a UC Location’s obligations will subject only such UC Location to the applicable corrective action, but otherwise will have no adverse impact on any other UC Location.

B. UC Affiliates.
   1. UC has entered, or will enter, into agreements with UC Affiliates that seek, through collaboration, to combine health care delivery services, procurement and/or contracting activities with efforts to obtain the best value goods and services while reducing total acquisition costs. As used herein, “UC Affiliate” shall mean: (i) any school, campus, facility, healthcare provider or payer, or entity that is not a UC Location (including any Additional UC Location) and that is, in whole or in part, owned or controlled by, or under common ownership with, UC, or that is managed, in whole or in part, by UC; (ii) any entity that, after the full execution of this Agreement, merges into or consolidates with any UC Location and which UC designates as a UC Affiliate; (iii) any entity into which any UC Location or UC Affiliate merges or consolidates and, after such merger or consolidation, the surviving entity is not a UC Location or UC Affiliate, and which UC designates as a UC Affiliate; (iv) any entity that merges into or consolidates with a UC Affiliate and, after such merger or consolidation, the surviving entity is a UC Affiliate; and (v) any entity, other than those described above, that UC and Supplier may agree in writing may be a UC Affiliate.

2. Supplier agrees to provide the Goods and/or Services described in this Agreement and as priced in this Agreement to any UC Affiliate executing a SOW. By execution of such SOW, such UC Affiliate Location on the one hand, and Supplier, on the other hand, shall be deemed, respectively, to have executed the Agreement (with changes to the appropriate signature block) as Parties, with such UC Affiliate taking on the obligations of the UC Location and Supplier taking on its obligations to such UC Affiliate.
3. UC and each of the UC Affiliates are separate and distinct legal entities and no fiduciary responsibility exists between UC and any UC Affiliate. As such, each UC Affiliate Location, is financially and legally separate and each shall be fully and solely responsible for its respective individual commitments, financial or otherwise, and none shall be responsible for performance or non-performance of any of the others. Any delay in payment or other operational issue involving one UC Affiliate shall not adversely affect any UC Location or other UC Affiliate, and any breach of a UC Affiliate’s obligations will subject only such UC Affiliate to the applicable corrective action, but otherwise will have no adverse impact on any UC Location or other UC Affiliate. Any change to a SOW or PO shall be applicable only to such UC Affiliate and to such SOW or PO.

4. For the avoidance of doubt, UC is not responsible for the acts or omissions of any UC Affiliate. UC Affiliate shall remain liable for each such UC Affiliate’s compliance or non-compliance with the terms of this Agreement as it pertains to POs or SOWs of such UC Affiliate.

C. Amendments. Except with respect to the type(s) Goods and or Services that will be provided to a UC Location or UC Affiliate, no Additional UC Location or UC Affiliate shall amend, alter or otherwise modify the terms of this Agreement applicable to UC, including the incorporated Documents, as defined herein. All modifications, amendments and alterations to this Agreement, including the Incorporated Documents, shall be mutually agreed to by the original UC Location entering into the Agreement and Supplier. All other modifications, amendments and alterations shall be null and void to the extent applicable to UC. In the event an Additional UC Location or UC Affiliate desires to add terms that do not amend, alter or otherwise revise any term applicable to other UC Locations that is contained in this Agreement, including the Incorporated Documents, such terms may be incorporated into the SOW or other agreement directly between the Supplier and such Additional UC Location or UC Affiliate.

ARTICLE 2 – TERM AND TERMINATION

A. As applicable, the term of the Agreement (“Initial Term”) will be stated in the Agreement. Following the Initial Term, the Agreement may be extended by written mutual agreement.

B. UC’s obligation to proceed is conditioned upon the appropriation of state, federal and other sources of funds not controlled by UC (“Funding”). UC will have the right to terminate the Agreement without damage, penalty, cost or further obligation in the event that through no action or inaction on the part of UC, the Funding is withdrawn.

C. UC may, by written notice stating the extent and effective date thereof, terminate the Agreement for convenience in whole or in part, at any time. The effective date of such termination shall be consistent with any requirements for providing notice specified in the Agreement, or immediate if no such terms are set forth in the Agreement. As specified in the termination notice, UC will pay Supplier as full compensation the pro rata Agreement price for performance through the later of the date that (i) UC provided Supplier with notice of termination or (ii) Supplier’s provision of Goods and/or Services will terminate.

D. UC may by written notice terminate the Agreement for Supplier’s breach of the Agreement, in whole or in part, at any time, if Supplier refuses or fails to comply with the provisions of the Agreement, or so fails to make progress as to endanger performance and does not cure such failure within five (5) business days, or fails to supply the Goods and/or Services within the time specified or any written extension thereof. In such event, UC may purchase or otherwise secure Goods and/or Services and, except as otherwise provided herein, Supplier will be liable to UC for any excess costs UC incurs thereby.

E. In the event the Agreement is terminated prior to the first anniversary of the effective date of the Agreement, the parties shall not enter into a contract for the same or similar Goods or Services until the first anniversary of the effective date of the Agreement has passed.

F. To the extent the Agreement extends to Additional UC Locations and UC Affiliates (each a “Customer”), each such Customer shall have the right to terminate the Agreement with respect to such Customer’s SOW and/or PO(s) only, as provided to UC in the UC Terms and Conditions. Each Customer and Supplier shall have the same rights and obligations with respect to the termination of such Customer’s SOW or PO(s) as set forth in the UC Terms and Conditions.

G. UC’s Appendix – Data Security, Appendix – BAA, and/or Appendix – GDPR will control in the event that one or more appendices are incorporated into the Agreement and conflicts with the provisions of this Article.

ARTICLE 3 – PRICING, INVOICING METHOD, AND SETTLEMENT METHOD AND TERMS.

Pricing is set forth in the Agreement or Purchase Order, and the amount UC is charged and responsible for shall not exceed the amount specified in the Agreement unless UC has given prior written approval. Unless otherwise agreed in writing by UC, Supplier will use the invoicing method and payment settlement method (and will extend the terms applicable to such settlement method) set forth in UC’s Supplier Invoicing, Terms & Settlement Matrix. UC will pay Supplier, upon submission of acceptable invoices, for Goods and/or Services provided and accepted. Invoices must be itemized and reference the Agreement or Purchase Order number. UC will not pay shipping,
packaging or handling expenses, unless specified in the Agreement or Purchase Order. Unless otherwise provided, freight is to be FOB destination. Any of Supplier’s expenses that UC agrees to reimburse will be reimbursed under UC’s Travel Policy, which may be found at http://www.ucop.edu/central-travel-management/resources/index.html. Where applicable, Supplier will pay all taxes imposed on Supplier in connection with its performance under the Agreement, including any federal, state and local income, sales, use, excise and other taxes or assessments. Notwithstanding any other provision to the contrary, UC will not be responsible for any fees, interest or surcharges Supplier wishes to impose.

To the extent the Agreement extends to Additional UC Locations and UC Affiliates, Supplier will submit invoices following the designated invoice method set forth in such Customer’s SOW, or, if not set forth in such SOW, following the designated invoice method set forth in the Agreement. Each Customer will pay Supplier, upon submission of acceptable invoices, for Goods and/or Services provided and accepted by such Customer.

For purposes of calculating UC’s use of Supplier’s Goods and/or Services and purchase price of such Goods and/or Services, Supplier shall aggregate, and UC and each Customer shall get the benefit of, all net purchases of Goods and/or Services made by all Customers. Supplier will review, on a quarterly annual basis, the combined net purchases of Goods and/or Services for all Customers during the term of the Agreement and shall make appropriate changes and adjustments to pricing to reflect the pricing for which UC and Customers qualify in accordance with the terms of this Agreement.

ARTICLE 4 – INSPECTION.

The Goods and/or Services furnished will be exactly as specified in the Agreement, free from all defects in Supplier’s performance, design, skill and materials, and, except as otherwise provided in the Agreement, will be subject to inspection and test by UC at all times and places. If, prior to final acceptance, any Goods and/or Services furnished are found to be incomplete, or not as specified, UC may reject them, require Supplier to correct them at the sole cost of Supplier, or require provision of such Goods and/or Services at a reduction in price that is equitable under the circumstances. If Supplier is unable or refuses to correct such deficiencies within a time UC deems reasonable, UC may terminate the Agreement in whole or in part. Supplier will bear all risks as to rejected Goods and/or Services and, in addition to any costs for which Supplier may become liable to UC under other provisions of the Agreement, will reimburse UC for all transportation costs, other related costs incurred, or payments to Supplier in accordance with the terms of the Agreement for unaccepted Goods and/or Services and materials and supplies incidental thereto. Notwithstanding final acceptance and payment, Supplier will be liable for latent defects, fraud or such gross mistakes as amount to fraud.

ARTICLE 5 – ASSIGNED PERSONNEL; CHARACTER OF SERVICES

Supplier will provide the Services as an independent contractor and furnish all equipment, personnel and materiel sufficient to provide the Services expeditiously and efficiently, during as many hours per shift and shifts per week, and at such locations as UC may so require. Supplier will devote only its best-qualified personnel to work under the Agreement. Should UC inform Supplier that anyone providing the Services is not working to this standard, Supplier will immediately remove such personnel from providing Services and he or she will not again, without UC’s written permission, be assigned to provide Services. At no time will Supplier or Supplier’s employees, sub-suppliers, agents, or assigns be considered employees of UC for any purpose, including but not limited to workers’ compensation provisions. Supplier shall not have the power nor right to bind or obligate UC, and Supplier shall not hold itself out as having such authority. Supplier shall be responsible to UC for all Services performed by Supplier’s employees, agents and subcontractors, including being responsible for ensuring payment of all unemployment, social security, payroll, contributions and other taxes with respect to such employees, agents and subcontractors.

ARTICLE 6 – WARRANTIES

In addition to the warranties set forth in Articles 11, 12, 17, 23, 24, 25 and 26 herein, Supplier makes the following warranties. Supplier acknowledges that failure to comply with any of the warranties in the Agreement will constitute a material breach of the Agreement and UC will have the right to terminate the Agreement without damage, penalty, cost or further obligation.

A. General Warranties. Supplier represents, warrants and covenants that: (i) Supplier is free to enter into this Agreement and that Supplier is not, and will not become, during the Term, subject to any restrictions that might restrict or prohibit Supplier from performing the Services or providing the Goods ordered hereunder; (ii) Supplier will comply with all applicable laws, rules and
regulations in performing Supplier’s obligations hereunder; (iii) the Goods and/or Services shall be rendered with promptness and diligence and shall be executed in a skilled manner by competent personnel, in accordance with the prevailing industry standards; and if UC Appendix Data Security is NOT included:(iv) Supplier has developed a business interruption and disaster recovery program and is executing such program to assess and reduce the extent to which Supplier’s hardware, software and embedded systems may be susceptible to errors or failures in various crisis (or force majeure) situations; (v) if Supplier uses electronic systems for creating, modifying, maintaining, archiving, retrieving or transmitting any records, including test results that are required by, or subject to inspection by an applicable regulatory authority, then Supplier represents and warrants that Supplier’s systems for electronic records are in compliance; and (vi) Supplier agrees that the Goods and/or Services furnished under the Agreement will be covered by the most favorable warranties Supplier gives to any customer for the same or substantially similar goods or services, or such other more favorable warranties as specified in the Agreement. The rights and remedies so provided are in addition to and do not limit any rights afforded to UC by any other article of the Agreement.

B. Permits and Licenses. Supplier agrees to procure all necessary permits or licenses and abide by all applicable laws, regulations and ordinances of the United States and of the state, territory and political subdivision or any other country in which the Goods and/or Services are provided.

C. Federal and State Water and Air Pollution Laws. Where applicable, Supplier warrants that it complies with the requirements in UC Business and Finance Bulletin BUS-56 (Materiel Management; Purchases from Entities Violating State or Federal Water or Air Pollution Laws). Consistent with California Government Code 4477, these requirements do not permit UC to contract with entities in violation of Federal or State water or air pollution laws.

D. Web Accessibility Requirements.

D(1) As applicable to the Supplies and/or Services being provided under the Agreement, Supplier warrants that:
1. It complies with California and federal disability laws and regulations; and
2. The Goods and/or Services will conform to the accessibility requirements of WCAG 2.0AA.
3. Supplier agrees to promptly respond to and resolve any complaint regarding accessibility of its Goods and/or Services;

D(2) As applicable to the Supplies and/or Services being provided under the Agreement, Supplier warrants that:
1. It complies with California and federal disability laws and regulations; and
2. The Goods and/or Services will conform to the accessibility requirements of WCAG 2.0AA.
3. Within six (6) months of the signing of this Agreement, Supplier will complete the testing of the Goods and/or Services for level AA conformance with Web Content Accessibility Guidelines (WCAG) 2.0 and report those findings to the University. In the event that testing results in findings of non-compliance, Supplier will provide a remediation plan to the University within two (2) months of completion of testing, and will use reasonable efforts to adhere to any remediation timelines provided to the University; and
4. The University and its Authorized User may abridge, modify, translate or create any derivative work based on the Goods and/or Services when necessary to allow Authorized Users with disabilities to access the Goods and Services.

D(3) As applicable to the Supplies and/or Services being provided under the Agreement, Supplier warrants that:
1. It will comply with California and federal disability laws and regulations; and
2. Supplier will promptly respond to remediate to any identified accessibility defects in the Goods and/or Services to conform to WCAG 2.0 AA; and
3. Supplier agrees to promptly respond to and use reasonable efforts to resolve and remediate any complaint regarding accessibility of its Goods and/or Services.

E. General Accessibility Requirements. Supplier warrants that:
1. It will comply with California and federal disability laws and regulations; and
2. Supplier will promptly respond to remediate to any identified accessibility defects in the Goods and Services to conform to WCAG 2.0 AA; and
3. Supplier agrees to promptly respond to and use reasonable efforts to resolve and remediate any complaint regarding accessibility of its Goods and/or Services.

F. Warranty of Quiet Enjoyment. Supplier warrants that Supplier has the right of Quiet Enjoyment in, and conveys the right of Quiet Enjoyment to UC for UC’s use of, any and all intellectual property that will be needed for Supplier’s provision, and UC’s use of, the Goods and/or Services provided by Supplier under the Agreement.

G. California Child Abuse and Neglect Reporting Act ("CANRA"). Where applicable, Supplier warrants that it complies with CANRA.

H. Debarment and Suspension. Supplier warrants that it is not presently debarred, suspended, proposed for debarment, or declared ineligible for award of federal contracts or participation in federal assistance programs or activities.

I. UC Trademark Licensing Code of Conduct. If the Goods will bear UC’s name (including UC campus names, abbreviations of these names, UC logos, UC mascots, or UC seals) or other trademarks owned by UC, Supplier warrants that it holds a valid license from UC

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J. Outsourcing (Public Contract Code section 12147) Compliance. Supplier warrants that if the Agreement will displace UC employees, no funds paid under the Agreement will be used to train workers who are located outside of the United States, or plan to relocate outside the United States as part of the Agreement. Additionally, Supplier warrants that no work will be performed under the Agreement with workers outside the United States, except as described in Supplier’s bid. If Supplier or its sub-supplier performs the Agreement with workers outside the United States during the life of the Agreement and Supplier did not describe such work in its bid, Supplier acknowledges and agrees that (i) UC may terminate the Agreement without further obligation for noncompliance, and (ii) Supplier will forfeit to UC the amount UC paid for the percentage of work that was performed with workers outside the United States and not described in Supplier’s bid.

ARTICLE 7 – INTELLECTUAL PROPERTY, COPYRIGHT, PATENTS, AND DATA RIGHTS

A. Goods and/or Services Involving Work Made for Hire.
   1. Unless UC indicates that the Goods and/or Services do not involve work made for hire, Supplier acknowledges and agrees that any deliverables provided to UC by Supplier in the performance of the Agreement, and any intellectual property rights therein, (hereinafter the “Deliverables”) will be owned by UC. The Deliverables will be considered “work made for hire” under U.S. copyright law and all right, title, and interest to and in such Deliverables including, but not limited to, any and all copyrights or trademarks, will be owned by UC. In the event that it is determined that UC is not the owner of such Deliverables under the “work made for hire” doctrine of U.S. copyright law, Supplier hereby irrevocably assigns to UC all right, title, and interest to and in such Deliverables and any copyrights or trademarks thereto.

2. The Deliverables must be new and original. Supplier must not use any pre-existing copyrightable or trademarked images, writings, or other proprietary materials (hereinafter "Pre-Existing Materials") in the Deliverables without UC’s prior written permission. In the event that Supplier uses any Pre-Existing Materials in the Deliverables in which Supplier has an ownership interest, UC is hereby granted, and will have, a non-exclusive, royalty-free, irrevocable, perpetual, paid-up, worldwide license (with the right to sublicense) to make, have made, copy, modify, make derivative works of, use, perform, display publicly, sell, and otherwise distribute such Pre-Existing Materials in connection with the Deliverables.

3. Whenever any invention or discovery is made or conceived by Supplier in the course of or in connection with the Agreement, Supplier will promptly furnish UC with complete information with respect thereto and UC will have the sole power to determine whether and where a patent application will be filed and to determine the disposition of title to and all rights under any application or patent that may result.

4. Supplier is specifically subject to an obligation to, and hereby does, assign all right, title and interest in any such intellectual property rights to UC as well as all right, title and interest in tangible research products embodying any such inventions whether the inventions are patentable or not. Supplier agrees to promptly execute any additional documents or forms that UC may require in order to effectuate such assignment.

B. Goods and/or Services Not Involving Work Made for Hire.
   1. If the Goods and/or Services do not involve work made for hire, and in the event that Supplier uses any Pre-Existing Materials in the Deliverables in which Supplier has an ownership interest, UC is hereby granted, and will have, a non-exclusive, royalty-free, irrevocable, perpetual, paid-up, worldwide license (with the right to sublicense) to make, have made, copy, modify, make derivative works of, use, perform, display publicly, sell, and otherwise distribute such Pre-Existing Materials in connection with the Deliverables.

2. The Deliverables must be new and original. Supplier must not use any Pre-Existing Materials in the Deliverables without UC’s prior written permission.

3. Whenever any invention or discovery is made or conceived by Supplier in the course of or in connection with the Agreement, Supplier will promptly furnish UC complete information with respect thereto and UC will have the sole power to determine whether and where a patent application will be filed and to determine the disposition of title to and all rights under any application or patent that may result.

4. Supplier is specifically subject to an obligation to, and hereby does, assign all right, title and interest in any such intellectual property rights to UC as well as all right, title and interest in tangible research products embodying any such inventions whether the inventions are patentable or not. Supplier agrees to promptly execute any additional documents or forms that UC may require in order to effectuate such assignment.

C. General. Should the Goods and/or Services become, or in Supplier’s opinion be likely to become, the subject of a claim of infringement of any patent, copyright, trademark, trade name, trade secret, or other proprietary or contractual right of any third party, Supplier will
provide written notice to UC of the circumstances giving rise to such claim or likely claim. In the event that UC receives notice of a claim of infringement or is made a party to or is threatened with being made a party to any claim of infringement related to the Goods and/or Services, UC will provide Supplier with notice of such claim or threat. Following receipt of such notice, Supplier will either (at Supplier’s sole election) (i) procure for UC the right to continue to use the affected portion of the Goods and/or Services, or (ii) replace or otherwise modify the affected portion of the Goods and/or Services to make them non-infringing, or obtain a reasonable substitute product for the affected portion of the Goods and/or Services, provided that any replacement, modification or substitution under this paragraph does not effect a material change in the Goods and/or Services’ functionality. If none of the foregoing options is reasonably acceptable to UC, UC will have the right to terminate the Agreement without damage, penalty, cost or further obligation.

**ARTICLE 8 – INDEMNITY AND LIABILITY**

To the fullest extent permitted by law, Supplier will defend, indemnify, and hold harmless UC, its officers, employees, and agents, 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, including the performance hereunder 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, provided such losses, expenses, damages and liabilities are due or claimed to be due to 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. UC 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 UC will cooperate fully in such defense. UC 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.

In the event Appendix DS applies to this Agreement, Supplier shall reimburse or otherwise be responsible for any costs, fines or penalties imposed against UC as a result of Supplier’s Breach of Institutional information and/or failure to cooperate with UC’s response to such Breach. As used herein, “Breach” means: (1) any disclosure of Institutional Information to an unauthorized party or in an unlawful manner; (2) unauthorized or unlawful acquisition of information that compromises the security, confidentiality or integrity of Institutional Information and/or IT Resources; and (3) the acquisition, access, use, or disclosure of Protected Health Information or medical information in a manner not permitted under the Health Insurance Portability and Accountability Act (HIPAA) or California law. “IT Resources” means IT infrastructure, cloud services, software, and/or hardware with computing and/or networking capability that is Supplier owned/managed, or UC-owned, or a personally owned device that stores Institutional Information, is connected to UC systems, is connected to UC networks, or is used for UC business.

Supplier shall indemnify and hold harmless UC if any amount of reimbursement is denied or disallowed because of Supplier’s failure to comply with Article 38, Section C – Access to Books and Records. Such indemnity shall include, but not be limited to, the amount or reimbursement denied, plus any interest, penalties and legal costs.

To the extent the terms of this Agreement apply or extend to Additional UC Locations and UC Affiliates, Supplier will defend, indemnify and hold harmless each Customer and its officers, employees and agents on the same terms as those specified in the UC Terms and Conditions. To the extent the terms of the Agreement apply or extend to UC Affiliates, UC is not responsible for the acts or omissions of any UC Affiliate. UC Affiliates shall remain liable for each such UC Affiliate’s compliance or non-compliance with the terms of the Agreement as it pertains to the SOW or PO(s) of such UC Affiliate.

**ARTICLE 9 – INSURANCE**

Supplier, at its sole cost and expense, will insure its activities in connection with providing the Goods and/or Services and obtain, keep in force, and maintain the following insurance with the minimum limits set forth below, unless UC specifies otherwise:

A. Commercial Form General Liability Insurance (contractual liability included) with limits as follows:
   1. Each Occurrence $ 2,000,000
2. Products/Completed Operations Aggregate $5,000,000
3. Personal and Advertising Injury $2,000,000
4. General Aggregate $5,000,000

B. Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles with a combined single limit of not less than one million dollars ($1,000,000) per occurrence. (Required only if Supplier drives on UC premises or transports UC employees, officers, invitees, or agents in the course of supplying the Goods and/or Services to UC.)

C. If applicable, Professional Liability Insurance with a limit of two million dollars ($2,000,000) per occurrence or claim with an aggregate of not less than two million dollars ($2,000,000). If this insurance is written on a claims-made form, it will continue for three years following termination of the Agreement. The insurance will have a retroactive date of placement prior to or coinciding with the effective date of the Agreement.

D. Workers’ Compensation as required by applicable state law and Employer’s Liability with limits of one million dollars ($1,000,000) per occurrence. Workers’ Compensation as required by applicable state law and Employer’s Liability with limits of one million dollars ($1,000,000) per occurrence.

E. If applicable, Supplier Fidelity Bond or Crime coverage for the dishonest acts of its employees in a minimum amount of one million dollars ($1,000,000). Supplier will endorse such policy to include a “Regents of the University of California Coverage” or “Joint Payee Coverage” endorsement. UC and, if so requested, UC’s officers, employees, agents and sub-suppliers will be named as “Loss Payee, as Their Interest May Appear” in such Fidelity Bond.

F. In the event Appendix DS applies to this Agreement, Supplier, at its sole cost and expense, will obtain, keep in force, and maintain one or more insurance policies that provide coverage for technology, professional liability, data protection, and/or cyber liability. Typically referred to as Privacy, Technology and Data Security Liability, Cyber Liability, or Technology Professional Liability insurance, it will cover liabilities for financial loss due to the acts, omissions, or intentional misconduct 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, in connection with the performance of this Agreement, as well as all Supplier costs, including damages it is obligated to pay UC or any third party, that are associated with any confirmed or suspected Breach or compromise of Institutional Information. In some cases, Professional Liability policies may include some coverage for data breaches or loss of Institutional Information. Regardless of the type of policy(ies) in place, such coverage will include without limitation: (i) costs to notify parties whose data were lost or compromised; (ii) costs to provide credit monitoring and credit restoration services to parties whose data were lost or compromised; (iii) costs associated with third party claims arising from the confirmed or suspected Breach or loss of Institutional Information, including litigation costs and settlement costs; (iv) any investigation, enforcement, fines and penalties, or similar miscellaneous costs; and (v) any payment made to a third party as a result of extortion related to a confirmed or suspected Breach. The following insurance coverage is based on the highest Protection Level Classification of Institutional Information identified in Exhibit 1 to Appendix DS:

1. P1 - This insurance policy must have minimum limits of $500,000 each occurrence and $500,000 in the aggregate.
2. P2 - This insurance policy must have minimum limits of $1,000,000 each occurrence and $1,000,000 in the aggregate.
3. P3 and P4, less than 70,000 records - this insurance policy must have minimum limits of $5,000,000 each occurrence and $5,000,000 in the aggregate.
4. P3 and P4, 70,000 or more records - this insurance policy must have minimum limits of $10,000,000 each occurrence and $10,000,000 in the aggregate.

Protection Level Classifications are defined in the UC Systemwide Information Security Classification of Information and IT Resources: https://security.ucop.edu/policies/institutional-information-and-it-resource-classification.html

G. Additional other insurance in such amounts as may be reasonably required by UC against other insurable risks relating to performance. If the above insurance is written on a claims-made form, it will continue for three years following termination of the Agreement. The insurance will have a retroactive date of placement prior to or coinciding with the effective date of the Agreement. If the above insurance coverage is modified, changed or cancelled, Supplier will provide UC with not less than fifteen (15) days’ advance written notice of such modification, change, or cancellation, and will promptly obtain replacement coverage that complies with this Article.

I. The coverages referred to under A and B of this Article must include UC as an additional insured. It is understood that the coverage and limits referred to under A, B and C of this Article will not in any way limit Supplier’s liability. Supplier will furnish UC with certificates of insurance (and the relevant endorsement pages) evidencing compliance with all requirements prior to commencing work under the Agreement. Such certificates will:

1. Indicate that The Regents of the University of California has been endorsed as an additional insured for the coverage referred to under A and B of this Article. This provision will only apply in proportion to and to the extent of the negligent acts or omissions of Supplier, its officers, agents, or employees.
2. Include a provision that the coverage will be primary and will not participate with or be excess over any valid and collectible insurance or program of self-insurance carried or maintained by UC.

ARTICLE 10 – USE OF UC NAME AND TRADEMARKS

Supplier will not use the UC name, abbreviation of the UC name, trade names and/or trademarks (i.e., logos and seals) or any derivation thereof, in any form or manner in advertisements, reports, or other information released to the public, or place the UC name, abbreviations, trade names and/or trademarks or any derivation thereof on any consumer goods, products, or services for sale or distribution to the public, without UC’s prior written approval. Supplier agrees to comply at all times with California Education Code Section 92000.

ARTICLE 11 – FEDERAL FUNDS

Supplier who supplies Goods and/or Services certifies and represents its compliance with the following clauses, as applicable. Supplier shall promptly notify UC of any change of status with regard to these certifications and representations. These certifications and representations are material statements upon which UC will rely.

A. For commercial transactions involving funds on a federal contract (federal awards governed by the FAR), the following provisions apply, as applicable:
   1. FAR 52.203-13, Contractor Code of Business Ethics and Conduct;
   2. FAR 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights;
   3. FAR 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements;
   4. FAR 52.219-8, Utilization of Small Business Concerns;
   5. FAR 52.222-17, Nondisplacement of Qualified Workers;
   6. FAR 52.222-21, Prohibition of Segregated Facilities;
   7. FAR 52.222-26, Equal Opportunity;
   8. FAR 52.222-35, Equal Opportunity for Veterans;
   9. FAR 52.222-36, Equal Opportunity for Workers with Disabilities;
   10. FAR 52.222-37, Employment Reports on Veterans;
   11. FAR 52.222-40, Notification of Employee Rights Under the National Labor Relations Act;
   12. FAR 52.222-41, Service Contract Labor Standards;
   13. FAR 52.222-50, Combating Trafficking in Persons;
   14. FAR 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment - Requirements;
   15. FAR 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services - Requirements;
   16. FAR 52.222-54, Employment Eligibility Verification;
   17. FAR 52.222-55, Minimum Wages Under Executive Order 13658;
   18. FAR 52.222-62, Paid Sick Leave under Executive Order 13706;
   19. FAR 52.224-3, Privacy Training;
   20. FAR 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations;
   21. FAR 52.233-1, Disputes; and
   22. FAR 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels.

B. For non-commercial transactions involving funds on a federal contract, the UC Appendix titled ‘Federal Government Contracts Special terms and Conditions (Non-Commercial Items or Services)’ and located at www.ucop.edu/procurement-services/policies-forms/index.html is hereby incorporated herein by this reference.

C. For transactions involving funds on a federal grant or cooperative agreement (federal awards governed by eCFR Title 2, Subtitle A, Chapter II, Part 200) the following provisions apply, as applicable:
   1. Rights to Inventions. If Supplier is a small business firm or nonprofit organization, and is providing experimental, development, or research work under this transaction, Supplier must comply with the requirements of 3 CFR Part 401, “Rights to Inventions Made by nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements”.

Revised 8/28/2019
2. Clean Air Act. Supplier agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).


4. Procurement of Recovered Materials. If Supplier is a state agency or agency of a political subdivision of a state, then Supplier must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

D. In these provisions, the term "contractor" as used therein will refer to Supplier, and the terms "Government" or "Contracting Officer" as used therein will refer to UC. Where a purchase of items is for fulfillment of a specific U.S. Government prime or subcontract, additional information and/or terms and conditions may be included in an attached supplement. By submitting an invoice to UC, Supplier is representing to UC that, at the time of submission:

1. Neither Supplier nor its principals are presently debarred, suspended, or proposed for debarment by the U.S. government (see FAR 52.209-6);
2. Supplier has filed all compliance reports required by the Equal Opportunity clause (see FAR 52.222-22); and
3. Any Supplier representations to UC about U.S. Small Business Administration or state and local classifications, including but not limited to size standards, ownership, and control, are accurate and complete.

ARTICLE 12 – EQUAL OPPORTUNITY AFFIRMATIVE ACTION

Supplier will abide by the requirements set forth in Executive Orders 11246 and 11375. Where applicable, Supplier will comply with 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), incorporated by reference with this statement: “This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, 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, protected veteran status or disability.” With respect to activities occurring in the State of California, Supplier agrees to adhere to the California Fair Employment and Housing Act. Supplier will provide UC on request a breakdown of its labor force by groups as specified by UC, and will discuss with UC its policies and practices relating to its affirmative action programs. Supplier will not maintain or provide facilities for employees at any establishment under its control that are segregated on a basis prohibited by federal law. Separate or single-user restrooms and necessary dressing or sleeping areas must be provided, however, to ensure privacy.

ARTICLE 13 – LIENS

Supplier agrees that upon UC’s request, Supplier will submit a sworn statement setting forth the work performed or material furnished by sub-suppliers and material men, and the amount due and to become due to each, and that before the final payment called for under the Agreement, will upon UC’s request submit to UC a complete set of vouchers showing what payments have been made for such work performed or material furnished. Supplier will promptly notify UC in writing, of any claims, demands, causes of action, liens or suits brought to its attention that arise out of the Agreement. UC will not make final payment until Supplier, if required, delivers to UC a complete release of all liens arising out of the Agreement, or receipts in full in lieu thereof, as UC may require, and if required in either case, an affidavit that as far as it has knowledge or information, the receipts include all the labor and materials for which a lien could be filed; but Supplier may, if any sub-supplier refuses to furnish a release or receipt in full, furnish a bond satisfactory to UC to indemnify it against any claim by lien or otherwise. If any lien or claim remains unsatisfied after all payments are made, Supplier will refund to UC all monies that UC may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorneys' fees.
ARTICLE 14 – PREMISES WHERE SERVICES ARE PROVIDED

A. Cleaning Up. Supplier will at all times keep UC premises where the Services are performed and adjoining premises free from accumulations of waste material or rubbish caused by its employees or work of any of its sub-suppliers, and, at the completion of the Services; will remove all rubbish from and about the premises and all its tools, scaffolding, and surplus materials, and will leave the premises “broom clean” or its equivalent, unless more exactly specified. In case of dispute between Supplier and its sub-suppliers as to responsibility for the removal of the rubbish, or if it is not promptly removed, UC may remove the rubbish and charge the cost to Supplier.

B. Environmental, Safety, Health and Fire Protection. Supplier will take all reasonable precautions in providing the Goods and Services to protect the health and safety of UC employees and members of the public and to minimize danger from all hazards to life and property, and will comply with all applicable environmental protection, health, safety, and fire protection regulations and requirements (including reporting requirements). In the event that Supplier fails to comply with such regulations and requirements, UC may, without prejudice to any other legal or contractual rights of UC, issue an order stopping all or any part of the provision of the Goods and/or Services; thereafter a start order for resumption of providing the Goods and/or Services may be issued at UC’s discretion. Supplier will not be entitled to make a claim for extension of time or for compensation or damages by reason of or in connection with such stoppage. Supplier will have sole responsibility for the safety of all persons employed by Supplier and its sub-suppliers on UC premises, or any other person who enters upon UC premises for reasons relating to the Agreement. Supplier will at all times maintain good order among its employees and all other persons who come onto UC’s premises at Supplier’s request and will not engage any unfit or unskilled person to provide the Goods and/or Services. Supplier will confine its employees and all other persons who come onto UC’s premises at Supplier’s request or for reasons relating to the Agreement and its equipment to that portion of UC’s premises where the Services are to be provided or to roads leading to and from such work sites, and to any other area which UC may permit Supplier to use. Supplier will take all reasonable measures and precautions at all times to prevent injuries to or the death of any of its employees or any other person who enters upon UC premises at Supplier’s request. Such measures and precautions will include, but will not be limited to, all safeguards and warnings necessary to protect workers and others against any conditions on the premises that could be dangerous and to prevent accidents of any kind whenever the Goods and/or Services are being provided in proximity to any moving or operating machinery, equipment or facilities, whether such machinery, equipment or facilities are the property of or are being operated by, Supplier, its sub-suppliers, UC or other persons. To the extent compliance is required, Supplier will comply with all relevant UC safety rules and regulations when on UC premises.

C. Tobacco-free Campus. UC is a tobacco-free institution. Use of cigarettes, cigars, oral tobacco, electronic cigarettes and all other tobacco products is prohibited on all UC owned or leased sites.

ARTICLE 15 – LIABILITY FOR UC - FURNISHED PROPERTY

Supplier assumes complete liability for any materials UC furnishes to Supplier in connection with the Agreement and Supplier agrees to pay for any UC materials Supplier damages or otherwise is not able to account for to UC's satisfaction. UC furnishing to Supplier any materials in connection with the Agreement will not, unless otherwise expressly provided in writing by UC, be construed to vest title thereto in Supplier.

ARTICLE 16 – COOPERATION

Supplier and its sub-suppliers, if any, will cooperate with UC and other suppliers and will so provide the Services that other cooperating suppliers will not be hindered, delayed or interfered with in the progress of their work, and so that all of such work will be a finished and complete job of its kind.

ARTICLE 17 – ADDITIONAL TERMS APPLICABLE TO THE FURNISHING OF GOODS

The terms in this Article have special application to the furnishing of Goods:

A. Price Decreases. Supplier agrees immediately to notify UC of any price decreases from its suppliers, and to pass through to UC any price decreases.

B. Declared Valuation of Shipments. Except as otherwise provided in the Agreement, all shipments by Supplier under the Agreement for UC’s account will be made at the maximum declared value applicable to the lowest transportation rate or classification and the bill of lading will so note.

C. Title. Title to the Goods purchased under the Agreement will pass directly from Supplier to UC at the f.o.b. point shown, or as otherwise specified in the Agreement, subject to UC’s right to reject upon inspection.
D. **Changes.** Notwithstanding the terms in Article 34, Amendments, UC may make changes within the general scope of the Agreement in drawings and specifications for specially manufactured Goods, place of delivery, method of shipment or packing of the Agreement by giving notice to Supplier and subsequently confirming such changes in writing. If such changes affect the cost of or the time required for performance of the Agreement, UC and Supplier will agree upon an equitable adjustment in the price and/or delivery terms. Supplier may not make changes without UC’s written approval. Any claim of Supplier for an adjustment under the Agreement must be made in writing within thirty (30) days from the date Supplier receives notice of such change unless UC waives this condition in writing. Nothing in the Agreement will excuse Supplier from proceeding with performance of the Agreement as changed hereunder. Supplier may not alter or misbrand, within the meaning of the applicable Federal and State laws, the Goods furnished.

E. **Forced, Convict and Indentured Labor.** Supplier warrants that no foreign-made Goods furnished to UC pursuant to the Agreement will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction. If UC determines that Supplier knew or should have known that it was breaching this warranty, UC may, in addition to terminating the Agreement, remove Supplier from consideration for UC contracts for a period not to exceed one year. This warranty is in addition to any applicable warranties in Articles 6 and 11.

F. **Export Control.** Export Control. Supplier agrees to provide UC (the contact listed on the Purchase Order) with written notification that identifies the export-controlled Goods and such Goods’ export classification if any of the Goods is export-controlled under the International Traffic in Arms Regulations (ITAR) (22 CFR §§ 120-130), the Export Administration Regulations (15 CFR §§ 730-774) 500 or 600 series, or controlled on a military strategic goods list. Supplier agrees to provide UC (the contact listed on the Purchase Order) with written notification if Supplier will be providing information necessary for the operation, installation (including on-site installation), maintenance (checking), repair, overhaul, and refurbishing of the Goods that is beyond a standard user manual (i.e. “Use” technology as defined under the EAR 15 CFR § 772.1), or “Technical Data” (as defined under the ITAR 22 CFR § 120.10).

**ARTICLE 18 – CONFLICT OF INTEREST**

Supplier affirms that, to the best of Supplier’s knowledge, no UC employee who has participated in UC’s decision-making concerning the Agreement has an “economic interest” in the Agreement or Supplier. A UC employee’s “economic interest” means:

A. An investment worth $2,000 or more in Supplier or its affiliate;

B. A position as director, officer, partner, trustee, employee or manager of Supplier or its affiliate;

C. Receipt during the past 12 months of $500 in income or $440 in gifts from Supplier or its affiliate; or

D. A personal financial benefit from the Agreement in the amount of $250 or more.

In the event of a change in these economic interests, Supplier will provide written notice to UC within thirty (30) days after such change, noting such changes. Supplier will not be in a reporting relationship to a UC employee who is a near relative, nor will a near relative be in a decision making position with respect to Supplier.

**ARTICLE 19 – AUDIT REQUIREMENTS**

The Agreement, and any pertinent records involving transactions relating to this Agreement, is subject to the examination and audit of the Auditor General of the State of California or Comptroller General of the United States or designated Federal authority for a period of up to five (5) years after final payment under the Agreement. UC, and if the underlying grant, cooperative agreement or federal contract so provides, the other contracting Party or grantor (and if that be the United States or an instrumentality thereof, then the Comptroller General of the United States) will have access to and the right to examine Supplier’s pertinent books, documents, papers, and records involving transactions and work related to the Agreement until the expiration of five (5) years after final payment under the Agreement. The examination and audit will be confined to those matters connected with the performance of the Agreement, including the costs of administering the Agreement.

**ARTICLE 20 – PROHIBITION ON UNAUTHORIZED USE OR DISCLOSURE OF INSTITUTIONAL INFORMATION**

A. **Prohibition on Access, Use and Disclosure of Institutional Information.** Supplier will not access, use or disclose Institutional Information, other than to carry out the purposes for which UC disclosed the Institutional Information to Supplier, except as required by applicable law, or as otherwise authorized in writing by UC prior to Supplier’s disclosure. Supplier shall have the limited right to disclose Institutional Information to Supplier’s employees provided that: (i) Supplier shall disclose only such Institutional Information as is necessary for the Supplier to perform its obligations under this Agreement, and (ii) Supplier informs such employees of the obligations governing the access, use and disclosure of Institutional Information prior to Supplier’s disclosure. Supplier shall be liable
for any breach of this Agreement by its employees. For avoidance of doubt, this provision prohibits Supplier from using for its own benefit Institutional Information and any information derived therefrom. For the avoidance of doubt, the sale of Institutional Information is expressly prohibited.

B. Compliance with Applicable Laws and Industry Best Practices. Supplier agrees to comply with all applicable state, federal, and foreign laws, as well as industry best practices, governing the collection, access, use, disclosure, safeguarding and destruction of Institutional Information. Supplier agrees to protect the privacy and security of Institutional Information according to all applicable laws and industry best practices, and no less rigorously than it protects its own information, but in no case less than reasonable care.

C. Confidential Institutional Information. Supplier agrees to hold UC’s Confidential Institutional Information, and any information derived therefrom, in strict confidence. Confidential Institutional Information shall be defined as any Institutional Information which is (i) marked as “Confidential” at the time of disclosure; (ii) if disclosed orally, identified at the time of such oral disclosure as confidential, and reduced to writing as “Confidential” within thirty (30) days of such oral disclosure; and (iii) if not marked as “Confidential,” information that would be considered by a reasonable person in the relevant field to be confidential given its content and the circumstances of its disclosure. Confidential Information will not be considered confidential to the extent that: (i) Supplier can demonstrate by written records was known to Supplier prior to the effective date of the Agreement; (ii) is currently in, or in the future enters, the public domain other than through a breach of the Agreement or through other acts or omissions of Supplier; (iii) is obtained lawfully from a third party; or (iv) is disclosed under the California Public Records Act or legal process. For the avoidance of doubt, as applicable to Supplier’s Services, Confidential Institutional Information may include any information that identifies or is capable of identifying a specific individual, including but not limited to:

1. Personally identifiable information,
2. Protected Health Information as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the HIPAA regulations (including, but not limited to 45 C.F.R. § 160.103),
3. Medical information as defined by California Civil Code § 56.05,
4. Cardholder data,
5. Student records, or
6. Individual financial information that is subject to laws restricting the use and disclosure of such information, including but not limited to:
   a. Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.);
   b. The federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2));
   c. The federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g);
   d. The federal Fair and Accurate Credit Transactions Act (15 U.S.C. § 1601 et seq.);
   e. The Fair Credit Reporting Act (15 U.S.C. § 1681 et seq.); and
   f. Applicable international privacy laws, including, but not limited to the General Data Protection Regulation.

D. Required Disclosures of Institutional Information. If Supplier is required by a court of competent jurisdiction or an administrative body to disclose Institutional Information, Supplier will notify UC in writing immediately upon receiving notice of such requirement and prior to any such disclosure (unless Supplier is prohibited by law from doing so), to give UC an opportunity to oppose or otherwise respond to such disclosure. To the extent Supplier still required to disclose Institutional Information, Supplier will furnish only that portion that is legally required and will exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be afforded to any Confidential Institutional Information.

E. No Offshoring. Supplier’s transmission, transportation or storage of Institutional Information outside the United States, or access of Institutional Information from outside the United States, is prohibited except with prior written authorization by UC.

F. Conflict in Terms. UC’s Appendix – Data Security, Appendix – BAA, and/or Appendix GDPR will control in the event that one or more appendices is incorporated into the Agreement and conflicts with the provisions of this Article.

G. Acknowledgement. Supplier acknowledges that remedies at law would be inadequate to protect UC against any actual or threatened breach of this Section by Supplier, and, without prejudice to any other rights and remedies otherwise available to UC, Supplier agrees to the granting of injunctive relief in UC’s favor without proof of actual damages.

ARTICLE 21 – UC WHISTLEBLOWER POLICY

UC is committed to conducting its affairs in compliance with the law, and has established a process for reporting and investigating suspected improper governmental activities. Please visit http://www.ucop.edu/uc-whistleblower/ for more information.
ARTICLE 22 – SUSTAINABLE PROCUREMENT GUIDELINES

Supplier will conduct business using environmentally, socially, and economically sustainable products and services (defined as products and services with a lesser or reduced effect on human health and the environment, and which generate benefits to the University as well as to society and the economy, while remaining within the carrying capacity of the environment), to the maximum possible extent consistent with the Agreement, and with the University of California Sustainable Practices Policy (https://policy.ucop.edu/doc/3100155) and the University of California Sustainable Procurement Guidelines: (https://www.ucop.edu/procurement-services/_files/sustainableprocurementguidelines.pdf).

In accordance with the University of California Sustainable Practices Policy, Supplier will adhere to the following requirements and standards, as applicable. Supplier acknowledges that failure to comply with any of the sustainability standards and requirements in the Agreement will constitute a material breach of the Agreement and UC will have the right to terminate the Agreement without damage, penalty, cost or further obligation.

A. Sustainability Marketing Standards. Supplier sustainability related claims, where applicable, must meet UC recognized certifications and standards set forth in the UC Sustainable Procurement Guidelines and/or meet the standards of Federal Trade Commission’s (FTC) Green Guides.

B. Electronic Transfer of Supplier Information. Suppliers, when interacting with the UC, shall be prohibited from providing hard copies of presentations, marketing material, or other informational materials. Suppliers will be required to present all information in electronic format that is easily transferable to UC staff. Materials may be provided in hard copy or physical format if specifically required or requested by a UC representative.

C. Packaging Requirements. All packaging must be compliant with the Toxics in Packaging Prevention Act (AB 455) and must meet all additional standards and requirements set forth in the UC Sustainable Practices Policy. In addition, UC requires that all packaging meet at least one of the criteria listed below:

1. Uses bulk packaging;
2. Uses reusable packaging (e.g. totes reused by delivery service for next delivery);
3. Uses innovative packaging that reduces the weight of packaging, reduces packaging waste, or utilizes packaging that is a component of the product;
4. Maximizes recycled content and/or meets or exceeds the minimum post-consumer content level for packaging in the U.S. Environmental Protection Agency Comprehensive Procurement Guidelines;
5. Uses locally recyclable or certified compostable material.

D. Foodservice Foam Ban. As of 2018, the University no longer allows packaging foam or expanded polystyrene (EPS) for takeaway containers or other food service items, in any University-owned or -operated food service facility.

E. Product Packaging Foam Ban. Beginning January 1st, 2020, the University will prohibit all contracted and non-contracted suppliers from selling or distributing packaging foam (other than that utilized for laboratory supply or medical packaging) to UC campuses. Packaging foam is defined as any open or closed cell, solidified, polymeric foam used for cushioning or packaging, including but not limited to: low-density polyethylene foam, polypropylene foam, polystyrene foam (i.e. expanded polystyrene (EPS)), polyurethane foam, polyethylene foam, polyvinyl chloride (PVC) foam, and microcellular foam. Not included in this ban are easily biodegradable, plant-based foams such as those derived from corn or mushrooms.

F. E-Waste Recycling Requirements. All recyclers of UC electronic equipment must be e-Steward certified by the Basel Action Network (BAN).

G. Hosted and Punch-out Catalog Requirements. Suppliers enabled with eProcurement hosted catalog functionality must clearly identify products with UC-recognized certifications, as defined by the UC Sustainable Procurement Guidelines, in both hosted and punch-out catalog e-procurement environments.

ARTICLE 23 – PATIENT PROTECTION AND AFFORDABLE CARE ACT (PPACA) EMPLOYER SHARED RESPONSIBILITY

If the Services involve Supplier furnishing UC with temporary or supplementary staffing, Supplier warrants that:

A. If Supplier is an Applicable Large Employer (as defined under Treasury Regulation Section 54.4980H-1(a)(4)):
   1. Supplier offers health coverage to its full-time employees who are performing Services for UC;
   2. Supplier’s cost of enrolling such employees in Supplier’s health plan is factored into the fees for the Services; and
   3. The fees for the Services are higher than what the Services would cost if Supplier did not offer health coverage to such full-time employees.

B. If Supplier is not an Applicable Large Employer (as defined above):
1. Supplier offers group health coverage to its full-time employees who are performing Services for UC and such coverage is considered Minimum Essential Coverage (as defined under Treasury Regulation Section 1.5000A-2) and is Affordable (as defined under Treasury Regulation Section 54.4980H-5(e)); or
2. Supplier’s full-time employees who are performing services for UC have individual coverage and such coverage satisfies the PPACA requirements for mandated individual coverage.

Supplier acknowledges that UC is relying on these warranties to ensure UC’s compliance with the PPACA Employer Shared Responsibility provision.

ARTICLE 24 - PREVAILING WAGES

Unless UC notifies Supplier that the Services are not subject to prevailing wage requirements, Supplier will comply, and will ensure that all sub-suppliers comply, with California prevailing wage provisions, including but not limited to those set forth in Labor Code sections 1770, 1771, 1771.1, 1772, 1773, 1773.1, 1774, 1775, 1776, 1777.5, and 1777.6. For purposes of the Agreement, the term “sub-supplier” means a person or firm, of all tiers, that has a contract with Supplier or with a sub-supplier to provide a portion of the Services. The term sub-supplier will not include suppliers, manufacturers, or distributors. Specifically, and not by way of limitation, if apprenticable occupations are involved in providing the Services, Supplier will be responsible for ensuring that Supplier and any sub-suppliers comply with Labor Code Section 1777.5. Supplier and sub-supplier may not provide the Services unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5 and 1771.1. Notwithstanding the foregoing provisions, Supplier will be solely responsible for tracking and ensuring proper payment of prevailing wages regardless if Services are partially or wholly subject to prevailing wage requirements. In every instance, Supplier will pay not less than the UC Fair Wage (defined as $13 per hour as of 10/1/15, $14 per hour as of 10/1/16, and $15 per hour as of 10/1/17) for Services being performed at a UC Location (defined as any location owned or leased by UC).

The California Department of Industrial Relations (DIR) has ascertained the general prevailing per diem wage rates in the locality in which the Services are to be provided for each craft, classification, or type of worker required to provide the Services. A copy of the general prevailing per diem wage rates will be on file at each UC Location’s procurement office, and will be made available to any interested party upon request. Supplier will post at any job site:

A. Notice of the general prevailing per diem wage rates, and
B. Any other notices required by DIR rule or regulation.

By this reference, such notices are made part of the Agreement. Supplier will pay not less than the prevailing wage rates, as specified in the schedule and any amendments thereto, to all workers employed by Supplier in providing the Services. Supplier will cause all subcontracts to include the provision that all sub-suppliers will pay not less than the prevailing rates to all workers employed by such sub-suppliers in providing the Services. The Services are subject to compliance monitoring and enforcement by the DIR. Supplier will forfeit, as a penalty, not more than $200 for each calendar day or portion thereof for each worker that is paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any portion of the Services provided by Supplier or any sub-supplier. The amount of this penalty will be determined pursuant to applicable law. Such forfeiture amounts may be deducted from the amounts due under the Agreement. If there are insufficient funds remaining in the amounts due under the Agreement, Supplier will be liable for any outstanding amount remaining due. Supplier will also pay to any worker who was paid less than the prevailing wage rate for the work or craft for which the worker was employed for any portion of the Services, for each day, or portion thereof, for which the worker was paid less than the specified prevailing per diem wage rate, an amount equal to the difference between the specified prevailing per diem wage rate and the amount which was paid to the worker. Review of any civil wage and penalty assessment will be made pursuant to California Labor Code section 1742.

ARTICLE 25 – FAIR WAGE/FAIR WORK

If the Agreement is for Services that will be performed at one or more UC Locations, does not solely involve furnishing Goods, and are not subject to extramural awards containing sponsor-mandated terms and conditions, Supplier warrants that it is in compliance with applicable federal, state and local working conditions requirements, including but not limited to those set forth in Articles 11, 12 and 14 herein, and that Supplier pays its employees performing the Services no less than the UC Fair Wage. Supplier agrees UC may conduct such UC Fair Wage/Fair Work interim compliance audits as UC reasonably requests, as determined in UC’s sole discretion. Supplier agrees to post UC

Revised 8/28/2019
Fair Wage/Fair Work notices, in the form supplied by UC, in public areas (such as break rooms and lunch rooms) frequented by Supplier employees who perform Services.

For Services rendered (actual spend) not subject to prevailing wage requirements in excess of $100,000 in a year (under the Agreement or any combination of agreements for the same service), Supplier will: (i) at Supplier’s expense, provide an annual independent verification (https://www.ucop.edu/procurement-services/for-suppliers/fwfw-resources-suppliers.html) performed by a licensed public accounting firm (independent accountant) or the Supplier’s independent internal audit department (http://na.theiia.org/standards-guidance/topics/Pages/Independence-and-Objectivity.aspx) in compliance with UC’s required verification standards and procedures (https://www.ucop.edu/procurement-services/for-suppliers/fwfw-resources-suppliers.html), concerning Supplier’s compliance with this provision, and (ii) ensure that in the case of a UC interim audit, its independent accountant/independent internal auditor makes available to UC its UC Fair Wage/Fair Work work papers for the most recent verification period. Supplier agrees to provide UC with a UC Fair Wage/Fair Work verification annually, in a form acceptable to UC, no later than ninety days after the end of the 12-month period in which $100,000 in spend is reached.

The Fair Wage Fair Work annual independent verification requirement does not extend to contracts for professional services or consulting for which pre-certification has been provided to UC (https://www.ucop.edu/procurement-services/for-suppliers/fwfw-resources-suppliers.html). Please see the UC Procurement/Supply Chain Management Policy BUS-43 (https://www.ucop.edu/procurement-services/policies-forms/business-and-finance/index.html) for the definition of professional services and consulting.

ARTICLE 26 – MEDICAL DEVICES

This Article applies when the Goods and/or Services involve UC purchasing or leasing one or more medical devices from Supplier, or when Supplier uses one or more medical devices in providing Goods and/or Services to UC.

Medical Device as used herein will have the meaning provided by the U.S. Food and Drug Administration (“FDA”) and means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component part, or accessory which is: (i) recognized in the official National Formulary, or the United States Pharmacopoeia, or any supplement to them; (ii) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in humans or other animals, or (iii) intended to affect the structure or any function of the body of humans or other animals, and which does not achieve any of its primary intended purposes through chemical action within or on the body of humans or other animals and which is not dependent upon being metabolized for the achievement of any of its primary intended purposes.

Supplier warrants that prior to UC’s purchase or lease of any Medical Device or Supplier’s use of any Medical Device in providing Goods and/or Services hereunder, Supplier will: (i) perform security testing and validation for each such Goods and/or Services or Medical Device, as applicable; (ii) perform security scans to detect malware on any software embedded within any Goods and/or Services or Medical Device, as applicable, in order to verify that the software does not contain any known malware; (iii) conduct a vulnerability scan encompassing all ports and fuzz testing; and (iv) provide UC with reports for (i) – (iii). Supplier warrants that any Good or Medical Device is compliant with FDA’s most current guidance or regulation for the quality system related to the cybersecurity and the Management of Cybersecurity in Medical Devices, and that Supplier will maintain compliance with any updates to such guidance or regulations.

Throughout Supplier’s performance of this Agreement, Supplier will provide UC with reasonably up-to-date patches, firmware and security updates for any Medical Device provided to UC, and any other Medical Device used in the course of providing Services, as applicable. All such patches and other security updates will be made available to UC within thirty (30) days of its commercial release or as otherwise recommended by Supplier or Supplier’s sub-supplier, whichever is earlier.

Supplier warrants that all software and installation media not specifically required for any Medical Device used by Supplier or Goods and/or Services delivered to UC under this Agreement as well as files, scripts, messaging services and data will be removed from all such Goods and/or Services or Medical Device following installation, and that all hardware ports and drivers not required for use or operation of such Goods and/or Services or Medical Device will be disabled at time of installation. In addition, Medical Devices must be configured so that only Supplier-approved applications will run on such Medical Devices.
Supplier agrees that UC may take any and all actions that it, in its sole discretion, deems necessary to address, mitigate and/or rectify any real or potential security threat, and that no such action, to the extent such action does not compromise device certification, will impact, limit, reduce or negate Supplier’s warranties or any of Supplier’s other obligations hereunder.

Supplier warrants that any Medical Device provided to UC, and any other Medical Device used in the course of providing such Goods and/or Services, meet and comply with all cyber-security guidance and similar standards promulgated by the FDA and any other applicable regulatory body.

If the Goods and/or Services entail provision or use of a Medical Device, Supplier will provide UC with a completed Manufacturer Disclosure Statement for Medical Device Security (MDS2) form for each such Medical Device before UC is obligated to purchase or lease such Medical Device or prior to Supplier’s use of such device in its performance of Services. If Supplier provides an MDS2 form to UC concurrently with its provision of Goods and/or Services, UC will have a reasonable period of time to review such MDS2 form, and if the MDS2 form is unacceptable to UC, then UC in its sole discretion may return the Goods or terminate the Agreement with no further obligation to Supplier.

ARTICLE 27 – FORCE MAJEURE
Neither Party will be liable for delays due to causes beyond the Party’s control (including, but not restricted to, war, civil disturbances, earthquakes, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather).

ARTICLE 28 – ASSIGNMENT AND SUBCONTRACTING
Except as to any payment due hereunder, Supplier may not assign or subcontract the Agreement without UC’s written consent. In case such consent is given, the assignee or subcontractor will be subject to all of the terms of the Agreement.

ARTICLE 29 – NO THIRD-PARTY RIGHTS
Nothing in the Agreement, express or implied, is intended to make any person or entity that is not a signer to the Agreement a third-party beneficiary of any right created by this Agreement or by operation of law.

ARTICLE 30 – OTHER APPLICABLE LAWS
Any provision required to be included in a contract of this type by any applicable and valid federal, state or local law, ordinance, rule or regulations will be deemed to be incorporated herein.

ARTICLE 31 – NOTICES
A Party must send any notice required to be given under the Agreement by overnight delivery or by certified mail with return receipt requested, to the other Party’s representative at the address specified by such Party.

To the extent the Agreement extends to Additional UC Locations and UC Affiliates, Notices pertaining to a specific PO or Customer shall be directed to the address(es) specified in such Customer’s SOW or PO.

ARTICLE 32 – SEVERABILITY
If a provision of the Agreement becomes, or is determined to be, illegal, invalid, or unenforceable, that will not affect the legality, validity or enforceability of any other provision of the Agreement or of any portion of the invalidated provision that remains legal, valid, or enforceable.
ARTICLE 3 – WAIVER

Waiver or non-enforcement by either Party of a provision of the Agreement will not constitute a waiver or non-enforcement of any other provision or of any subsequent breach of the same or similar provision.

ARTICLE 34 – AMENDMENTS

The Parties may make changes in the Goods and/or Services or otherwise amend the Agreement, but only by a writing signed by both Parties’ authorized representatives. In the event there is a Material Change to the Agreement, the parties agree to meet and confer in good faith in order to modify the terms of the Agreement. A Material Change as used herein refers to:
A. A change to the scope of Goods and/or Services to be provided by Supplier, as agreed to by UC;
B. A change in the Institutional Information Supplier is required to create, receive, maintain or transmit in performance of the agreement, such that the Protection Level Classification of such Institutional Information changes;
C. Changes in the status of the parties;
D. Changes in flow down terms from external parties; and
E. Changes in law or regulation applicable to this Agreement.

Each party shall notify the other party upon the occurrence of a Material Change.

ARTICLE 35 – GOVERNING LAW AND VENUE

California law will control the Agreement and any document to which it is appended. The exclusive jurisdiction and venue for any and all actions arising out of or brought under the Agreement is in a state court of competent jurisdiction, situated in the county in the State of California in which the UC Location is located or, where the procurement covers more than one UC Location, the exclusive venue is Alameda County, California.

ARTICLE 36 – ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS

Supplier will make itself and its employees, subcontractors, or agents assisting Supplier in the performance of its obligations reasonably available to UC at no cost to UC to testify as witnesses, or otherwise, in the event of investigations, or proceedings against UC, its directors, officers, agents, or employees relating to the Goods or Services.

ARTICLE 37 – SUPPLIER TERMS

Any additional terms that Supplier includes in an order form or similar document will be of no force and effect, unless UC expressly agrees in writing to such terms.

ARTICLE 38 – UC HEALTH TERMS

A. Government Health Care Programs. Neither Supplier nor its employees nor agents is now nor has ever been excluded, suspended, debarred, or otherwise sanctioned or made ineligible from participation in any government sponsored program, including any federal or state health care program (e.g., Medicare, Medi-Cal), and no proceedings, investigations, or inquiries are currently pending or threatened by any federal or state agency as a result of which Supplier or its employees or agents could be excluded, sanctioned, debarred or otherwise made ineligible from participation in any government sponsored program or sanctioned for any violation of any rule or regulation of such programs (excluding denial of reimbursement or payment of any specific claim or claims). Supplier will immediately provide written notice to UC of any such pending or threatened investigation or inquiry upon becoming aware of such investigation or inquiry. Any breach of this Section shall give UC the right to terminate the Agreement immediately for cause.

B. Compliance with Laws. Supplier represents and warrants that it is currently, and shall remain throughout the term of the Agreement, in material compliance with applicable laws, rules and regulations, including, but not limited to, those relating to participation in the Medicare and Medi-Cal programs, the False Claims Act, the Civil Monetary Penalties Law, the Federal anti-kickback statute, and corresponding state laws; the Health Insurance Portability and Accountability Act of 1996, as amended, and its implementing regulations (“HIPAA”), the California Confidentiality of Medical Information Act (“CMIA”), and all other applicable,
state, local and federal requirements. The Parties acknowledge that this Agreement, together with other contracts between Supplier and UC, will be included on the master list of physician contracts maintained by UC, as applicable.

C. Access to Books and Records. [Buyer: This Section is required by law if UC will claim any portion of the amounts paid under this Agreement on its Medicare cost report.]

1. As and to the extend required by law, upon the written request of the Secretary of the U.S. Department of Health and Human Services ("Secretary") or the U.S. Comptroller General or any of their duly authorized representatives, Supplier shall make available those contracts, books, documents and records necessary to verify the nature and extent of the costs of providing the Goods and/or Services under the Agreement. Such inspection shall be available for up to four (4) years after the provision of such Goods and/or Services.

2. If Supplier is requested to disclose books, documents or records pursuant to this Section for any purpose, Supplier shall notify UC of the nature and scope of such request within ten (10) days of receiving such request, and Supplier shall make available, upon written request by UC, all such books, documents or records.

3. If Supplier carries out any of the duties of the Agreement through a subcontract with a value of $10,000.00 or more over a twelve (12) month period with a related individual or organization (as that term is defined in 42 C.F.R. § 420.300), Supplier agrees to include this requirement in any such subcontract.

4. This Section is included pursuant to and is governed by the requirements of 42 U.S.C. § 1395x(v)(1) and the regulations thereto. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by UC or Supplier by virtue of the Agreement.

D. No Requirement to Refer; Fair Market Value [Buyer: if the Supplier is a health care provider or otherwise in a position to make or influence referrals of patients to UC, or is providing a good or service for which payment may be made by Medicare, Medi-Cal, or any other federal health care program, evidence of both (a) fair market value and (b) commercial reasonableness should be documented and retained in the file with the executed copy of this Agreement.] The Parties expressly acknowledge and agree that it is their intent to comply fully with all federal, state, and local laws, rules, and regulations. Supplier and UC each declare their intent that none of the terms of the Agreement are in exchange for any direct or indirect patient referrals or any arranged for, recommended, or promised referrals of patients. It is not the purpose nor is it a requirement of the Agreement to offer or receive any remuneration or benefit of any nature or to solicit, require, induce, or encourage the referral of any patient, nor the purchase, lease, order, arrangement, or recommendation to purchase, lease, or order any goods, services, items, or products for which payment may be made in whole or in part by Medicare or Medi-Cal or any other Federal Health Care program. Any payments made by UC to Supplier represent the fair market value of the Goods and/or Services rendered under this Agreement and are not in any way related to or depend upon referrals by and between the Parties. Supplier shall disclose to UC and Customer, as applicable, the existence of any financial relationship Supplier currently has or enters into during the term of the Agreement with a physician (or entity composed of or employing a physician) who Supplier has reason to believe is a member of the medical staff of any UC facility, as applicable. The Agreement is not intended to influence a medical professional's judgment in choosing the medical facility appropriate for the proper care and treatment of her or his patients.

E. Disclosure of Discounts. UC acknowledges that discounts, rebates, credit, free goods and services, coupons or other things of value which may receive from Supplier under the Agreement constitute a discount or reduction in price for purpose of 42 U.S.C. paragraph 1320a-7(b)(3)(A). UC agrees to file all appropriate reports and to properly disclose and reflect all such discounts, rebates, credit, free goods and services, coupons or other things of value or any price reductions in any report filed in connection with state or federal cost reimbursement programs.

F. Protected Health Information or Medical Information. [Buyer: Select one of the following:]

/\ It is NOT anticipated that Supplier will require access to “Protected Health Information,” as defined by the privacy and security standards of HIPAA, the regulations promulgated thereunder by the U.S. Department of Health and Human Services, or “Medical Information” (collectively with Protected Health Information, “PHI”), as defined by the California Confidentiality of Medical Information Act, California Civil Code §§ 56-56.16 or California Health and Safety Code §1280.15 and California Civil Code §§ 1798.82 and 1798.29 in order to perform its obligations under the Agreement. However, in the event that Supplier has unintentionally received PHI, Supplier will notify UC immediately and Supplier shall use commercially reasonable efforts to return the PHI to UC, as applicable, and to maintain the confidentiality of the PHI. Additionally, in the event the nature of the Good and/or Services change such as to require Supplier to have access to PHI, Supplier will notify UC, as applicable, and Supplier will execute and deliver the UC HIPAA Business Associate Agreement or modify the terms of this Agreement.

/\ It is anticipated that Supplier will have access to “Protected Health Information,” as defined by the privacy and security standards of HIPAA, the regulations promulgated thereunder by the U.S. Department of Health and Human Services, or “Medical
Information” (collectively with Protected Health Information, “PHI”), as defined by the California Confidentiality of Medical Information Act, California Civil Code §§ 56-56.16 or California Health and Safety Code §1280.15 and California Civil Code §§ 1798.82 and 1798.29 in order to perform its obligations under the Agreement. Any and all of UC’s medical records and charts created at UC’s facilities as a result of performance under this Agreement shall be and shall remain the property of UC. Both during and after the term of this Agreement, Supplier shall be permitted to inspect and/or duplicate any individual charts or records which are: (2) necessary to assist in the defense of any malpractice or similar claim; (2) relevant to any disciplinary action; (3) for educational or research purposes; and/or (4) necessary for Supplier to ensure compliance with all regulatory requirements. Such inspection and/or duplication shall be permitted and conducted pursuant to commonly accepted standards of patient confidentiality in accordance with applicable federal, state and local laws.

In the event Supplier will have access to PHI, UC Affiliates may require Supplier to execute and deliver a HIPAA business associate agreement with respect to performance of Goods and/or Services for such UC Affiliate.

G. New Technology.

1. UC and Supplier believe an essential element of advancing the core objectives and mission of UC is to encourage the development of health care technology that significantly improves the quality, process and/or outcome of care. In support of this belief, the Parties acknowledge that certain products and implants which incorporate breakthrough technologies have the potential to significantly improve non-clinical operational efficiency, or improved clinical outcomes when compared to the level of safety, operational efficiency, process of care and/or outcomes delivered through use of the products covered under this Agreement (hereafter, “New Technology Products”).

2. New Technology Products shall be disclosed to UC promptly upon such products’ commercial availability.

3. New Technology Products will not be provided to UC without prior review and approval by UC. Should such New Technology Products become available, UC will conduct an evaluation to determine if the product meets facility criteria and clinical needs. Supplier shall cooperate with UC’s efforts to evaluate such New Technology Products, including, but not limited to, providing UC with information and/or training pertaining to the products. If UC agrees to accept a New Technology Product following evaluation, UC and Supplier shall negotiate final pricing and product conversion (if required) based on the contract pricing of the nearest comparable product(s) available to UC for purchase under the Agreement for which pricing has been mutually agreed upon at the time of release. Following the negotiation of pricing terms for such approved New Technology Products, the parties shall amend in writing any of the Incorporated Documents as necessary to identify the New Technology Products available to UC and Customers under this Agreement, and the pricing agreed upon. Invoices that contain New Technology Products that are not listed as approved products under any of the Incorporated Documents, as amended, will be free of charge to UC and the applicable Customer and will not be paid for.

4. During the contract period, Supplier may release new versions of existing technology (“Updated Technology”). If it is determined that a new version of existing technology causes an existing product available to UC and Customers under the Agreement to become obsolete, Supplier will provide the updated technology at the existing contract price.

H. Auditing. Supplier shall allow UC to audit Supplier for UC’s requirements covered by this Agreement, as applicable, at least quarterly. If upon audit by UC, non-compliance in regards to UC policies, and/or this Agreement, are identified, UC may give notice to cure the deficiency, and if such deficiency is not cured to UC’s reasonable satisfaction, UC may terminate this Agreement.

I. No Exclusivity. It is understood by Supplier that this Agreement is not exclusive. UC and each Customer has, and will continue to have, or may have, other relationships with other suppliers for the provision of Goods and/or Services similar to the Goods and/or Services provided herein, with no minimum guarantee of the utilization of Supplier’s Goods and/or Services.

ARTICLE 38 – SURVIVAL CLAUSE

Upon expiration or termination of the Agreement, the following provisions will survive: WARRANTIES; INTELLECTUAL PROPERTY, COPYRIGHT, PATENTS, AND DATA RIGHTS; INDEMNITY AND LIABILITY; USE OF UC NAMES AND TRADEMARKS; LIABILITY FOR UC-FURNISHED PROPERTY; COOPERATION; TERMS APPLICABLE TO THE FURNISHING OF GOODS; AUDIT REQUIREMENTS; PROHIBITION ON UNAUTHORIZED USE OR DISCLOSURE OF INSTITUTIONAL INFORMATION; GOVERNING LAW AND VENUE, UC HEALTH TERMS, and, to the extent incorporated into the Agreement, the terms of the APPENDIX–DATA SECURITY, APPENDIX–BAA, and/or APPENDIX-GDPR.
Section 1: Purpose
As a HIPAA Covered Entity, UCSDH is required to conduct a thorough privacy and security assessment of their vendors before entering into a contractual arrangement and disclosing protected health information (PHI). This Questionnaire is a high level assessment conducted by UCSDH’s Compliance Department and focuses on your privacy and security protocols at your organization level. UCSDH’s Information Security Department will provide you with a separate Questionnaire specific to their assessment of your services and applications.

Section 2: Company Information

| Company Name |  |
| Company Address |  |
| Contact Name |  |
| Contact Title |  |
| Contact Email |  |
| Contact Phone |  |
| Questionnaire completed by: |  |
| Date Completed: |  |
# Section 4: Business Operations

1. How long has the company been in business?

2. What are the States that your organization conducts business?

3. Do you process HIPAA Patient Protected Health Information (PHI)?

4. Do you process Payment Card Industry (PCI) data?

5. Do you process Personally Identifiable Information (PII)?

6. Are PHI / PCI / PII stored on-site or on the Cloud?

7. If Cloud, what is the name of your Cloud vendor?

8. Are you a HIPAA Covered Entity?

9. Will you be able to sign UCSDH’s HIPAA Business Associate Agreement (BAA)?

10. Do you outsource UCSDH PHI, PCI, or PII to other 3rd party vendors or consultants?

   If yes, please provide vendor name and contact information:
   a) Name of Vendor #1:
      Contact Name:
      Contact Phone:
   b) Name of Vendor #2
      Contact Name:
      Contact Phone:

11. Do you outsource PHI to offshore companies?

12. Have you executed BAA’s or comparable Compliance Agreements with each of your sub-vendors?

13. Do you have Cyber Security insurance?
   a) If yes, what are your coverage amounts?
   b) Does it include Credit Monitoring Services?
   c) Does it include Network Security and Privacy Liability Coverages, including Breaches of Unauthorized Disclosure of PHI?

14. At contract termination, will you be able to:
   a) Return PHI / PCI / PII data to UCSDH?
   b) Delete PHI / PCI / PII?
   c) Provide assurances PHI / PCI / PII will be secured?
### Section 5: Privacy Questionnaire

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<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>15. Name and Contact Info for Privacy Officer:</strong></td>
<td></td>
</tr>
<tr>
<td>Name:</td>
<td></td>
</tr>
<tr>
<td>Address:</td>
<td></td>
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<tr>
<td>Phone:</td>
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<tr>
<td>Email:</td>
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<tr>
<td><strong>16. Do you have Policies and Procedures that comply with the HIPAA Privacy Rule and applicable State Laws?</strong></td>
<td></td>
</tr>
<tr>
<td><strong>17. If we sign your NDA, will you be able to share copies with us?</strong></td>
<td></td>
</tr>
<tr>
<td><strong>18. If not, can you arrange a WebEX and review them with us?</strong></td>
<td></td>
</tr>
<tr>
<td><strong>19. Have you trained your workforce on these Policies and Procedures?</strong></td>
<td></td>
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<tr>
<td><strong>20. Is training required on an annual basis?</strong></td>
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### Section 6: Security Questionnaire

#### Section 6a: Administrative Safeguards

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<table>
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<tbody>
<tr>
<td><strong>21. Risk Analysis / Risk Management</strong></td>
<td></td>
</tr>
<tr>
<td>a) Do you perform annual security risk assessments of your sensitive PHI, PCI, PII applications / processes?</td>
<td></td>
</tr>
<tr>
<td>b) Can you share your latest findings with us?</td>
<td></td>
</tr>
<tr>
<td>c) Can you provide a copy of this policy and procedure?</td>
<td></td>
</tr>
<tr>
<td>d) Can you provide copies of your most recent AICPA SOC I &amp; II reports?</td>
<td></td>
</tr>
<tr>
<td><strong>22. Sanction Policy</strong></td>
<td></td>
</tr>
<tr>
<td>a) Do you have a sanctions policy for employees who fail to comply with your privacy &amp; security policies and procedures?</td>
<td></td>
</tr>
<tr>
<td>b) Can you provide a copy of this policy and procedure?</td>
<td></td>
</tr>
<tr>
<td><strong>23. Information System Activity Review</strong></td>
<td></td>
</tr>
<tr>
<td>a) Do you perform information system activity review on at least an annual basis?</td>
<td></td>
</tr>
<tr>
<td>b) Can you share your latest findings with us?</td>
<td></td>
</tr>
<tr>
<td>c) Can you provide a copy of this policy and procedure?</td>
<td></td>
</tr>
<tr>
<td><strong>24. Name and Contact Info for Security Officer</strong></td>
<td></td>
</tr>
<tr>
<td>Name:</td>
<td></td>
</tr>
<tr>
<td>Address:</td>
<td></td>
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<tr>
<td>Phone:</td>
<td></td>
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<tr>
<td>Email:</td>
<td></td>
</tr>
<tr>
<td><strong>25. Authorization and/or Supervision</strong></td>
<td></td>
</tr>
<tr>
<td>a) For employees authorized to access PHI, are their job titles authorized and documented?</td>
<td></td>
</tr>
<tr>
<td><strong>26. Workforce Clearance Procedure</strong></td>
<td></td>
</tr>
<tr>
<td>Question</td>
<td>Answer</td>
</tr>
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<td>-------------------------------------------------------------------------</td>
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<tr>
<td><strong>27. Termination Procedures</strong></td>
<td></td>
</tr>
<tr>
<td>a) Do you always disable employee system / application accounts and access badges on or prior the employees last day of employment?</td>
<td></td>
</tr>
<tr>
<td>b) Can you provide a copy of this policy and procedure?</td>
<td></td>
</tr>
<tr>
<td><strong>28. Isolating Health Care Clearinghouse Function</strong></td>
<td></td>
</tr>
<tr>
<td>a) If you are a clearinghouse, are you part of a larger organization?</td>
<td></td>
</tr>
<tr>
<td>b) If yes, can you provide policies and procedures that protect PHI from unauthorized access by the larger organization?</td>
<td></td>
</tr>
<tr>
<td><strong>29. Access Authorization</strong></td>
<td></td>
</tr>
<tr>
<td>a) Have you implemented policies and procedures that establish access authorization for your employee’s access to a workstation, transaction, program, or process?</td>
<td></td>
</tr>
<tr>
<td>b) Can you provide a copy of this policy and procedure?</td>
<td></td>
</tr>
<tr>
<td><strong>30. Access Establishment and Modification</strong></td>
<td></td>
</tr>
<tr>
<td>a) Have you implemented policies and procedures that modifies your employee’s access rights to a workstation, transaction, program, or process?</td>
<td></td>
</tr>
<tr>
<td>b) Can you provide a copy of this policy and procedure?</td>
<td></td>
</tr>
<tr>
<td><strong>31. Security Reminders</strong></td>
<td></td>
</tr>
<tr>
<td>a) Do you provide HIPAA Privacy and Security training to your employees before that are allowed to access PHI?</td>
<td></td>
</tr>
<tr>
<td>b) Do you provide periodic awareness training on an annual basis?</td>
<td></td>
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<tr>
<td>c) Is the training web-based, or conducted via classroom?</td>
<td></td>
</tr>
<tr>
<td>d) Do you retain training records?</td>
<td></td>
</tr>
<tr>
<td>e) Can we inspect your training records?</td>
<td></td>
</tr>
</tbody>
</table>
32. Protection from Malicious Software
   a) Have you enabled malware / anti-virus software?
   b) Have you had a serious attack and how did you contain and remediate the attack?

33. Log-In Monitoring
   a) Do you have policies and procedures for monitoring log-in attempts and reporting discrepancies?
   b) Do you have surveillance activities that look for unauthorized access (“Snooping”) of PHI?
   c) Describe how you mitigate the discrepancies?
   d) Can you provide a copy of this policy and procedure?

34. Password Management
   a) Do you have policies and procedures for creating, changing, and safeguarding passwords?
   b) Do you use strong alpha-numeric-special characters of at least 7 characters in length?
   c) How often do you change passwords?
   d) Are there any situations where your employees are allowed to share passwords?
   e) Can you provide a copy of this policy and procedure?

35. Response and Reporting
   a) Do you have policies and procedures to identify and respond to suspected or known security incidents; mitigate to the extent practicable, harmful effects of the incident?
   b) Can you describe your most recent incident and how it was mitigated?
<p>| | |</p>
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<tbody>
<tr>
<td><strong>c)</strong></td>
<td>Can you provide a copy of this policy and procedure?</td>
</tr>
<tr>
<td><strong>36. Data Backup Plan</strong></td>
<td></td>
</tr>
<tr>
<td>a)</td>
<td>Do you have policies and procedures to create and maintain retrievable exact copies of ePHI?</td>
</tr>
<tr>
<td>b)</td>
<td>Can you provide a copy of this policy and procedure?</td>
</tr>
<tr>
<td><strong>37. Disaster Recovery Plan</strong></td>
<td></td>
</tr>
<tr>
<td>a)</td>
<td>Do you have policies and procedures to restore any loss to data / PHI?</td>
</tr>
<tr>
<td>b)</td>
<td>Are data stored at a vendor offsite?</td>
</tr>
<tr>
<td>c)</td>
<td>Do you test your DRP on an annual basis?</td>
</tr>
<tr>
<td>d)</td>
<td>Can you provide a copy of this policy and procedure?</td>
</tr>
<tr>
<td><strong>38. Emergency Mode Operation Plan</strong></td>
<td></td>
</tr>
<tr>
<td>a)</td>
<td>Do you have policies and procedures to enable continuation of critical business processed for protection of ePHI while operating in emergency mode?</td>
</tr>
<tr>
<td>b)</td>
<td>Can you provide a copy of this policy and procedure?</td>
</tr>
<tr>
<td><strong>39. Testing and Revision Procedure</strong></td>
<td></td>
</tr>
<tr>
<td>a)</td>
<td>Do you have policies and procedures for periodic testing and revision of contingency plans?</td>
</tr>
<tr>
<td>b)</td>
<td>Can you provide a copy of this policy and procedure?</td>
</tr>
<tr>
<td><strong>40. Applications and Data Criticality Analysis</strong></td>
<td></td>
</tr>
<tr>
<td>a)</td>
<td>Do you assess the relative criticality of specific applications and data in support of other contingency plan components?</td>
</tr>
<tr>
<td>b)</td>
<td>How often is this activity performed?</td>
</tr>
</tbody>
</table>

**Section 6b: Physical Safeguards**

**41. Contingency Operations**
### Exhibit D

#### Compliance Questionnaire | V1.4 | 03/15/2017

<p>| | |</p>
<table>
<thead>
<tr>
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<tbody>
<tr>
<td><strong>a)</strong></td>
<td>Do you have policies and procedures that allow facility access in support of restoration of lost data under the disaster recovery plan and emergency mode operations plan in the event of an emergency?</td>
</tr>
<tr>
<td><strong>b)</strong></td>
<td>How often is this activity performed?</td>
</tr>
<tr>
<td><strong>c)</strong></td>
<td>Can you provide a copy of this policy and procedure?</td>
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</table>

<table>
<thead>
<tr>
<th><strong>42. Facility Security Plan</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>a)</strong></td>
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<td><strong>b)</strong></td>
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<table>
<thead>
<tr>
<th><strong>43. Access Control and Validation Procedures</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>a)</strong></td>
</tr>
<tr>
<td><strong>b)</strong></td>
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<td><strong>c)</strong></td>
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<tr>
<td><strong>d)</strong></td>
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<table>
<thead>
<tr>
<th><strong>44. Maintenance Records</strong></th>
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</thead>
<tbody>
<tr>
<td><strong>a)</strong></td>
</tr>
<tr>
<td><strong>b)</strong></td>
</tr>
<tr>
<td><strong>c)</strong></td>
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</tbody>
</table>
45. Workstation Use  
   a) Do you have policies and procedures that specify the proper functions to be performed, the manner in which those functions are to be performed, and the physical attributes of the surroundings of a specific workstation or class of workstation that can access ePHI?  
   b) Can you provide a copy of this policy and procedure?

46. Workstation Security  
   a) Do you have policies and procedures that implement physical safeguards for all workstations that access ePHI, to restrict access to only authorized users?  
   b) Can you provide a copy of this policy and procedure?

47. Disposal  
   a) Do you have policies and procedures to address the final disposition of electronic protected health information, and/or the hardware or electronic media on which it is stored?  
   b) Does the policies extend to employees who work offsite / remotely / on travel?  
   c) Can you provide a copy of this policy and procedure?

48. Media Re-use  
   a) Do you have policies and procedures for removal of ePHI from electronic media before the media are made available for re-use.  
   b) Can you provide a copy of this policy and procedure?

49. Accountability  
   a) Do you maintain a record of the movements of hardware and electronic media and any person responsible therefore?  
   Can we inspect this log?

50. Data Backup and Storage
### Section 6c: Technical Safeguards

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<table>
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<tbody>
<tr>
<td>51. <strong>Unique User Identification</strong></td>
<td></td>
</tr>
<tr>
<td>a) For access to software programs, do you assign a unique name and/or number for identifying and tracking user identity?</td>
<td></td>
</tr>
<tr>
<td>52. <strong>Emergency Access Procedure</strong></td>
<td></td>
</tr>
<tr>
<td>a) Do you have policies and procedures for obtaining necessary ePHI during an emergency?</td>
<td></td>
</tr>
<tr>
<td>b) Can you provide a copy of this policy and procedure?</td>
<td></td>
</tr>
<tr>
<td>53. <strong>Automatic Logoff</strong></td>
<td></td>
</tr>
<tr>
<td>a) Do you have policies and procedures that terminate an electronic session after a predetermined time of inactivity?</td>
<td></td>
</tr>
<tr>
<td>b) Can you provide a copy of this policy and procedure?</td>
<td></td>
</tr>
<tr>
<td>54. <strong>Encryption and Decryption</strong></td>
<td></td>
</tr>
<tr>
<td>a) Do you have policies and procedures to enabled AES to encrypt all inbound and outbound data transmissions of PHI / PCI / PII?</td>
<td></td>
</tr>
<tr>
<td>b) Are data (PHI / PCI / PII) at rest encrypted?</td>
<td></td>
</tr>
<tr>
<td>c) Can you provide a copy of this policy and procedure?</td>
<td></td>
</tr>
<tr>
<td>55. <strong>Audit Controls</strong></td>
<td></td>
</tr>
<tr>
<td>a) Do you have policies and procedures to implement hardware, software, and/or procedural mechanisms that record and examine activity in information systems that contain or use ePHI?</td>
<td></td>
</tr>
<tr>
<td>b) Can you provide a copy of this policy and procedure?</td>
<td></td>
</tr>
<tr>
<td>56. <strong>Mechanism to Authenticate Electronic Protected Health Information</strong></td>
<td></td>
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<tr>
<td>57. Person or Entity Authentication</td>
<td></td>
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</tr>
<tr>
<td>a) Do you have policies and procedures to verify that a person or entity seeking access to ePHI is the one claimed?</td>
<td></td>
</tr>
<tr>
<td>b) Can you provide a copy of this policy and procedure?</td>
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<table>
<thead>
<tr>
<th>58. Integrity Controls</th>
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<tbody>
<tr>
<td>a) Do you have policies and procedures to implement security measures to ensure that electronically transmitted ePHI is not improperly modified without detection until disposed of?</td>
<td></td>
</tr>
<tr>
<td>b) Can you provide a copy of this policy and procedure?</td>
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</table>
## Section 7: Breach Questionnaire

<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
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<tbody>
<tr>
<td>59. Do you have Policies and Procedures that comply with the HIPAA HITECH Rule and applicable State Breach Laws?</td>
<td></td>
</tr>
<tr>
<td>60. If we sign your NDA, will you be able to share copies with us?</td>
<td></td>
</tr>
<tr>
<td>61. If not, can you arrange a WebEX and review them with us?</td>
<td></td>
</tr>
<tr>
<td>62. Have you trained your workforce on these Policies and Procedures?</td>
<td></td>
</tr>
<tr>
<td>63. Is training required on an annual basis?</td>
<td></td>
</tr>
<tr>
<td>64. Have you experienced a data breach?</td>
<td></td>
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<tr>
<td>If yes, please describe how you mitigated the breach?</td>
<td></td>
</tr>
<tr>
<td>65. Will you be able to identify and report a Breach of PHI within (10) business days to UCSDH as defined in the HIPAA BAA?</td>
<td></td>
</tr>
</tbody>
</table>
This Appendix - Business Associate Agreement ("Appendix BAA") supplements and is made a part of any and all agreements entered into by and between The Regents of the University of California, a California corporation ("UC"), on behalf of its University of California Health System and ___________, Business Associate ("BA").

RECITALS

A. UC is a “Covered Entity” as defined under 45 C.F.R. § 160.103

B. UC and BA are entering into or have entered into, and may in the future enter into, one or more agreements (each an “Underlying Agreement”) under which BA performs functions or activities for or on behalf of, or provides services to UC (“Services”) that involve receiving, creating, maintaining and/or transmitting Protected Health Information ("PHI") of UC as a “Business Associate” of UC as defined under 45 C.F.R. § 160.103. This Appendix BAA shall only be operative in the event and to the extent this Appendix BAA is incorporated into an Underlying Agreement between UC and BA.

C. UC and BA desire to protect the privacy and provide for the security of PHI used by or disclosed to BA in compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the regulations promulgated thereunder by the U.S. Department of Health and Human Services (45 C.F.R. Parts 160, 162 and 164) (the “HIPAA Regulations”), the Health Information Technology for Economic and Clinical Health Act of 2009 (the “HITECH Act”), California Civil Code § 56 et seq., §§1798.82 and 1798.29, and other applicable laws and regulations. The purpose of this BA Agreement is to satisfy certain standards and requirements of HIPAA, the HIPAA Regulations, including 45 CFR § 164.504(e), the HITECH Act, including Subtitle D, part 1, as they may be amended from time to time, and similar requirements under California law.

D. UC has designated all of its HIPAA health care components as a single component of its hybrid entity and therefore this BA Agreement is binding on all other UC health care components (collectively, the Single Health Care Component or the SHCC). This BA Agreement is effective on the date of the Underlying Agreement under which BA provides Services to UC ("Effective Date").

1. DEFINITIONS

Except for PHI, all capitalized terms in this Appendix BAA shall have the same meaning as those terms in the HIPAA Regulations.

PHI shall have the same meaning as “protected health information” in the HIPAA Regulations that is created, received, maintained, or transmitted by Business Associate or any Subcontractor on behalf of UC and shall also include “medical information” as defined at Cal. Civ. Code § 56.05.
2. OBLIGATIONS OF BA

BA agrees to:

A. Comply with the requirements of the Privacy Rule that apply to UC in carrying out such obligations, to the extent BA carries out any obligations of UC under the Privacy Rule. BA also agrees to comply with the requirements of California state privacy laws and regulations that apply to UC in carrying out such obligations, to the extent BA carries out any obligations of UC under California Civil Code § 1798 et seq., California Civil Code § 56 et seq., and California Health & Safety Code §§ 1280.15 and 1280.18, as applicable, unless otherwise mutually agreed to by BA and UC.

B. Not Use or Disclose PHI other than as permitted or required by the Underlying Agreement or as required by law.

C. Use appropriate safeguards, and comply, where applicable, with 45 C.F.R. § 164 Subpart C with respect to ePHI, to prevent the Use or Disclosure of PHI other than as provided for by the Underlying Agreement(s) and the Appendix BAA.

D. Notify UC, orally and in writing, as soon as possible, but in no event more than five (5) calendar days, after BA becomes aware of any Use or Disclosure of the PHI not permitted or required by the Appendix BAA or Underlying Agreement(s), including Breaches of unsecured PHI as required by 45 C.F.R. § 164.410 and potential compromises of UC PHI, including potential inappropriate access, acquisition, use or disclosure of UC PHI (each, collectively an “Incident”). BA shall be deemed to be aware of any such Incident, as of the first day on which it becomes aware of it, or by exercising reasonable diligence, should have been known to its officers, employees, agents or sub-suppliers. The notification to UC shall include, to the extent possible, each individual whose unsecured PHI has been, or is reasonably believed by BA to have been, accessed, acquired, used or disclosed during such Incident. BA shall further provide UC with any other available information that UC is required to include in a notification to affected individuals at the time of the notification to UC, or promptly thereafter as information becomes available. BA shall take prompt corrective action to remedy any such Incident, and, as soon as possible, shall provide to UC in writing: (i) the actions initiated by the BA to mitigate, to the extent practicable, any harmful effect of such Incident; and (ii) the corrective action BA has initiated or plans to initiate to prevent future similar Incidents.

E. Ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of the BA agree to the same restrictions, conditions, and requirements that apply to the BA with respect to such PHI.

F. If BA maintains PHI in a Designated Record Set, BA shall make the PHI in the Designated Record Set available to UC, or if directed by UC to the Individual or the Individual’s designee, as necessary to satisfy UC’s obligations under 45 C.F.R. § 164.524.

G. If BA maintains PHI in a Designated Record Set, BA shall make any amendments directed or agreed to by UC pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy UC’s obligations under 45 C.F.R. § 164.526.
H. Maintain and make available the information required to provide an accounting of disclosures to UC, or if directed by UC to the Individual, as necessary to satisfy UC’s obligations under 45 C.F.R. § 164.528.

I. Make its internal practices, books, and records, relating to the Use and Disclosure of PHI available to UC, and to the Secretary for purposes of determining UC’s compliance with HIPAA, HITECH and their implementing regulations.

3. PERMITTED USES AND DISCLOSURES BY BA

BA may only Use or Disclose the Minimum Necessary PHI to perform the services set forth in the Underlying Agreement.

4. TERM AND TERMINATION

A. Termination for Cause. UC may terminate this Appendix BAA and any Underlying Agreement(s), if UC determines BA has violated a material term of the Appendix BAA.

B. Upon termination of this Appendix BAA for any reason, with respect to PHI received from UC, or created, maintained, or received by BA on behalf of UC, BA shall return to UC, or if agreed to by UC, destroy, all such PHI that BA still maintains in any form, and retain no copies of such PHI.

To the extent return or destruction of UC PHI is not feasible, BA shall (1) retain only that PHI which is necessary for BA to continue its proper management and administration or to carry out its legal responsibilities; and (2) continue to use appropriate safeguards for such UC PHI and comply with Subpart C of 45 C.F.R. Part 164 with respect to ePHI to prevent Use or Disclosure of the PHI, other than as provided for in this Section, for as long as BA retains the PHI.

C. Survival. The obligations of BA under this Section 4.B shall survive the termination of this Appendix BAA and any Underlying Agreement(s).

The Appendix BAA is signed below by the parties’ duly authorized representatives.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

(Signature)

(Printed Name, Title)

(Date)

BUSINESS ASSOCIATE

(Supplier Name)

(Signature)

(Printed Name, Title)

(Date)

8.1.19
ARTICLE 1.  PURPOSE AND INTRODUCTION

A. In the course of providing the Goods and/or Services contemplated by the Agreement, Supplier may gain access to the University of California’s (UC) Institutional Information and/or IT Resources (both defined below). In such an event, UC and Supplier desire to appropriately protect Institutional Information and IT Resources. The purpose of this Appendix-Data Security is to specify Supplier’s cybersecurity and risk management responsibilities when Supplier has access to Institutional Information and/or IT Resources.

B. Any capitalized terms used here have the meaning ascribed to such terms as set forth in the Agreement or Incorporated Documents.

C. Supplier must provide commercially acceptable cybersecurity and cyber risk management to protect Institutional Information and/or IT Resources. This must include, but is not limited to the Supplier:

1. Developing and documenting a plan that protects Institutional Information and IT Resources.
   - Supplier must responsibly execute this plan.
   - Supplier’s approach must conform to a recognized cybersecurity framework designed for that purpose.¹
   - Supplier’s information security plan must be supported by a third-party review or certification. Supplier may only use an alternative to a third-party review if approved by the responsible UC Information Security Officer.

2. Conducting an accurate and thorough assessment of the potential risks to and vulnerabilities of the security of the Institutional Information and/or IT Resources. Supplier must mitigate anticipated risks effectively. This includes implementing commercially acceptable security policies, procedures, and practices that protect Institutional Information and/or IT Resources.

3. Updating its plan to effectively address new cybersecurity risks.

4. Complying with pertinent contractual and regulatory responsibilities.

5. Providing UC with evidence of compliance with Supplier’s information security plan.

6. Keeping UC informed with timely updates on risks, vulnerabilities, Security Incidents, and Breaches.

7. Keeping UC informed of any measures UC must perform to ensure the security of Institutional Information and IT Resources.

¹ Examples include the latest versions of PCI DSS, NIST CSF, CIS Critical Security Controls, ISO 27002, NIST SP 800-53 and NIST SP 800-171.
D. If, in the course of providing the Goods and/or Services under the Agreement, Supplier engages in transactions with UC affiliated individuals (including but not limited to: students, staff, faculty, customers, patients, guests, volunteers, visitors, research subjects, etc.), as a benefit and result of the Agreement, Supplier must treat any data about UC affiliated individuals that Supplier creates, receives, and/or collects in the course of those transactions with the same level of privacy and security protections and standards as required of Institutional Information by this Appendix.

E. Supplier agrees to be bound by the obligations set forth in this Appendix. To the extent applicable, Supplier also agrees to impose, by written contract, the same terms and conditions contained in this Appendix on any sub-supplier retained by Supplier to provide or assist in providing the Goods and/or Services to UC.

F. To the extent that a requirement of this Appendix conflicts with those of any other UC Agreement or Incorporated Document, the most stringent requirement (including but not limited to: least risk to UC, shortest time, best practice, etc.) will apply.

ARTICLE 2. DEFINED TERMS

A. “Breach” means: (1) Any disclosure of Institutional Information to an unauthorized party or in an unlawful manner; (2) Unauthorized or unlawful acquisition of information that compromises the security, confidentiality, or integrity of Institutional Information and/or IT Resources; or (3) The acquisition, access, use, or disclosure of protected health information (PHI) or medical information under the Health Insurance Portability and Accountability Act (HIPAA) or California law.

B. “Illicit Code” means: (1) Any code UC would not reasonably expect to be present or operating; (2) Hidden software or functionality with adverse or undesired actions or consequences; (3) Code that replicates or transmits Institutional Information or activates operating systems or other similar services without the express knowledge and approval of UC; (4) Code that alters, damages, or erases any Institutional Information or software without the express knowledge and approval of UC; or (5) Code or apparatus that functions in any way as a: key lock, node lock, time-out, “back door,” “trap door,” “booby trap,” “dead drop device,” “data scrambling device,” or other function, regardless of how it is implemented, which is intended to alter or restrict the use of or access to any Institutional Information and/or IT Resources.

C. “Institutional Information” means: Any information or data created, received, and/or collected by UC or on its behalf, including but not limited to: application logs, metadata, and data derived from such data.

D. “IT Resource” means: IT infrastructure, cloud services, software, and/or hardware with computing and/or networking capability that is Supplier owned/managed or UC-owned, or a personally owned device that stores Institutional Information, is connected to UC systems, is connected to UC networks, or is used for UC business. IT Resources include, but are not limited to: personal and mobile computing systems and devices,
mobile phones, printers, network devices, industrial control systems (including but not limited to: SCADA, PLCs, DPC, Operational Technology, etc.), access control systems, digital video monitoring systems, data storage systems, data processing systems, backup systems, electronic and physical media, biometric and access tokens, Internet of Things (IoT), or any other device that connects to any UC network.

E. “Major Change” means: The implementation of a change that could have an effect on the security of an IT Resource or Institutional Information. The scope includes changes to architectures, processes, tools, metrics, and documentation, as well as changes to IT services and other configuration items. These include changes related to:

1. Technology upgrades or migrations.
2. Responses to Security Incidents.
3. Modifications of scope (data elements, features, location of Institutional Information, etc.).
4. Regulatory guidance.
5. Law and legal regulations.
6. Responses to risk assessments.
7. Addressing vulnerabilities.
8. Material updates or shifts in technologies used by Supplier.

F. “Security Incident” means: (1) A material compromise of the confidentiality, integrity, or availability of Institutional Information; (2) A single event or a series of unwanted or unexpected events that has a significant probability of compromising UC business operations or threatening Institutional Information and/or IT Resources; (3) Any event involving a cyber intrusion; or (4) A material failure of Supplier’s administrative, technical, or physical controls that resulted or could have resulted in an adverse impact to the confidentiality, integrity, or availability of Institutional Information or IT Resources.

ARTICLE 3. ACCESS TO INSTITUTIONAL INFORMATION AND IT RESOURCES

A. Supplier must limit its access to, use of, and disclosure of Institutional Information and IT Resources to the least invasive degree necessary required to provide the Goods and/or Services.

1. Supplier may not access or use Institutional Information and IT Resources for any purpose except to provide the Goods and/or Services.
2. For the avoidance of doubt, Supplier may not access, use, or disclose Institutional Information and IT Resources outside the scope of the Agreement for purposes of, including but not limited to: marketing, advertising, research, sale, or licensing unless expressly approved in writing by UC.

B. In the event that Goods and/or Services include the review of a specific Security Incident or a threat to or anomaly in Institutional Information or IT Resources, Supplier must limit inspection to the least invasive degree necessary required to perform the investigation.
ARTICLE 4. SUPPLIER’S INFORMATION SECURITY PLAN AND RESPONSIBILITIES

A. Supplier acknowledges that UC must comply with information security standards as required by law, regulation, and regulatory guidance, as well as by UC’s internal security program that protects Institutional Information and IT Resources.

B. Supplier must establish, maintain, comply with, and responsibly execute its information security plan.

C. Supplier’s initial information security plan is attached as Exhibit 2 and incorporated by reference.

D. Updates to Exhibit 2 will occur as follows:
   1. On an annual basis, Supplier will review its information security plan, update it as needed, and submit it upon written request by UC.
   2. In the event of a Major Change, Supplier will review its information security plan, update it as needed, and submit it to UC as detailed herein.

E. If Supplier makes any material modifications to its information security plan that will affect the security of Institutional Information and IT Resources, Supplier must notify UC within seventy-two (72) calendar hours and identify the changes.

F. Supplier’s Information Security Plan must:
   1. Ensure the security (including but not limited to: confidentiality, integrity, and availability) of Institutional Information and IT Resources through the use and maintenance of appropriate administrative, technical, and physical controls;
   2. Protect against any reasonably anticipated threats or hazards to Institutional Information and IT Resources;
   3. Address the risks associated with Supplier having access to Institutional Information and IT Resources;
   4. Comply with applicable regulations and/or external obligations listed in Exhibit 1;
   5. Comply with all applicable legal and regulatory requirements for data protection, security, and privacy;
   6. Clearly document the cybersecurity responsibilities of each party;
   7. Follow UC records retention requirements outlined in the Statement of Work (SOW) or in UC’s Terms and Conditions;
   8. Prevent the sharing of passwords or authentication secrets that provide access to Institutional Information and/or IT Resources;
   9. Prevent the use of passphrases (passwords) or other authentication secrets that are common across customers or multiple unrelated UC sites or units;
   10. Prevent unauthorized access to Institutional Information and IT Resources;
   11. Prevent unauthorized changes to IT Resources;
   12. Prevent the reduction, removal, or turning off of any security control without express written approval from UC;
13. Prevent the creation of new Supplier accounts to access Institutional Information and IT Resources without express written approval from UC;  
14. Prevent the storing, harvesting, or passing through of UC credentials (username, password, authentication secret, or other factor); and  
15. Prevent the use or copying of Institutional Information for any purpose not authorized under the Agreement or any associated Statement of Work (SOW).

ARTICLE 5. REQUESTS FROM UC AND EVIDENCE OF COMPLIANCE
A. Supplier must provide UC with evidence that demonstrates to UC’s reasonable satisfaction Supplier’s adherence to its information security plan (including but not limited to: third-party report, attestation signed by an authorized individual, attestation of compliance by a qualified assessor, or a mutually agreed upon equivalent) upon execution of the Agreement, upon reasonable request (including but not limited to: annually, after Major Changes, and/or as a result of a Security Incident), or as required by any applicable regulatory or governmental authority.  
B. Supplier must respond to UC’s reasonable questions related to cybersecurity controls, Security Incidents, or Major Changes, newly published vulnerabilities, and/or risk assessments within ten (10) business days.  
C. UC may request and perform a security audit using a qualified third party or a mutually agreed upon alternative annually or as a result of a Breach.

ARTICLE 6. NOTIFICATION OF MAJOR CHANGES AND VULNERABILITY DISCLOSURES
A. Within twenty (20) business days, Supplier must notify UC regarding changes in Supplier’s security posture or IT infrastructure. Such notices must occur:  
  1. When Major Changes happen.  
  2. When Supplier becomes aware of a vulnerability that warrants a CVE² rating of “High” or “Critical,” based on the latest CVE version, for which a patch is not yet available or for which Supplier will delay application of an available patch.  
B. Supplier must use commercially acceptable efforts to remediate, within twenty (20) business days, any vulnerability rated as CVE High or Critical.  
C. In response to Major Changes, Supplier must update its information security plan no later than fifteen (15) days into the next calendar quarter and must provide updated evidence of compliance with the information security plan.

² Common Vulnerabilities and Exposures (CVE) is a dictionary-type list of standardized names for vulnerabilities and other information related to security exposures maintained by The MITRE Corporation. CVE aims to standardize the names for all publicly known vulnerabilities and security exposures. The goal of CVE is to make it easier to share data across separate vulnerability databases and security tools. The CVE list can be found at: cve.mitre.org
ARTICLE 7. RETURN AND DISPOSAL OF INSTITUTIONAL INFORMATION

A. Within thirty (30) calendar days of the termination, cancellation, expiration, or other conclusion of the Agreement, Supplier must return all Institutional Information to UC and then dispose of the Institutional Information in possession of Supplier as detailed herein. This provision also applies to all Institutional Information that is in the possession of sub-suppliers or agents of Supplier.

B. Such disposal will be accomplished using the methods described in UC’s Institutional Information Disposal Standard (https://security.ucop.edu/policies/institutional-information-disposal.html) or an alternative approved by UC.

C. Supplier will certify in writing to UC that such return and/or disposal has been completed.

D. If Supplier believes that return and/or disposal of Institutional Information is technically impossible or impractical, Supplier must provide UC with a written statement explaining the reason for this conclusion. If UC determines that return and/or disposal is technically impossible or impractical, Supplier will continue to protect the Institutional Information in accordance with the terms of this Appendix for as long as the Institutional Information is in Supplier’s possession.

ARTICLE 8. NOTIFICATION OF CORRESPONDENCE CONCERNING INSTITUTIONAL INFORMATION

A. Supplier agrees to notify UC promptly, both orally and in writing, but in no event more than seventy-two (72) calendar hours after Supplier receives correspondence or a complaint that relates to a regulation, contractual obligation, Breach, or material risk concerning Institutional Information. For purposes of this Article 8.A, a correspondence or complaint may include, but is not limited to, any communication that originates from law enforcement, regulatory or governmental agencies, government investigators, corporations, or an individual, but excludes normal customer service correspondence or inquiries.

ARTICLE 9. COORDINATING, REPORTING, AND RESPONDING TO BREACHES AND SECURITY INCIDENTS

A. Reporting of Breach or Security Incident: If Supplier reasonably suspects or confirms a Breach and/or a Security Incident impacting Institutional Information and/or IT Resources, Supplier must promptly notify UC both orally and in writing using the contacts in the Agreement. Supplier must provide such notifications no later than (1) seventy-two (72) calendar hours after the initial suspicion of a Security Incident and/or Breach and (2) seventy-two (72) calendar hours after the initial confirmation of a Security Incident and/or Breach, if Supplier is able to make such a confirmation. Supplier’s notification must identify:

1. Contacts for both technical and management coordination;
2. Escalation and identifying information, such as ticket numbers, system identifiers, etc.;
3. The nature of the Breach and/or Security Incident;
4. The Institutional Information and/or IT Resources affected;
5. What Supplier has done or will do to mitigate any deleterious effect; and
6. What corrective action Supplier has taken or will take to prevent future Security Incidents.

B. Supplier will provide other information as reasonably requested by UC.

C. In the event of a suspected Breach and/or Security Incident, Supplier will keep UC informed regularly of the progress of its investigation until the incident is resolved.

D. **Coordination of Breach Response or Security Incident Activities:** Supplier will fully cooperate with UC’s investigation of any Breach and/or Security Incident involving Supplier and/or Goods and/or Services. Supplier’s full cooperation will include, but not be limited to, Supplier:
   1. Promptly preserving any potential forensic evidence relating to the Breach and/or Security Incident;
   2. Remedying the Breach and/or Security Incident as quickly as circumstances permit;
   3. Promptly, but no more than seventy two (72) calendar hours after the discovery of Breach and/or Security Incident, designating a contact person to whom UC will direct inquiries and who will communicate Supplier responses to UC inquiries;
   4. As rapidly as circumstances permit, assigning/using appropriate resources to remedy, investigate, and document the Breach and/or Security Incident, to restore UC service(s) as directed by UC, and undertake appropriate response activities;
   5. Providing status reports to UC regarding Breach and Security Incident response activities, either on a daily basis or a frequency approved by UC;
   6. Coordinating all media, law enforcement, or other Breach and/or Security Incident notifications with UC in advance of such notification(s), unless expressly prohibited by law;
   7. Ensuring that knowledgeable Supplier employees are available on short notice, if needed, to participate in UC and Supplier initiated meetings and/or conference calls regarding the Breach and/or Security Incident; and
   8. Ensuring that knowledgeable Supplier employees and agents participate in after-action analysis, including root cause analysis and preventive action planning.

E. **Breaches and Security Incidents – Corrective And Preventive Action:** As a result of a Breach and/or Security Incident impacting Institutional Information and/or IT Resources, and upon UC’s request, Supplier must prepare a report detailing corrective and preventive actions. The report must include:
1. A mutually agreed upon timeline for the corrective and preventive actions based on the nature of the Breach and/or Security Incident;  
2. Identification and description of the root causes; and  
3. Precise steps Supplier will take to address the failures in the underlying administrative, technical, and/or physical controls to mitigate damages and future cyber risk.

F. **Costs:** Supplier must reimburse UC for reasonable costs related to responding to Breaches impacting Institutional Information and IT Resources caused by Supplier. This includes all costs associated with notice and/or remediation of the Breach.

G. **Grounds for Termination:** Any Breach may be grounds for termination of the Agreement by UC. Agreement obligations to secure, dispose, and report continue through the resolution of the Breach and/or Security Incident.

### ARTICLE 10. ILLICIT CODE WARRANTY

A. Supplier represents and warrants that the Goods and/or Services do not contain Illicit Code.

B. To the extent that any Goods and/or Services have Illicit Code written into them, Supplier will be in breach of this Agreement, and no cure period will apply.

C. Supplier agrees, in order to protect UC from damages that may be intentionally or unintentionally caused by the introduction of Illicit Code, to promptly isolate or otherwise secure and then return Institutional Information and/or IT Resources.

D. Supplier acknowledges that it does not have any right to electronically hold Institutional Information or assert any claim against UC by withholding the Goods and/or Services using Illicit Code.

E. Should Supplier learn of the presence of Illicit Code, Supplier will promptly provide UC with written notice explaining the scope and associated risk.

F. Supplier represents and warrants that it will take commercially reasonable steps to promptly remove Illicit Code.

G. Supplier represents and warrants that even if Illicit Code is unintentionally installed via any method, Supplier will never utilize the Illicit Code.

H. This provision does not relate to malware or viruses that attack the running IT Resource. These are covered under ARTICLE 9 - COORDINATING, REPORTING, AND RESPONDING TO BREACHES AND SECURITY INCIDENTS.

### ARTICLE 11. BACKGROUND CHECKS

A. Before Supplier’s employee, sub-supplier, or agent may access Institutional Information and/or IT Resources classified at Protection Level 3 or Protection Level 4[^3], Supplier must conduct a thorough and pertinent background check. Supplier must evaluate the results prior to granting access in order to assure that there is no indication

[^3]: See Exhibit 1.
that the employee, sub-supplier, or agent presents a risk to Institutional Information and IT Resources.

B. Supplier must retain each employee’s, sub-supplier’s, or agent’s background check documentation for a period of three (3) years following the termination of the Agreement.
Exhibit 1 – Institutional Information

1. **Protection Level Classification**:  
   - ☐ Protection Level 1  
   - ☐ Protection Level 2  
   - ☐ Protection Level 3  
   - ☐ Protection Level 4  

   **Explanation:** [Optional, add detail if needed, may be covered in SOW]  
The Protection Level determines the applicable cyber security insurance requirement in the Terms and Conditions.

2. **Institutional Information data element descriptors:**  
   Select all data types that apply:  
   A. ☐ Animal Research Data.  
   B. ☐ Controlled Technical Information (CTI).  
   C. ☐ Controlled Unclassified Information (CUI) – 800-171/NARA.  
   D. ☐ Defense Department: Covered Defense Information (CDI).  
   E. ☐ Federal Acquisition Regulations (FARS/DFAR) other than CUI.  
   F. ☐ GDPR personal data.  
   G. ☐ GDPR special data.  
   H. ☐ Health data – other identifiable medical data not covered by HIPAA. (Including but not limited to: occupational health, special accommodation, or services qualification, etc.)  
   I. ☐ Health Records subject to HIPAA Privacy or Security Rule (PHI).  
   J. ☐ Human Subject Research Data.  
      1. ☐ Identified.  
      2. ☐ Anonymized.  
   K. ☐ Intellectual property (IP), such as patents, copyright, or trade secrets.  
   L. ☐ ITAR/EAR-controlled data.  
   M. ☐ Payment card data (PCI, PCI DSS).  
   N. ☐ Personally identifiable information – PII.  
   O. ☐ Student data, whether or not subject to FERPA.  
   P. ☐ Other: ____________________________

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Q. □ Other: ___________________________________________________________
R. □ Other: __________________________________________________________
S. □ Other: __________________________________________________________

3. **Institutional Information Regulation or Contract Requirements:**
Select all regulations or external obligations that apply to inform UC and the Supplier of obligations related to this Appendix:

**Privacy (∗ indicates data security requirements are also present)**
A. □ California Confidentiality of Medical Information Act (CMIA) ∗.
B. □ California Consumer Privacy Act (CCPA).
C. □ California Information Practices Act (IPA).
D. □ European Union General Data Protection Regulation (GDPR) ∗.
E. □ Family Educational Rights and Privacy Act (FERPA) ∗.
G. □ Genetic Information Nondiscrimination Act (GINA).
H. □ Gramm-Leach-Bliley Act (GLBA) (Student Financial Aid) ∗.
I. □ Health Insurance Portability and Accountability Act/Health Information Technology for Economic and Clinical Health Act (HIPAA/HITECH) ∗.
J. □ Substance Abuse and Mental Health Services Administration SAMHSA (CFR 42 Part 2).
K. □ The Fair and Accurate Credit Transaction Act (FACTA).
L. □ The Fair Credit Reporting Act (FCRA).

**Data Security**
M. □ Chemical Facility Anti-Terrorism Standards (CFATS).
N. □ Defense Federal Acquisition Regulations (DFARS).
O. □ Export Administration Regulations (EAR).
P. □ Federal Acquisition Regulations (FARS).
R. □ International Traffic in Arms Regulations (ITAR).
S. □ Payment card data (PCI, PCI DSS).
T. □ Toxic Substances Control Act (TSCA).
U. □ Other: ___________________________________________________________
V. □ Other: ___________________________________________________________
W. □ Other: ___________________________________________________________
X. □ Other: ___________________________________________________________
Exhibit 2
Supplier’s Initial Information Security Plan

[Supplier to provide and update per the Appendix DS requirements.]
Best Value

Evaluation

The University will review each Proposal to determine if all the RFP requirements have been met. Proposals that meet all RFP requirements will be considered responsive. Proposals that do not meet all RFP requirements will be considered non-responsive and receive no further consideration.

Responsive Proposals will be evaluated using a Best Value method. Best Value means the most advantageous balance of price/cost, quality, service performance and other elements, as defined by the University. University evaluators will determine the Proposals’ value by scoring the Proposals based on a uniform set of weighted evaluation criteria. Each Proposal’s Best Value score will be the average of all evaluators’ total scores awarded for the Proposal.

The University will then determine each Proposal’s Price Score by the following method. The University will have determined the Maximum Possible Price Score prior to the Proposal due date. The Proposal with the Maximum Possible Price Score will be considered the lowest responsive Proposal.

All other responsive Proposals will receive a proportion of the Maximum Possible Price Score equal to the quotient of the lowest Proposal’s cost divided by that Proposal’s cost.

Each Proposal’s Price Score will be added to that Proposal’s Quality Point Score to get that Proposal’s Total Score. The Proposal with the highest Total Score will be considered the “Best Value”. The Proposal with the next highest Total Score will be considered the second Best Value, and so on.

The University will then determine if the Bidder submitting the Best Value Proposal is responsible. The apparent RFP winner will be the responsible Bidder submitting the Best Value Proposal.

Example:
Sample Price/Cost Normalization

| Bidder #1: Low bidder at $50,000 receives maximum points | 500 |
| Bidder #2: Next lowest bidder at $55,000 receives 90.9% of max points | 455 |
| ($50,000 divided by $55,000 = 90.9% X 500 = 455) |
| Bidder #3: Highest bidder at $60,000 receives 83.3% of max points | 417 |
| ($50,000 divided by $60,000 = 83.3% X 500 = 417) |

Above points are added to the other criteria point totals to come up with the total points. Bidder with the highest overall total points is considered the lowest responsible bidder with best value in terms of price/cost, quality, service and performance that meet the University’s requirements.

Award

The University may award the contract without further discussion or may enter into negotiations with the apparent RFP winner. Should the apparent RFP winner fail to accept the award, the University may determine that that Bidder has abandoned its Proposal. The University may then enter into negotiations with the responsible Bidder submitting the second Best Value Proposal. If that Bidder fails to accept the award, the University may determine that that Bidder has abandoned its Proposal and enter into
negotiations with the responsible Bidder submitting the third Best Value Proposal and so on to each successive responsible Best Value Bidder until an award is made and accepted.

**Right to make no Award**
The University reserves the right to reject all Proposals and to make no award. Unless stated otherwise in this RFP, the University reserves the right to make multiple awards or to award items separately or in the aggregate as the interests of University may appear.

**Contract Form**
Any contract awarded pursuant to this RFP will be in writing and incorporate the RFP requirements and specifications, as well the contents of the Bidder’s Proposal as accepted by the University.

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