
Request for Proposal

Professional and Outpatient Clinic Facility
Coding Review/Audit



Request for Proposal # 05-08-2020-DJ

Date Issued: 05/08/2020

Due Date: 05/29/2020

Submitted by the
University of California Davis Health

This RFP is also available at: <https://health.ucdavis.edu/supplychain/>

All questions regarding this RFP should be directed to:

Dave Johnson
UCDH Procurement & Strategic Sourcing Department
Email: ucdjohnson@ucdavis.edu
Phone: (916) 734-2352

Questions should not be directed to any other University departments or staff. Material or substantive information provided to any bidder, as a result of questions received, will be provided to all bidders via an addendum to this RFP.

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DISCLOSURES

Deviations from specifications: Any deviation from the specifications shall be identified and fully described. The right is reserved to accept or reject quotations on each item separately, or as a whole and to waive any irregularities in the quotation; irregularities may, however, render the quotation 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 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 submitter of data so classified of any request to inspect such data so that the submitter 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 I – RFP INSTRUCTIONS AND TIMELINE

Submission of Written Questions or Request for Clarification

Inquiries regarding this RFP must be received by **3:00 PM PDT on 05/18/2020**. Individual questions will not be answered directly to submitter. Send questions to the UCDH contact person listed below. Questions may only be sent via email.

Dave Johnson
UCDH Procurement & Strategic Sourcing Department
Email: ucdjohnson@ucdavis.edu
Phone: (916) 734-2352

Responses to Written Questions

The identity of the submitter of any question will not be disclosed. Responses to all submitted questions will receive replies via posted addendum to the RFP web site by **05/22/2020** located at <https://health.ucdavis.edu/supplychain/opensolicitations.html>. Inquiries and questions regarding this RFP will not be entertained after the **05/22/2020** date.

Proposal Submittal Instructions

Each bidder is required to submit final RFP proposals by email to Dave Johnson (ucdjohnson@ucdavis.edu) Please include "UC Davis Coding RFP 04-03-2020-DJ" in the subject line. Proposals may only be sent via email.

All proposals submitted must be received no later than **3:00 PM PDT on 05/29/2020**. UCDH Procurement Department will not accept proposals received after the due date and time.

RFP Schedule of Events

Event	Date
Release of Request for Proposals	05/08/2020
Deadline for Submission of Written Questions or Request for Clarification	05/18/2020
Responses to Written Questions	05/22/2020
Deadline for Submissions of Proposals	05/29/2020
Completion of Proposal Evaluation**	06/12/2020
Oral Presentations, if necessary**	
Notification of Award of Contract**	06/15/2020

**These are approximate dates and subject to change.

Addendum or Supplement to Request for Proposal

UCDH may modify the RFP prior to the RFP due date, by issuance of amendments sent by email, facsimile or overnight courier to known prospective bidders. Amendments will be posted on the UCDH Supply Chain Management web site. Amendments will be clearly marked as such. Each amendment will be numbered consecutively and will become part of this RFP. Any Contractor who fails to receive such amendments shall not be relieved of any obligation under this quotation as submitted.

SPECIFICATIONS OR RFP REQUIREMENTS MAY BE REVISED ONLY THROUGH WRITTEN NOTICE OF ADDENDUM ISSUED BY DAVE JOHNSON, UNIVERSITY OF CALIFORNIA, DAVIS, HEALTH, PURCHASING DEPARTMENT. CHANGES BY ANY OTHER INDIVIDUAL ARE NOT AUTHORIZED.

Basis of Award

An evaluation committee consisting of representatives from UCDH will evaluate the responses. Responses that do not meet the qualification criteria and scope of services will not be considered for selection.

Responses will be evaluated on the respondent's ability to provide the requested services, availability of resources, expertise, experience, and other factors deemed applicable to UCDH. UCDH has established a weight factor that will be applied to each award criteria and will be used to determine the overall cost per quality points.

UCDH reserves the right to award this agreement based on the best overall value of services and total costs. Therefore, the award may not be made to the lowest bidder.

The evaluation committee reserves the right to contact, interview, and evaluate the respondent's references, contact and interview current clients, solicit information from any available source concerning any aspect of this proposal or response, and seek and review any other information deemed pertinent to the evaluation process.

UCDH reserves the right to reject or accept any or all proposals, to make more than one selection, or not select. Any resulting agreement will incorporate the terms, conditions, and requirements set forth in this RFP.

SECTION II – GENERAL INFORMATION

University of California at Davis Health Profile

UC Davis Health (UCDH) provides an organizational framework that enables UC Davis to fulfill its teaching, research, patient-care and public service missions. UCDH delivers primary, secondary and tertiary care throughout inland Northern California; from both a medical and a financial standpoint, UCDH has a wide-ranging impact on the Sacramento area and the region. UCDH consists of the UC Davis School of Medicine, the Betty Irene Moore School of Nursing, the UC Davis Medical Center and the UC Davis Medical Group. The organization has over 11,300 faculty and staff, including over 2,400 physicians and 1,800 registered nurses.

UC Davis Medical Center (UCDMC) is located on 140 acres in central Sacramento, just three miles from the State Capitol, and was established in 1973 by the Regents of UCDH of California. It is inland Northern California's only academic medical center and Level I trauma center for both adult and pediatric emergencies. It includes a 625-bed, fully accredited hospital that serves as the main clinical educational site for the UCDSOM and is the main tertiary care referral center for a 33-county area of more than six million residents. Each year, UCDMC admits more than 30,000 patients, while its emergency room and 100-plus specialty and primary care clinics log more than 900,000 outpatient visits.

The **UC Davis Medical Group (UCDMG)** is the clinical/medical staff component of the UC Davis Health. The Medical Group began as a primary care extension of the Medical Center's hospital-based clinics in 1994. It now includes all medical staff, consisting of approximately 114 primary care physicians and more than 500 specialists serving patients in 13 communities throughout northern California. As the only provider of many specialty and sub-specialty services in inland northern California, UCDMG serves a diverse patient population. Just over one half of our outpatient population is classified as Caucasian, the balance being largely Hispanic, African American, Southeast Asian and Russian. On-site interpreters provide interpreting services in approximately 20 languages.

SECTION III – REQUEST FOR PROPOSAL

University of California, Davis Health (UCDH) is requesting information from service organizations interested in providing professional and outpatient facility coding and documentation audits for 50+ outpatient clinics and ancillary services. Audits to Include CPT surgical and level of service, HCPCS and modifiers, ICD 10, adherence to LCD and NCD etc. The purpose of this RFP is to solicit proposals from qualified consultancies with the resources, experience, and capabilities for a large-scale coding audit and follow up education.

All work performed by the successful bidder shall be directed, reviewed and approved by Health Information Management, Finance Services, and senior physician leadership.

Background

UC Davis Health (UCDH) manages 50+ outpatient clinics located on the Sacramento Campus and across the greater Sacramento Region. The clinic volume is over 900,000 outpatient encounters and \$894 million in professional and technical revenues annually. UCDH is seeking proposals for a consultancy to partner with UCDH on the execution of an approved plan to perform professional and outpatient facility coding and documentation audits and perform follow up on physician professional coding, outpatient facility coding, and documentation education to coders and/or providers.

SECTION IV – SCOPE OF WORK

General Approach

UCDH has Patient Record Abstractors (PRA) who are responsible for coding/abstracting professional charges and outpatient facility charges. We are looking for an experienced coding audit firm to work with UCDH to determine a valid audit format and sampling for all inpatient professional Evaluation and Management services, surgical professional subspecialties, Hospital Based Clinics and Community Based provider clinics. Also, to include ongoing annual coding audits and provider education.

Current PRA coding audits consist of a randomly selected sample of ten encounters per coder that must meet or exceed 90% in all categories (Professional; Facility; Billing Modifiers; Drugs and Supply; ICD 10 Diagnosis coding) in order to pass. The audit review is upheld by CMS documentation guidelines (1995-1997); ICD 10 guidelines and other credible resources to determine accuracy and quality. The assessor will communicate a preliminary result with coder in which all findings are reviewed. During the preliminary period, educational opportunities, corrections, retractions are discussed and finalized. If any changes occur, a revised preliminary is sent to the coder. Upon agreement and completion of corrections; final report is sent out to coder and leadership. The coders are placed in the appropriate schedule cycle. The audit schedule is a bi-annual cycle for passing assessments. If the coder fails the assessment, the coder is placed on a biweekly cycle until the coder receives a passing score. If coder disagrees/disputes the auditor's assessment; the coder has an option to appeal. The coding auditor is audited by the Compliance Office via a sampling of the PRA audits performed on a monthly basis.

Objectives

1. Enhancing our provider satisfaction and experience with coding.
2. Identifying educational opportunities for the PRAs.
3. Confirming the quality of the coding/abstracting.
4. Ongoing annual audits and continuing education for all departments/specialties.

1. Enhancing our provider satisfaction and experience with coding

- Audit of professional services to ensure we have achieved an accuracy rating of 90%.
- Review of provider documentation to ensure providers documentation is appropriate/complete.
- Provide education to the provider on documentation opportunities.
- Provide assurance all services are supported, and all appropriate revenue is captured.

2. Confirming the quality of the coding/abstracting.

- Achieve high-level 90% or better on coder abstracting/coding.
- Provide education to coders on opportunities for coding improvement.
- Develop analytics to monitor and reporting of key performance indicators such as coding/charge lag, EPIC WQ lag, etc.
- Provide an objective measurement and validity to our current coding/audit process.

3. Ongoing annual audits and continuing education for all departments/specialties.

Provide a plan to include education of upcoming CMS, specialty and AMA annually
Provide a plan for the scope of ongoing annual coding audits

Deliverables

1. Review, validate and report assessment findings by coder, specialty, department
2. Provide citation of the coding/documentation guideline resources (e.g. CMS, Federal Register CPT, ICD-10, etc.) for educational feedback and review on any high-risk coding errors identified.
3. Specify audit methodology and confirm size audit/sampling
4. Project plan
5. Education plan for staff based on audit results
6. Training plan for departments/providers regarding annual CMS, CPT and ICD-10 updates
7. Plan for ongoing annual coding/documentation audits.

SECTION V - PROPOSAL FORMAT

Introduction

Each bidder's response must contain a Qualification Statement, Technical Proposal, References Cost Proposal and Non-Disclosure Statement as described below. Please provide all requested information in a brief but complete response, **responding in order and identifying each response by the corresponding question number.**

Failure to prepare proposals in the following required format may result in elimination from the evaluation process.

Proposal Format and Content

Proposals are to be submitted in four separate sections as follows:

- Part A - Qualification Statement
- Part B - Technical Proposal
- Part C - References
- Part D - Cost Proposal
- Part E – Non-Disclosure Statement

Part A – Qualification Statement (Tier 1)

The Qualification Statement must contain a description of the Bidder's corporate qualifications, area of expertise, and prior experience with providing services similar to those described in this RFP, including but limited to the following: Provide a detailed narrative to the following inquiries, in the order they are asked.

1. Ownership and Management
 - a. Provide the Bidder's name, address, telephone and facsimile numbers, a contact name, a brief description of the company's history, including name and address of the parent company, and the size of the company.
 - b. Provide a corporate profile, service portfolio, and description of the Bidder's service philosophy and approach. What separates and distinguishes this Bidder from other applicants?
 - c. Provide a report of the Bidder's financial status, including the most recently audited financial statements and profit and loss statements or equivalent evidence of financial stability and include auditor's opinion.
 - d. Identify by name and University position any University officer, faculty member or other employee who holds a position of director, officer, partner, trustee, manager or employee in the Bidder's company, as well as the name of any near relatives who are employed by the University.
 - e. Attach an organizational chart. Indicate any areas where independent contractors are used.
 - f. List audit engagements successfully completed which demonstrate experience and expertise in an organization comparable to UCDH.

- g. Provide profiles of staff whom would be assigned to this project.
- h. Willing to sign required UC Davis Health Business Associates Agreement and Data Security Agreement as written (see attached).
- i. Willing to sign any required NDA agreements set forth by Epic or call management software vendor.

Part B – Technical Proposal

Provide a narrative description for all sections specified. No response to any of the following may result in disqualification of the bidder.

1. Functional Capabilities

- a. Provide information on the number of Professional and Outpatient charging/coding engagements that you have worked on.
- b. Provide information on the number of California clients you have assisted with the completion of Professional and Outpatient charging/coding engagements.
- c. Provide your anticipated staffing for our Professional and Outpatient charging/coding engagement.
- d. Describe the experience and coding certifications for the anticipated staffing to be provided.
- e. Provide a potential work plan with anticipated steps and timelines and required resources from UCDH.
- f. Describe any training that would be part of this engagement.

2. Work Statement

- a. Provide a narrative description of the process you would use to accomplish the tasks identified under Section Scope of Work. Demonstrate your firm's ability to be innovative, creative and original in accomplishing the tasks, as well as your firm's knowledge of and approach to the process. You are encouraged to provide suggestions and recommendations that you believe will enhance the accomplishment of the established objectives.

Part C – References

Each Bidder must provide a reference list of at least three (3) clients for whom similar services have been performed within the past two (2) years. The references must be from two current and one prior client. The references will be used as a basis for inquiry concerning the bidder's quality of service. The scores received in the reference check process will be factored into the quality percentage points earned (See Section V, Basis of Award). The reference criteria to be used in the reference checks will be provided to bidders, upon written request, after the due date and time for RFP responses.

Furnishing incorrect and/or incomplete reference information may lead to bidder's elimination from consideration for award. The decision to eliminate bidder from consideration for award for poor reference checks or for incorrect and/or incomplete reference information shall be at the sole discretion of UCDH and shall not be subject to appeal.

Part D – Cost Proposal

Fee Structure/Payment Terms

Please provide an itemized quotation to include your fee structure. Please include all expenses with your quote.

Part E – Non-Disclosure Statement

All bidders must sign Attachment C – University of California, Davis Bid/Proposal Evaluation Non-Disclosure Statement as part of the submittal.

SECTION VI – TERMS AND CONDITIONS

Proposal Conditions

Notwithstanding any other provision of the RFP, bidders are hereby advised that this RFP is solicitation of proposals only and is not to be construed as an offer to enter into any contract or agreement. Thus, UCDH reserves the unqualified right to reject any or all proposals for any reason.

UCDH shall have the unconditional and unqualified right to withdraw, cancel, or amend this RFP at any time. Bidders shall bear all costs associated with the preparation and furnishing of responses to this RFP. UCDH, in its sole discretion, reserves the right to determine whether any bidder meets the minimum qualification standards, to determine whether a proposal is responsive, and to select a proposal which best serves its programmatic objectives. UCDH reserves the right to negotiate a binding contract with the selected bidder.

All proposals shall be agency for a period of 180 days following the proposal submission due date.

Responses to this RFP should be made according to the instructions contained herein. Failure to adhere to RFP instructions may be cause for rejection of the proposal. A proposal which contains conditions or limitations set up by the bidder may be deemed irregular and subsequently rejected by UCDH.

False, incomplete, or unresponsive statements in the proposal response may be cause for its rejection. The evaluation and determination of the fulfillment of the RFP requirements will be UCDH's responsibility and its judgment shall be final.

UCDH reserves the right to interpret or change any provision of this RFP at any time prior to the proposal submission date. Such interpretation or change shall be in the form of a written addendum to this RFP. Such addendum will become part of this RFP and any resultant contract. Such addendum shall be made available to each agency that has received an RFP. Should such addendum require additional information not previously requested, a bidder's failure to address the requirements of such addendum in the proposal response may result in the proposal not being considered.

UCDH has, at its sole discretion, the unconditional and unqualified right to determine that a time extension is required for submission of proposals, in which case, a written RFP addendum issued by UCDH shall indicate the new submission date for proposals.

Prior to the final submission date, any bidder may retrieve its proposal to make additions or alterations. Such retrieval, however, shall not extend the final submission date.

Bidders wishing to submit proposals in response to this request do so entirely at their own expense, and submission of a proposal indicates acceptance of the conditions contained in the RFP unless clearly and specifically noted otherwise.

It is understood and agreed by UCDH and vendor that in the performance of this agreement, vendor shall be, and act as an independent contractor and not as an agent or employee of UCDH. It is expressly understood and agreed that this agreement is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture or association between UCDH and vendor. Vendor is not an employee of UCDH and is not entitled to the benefits provided by UCDH to its employees, including but not limited to, group insurance, pension plans, worker's compensation or unemployment insurance.

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

PUBLIC INFORMATION AND TRADE SECRETS - The California Public Records Act limits the ability of UCDH to withhold pre-qualification 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 bidder does not want disclosed to the public or used by UCDH for any purpose other than evaluation of the bidder's eligibility, each sheet of such information must be marked with the designation "Confidential." UCDH will notify the bidder of data so classified upon receipt of any request to inspect such data so that the bidder will have an opportunity to establish that such information is exempt from inspection in any proceeding to compel inspection.

All materials submitted in response to the RFP will become the property of the Health System. All samples of work submitted as a part of this proposal will be returned at the request of the bidder. Materials may be returned, with the exception noted above for sample material, only at the Health System's option and at the competitor's expense. Two copies of the proposal shall be retained for the Health System files.

Contract Terms and Conditions

All terms and conditions of University of California Terms and Conditions of Purchase, Appendix A, (Attachment I) shall apply to any contract awarded from this solicitation for proposals. The selected bidder will be required to comply with all the terms and conditions as specified therein. A bidder's inability to comply with, or exceptions and modifications to, the terms and conditions incorporated in the said terms and conditions must be stated in its proposal and may disqualify the bidder from further consideration.

To facilitate timely award of this contract, each bidder must certify its ability to comply with the insurance requirements as outlined in Attachment I. The University will require the selected bidder to furnish a certificate of insurance, naming The Regents of the University of California as an additional insured. Such certificate of insurance 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 said policy. Failure to comply with this requirement may result in cancellation of any contract resulting from this request for proposal.

The University reserves the right to adjust the minimum insurance limits specified in Attachment I, based on the overall risk assessment of the project. Each bidder **must** provide evidence of its current coverage with its proposal. The final contract with the selected bidder will be prepared by the University of California, Davis, Health System's Business Contracts and will incorporate this Request for Proposal, the submitted proposal, and Attachment I.

Vendor shall be solely responsible for the conduct and control of the work to be performed by vendor under this agreement. Vendor's services for UCDH shall be performed in accordance with currently approved methods and ethical standards applicable to vendor's professional capacity.

Any order resulting from this Request for Proposal shall be subject to the examination and audit by the California State Auditor for a period of three years after final payment under this order. The examination and audit shall be confined to those matters connected with the performance of the contract, including, but not limited to, the cost of administering the contract.

All agreements resulting from this RFP shall be construed and enforced in accordance with the laws of the State of California.

The Bidder shall not maintain or provide racially segregated facilities for employees at any establishment under the Bidder's control. The 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 regarding 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. The 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. The Bidder shall communicate this policy in both English and Spanish to all people as concerned within its company, with outside recruiting services and the minority community at large. The Bidder shall provide the University on request a breakdown of its 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.

Please complete the vendor contact information requested below:

Company Name: _____

Federal Employer Identification #: _____

Contact Person / Title: _____

Email Address: _____

Telephone Number: _____

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

_____ Authorized signature _____ Date

SECTION VI – UC HIPPA/DATA SECURITY APPENDIX ACKNOWLEDGEMENT

In the course of providing Services contemplated by the Agreement, Supplier may gain access to patient health information (PHI) and/or University of California's (UC) Institutional Information and/or IT Resources. In such an event, UC and Supplier desire to appropriately protect Institutional Information. The purpose of the HIPPA and Appendix-Data Security is to specify Supplier's cybersecurity and risk management responsibilities when Supplier has access to PHI and/or Institutional Information and/or IT Resources.

For the purposes of this RFP the vendor will have access to PHI and/or UC data information. By submitting this RFP response, the vendor agrees to comply with the attached policies.



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19.pdf



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Signature

Company Name

Date

ACKNOWLEDGEMENT FORMS MUST BE SIGNED & RETURNED WITH YOUR BID

SECTION VII – PRICING MATRIX

YOUR PROPOSAL MUST INCLUDE A RESPONSE TO EVERY QUESTION AND SECTION THAT REQUESTS INFORMATION.

Failure to provide the information necessary to fully evaluate the bid response may result in disqualification of the bid.



Copy of Coding
Audit RFP Bid Matrix

ATTACHMENT A

UNIVERSITY OF CALIFORNIA TERMS AND CONDITIONS OF PURCHASE

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 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 A 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 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 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 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;
 - 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 and complies with the Trademark Licensing Code of Conduct policy, available at <http://policy.ucop.edu/doc/3000130/TrademarkLicensing>.
- 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.
- D. UC Rights to Institutional Information. Institutional Information shall belong exclusively to UC and unless expressly provided, this Agreement shall not be construed as conferring on Supplier any patent, copyright, trademark, license right or trade secret owned or obtained by UC. Any right for Supplier to use Institutional Information is solely provided on a non-exclusive basis, and only to the extent required for Supplier to provide the Goods or Services under

the Agreement. As used herein, "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.

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 always agrees to comply 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".
 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. 7401-7671g) 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).
 3. Byrd Anti-Lobbying. Supplier certifies that it will not, and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.
 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.
 4. Byrd Anti-Lobbying. Supplier certifies that it will not, and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.

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 apprentice 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 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/fwf-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/fwf-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 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/fwf-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 33 – 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.

1. Access to Books and Records As and to the extent 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.

- C. No Requirement to Refer; Fair Market Value 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 in to 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.

- D. Disclosure of Discounts. UC acknowledges that discounts, rebates, credit, free goods and services, coupons or other things of value which it may receive from Supplier under the Agreement constitute a discount or reduction in price for purposes 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.

- E. Protected Health Information or Medical Information.

☐ 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.

- F. 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.
- G. 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 with 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.
- H. 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 39 – 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.

ATTACHMENT B

INDEPENDENT CONTRACTOR AGREEMENT

This Agreement is made and entered into in Sacramento, California, by and between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California Constitutional Corporation, on behalf of its University of California Davis Health ("University") and _____ ("Independent Contractor").

The parties agree as follows:

1. The Independent Contractor shall perform the following services to the best of their ability:

If such services are not performed to the sole satisfaction of University, University may terminate this Agreement immediately upon written notification to Independent Contractor.
2. The above-described Services shall be provided for the University at the following, time, date, location:
3. The Independent Contractor shall be paid _____, less state and federal taxes including state income tax subject to withholding pursuant to California Revenue and Taxation Code Sections 18661—18677, if applicable. No payment will be made in advance of work performed except as otherwise specified in this Agreement. Final payment will be withheld pending completion of the work. Invoices may be submitted to:

PO Box 168016, Sacramento, CA 95816 and they shall reference the contract order number given for this engagement.

Any reimbursement for travel and per diem shall be in accordance with established University rates and policies (<http://manuals.ucdavis.edu/ppm/contents.htm#300>).
4. Independent Contractor shall provide, at his/her own expense, all equipment, materials, and related services as are necessary to perform as described above.
5. This Agreement may be terminated by either party upon fifteen (15) working days' notice to the other.
6. If this Agreement is terminated at any time during the Agreement period, and Independent Contractor has satisfactorily completed any of the covenants contained in this Agreement in the time or manner specified, the Independent Contractor will be compensated for all completed Services rendered up to and including the last day of service. University reserves the right to determine what shall be deemed completed Services.
7. Both parties agree that in the performance of this Agreement the Independent Contractor will not be an agent or employee of University, and will not be covered by University's Worker's Compensation Insurance or Unemployment Insurance, is not eligible to participate in University's retirement programs, nor is entitled to any other University benefits.

8. Independent Contractor shall defend, indemnify and hold University, its officers, employees and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injuries or damages are caused by or result from the negligent or intentional acts or omissions of Independent Contractor, its officers, agents or employees.

University shall defend, indemnify and hold Independent Contractor, its officers, employees and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injuries or damages are caused by or result from the negligent or intentional acts or omissions of University, its officers, agents or employees.

9. Insurance Requirements. Independent Contractor warrants he/she shall maintain during the term hereof policies of insurance with minimum coverage as follows:

- a. General Liability: Comprehensive or Commercial Form (Minimum Limits)
- | | | |
|----|--|-------------|
| 1) | Each Occurrence | \$1,000,000 |
| 2) | Products, Completed Operations Aggregate | \$2,000,000 |
| 3) | Personal and Advertising Injury | \$1,000,000 |
| 4) | General Aggregate (BI, PD) * | \$2,000,000 |

* (not applicable to comprehensive form)

However, if such insurance is written on a claims-made form following termination of this Agreement, coverage shall survive for a period no less than three years. Coverage shall also provide for a retroactive date of placement coinciding with the effective date of this Agreement.

- b. Business Auto Liability: (Minimum Limits) for Owned, Scheduled, Non-Owned, or Hired Automobiles with a combined single limit of no less than \$1,000,000 per occurrence.

The above coverage must name The Regents of the University of California as an additional insured. This provision shall apply in proportion to and to the extent of the negligent acts or omissions of the non-University party and any person or persons under the non-University party's direct supervision and control.

- c. Workers' Compensation as required under California State Law.

Check if Professional Liability is needed

10. All notices, requests, or other communications required under this Agreement shall be in writing and shall be delivered to the respective parties by personal delivery; by deposit in the United States Postal Service as certified or registered mail, postage prepaid, return receipt requested; or by a reputable overnight delivery service such as Federal Express. Notices shall be deemed delivered on the date of personal delivery, on the date indicated on the United States Postal Service return receipt, or on the date indicated by express mail receipt, as applicable. Notices shall be addressed to the parties at the addresses set forth below:

UNIVERSITY:
UC Davis Health Systems Contracts
2300 Stockton Blvd
Sacramento, CA 95817

INDEPENDENT CONTRACTOR:

Either party may change its address by written notice to the other during the term.

11. This Agreement shall be construed in accordance with the laws of the State of California.
12. To the extent required by applicable law, Independent Contractor shall make available, upon written request from University, the Secretary of Health and Human Services, the Comptroller General of the United States, or any other duly authorized agent or representative, this Agreement and Independent Contractor's books, documents and records. Independent Contractor shall preserve and make available such books, documents and records for a period of four (4) years after the end of the term of this Agreement. If Independent Contractor is requested to disclose books, documents or records pursuant to this Section for any purpose, Independent Contractor shall notify University of the nature and scope of such request, and Independent Contractor shall make available, upon written request of University, all such books, documents or records. If Independent Contractor carries out any of the duties of this Agreement through a subcontract with a related organization ("Subcontractor"), with a value or cost of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period, such subcontract shall contain a clause to the effect that until the expiration of four (4) years after the end of the term of such subcontract, the related organization shall make available, upon written request from the Secretary of Health and Human Services, or upon request by the University, Comptroller General of the United States, or any other duly authorized agent or representatives, the subcontract and Subcontractor's books, documents and records of such organization that are necessary to verify the nature and extent of such costs.
13. Independent Contractor warrants that he/she/it is not excluded from participation in any governmental sponsored program, including, without limitation, the Medicare, Medicaid, or Campus programs (<http://exclusions.oig.hhs.gov/search.html>) and the Federal Procurement and Non-procurement Programs (<http://epls.arnet.gov/PrivacyActProvisionsEPLS.html>). This Agreement shall be subject to immediate termination in the event that Independent Contractor is excluded from participation in any federal healthcare or procurement program.
14. During the performance of this Agreement, Independent Contractor and any and all of its subcontractors shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, mental condition, marital status, age, sex, or sexual orientation. Independent Contractor and any and all subcontractors shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. Independent Contractor and any and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code, Section 12900 *et seq.*) and the applicable regulations promulgated thereunder (California Administrative Code, Title 2, Section 7285.0 *et seq.*). The applicable regulations of the Fair Employment and Housing Commission, implementing Government Code, Section 12990, set forth in Chapter 5, Division 4, Title 2 of the California Administrative Code are incorporated into this Agreement by reference and made apart hereof as if set forth in full. Independent Contractor and any and all subcontractors shall give written notice of their

obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

15. No form of the University name shall be used in promotional materials, signs, announcements or other forms of communication or advertising originated by Independent Contractor unless express written permission for such use has been obtained in advance.
16. Each party shall use their best efforts to keep confidential any information provided by the other party and marked "Confidential Information" or any oral information conveyed and followed by a written communication within thirty (30) days that said information shall be considered Confidential Information. Neither of the parties shall have an obligation to preserve the confidential or proprietary nature of any Confidential Information which:
 1. was already known to the party free of any obligation to keep it confidential at the time of its disclosure by the disclosing party as evidenced by written records prepared prior to such disclosure; or
 2. is or becomes publicly known through no wrongful act of the party to which the Confidential Information was disclosed; or
 3. is rightfully received from a third person having no direct or indirect secrecy or confidentiality obligation with respect to such Confidential Information; or
 4. is independently developed by an employee, agent or contractor of the party, not associated with the Services and who did not have any direct or indirect access to the Confidential Information; or
 5. is approved for release by written authorization of the disclosing party.
 6. Disclosure is required by law.

Notwithstanding the above, Independent Contractor understands that University is a public institution and that any information received by University from Independent Contractor will be subject to the California Public Records Act (California Government Code Sections 6250 et seq.).

Applicable if Independent Contractor has access to PHI

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

Independent Contractor shall comply with the Health Insurance Portability and Accountability Act of 1996, ("HIPAA") and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws and regulations as further outlined in attached hereto and made a part hereof.

17. No party to this Agreement may assign this Agreement, assign rights under this Agreement, or delegate duties under this Agreement without prior written consent of the other party hereto. Except as specifically provided in this Agreement, any attempted assignment or delegation of a party's rights, claims, privileges, duties or obligations hereunder shall be null and void.
18. This Agreement contains all the terms agreed upon by both parties and supersedes all prior written or oral agreements with respect to the subject matter herein. This Agreement may not be amended except in writing and signed by both parties.

INDEPENDENT CONTRACTOR

THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA

By _____
Name

By _____

Title

UC Davis Health Systems Contract

Date _____

Date _____

Taxpayer ID # _____

Pursuant to the Federal Privacy Act of 1974, you are hereby notified that disclosure of your social security number is required pursuant to Sections 6011 and 6051 of Subtitle F of the Internal Revenue Code and pursuant to Regulation 4, Section 404, 1256, Code of Federal Regulations, under Section 218, Title II of the Social Security Act, as amended. The social security number is used to verify your identity. The principal uses of the number shall be to report payments and income taxes withheld to Federal and State governments.

ATTACHMENT C

UNIVERSITY OF CALIFORNIA, DAVIS HEALTH BID/PROPOSAL EVALUATION NON-DISCLOSURE STATEMENT

I, _____, the undersigned, hereby certify that the following statements are true and correct and that I understand and agree to be bound by the commitments contained herein.

I have acted at the request of the UC Davis Health Purchasing department as a participant in the evaluation of proposals received in response to the **Request for Proposal 19-101419-ARS: Patient Contact Center Implementation**. I am acting of my own accord and am not acting under duress. I am not currently employed by, nor am I receiving compensation from, nor have I been the recipient of any present or future economic opportunity, employment, gift, loan, gratuity, special discount, trip, favor, or service in connection with any proposal response or involved proposer in return for favorable consideration. I have no preconceived position on the relative merits of any of the proposal responses nor have I established a personal preference or position on the worth or standing of any proposer participating in this action.

I agree not to disclose or otherwise divulge any information pertaining to the contents, status, or ranking of any proposal to anyone other than the evaluation team leader or other evaluation team members. I understand the terms "disclosed or otherwise divulge" to include, but are not limited to, reproduction of any part of portion of any proposal, or removal of same from designated areas without prior authorization from the evaluation team leader. I agree to perform any and all evaluations of said proposal responses in an unbiased manner, to the best of my ability, and with the best interest of the University of California paramount in all decisions.

NOTE: UC Davis Health employees and representatives must disclose any relationships that can be construed to create a conflict of interest when involved in advisory committees that influence the allocation of UCDH resources.

Name Printed

Signature

Department

Date