

**University of California**

**Contract # 2022003254**

*for*

Microscopes, Related Accessories and Services

*with*

**Olympus Scientific Solutions Americas Corporation dba.  
Evident Scientific**

Effective: January 1st, 2023

The following documents comprise the executed contract between the University of California and Olympus Scientific Solutions Americas Corporation dba. Evident Scientific, effective January 1st, 2023:

- I. Vendor Contract and Signature Form
- II. Supplier's Response to the RFP, incorporated by reference



**UNIVERSITY  
OF  
CALIFORNIA**

## **Purchasing Agreement # 2022003254**

As a result of Request for Proposal # 002681-Dec2021 – RFP UC Systemwide Microscope, Related Accessories & Services, the Agreement to furnish certain goods and services described herein and in the documents referenced herein ("Goods and/or Services") is made by and between The Regents of the University of California, a California public corporation ("UC") on behalf of the University of California and the supplier named below ("Supplier"). This Agreement is binding only if it is negotiated and executed by an authorized representative with the proper delegation of authority.

Olympus Scientific Solutions Americas Corp.  
DBA Evident Scientific  
48 Woerd Ave.  
Waltham, MA 02453

**Cooperative Purchasing.** Supplier agrees to extend Goods and/or Services to public agencies (state and local governmental entities, public and private primary, secondary and higher education entities, non-profit entities, and agencies for the public benefit ("Public Agencies") registered with OMNIA Partners, Public Sector ("Participating Public Agencies") under the terms of this agreement. All contractual administration (e.g. terms, conditions, extensions, and renewals) will remain the UC's responsibility except as outlined in the above referenced RFP (title of RFP). Operational issues, fiduciary responsibility, payment issues and liabilities, and disputes involving individual Participating Public Agencies will be addressed, administered, and resolved by each Participating Public Agency.

### **1. STATEMENT OF WORK**

Supplier agrees to perform the Services listed in the statement of work attached as Attachment A ("Statement of Work") and any other documents referenced in the Incorporated Documents section herein, at the prices set forth in the Statement of Work and any other documents referenced in the Incorporated Documents section herein. Unless otherwise provided in the Agreement, UC will not be obligated to purchase a minimum amount of Goods and/or Services from Supplier.

### **2. TERM OF AGREEMENT/TERMINATION**

The term of the Agreement will be effective from January 1<sup>st</sup>, 2023 and through December 31<sup>st</sup>, 2028 for the initial period and is subject to earlier termination as provided below. It may be extended upon the agreement of the parties. UC may renew the Agreement for three (3) successive one (1) year periods (each, a "Renewal Term") by providing Supplier with at least thirty (30) calendar days' written notice before the end of the Initial Term or any Renewal Term. The renewal agreement shall be put forth in writing and become known as an AMENDMENT to the AGREEMENT, and this Agreement shall be known as the Purchase Agreement or Master Supply Agreement (MSA).

- a) UC or Supplier may terminate the Agreement for convenience by giving the other party at least thirty (30) calendar days' written notice.
- b) UC or Supplier may terminate the Agreement for cause by giving the other party at least thirty (30) days' notice to cure a breach of the Agreement (Cure Period). If the breaching party fails to cure the breach within the Cure Period, the non-breaching party may immediately terminate the Agreement.



### **3. PURCHASE ORDER; ADVANCE PAYMENTS**

Supplier may not begin providing Goods and/or Services until UC approved Purchase Order for the Goods and/or Services is submitted to the Supplier.

### **4. PRICING, INVOICING METHOD, AND SETTLEMENT METHOD AND TERMS**

Refer to Statement of Work or Purchase Order for Pricing. As a systemwide agreement, each UC Location will specify the Invoicing Method and Payment Options that will apply, taking into account the operational capabilities of Supplier and the UC Location.

#### Invoicing Method

Notwithstanding the provisions of the Terms and Conditions of Purchase, UC and the Supplier agrees to comply with the business terms outlined in Attachment A also known as the Statement of Work.

All invoices must clearly indicate the following information:

- California sales tax as a separate line item;
- Shipping costs as a separate line item;
- UC Purchase Order or Release Number;
- Description, quantity, catalog number and manufacturer number of the item ordered;
- Net cost of each item;
- Any pay/earned/dynamic discount;
- Reference to original order number for all credit memos issued;

Supplier will submit invoices following the designated invoice method directly to UC Accounts Payable Departments at each UC Location unless UC notifies the supplier otherwise.

#### Settlement Method and Terms

Notwithstanding the provisions of Article 3 of the Terms and Conditions of Purchase, the Settlement Method and Terms will be as established by each campus location.

### **5. NOTICES**

As provided in the UC Terms and Conditions of Purchase, notices may be given by email, which will be considered legal notice only if such communications include the following text in the Subject field: FORMAL LEGAL NOTICE – [insert, as the case may be, Supplier name or University of California]. If a physical format notice is required, it must be sent by overnight delivery or by certified mail with return receipt requested, at the addresses specified below.

To UC, regarding contract issues:



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<b>Name</b>	Bob Stueber
<b>Phone</b>	510-987-9364
<b>Email</b>	<a href="mailto:Robert.Stueber@ucop.edu">Robert.Stueber@ucop.edu</a>
<b>Address</b>	

To Supplier:


**6. INTELLECTUAL PROPERTY, COPYRIGHT AND PATENTS**

The Goods and/or Services do not involve Work Made for Hire

**7. PATIENT PROTECTION AND AFFORDABLE CARE ACT (PPACA)**

Not Applicable

**8. PREVAILING WAGES**

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

**9. FAIR WAGE/FAIR WORK**

Not Applicable

**10. FEDERALLY FUNDED CONTRACTS, GRANTS, AND COOPERATIVE AGREEMENTS**

Not Applicable

**11. RESTRICTION RELATING TO CONSULTING SERVICES OR SIMILAR CONTRACTS – FOLLOW-ON CONTRACTS**



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

### **12. INSURANCE**

Deliver the PDF version of the Certificate of Insurance to UC's Buyer, by email with the following text in the Subject field: CERTIFICATE OF INSURANCE – Franklin Young International, Inc.

### **13. SERVICE-SPECIFIC AND/OR GOODS-SPECIFIC PROVISIONS**

Not Applicable

### **14. RECORDS ABOUT INDIVIDUALS**

Not Applicable

### **15. INCORPORATED DOCUMENTS AND ORDER OF PRECEDENCE**

This Agreement and its Incorporated Documents contain the entire agreement between the Parties, in order of the below precedent, concerning its subject matter and shall supersede all prior or other agreements, oral and written declarations of intent and other legal arrangements (whether binding or non-binding) made by the Parties in respect thereof.

- 1) Statement of Work
- 2) Pricing & Schedule
- 3) Price List
- 4) UC Terms and Conditions, dated 04/05/2021
- 5) FEMA Addendum
- 6) Business Associate Agreement Appendix
- 7) UC Data Security Appendix
- 8) eCommerce Appendix, dated 07/18/2019



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## **16. ENTIRE AGREEMENT**

The Agreement and its Incorporated Documents contain the entire Agreement between the parties and supersede all prior written or oral agreements with respect to the subject matter herein.

This Agreement can only be signed by an authorized representative with the proper delegation of authority.

### **THE REGENTS OF THE UNIVERSITY OF CALIFORNIA**

DocuSigned by:

*Paul Williams*

748B68F8D4234A9...

Signature

**Paul Williams**

Printed Name

**Chief Procurement Officer and AVP**

Title

**1/5/2023**

Date

### **EVIDENT SCIENTIFIC**

DocuSigned by:

*Lee Wagstaff*

EC0DA3810B3E420...

Signature

**Lee Wagstaff**

Printed Name

**V.P. Sales & Marketing Americas, Life Science**

Title

**01-01-2023**

Date

### **Attachments to Purchase Agreement 2021002941**

- 9) Attachment A: Statement of Work
- 10) Attachment B: Pricing & Schedule
- 11) Attachment C: Price List
- 12) Attachment D: UC Terms and Conditions, dated 04/05/2021
- 13) Attachment E: FEMA Addendum
- 14) Attachment F: Business Associate Agreement Appendix
- 15) Attachment G: UC Data Security Appendix
- 16) Attachment H: eCommerce Appendix, dated 07/18/2019



# Attachment A: Statement of Work

## Sourcing Agreement # 2022003254

This strategic sourcing agreement ("Agreement") is dated January 1<sup>st</sup>, 2023, effective December 31<sup>st</sup>, 2028, and is between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA ("UC or Customer") and Olympus Scientific Solutions Americas Corp DBA Evident Scientific with its principal place of business at 48 Woerd Ave. Waltham, MA 02453 ("Seller").

The parties agree as follows:

### 1. DEFINITIONS

As used in this Agreement and its attachments and exhibits all of which are a part of the Agreement, the following terms have the following meanings:

- a. "Affiliates" means those institutions which UC has an affiliation with and which participate in this Agreement (as further described in clause 2.3 below).
- b. Market Basket means those Products which were included within the scope of University of California's General Lab Supply RFP number 002681, dated December 2021.
- c. "eCommerce" means the electronic procurement system currently utilized by the UC locations or any electronic procurement system that UC may adopt in the future.
- d. "Business Day" means Monday through Friday, between 8:00 AM - 5:00 PM Pacific Time, excluding UC and Seller observed holidays.
- e. "Catalog Products" – (i.) Products offered and maintained in Seller's standard catalog/price book portfolio. (ii) Other Products that Seller may offer through a distribution agreement, which are not specifically included in Seller's current scientific catalogs and/or price books which is available to the UC. It does not denote a specific method of purchase such as eCommerce, seller's internet site, phone, email or otherwise.
- f. "Current Published List Price" - the Seller's list price for an item equal to Manufacturer's suggested retail price, or MSRP.
- g. "Delivery" means delivery by Seller directly to the designated UC delivery points.
- h. "Equipment" – shall be defined as instrumentation or equipment sold to the University.
- i. "Equipment Maintenance Services" – shall mean those services offered by Seller for the purposes of repair and maintenance of the Equipment, regardless of OEM. This includes any associated service-level commitments implied or expressed for the purposes of maintaining performance as set forth by the Original Equipment Manufacturer's (OEM) standard specifications.





# Attachment A: Statement of Work

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- j. "Outreach" means those Events and Activities that UC will actively support to enable the Seller to promote its Products to researchers, faculty, and staff.
- k. "Products" means all products sold by Seller, whether or not manufactured by Seller or bearing a Seller trademark, including but not limited to Catalog Products and Third Party Products.
- l. "Third Party Products" means products that may be offered by Seller from suppliers with whom Seller does not have a distribution agreement and/or which are sourced as an accommodation to customer.
- m. "University and UC" are used interchangeably to mean each and all of the Regents of the University of California, and all current and future UC campuses and Affiliates.
- n. "Stockroom Volume Discounts" — shall mean Seller's bulk order volume discounts for stockroom programs mutually agreed upon by Customer and Seller.

## 2. SCOPE AND DESCRIPTION OF PROGRAM

Purchase and Sale of Products. During the term of this Agreement, and any extension(s) to such term, Seller shall sell to UC the Products subject to the terms and conditions set forth in this Agreement.

- a. UC Affiliates. The parties acknowledge that the benefits of this Agreement may be extended to affiliates of UC who may be located outside of the UC system, but who are conducting research activities directed and funded by UC.
  - **Ten Campuses:** UC Berkeley, UC Davis, UC Irvine, UC Los Angeles, UC Merced, UC Riverside, UC San Diego, UC San Francisco, UC Santa Barbara, UC Santa Cruz.
  - **Six Health Centers:** UC Davis, UC Irvine, UC Los Angeles, UC Riverside, UC San Diego, UC San Francisco.
  - **The UC Office of the President:** a central systemwide headquarters with offices primarily located in Oakland and Sacramento, California, and teaching/administrative offices in Washington, D.C.
  - **The Division of Agriculture and Natural Resources:** a statewide research and public service organization that serves a large and diverse agricultural community. The division collaborates on research with all campuses, and conducts studies at nine research and extension centers and on private land in cooperation with California producers. In addition, research and educational programs are conducted in each of the state's 58 counties.
  - **UC Hastings College of Law**



# Attachment A: Statement of Work

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- **Lawrence Berkeley National Lab:** owned by the Federal Government but managed by the University of California.
- Additional centers and offices as further detailed at:  
<http://www.universityofcalifornia.edu/uc-system/parts-of-uc>

### 3. E-COMMERCE SYSTEMS

E-Commerce Catalog. Subject to this Agreement, Seller's e-Commerce catalogs shall contain items as agreed upon by the UC Contract Administrator and the Seller.

- a. UC campuses have enabled e-commerce as befits their situation and existing financial infrastructure. Seller must comply with campus e-commerce requirements on a campus by campus basis but must adhere to overall University policy for consistency in catalog loading and pricing, as per the terms of this Agreement. Campus-specific requirements for eCommerce programs shall be mutually reviewed between Seller and UC.

### 4. SUSTAINABILITY

Seller will create commodity-specific sustainability program to assist UC in furthering the UC's Sustainability goals

- a. Seller agrees that it shall collaborate and work in good faith with University in furthering the University's sustainability goals including, without limitation, identifying suitable opportunities for the reduction of carbon emissions, packaging waste, and other types of waste relating to the supplies made under this Agreement.
- b. UC expects the seller to use reasonable commercial efforts to complete CSR Assessment with EcoVadis, within 180 days of Contract signing for purpose of establishing a baseline and/or creating plan for targeted improvements (if below avg. score). UC shall use the EcoVadis assessment as part of the Seller's evaluation. Up to date information regarding the UC Sustainable Procurement Policy can be found on the link below.
- c. <https://www.ucop.edu/procurement-services/for-ucstaff/sustainable-procurement/sustainable-procurement-policy-guidelines.html>

### 5. UC PURCHASE TO PAYMENT PROCESS (P2P) REQUIREMENTS

- a. Ecommerce Procedures. UC orders placed with Seller shall be binding on Seller when UC transmits a purchase order to Seller and the Seller receives the UC purchase order and Seller communicates acceptance to UC. The Seller will honor all live and current price files until such time that a new price file is updated. The Seller shall adhere to the agreed upon frequency of providing updates to the hosted price-file. Price-file updates shall be managed as described in eCommerce Appendix, dated



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7/18/2019. In any case where insufficient product inventory exists, Seller will use reasonable commercial efforts to notify UC work toward a solution that works best for both parties.

- b. Non-Ecommerce Procedures. For non-e-commerce procurements, orders placed by UC shall be binding upon Seller when either: 1) the Seller receives the UC purchase order and Seller communicates acceptance to UC, 2) Seller receives purchase order and submits to UC a counter proposal and counter proposal is accepted by UC, 3) Seller fills the order pursuant to the terms of the purchase order. If Seller communicates back that the Purchase Order was received or Seller fills the order, the order shall be binding. When UC transmits purchase order to Seller, Seller must communicate to end-user if there is a price difference, giving end-user the opportunity to change or rescind the order.

All purchases, through the eCommerce system or non-eCommerce system with the Seller is subject to the terms and conditions of the Order of Precedence as outlined in this agreement. For purchases where the terms may be different than the agreed upon terms, the terms shall have no weight to the Terms and Conditions set for in this agreement.

- c. Order Packaging and Labeling. Seller will individually package and label every UC order with the following information:

- Purchase order number.

- Product description, quantity and catalog number of the Product ordered.

- Other information, as may be requested by ordering UC Department.

- Seller will attach a packing slip to the outside of the package that will be easily inspected by UC.

- d. Invoicing. The method for invoicing is through electronic format as defined per each campus location. UC expects the Seller to be consistent in their submission of invoices. All invoices must clearly indicate the following information

- California sales tax as separate line item

- Purchase Order number and the Agreement number

- Description, quantity, catalog number and manufacturer number of the item or service ordered

- Net cost of every Product or service

- Discount (when applicable)

- Reference to original order number for all credit invoices issued

- Purchasing card information (when applicable)

- e. Delivery. Seller shall provide delivery to all of UC's current and future authorized Designated Delivery points. Seller will continue to offer mutually beneficial transportation and product delivery programs to the UC campuses. The parties shall work together in good faith to identify opportunities and mutually agree to off-setting costs.



## Attachment A: Statement of Work

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#### i. Delivery Models

##### 1. Desktop Product Delivery.

UC end user departmental orders will be placed directly with Seller via a web-based static and/or roundtrip electronic catalog Purchase Order Management System and/or by the traditional method of telephone, fax or hardcopy Purchase Order for Product Delivery to a specific address (e.g. desk, office, lab, etc.) by the Seller. Product is packaged for receipt of the shipment directly by the end user. If Seller provides package Delivery using their own vehicles, Seller is responsible for any applicable costs, including but not limited to parking permits, annual dock access, etc.

##### 2. Cross-Dock Product Delivery to Several Ship-to Addresses.

UC end user departmental orders will be placed directly with Seller via a web-based static and/or roundtrip electronic catalog Purchase Order Management System and/or by the traditional method of telephone, fax or hardcopy Purchase Order for Product Delivery to several scattered mini- receiving ship-to addresses by the Seller. In this model Products will be cross- docked and will be delivered by the UC or a third party to the end user when required. In this model Products may be delivered on a pallet(s) as appropriate for handling. This aggregation is determined by each campus location. Product is packaged for Delivery to end customer (could be bulk/high volume quantity purchase or single purchase). Seller will defray cross-dock Delivery costs based on a Capitated Redelivery Charge, as determined by each campus, if applicable.

##### 3. Cross-Dock Product Delivery to One Ship-to Addresses.

UC end user departmental orders will be placed directly with Seller via a web-based static and/or roundtrip electronic catalog Purchase Order Management System and/or by the traditional method of telephone, fax or hardcopy Purchase Order for Product Delivery to one ship-to address by the Seller. In this model Products will be cross-docked and will be delivered by the UC or a third party to the end user when required. In this model Products may be delivered on a pallet(s) as appropriate for handling. This aggregation is determined by each campus location. Product is packaged for Delivery to end customer (could be bulk/high volume quantity purchase or one off). Seller will defray cross-dock Delivery costs based on a Capitated Redelivery Charge, as determined by each campus, if applicable.

##### 4. Storehouse or 3<sup>rd</sup> Party Product Delivery (bulk/high-volume quantities).

UC Storehouse or third party orders will be placed directly with Seller via a web-based static and/or roundtrip electronic catalog Purchase Order Management System and/or by the traditional method of telephone, fax or hardcopy Purchase Order for Product Delivery to a Storehouse ship to address by the Seller. In this model Products may be purchased and maintained in inventory by UC Storehouses or a third party for resale/ mark-up to the campus end user. Typically, the Storehouse or



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third party will purchase in bulk/high volume quantities and the Product delivered is palletized. Pricing for UC Storehouses may be negotiated directly at the campus level in accordance with the intent of this agreement.

- f. **Freight Terms.** All Products (including Catalog Products and Third Party Products shall be delivered FOB (Freight on Board) Destination with standard freight and handling charges absorbed by Seller. Rush delivery charges may be applied when mutually agreed upon in advance by both parties. Note some equipment may require additional handling (i.e. lift gate, inside delivery, white glove, and installation) the Customer shall be responsible for these additional charges. Minimum order charges will not apply for any Products provided that where a supplier of any Third Party Product has a minimum order charge that Seller is not reasonably able to negotiate away, then Seller shall communicate this to UC prior to the placement of the order for that Product.
  - ii. **Standard Delivery Requirements.** Seller shall endeavor to supply Supplier stocked Products within three (3) business days in respect of (i) electronic orders placed before 12pm PST; and (ii) telephone rush orders placed before 4pm PST; in both cases upon confirmation that the Product is available in stock with Seller at the time of order. Where delivery of any product requires a longer lead time for delivery or applicable installation, Seller will quote the relevant lead time to UC at time of order confirmation.
  - iii. **Rush Delivery Requirements.** UC may, on occasion require expedited shipping. As such, Seller shall notify the UC of the increase in cost. It is the sole discretion of the UC to accept the additional cost if applicable. The provision shall apply only to orders for routine off the shelf items. UC shall not be liable for the expedited freight associated with Seller's inability to meet its delivery obligations, unless otherwise authorized by the UC. Such request is the responsibility of the Seller to receive the authorization in writing prior to the shipment of the product.
- g. **Last Mile Delivery.** At campuses that have implemented Last Mile Delivery Agreements with the Supplier, products will be delivered to a centralized receiving's location, at which time, will be delivered by the UC to the end user. The Products may be delivered individually, or as mixed pallet(s), as determined by each campus location. Regardless of delivery to the centralized receiving location, each box must be labeled appropriately for delivery to end customer (could be bulk volume quantity purchase or one off).
- h. **Out-of- Stock Procedures.** Seller will notify UC if any ordered item(s) are out of stock. If UC approves, the out of stock item will be added to the backorder file and will be delivered to UC when the item is in stock without a further order being submitted and at the price on the original order date.
- i. **Returns.** Seller shall accept returns for all products for full credit of purchase price regardless of reason for return within 30 days of confirmed date of delivery. Seller must issue credit if Products were purchased via UC P-Card, to the same purchasing card. Seller shall not charge UC restocking fees for Catalog Product returns. Returns of Third Party Products are at all times subject to a



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restocking fee of 15%, plus UC will be responsible for return freight costs. Such restocking fee shall be disclosed to the UC prior to return of the Product.

- j. Time. Time is of the essence with respect to the Seller's performance of each and every condition, covenant and agreement contained herein. UC has the option to accept or reject any or all Products not delivered on or before the Delivery time. Seller will not be liable for any damages related to delays in Delivery and, in addition, the Delivery may be refused if damages to the packaging are present.

## 6. PRICING AND APPLICABLE TAXES

Pricing. Pricing set forth in the Agreement shall be established as the initial baseline price, agreed upon by the UC and the Seller. All subsequent updates or price adjustment, whether increase or decrease in the prices, shall be subject to the terms of the Agreement and based on the schedule established in Attachment B: Pricing & Schedule.

- a. Seller shall provide UC with not less than a thirty (30) prior notice of proposed increases. Subject to revised pricing being within such limits, Seller shall be entitled to implement revised pricing from the first business day in the new calendar year.
- b. The discounts shall apply to January List Price and be held firm for twelve (12) months each calendar year.
- c. Where the price increase exceeds what is considered reasonable, then (i) Seller shall specifically identify to UC (as part of the annual price review report) any item which was purchased in the prior year and where Seller is proposing a price increase in excess of the Price Review Target; and (ii) at UC's request, the price of such items shall be reviewed jointly to determine reasonableness of increase.
- d. Price Consistency. Seller's internal pricing system is set-up to offer the agreed contract price to all UC locations and Seller shall use best efforts to ensure price consistency across all UC locations. Notwithstanding the foregoing, deviations from the contract price (lower than contract price) may be offered to specific UC customers to reflect special situations such as new lab start-ups, bulk purchase discounts, or one-off competitive situations. To ensure traceability and visibility of such pricing, Seller shall provide UC with a savings report identifying any such contract price deviations to UC as part of the Business Review Process.
- e. Whereas, Seller wishing to offer promotional pricing, the parties shall work together to allow for short-term promotional pricing to be offered on a UC System-wide basis. This will require specific start and end dates as well as timely loading of catalogs to capture price changes.
- f. Seller's pricing for Catalog Products shall never exceed List Price.



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- g. Purchase and Sale of Products to UC Department Storerooms. Contract pricing for UC department storerooms shall be consistent; every UC department storeroom shall receive equivalent pricing as per the contract price terms described herein, provided that price deviations per storeroom may apply in respect of Stockroom Volume Discounts and manufacturer supported price rebates for specific opportunities. Seller agrees to sell Products to the UC department storerooms subject to the terms and conditions set forth in this Agreement and Seller will provide UC all differentiated pricing resulting from such negotiations. To ensure traceability and visibility of such pricing, Seller shall provide UC with a report identifying any such additional discounts to UC as part of the UCOP Quarterly Business reviews.

## 7. CATALOG ADJUSTMENTS

- a. Price Updates. As described above, prices for Catalog Products regardless of procurement channel, shall be reviewed and subject to change once per year from 1<sup>st</sup> January. Price decreases shall be implemented on the quarterly review (or such earlier date mutually agreed by the parties). Changes to price files shall be submitted to UC, and UC shall have a maximum period of 45 days to review. Should objections arise, UC and the Seller shall be review the objections on a case by case basis with the balance of price amendments being approved.
- b. Other Catalog Updates. Seller may provide other updates to the UC catalog quarterly or as mutually agreed. These updates may include (without limitation) changes to content, the addition of new products, removal of discontinued items, updates to unit of measure, and special promotional offers Price decreases. Seller shall pass on to UC the benefit of such price decreases, provided that the parties shall review and mutually agree the schedule for the implementation of such changes into the UC catalog.
- c. Discontinued Products. To the extent that Seller has knowledge of a discontinuation prior to 60 days of a Product being discontinued, Seller shall notify UC sixty (60) days in advance of any Product being discontinued and will, where agreed, hold limited stocks of the Product for UC to purchase for up to a maximum of 60 days after the date of discontinuance.
- d. Unit of Measurement Alignment. Seller will work closely with UC in respect of unit of measure and to determine best possible match to units requested. Seller shall offer products to the UC that is consistent with unit of measure that befits the volume that are typically appropriate for research laboratories.

## 8. PAYMENT TERMS.

Seller shall extend payment terms of Net 30.



### 9. SERVICE STANDARDS

Service Standards. Seller shall provide the following minimum service standards:

Normal Delivery (stock)

- a. Rush Delivery - 98% within 1 Business Day ARC,
- b. Returns- 30 Business Days from shipment
- c. Pick up returns - 98% within 3 Business Days
- d. Credits -98% within 10 Business Days
- e. Request for report - within 5 Business Days
- f. Line Item fill rate - 98% for Hot List items, 95% for non-Hot List items
- g. Delivery accuracy - 98% (correct place, correct size and quantity, correct items)
- h. Delivery, on-time - 98% (against agreed delivery date confirmed by Seller)
- i. Invoice/billing accuracy - 98% (applicable to initial invoice submission)
- j. Customer service satisfaction - 95%
- k. Quote turnaround - within 1 Business Day
- l. Should, however, the service levels fall below the minimum standards and Seller does not take corrective actions within 14 days following the date of UC written notification to Seller, UC shall escalate the matter to Seller's senior management for development of a mutually agreed upon corrective action plan to resolve the concern. In the event that, despite such actions, Seller fails to improve performance and continues to materially fail the relevant standards, UC reserves the right to terminate this Agreement, which will be UC's sole remedy.
- m. Substitutions. No substitutions of Products ordered including brand or size will be permitted except with the express prior written approval from authorized UC personnel.
- n. Minimum Order. There shall be no minimum order requirement during the term of this Agreement and any extension(s) of such term.





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### 10. REPORTING

- a. Reports. Seller will provide each UC campus bi-annually, or upon request, summary of sales, usage, differentiated storeroom pricing, incentive, service level reports, and Sustainability reports at no additional cost to UC, in electronic format, i.e. Excel or CSV.

### 11. GENERAL TERMS AND CONDITIONS

- a. University of California Terms and Conditions. University of California Terms and Conditions, Attachment D, revised April 05, 2021. To the extent of any inconsistency between such terms and the main body of this Agreement, the main body of this Agreement shall take precedence, or as outlined in the Purchasing Agreement.
- b. Product Certification. Seller hereby certifies and warrants that all Products sold to UC under this Agreement:
- c. Shall be new and genuine. UC may permit the sale of refurbished or used product, provided it is clearly designated as such prior to purchase and approved by UC.
- d. Shall be provided in the manufacturer's original packaging unless otherwise requested by UC.
- e. Shall be manufactured and sold by, or distributed to, the Seller for retail sales in the United States.
- f. Shall be sold to the Seller from legal and reputable channels, which are understood to be the manufacturer or authorized representatives of the manufacturer of the Products.
- g. Shall not be altered or misbranded within the meaning of the federal and state laws applicable to such Products.
- h. Shall not be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction.
- i. Seller agrees that the Products furnished under this Agreement shall be covered by the standard manufacturer warranties, and that the rights and remedies so provided are in addition to and do not limit any rights afforded to UC by any other article in this Agreement and any subsequent Agreement. Such warranties will be effective notwithstanding prior inspection and/or acceptance of the Products by UC, and in all cases shall commence upon acceptance of the Products by UC.



### 12. TERMINATION OF AGREEMENT.

- a. Either party may terminate this Agreement for cause or for convenience at any time, in accordance with the terms outlined on the Purchase Agreement.
- b. In the event of termination for convenience, UC agrees to provide Seller at least thirty (30) days prior written notice of effective date of termination and the extent thereof without penalty. Seller may only terminate this Agreement for cause, at any time, upon sixty (60) days prior written notice of termination and to the extent thereof without penalty to UC. Provided however, Seller shall give UC sixty (60) days from the date UC receives notice in which to cure any material breach of the Agreement and termination shall be effective at the end of such period only if UC fails to cure the breach.
- c. If any termination of this Agreement takes place, Seller shall extend to UC, upon UCS request, an additional ninety (90) day period to properly implement a smooth transition. Fees for the services performed during the additional ninety (90) days will be negotiated in good faith between UC and Seller.
- d. In the event of termination for cause by UC based on reason of breach by Seller, UC shall first give Seller not less than thirty (30) days written notice of such breach. If Seller fails to remedy the breach within thirty (30) days of receipt of written notice from UC of Seller's breach of any term or condition of the Agreement, then UC may terminate this Agreement by written notice to Seller.

### 13. PROMOTIONS

Seller may offer promotions supportive of its efforts to sell Products under this Agreement. Seller shall not give promotional awards to UC and end users, including by way of example clothing, personal electronic equipment, retail gift certificates or similar items. Seller may however, make available free Product(s), credit(s) on Product purchases or other business-related award(s).

### 14. MARKETING REFERENCES

In accordance with California law and University policy and without prior express written consent of UC, Seller shall not use the name of the University of California, or any abbreviation thereof, or any name of which "University of California" is a part, or any trademarks of the UC, in any commercial context. In addition to the above, if the reference only concerns specific campus, then the prior express written consent of a duly authorized officer of that campus is required.



## Attachment A: Statement of Work

Sourcing Agreement # 2022003254

### 15. HEADINGS AND CAPTIONS

The headings and captions contained in this Agreement are inserted for convenience or referenced only and are not to be deemed part of or to be used in construing this Agreement.

### 16. PRICE AUDITS

UC shall be entitled, upon reasonable prior notice to Seller, to perform an annual price accuracy audit in respect of the prices charged by Seller over the prior year. Seller shall provide UC with reasonable assistance in respect of such audits, including the provision of history of sales information. In respect of Third Party Products, the parties agree that such audit may include a sampling of Third Party pricing (not to exceed XXXX (XXX%) percent of Third Party Products purchased). The UC shall have the right to identify which Third Party Products purchased it wishes to audit within the sample. Seller shall provide the auditor all details in determining the cost to the UC, including the Seller's invoice for a given item. In the event there are discrepancies found, the Seller will allow the UC to Audit up to 100% of Third Party Products purchased. Disclosure of price information to any third party consultant appointed by UC shall be subject to the consultant entering into reasonable commitments of confidentiality with Seller in respect of the information disclosed. UC will conduct such audits at its sole cost and expense, and all findings shall be deemed to be Seller's confidential information. UC will share the results of such audits with Seller and allow Seller a reasonable time period to respond to such findings. In calculating any underpayment or overpayment, UC shall be required to offset any undercharges against overcharges.

This Agreement, together with the above named instruments, constitute the entire agreement between UC and Seller with respect to the subject matter and supersedes all previous negotiations, proposals, commitments, writings, advertisements, publications, and understandings.



UC Category	Supplier Category	Supplier Subcategory	P	Description of Discount	Comments
Example: Confocal					
Microscopes	Confocal	Confocal		All microscopes	
Teaching					
Microscopes					
Cameras					
Optics					
Software					
Service and Maintenance					
Extended Warranties					
Spares/Parts					
Accessories					
Other (Misc.) please list	Third Party				
Clinical					
Microscopes					
Cameras					
Optics					
Software					
Service and Maintenance					
Extended Warranties					
Spares/Parts					
Accessories					
Other (Misc.) please list	Third Party				
Research					
Microscopes					
Cameras					
Optics					
Software					
Service and Maintenance					
Extended Warranties					
Spares/Parts					
Accessories					
Other (Misc.) please list	Third Party				
Confocal					
Microscopes					
Cameras					
Optics					
Software					
Service and Maintenance					
Extended Warranties					
Spares/Parts					
Accessories					
Other (Misc.) please list	Third Party				
Specialized					
Microscopes					
Cameras					
Optics					
Software					
Service and Maintenance					
Extended Warranties					
Spares/Parts					
Accessories					
Other (Misc.) please list	Third Party				
Surgical					
Microscopes	N/A				Not offered under the Life Science division
Cameras	N/A				
Optics	N/A				
Software	N/A				
Service and Maintenance	N/A				
Extended Warranties	N/A				



February 1, 2022

David Diaz  
Life Sciences Commodity Manager  
University of California Procurement Services  
1111 Franklin Street | Oakland, CA 94607

Reference: RFP UC Systemwide Microscope, Related Accessories & Services (RFP: 002681 - DEC2021))".

Dear Mr. Diaz,

On behalf of Olympus, thank you for the invitation to participate in the competitive bid process for the request for a multi-year Microscopy, Accessories and Service contract for The University of California. The Olympus Scientific Solutions Group takes great pride in being able to provide microscopy knowledge and solutions that enable the members of The University of California to further develop student education, clinical and research capabilities.

Olympus wanted to take this time to highlight additional value-adds and pricing we are proposing. Please kindly note the below:

- [REDACTED]
- **Small Business Partnership** – We understand and appreciate University of California's commitment to supporting small business. Thus, we have connected with Franklin Young International, Inc., a California self-certified SBE and DVBE business, to distribute Olympus microscopy products as an authorized vendor. Franklin Young is a reputable business working with State of CA for over 10 years, CA Dept. of Public Health, CA Dept. of Food and Agriculture, CA Air Resources Board, etc. Attached you will find FY's Disabled Veteran Form, W-9, Commercially Useful Function CUF form, and CCC CA certification. Olympus is committed to assisting UC's SB1st goals and help grow our businesses.

POC:

[REDACTED]

**OLYMPUS AMERICA INC.**

48 Woerd Ave. Waltham, MA 02453  
TELEPHONE (781) 419-3900



- New Service Agreement – [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

We thank you for the opportunity to provide a quotation and hope you will consider Olympus America Inc. as a continued supplier of Microscopy products.

Regards,

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

**OLYMPUS AMERICA INC.**

48 Woerd Ave. Waltham, MA 02453  
TELEPHONE (781) 419-3900



## 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 will constitute Supplier's unqualified acceptance of all of the Agreement's terms and conditions. The terms of any proposal referred to in the Agreement are included and made a part of the Agreement only to the extent the proposal specifies the Goods and/or Services ordered, the price therefor, and the delivery thereof, and then only to the extent that such terms are consistent with the terms and conditions of the Agreement.

### 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
  - a. UC provided Supplier with notice of termination or
  - b. 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.
- E. If any of the following appendices are incorporated in to the agreement, then they will control in the event that the appendices conflict with the provisions of this Article:
  - UC's Appendix – Data Security,
  - Appendix – BAA, and/or
  - Appendix – GDPR

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

Pricing is set forth in the Agreement or PO, 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





## Terms and Conditions of Purchase

method (and will extend the terms applicable to such settlement method) set forth in UC's Supplier Invoicing, Terms & Settlement Matrix (<https://www.ucop.edu/procurement-services/procurement-systems/supplier-invoicing-terms-and-settlement-matrix.html>). 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 PO number. UC will not pay shipping, packaging or handling expenses, unless specified in the Agreement or PO. 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.

### **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, 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 supplies 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 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 those individuals will not again be assigned to provide Services without UC's written permission. 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.



## Terms and Conditions of Purchase

- 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 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. Unless limited by any provision within this Agreement as allowed by law, 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. Suppliers standard limited product warranty attached hereto and incorporated herein by this reference.
- 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. As applicable to the Supplies and/or Services being provided under the Agreement, Supplier warrants that:
- It complies with California and federal disability laws and regulations; and
  - The Goods and/or Services will conform to the accessibility requirements of WCAG 2.0AA.
  - Supplier agrees to promptly respond to and resolve any complaint regarding accessibility of its Goods and/or Services;
- E. General Accessibility Requirements. Supplier warrants that:
- It will comply with California and federal disability laws and regulations;
  - Supplier will promptly respond to remediate to any identified accessibility defects in the Goods and Services to conform to WCAG 2.0 AA; and
  - 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



## Terms and Conditions of Purchase

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, Suspension, U.S. Government Restricted Party Lists. Supplier warrants that it is not on the U.S. government's Denied Parties List, the Unverified List, the Entities List, the Specially Designated Nationals and Blocked Parties List, and is not presently debarred, suspended, proposed for debarment or otherwise 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.
- K. Supplier warrants that the Goods and Services rendered under this Agreement will not require Supplier to use for UC, or provide to UC to use, "covered telecommunications equipment or services" as a substantial or essential component of any system, or as critical technology as part of any system, within the meaning of Federal Acquisition Regulation ("FAR") Section 52.204-25. Supplier will provide "Timely Notice" to the UC of any changes to the statements, confirmations or representations made in its proposal response or in any information provided as part of the contract award process, including in particular any changes to the certifications or representations made regarding NDAA Section 889. Timely Notice means that Supplier will notify UC in writing within 3 business days of any changes to the representations or confirmations made in relation to NDAA Section 889. Notice shall include the representations or confirmations made and the changes to those representations or confirmations. The notice shall be provided by a Supplier representative authorized to bind the Supplier.

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

- A. Goods and/or Services Not Involving Work Made for Hire.
  - a. 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, use, such Pre-Existing Materials in connection with the Deliverables.
  - b. The Deliverables must be new and original. Supplier must not use any Pre-Existing Materials in the Deliverables without UC's prior written permission.
  - c. 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



## Terms and Conditions of Purchase

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.

- d. 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. 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.
- C. 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 US, its officers, employees, and agents, from and against all losses, expenses (including, without limitation, reasonable attorney's fees and costs), damages and liabilities of any kind resulting from or arising out of personal injury (including death) or property damage asserted against the University by a third party as a result of the grossly negligent acts or willful 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 or control. Except for the indemnity of third part claims as set for above, to the extent allowed by applicable law, in no event shall Supplier be liable to UC for indirect, incidental, consequential or special damages of any kind, including but not limited to loss of profits or revenue, loss of use or opportunity, cover, overhead, downtime, of loss to reputation or goodwill, regardless of whether Supplier was aware of the likelihood of such damages.

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:

- a. Any disclosure of Institutional Information to an unauthorized party or in an unlawful manner;
- Revised 4.5.21



## Terms and Conditions of Purchase

- b. Unauthorized or unlawful acquisition of information that compromises the security, confidentiality or integrity of Institutional Information and/or IT Resources; and
- c. 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.

### 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:
  - a. Each Occurrence \$ 1,000,000
  - b. Products/Completed Operations Aggregate \$ 2,000,000
  - c. Personal and Advertising Injury \$ 1,000,000
  - d. General Aggregate \$ 2,000,000
- 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.
- 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:
  - a. Costs to notify parties whose data were lost or compromised;
  - b. Costs to provide credit monitoring and credit restoration services to parties whose data



## Terms and Conditions of Purchase

were lost or compromised;

- c. Costs associated with third party claims arising from the confirmed or suspected Breach or loss of Institutional Information, including litigation costs and settlement costs;
- d. Any investigation, enforcement, fines and penalties, or similar miscellaneous costs; and
- e. 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:

P1 - This insurance policy must have minimum limits of \$500,000 each occurrence and \$500,000 in the aggregate.

P2 - This insurance policy must have minimum limits of \$1,000,000 each occurrence and \$1,000,000 in the aggregate.

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.

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.

- G. 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>
- H. 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:
  - a. 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.
  - b. Include a provision that the coverage will be primary and will not participate with or be excess over any valid and collectible insurance or program of self-insurance carried or maintained by UC.

### ARTICLE 10 – USE OF UC NAME AND TRADEMARKS

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

### ARTICLE 11 – FEDERAL FUNDS

Supplier who supplies Goods and/or Services certifies and represents its compliance with the following



## Terms and Conditions of Purchase

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:
- a. FAR 52.203-13, Contractor Code of Business Ethics and Conduct;
  - b. FAR 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights;
  - c. FAR 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements;
  - d. FAR 52.219-8, Utilization of Small Business Concerns;
  - e. FAR 52.222-17, Non-displacement of Qualified Workers;
  - f. FAR 52.222-21, Prohibition of Segregated Facilities;
  - g. FAR 52.222-26, Equal Opportunity;
  - h. FAR 52.222-35, Equal Opportunity for Veterans;
  - i. FAR 52.222-36, Equal Opportunity for Workers with Disabilities;
  - j. FAR 52.222-37, Employment Reports on Veterans;
  - k. FAR 52.222-40, Notification of Employee Rights Under the National Labor Relations Act;
  - l. FAR 52.222-41, Service Contract Labor Standards;
  - m. FAR 52.222-50, Combating Trafficking in Persons;
  - n. FAR 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment - Requirements;
  - o. FAR 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services - Requirements;
  - p. FAR 52.222-54, Employment Eligibility Verification;
  - q. FAR 52.222-55, Minimum Wages Under Executive Order 13658;
  - r. FAR 52.222-62, Paid Sick Leave under Executive Order 13706;
  - s. FAR 52.224-3, Privacy Training;
  - t. FAR 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations;
  - u. FAR 52.233-1, Disputes; and
  - v. 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](http://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 CFR Title 2, Subtitle A, Chapter II, Part 200) the following provisions apply, as applicable:
- a. 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".
  - b. Clean Air Act. Supplier agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
  - c. Byrd Anti-Lobbying. Supplier certifies that it will not, and has not used Federal appropriated



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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.

- d. 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.
  - e. Domestic Preferences for Procurements. As appropriate and to the extent consistent with law, Supplier should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- 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:
- a. Neither Supplier nor its principals are presently debarred, suspended, or proposed for debarment by the U.S. government (see FAR 52.209-6);
  - b. Supplier has filed all compliance reports required by the Equal Opportunity clause (see FAR 52.222-22); and
  - c. 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.
  - d. 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





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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



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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. Freight charged for expedited shipments.
- 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. Supplier agrees to provide UC (the contact listed on the PO) with written notification



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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 PO) 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.



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- 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:
- a. Personally identifiable information,
  - b. 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),
  - c. Medical information as defined by California Civil Code § 56.05,
  - d. Cardholder data,
  - e. Student records, or
  - f. Individual financial information that is subject to laws restricting the use and disclosure of such information, including but not limited to:
    - i. Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 et seq.);
    - ii. The federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2));
    - iii. The federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g);
    - iv. The federal Fair and Accurate Credit Transactions Act (15 U.S.C. § 1601 et seq.);
    - v. The Fair Credit Reporting Act (15 U.S.C. § 1681 et seq), and
    - vi. 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.



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- 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/for-ucstaff/sustainable-procurement/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.



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- 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:
  - a. Uses bulk packaging;
  - b. Uses reusable packaging (e.g. totes reused by delivery service for next delivery);
  - c. Uses innovative packaging that reduces the weight of packaging, reduces packaging waste, or utilizes packaging that is a component of the product;
  - d. 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;
  - e. 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)):
  - a. Supplier offers health coverage to its full-time employees who are performing Services for UC;
  - b. Supplier's cost of enrolling such employees in Supplier's health plan is factored into the fees for the Services; and 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):
  - a. 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



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under Treasury Regulation Section 1-5000A-2) and is Affordable (as defined under Treasury Regulation Section 54.4980H-5(e)); or

- b. 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.
- C. 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 apprenticeship 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.



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### 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

- a. At Supplier's expense, provide an annual independent verification (<https://www.ucop.edu/procurement-services/for-suppliers/fwfw-resources-suppliers.html>) performed by a licensed public accounting firm (independent accountant) or the Supplier's independent internal audit department (<http://na.theiia.org/standards-guidance/topics/Pages/Independence-and-Objectivity.aspx>) in compliance with UC's required verification standards and procedures (<https://www.ucop.edu/procurement-services/for-suppliers/fwfw-resources-suppliers.html>), concerning Supplier's compliance with this provision, and
- b. Ensure that in the case of a UC interim audit, its independent accountant/independent internal auditor makes available to UC its work papers for UC Fair Wage/Fair Work for the most recent verification period. Supplier agrees to provide UC with a UC Fair Wage/Fair Work verification annually, in a form acceptable to UC, no later than ninety days after the end of the 12-month period in which \$100,000 in spend is reached.

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

### ARTICLE 26 – MEDICAL DEVICES

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

Medical Device as used herein will have the meaning provided by the U.S. Food and Drug Administration ("FDA") and means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component part, or accessory which is:

- a. Recognized in the official National Formulary, or the United States Pharmacopoeia, or any supplement to them;
- b. 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
- c. Intended to affect the structure or any function of the body of humans or other animals, and





## Terms and Conditions of Purchase

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:

- a. Perform security testing and validation for each such Goods and/or Services or Medical Device, as applicable;
- b. 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;
- c. Conduct a vulnerability scan encompassing all ports and fuzz testing; and
- d. Provide UC with reports for a-c. Supplier warrants that all Goods or Medical Devices are 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.



## Terms and Conditions of Purchase

Neither Party shall be deemed to be in default of or to have breached any provision of this Agreement due to a delay, failure in performance or interruption of service, if such performance or service are impossible to execute, illegal or commercially impracticable, because of the following "force majeure" occurrences: acts of God, acts of civil or military authorities, civil disturbances, wars, strikes or other labor disputes, transportation contingencies, freight embargoes, acts or orders of any government or agency or official thereof, earthquakes, fires, floods, unusually severe weather, epidemics, pandemics, quarantine restrictions and other catastrophes or any other similar occurrences beyond such party's reasonable control. In every case, the delay or failure in performance or interruption of service must be without the fault or negligence of the Party claiming excusable delay and the Party claiming excusable delay must promptly notify the other Party of such delay. Performance time under this Agreement shall be considered extended for a period of time equivalent to the time lost because of the force majeure occurrence; provided, however, that if any such delay continues for a period of more than thirty (30) days, UC shall have the option of terminating this Agreement upon written notice to Supplier.

### **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.

### **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:



## Terms and Conditions of Purchase

- 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 – 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, and, to the extent incorporated into the Agreement, the terms of the APPENDIX–DATA SECURITY, APPENDIX–BAA, and/or APPENDIX-GDPR.

### **ARTICLE 39 – CONTRACTING FOR COVERED SERVICES**

Covered Services, for the purpose of this Agreement, are defined as work customarily performed by bargaining unit employees at the University in the categories of services described in Regents Policy 5402, and American Federation of State, County, and Municipal Employees (AFSCME) Collective Bargaining Agreement Article 5. Covered Services include, but are not necessarily limited to, the following services: cleaning, custodial, janitorial, or housekeeping services; food services; laundry services; grounds keeping; building maintenance (excluding skilled crafts); transportation and parking services; security services; billing and coding services; sterile processing; hospital or nursing assistant services; and medical imaging or other medical technician services.

Unless UC notifies Supplier that the Services are not Covered Services, Supplier warrants that it is in compliance with applicable federal, state and local working conditions requirements, including but not



## Terms and Conditions of Purchase

limited to those set forth in in other Articles of the Agreement. In accordance with Regents Policy 5402 and AFSCME Collective Bargaining Agreement Article 5, Supplier also warrants that it pays its employees performing the Covered Services at UC locations the equivalent value of the wages and benefits – as determined in the Wage and Benefit Parity Appendix – received by UC employees providing similar services at the same, or nearest UC location.

Supplier agrees UC may conduct such compliance audits as UC reasonably requests, and determined at UC's sole discretion. Supplier agrees to post UC Contracting for Covered Services notices, in the template supplied by UC, in a prominent and accessible place (such as break rooms and lunch rooms) where it may be easily seen by workers who perform Covered Services. The term "Supplier" includes Supplier and its Sub-Suppliers at any tier. Supplier also agrees to:

- a. Upon UC's request, provide verification of an independent audit performed by Supplier's independent auditor or independent internal audit department (<http://na.theiia.org/standards-guidance/topics/Pages/Independence-and-Objectivity.aspx>) and at Supplier's expense; and
- b. Ensure that, in the case of a UC interim audit, Supplier's auditor makes available to UC its Contracting for Covered Services work papers for the most recently audited time period. Supplier agrees to provide UC requested verification, in a form acceptable to UC, no later than ninety days after receiving UC's request.

## FEMA CONTRACT ADDENDUM<sup>1</sup>

This Agreement and/or Purchase Order is in response to the COVID-19 pandemic, and is eligible for FEMA reimbursement under section 501 (b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the "Stafford Act"). Accordingly, the following additional terms apply to this Agreement and/or Purchase Order. To the extent of any conflict between the terms set forth in this Addendum and other terms set forth in the Agreement and/or Purchase Order, the terms of this Addendum shall control.

1. Remedies. 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. [REDACTED]
2. Termination for Cause or Convenience. 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.
1. Clean Air Act and Federal Water Pollution Act. Supplier agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
2. Suspension and Debarment.
  - a. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Supplier is required to verify that none of the Supplier's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
  - b. The Supplier must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
  - c. This certification is a material representation of fact relied upon by (insert name of recipient/subrecipient/applicant). If it is later determined that the Supplier did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to UC, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

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<sup>1</sup> This addenda applies in the event UC seeks federal reimbursement from FEMA for procurements. Refer to the body of the Alert for guidance on inclusion of each term.

- d. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.
3. Byrd Anti-Lobbying Amendment. Suppliers who apply or bid for an award of \$100,000 or more shall file the required certification set forth in Appendix A to 44 C.F.R. Part 18. Each tier certifies to the tier above 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. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.
4. Procurement of Recovered Materials. (i) In the performance of this contract, Supplier shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired competitively within a timeframe providing for compliance with the contract performance schedule; meeting contract performance requirements; or at a reasonable price. (ii) Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>. (iii) Supplier also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.
5. Access to Records. 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.
6. Changes. 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.

7. DHS Seal, Logo, and Flags. The Supplier shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
8. Compliance with Federal Law, Regulations, and Executive Orders. Supplier acknowledges that FEMA financial assistance will be used to fund all or a portion of the contract. Supplier will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.
9. No Obligation by Federal Government. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to UC, Supplier, or any other party pertaining to any matter resulting from the contract.
10. Program Fraud and False or Fraudulent Statements or Related Acts. The Supplier acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Supplier's actions pertaining to this contract.

Upon acceptance of payment and/or shipment of Goods and/or Services pursuant to this Agreement or Purchase Order, the terms of this Addendum shall be interpreted to be accepted by Supplier.]



# UNIVERSITY OF CALIFORNIA

## Appendix – Business Associate Agreement

This Appendix - Business Associate Agreement ("Appendix BAA") supplements and is made a part of any and all agreements entered into by and between The Regents of the University of California, a California corporation ("UC"), on behalf of its University of California Health System and \_\_\_\_\_, Business Associate ("BA").

### RECITALS

- A. UC is a "Covered Entity" as defined under 45 C.F.R. § 160.103
- B. UC and BA are entering into or have entered into, and may in the future enter into, one or more agreements (each an "Underlying Agreement") under which BA performs functions or activities for or on behalf of, or provides services to UC ("Services") that involve receiving, creating, maintaining and/or transmitting Protected Health Information ("PHI") of UC as a "Business Associate" of UC as defined under 45 C.F.R. § 160.103. This Appendix BAA shall only be operative in the event and to the extent this Appendix BAA is incorporated into an Underlying Agreement between UC and BA.
- C. UC and BA desire to protect the privacy and provide for the security of PHI used by or disclosed to BA in compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the regulations promulgated thereunder by the U.S. Department of Health and Human Services (45 C.F.R. Parts 160, 162 and 164) (the "HIPAA Regulations"), the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act"), California Civil Code § 56 et seq., §§1798.82 and 1798.29, and other applicable laws and regulations. The purpose of this BA Agreement is to satisfy certain standards and requirements of HIPAA, the HIPAA Regulations, including 45 CFR § 164.504(e), the HITECH Act, including Subtitle D, part 1, as they may be amended from time to time, and similar requirements under California law.
- D. UC has designated all of its HIPAA health care components as a single component of its hybrid entity and therefore this BA Agreement is binding on all other UC health care components (collectively, the Single Health Care Component or the SHCC). This BA Agreement is effective on the date of the Underlying Agreement under which BA provides Services to UC ("Effective Date").

### 1. DEFINITIONS

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

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



## **2. OBLIGATIONS OF BA**

BA agrees to:

- A. Comply with the requirements of the Privacy Rule that apply to UC in carrying out such obligations, to the extent BA carries out any obligations of UC under the Privacy Rule. BA also agrees to comply with the requirements of California state privacy laws and regulations that apply to UC in carrying out such obligations, to the extent BA carries out any obligations of UC under California Civil Code § 1798 et seq., California Civil Code § 56 et seq., and California Health & Safety Code §§ 1280.15 and 1280.18, as applicable, unless otherwise mutually agreed to by BA and UC.
- B. Not Use or Disclose PHI other than as permitted or required by the Underlying Agreement or as required by law.
- C. Use appropriate safeguards, and comply, where applicable, with 45 C.F.R. § 164 Subpart C with respect to ePHI, to prevent the Use or Disclosure of PHI other than as provided for by the Underlying Agreement(s) and the Appendix BAA.
- D. Notify UC, orally and in writing, as soon as possible, but in no event more than five (5) calendar days, after BA becomes aware of any Use or Disclosure of the PHI not permitted or required by the Appendix BAA or Underlying Agreement(s), including Breaches of unsecured PHI as required by 45 C.F.R. § 164.410 and potential compromises of UC PHI, including potential inappropriate access, acquisition, use or disclosure of UC PHI (each, collectively an “Incident”). BA shall be deemed to be aware of any such Incident, as of the first day on which it becomes aware of it, or by exercising reasonable diligence, should have been known to its officers, employees, agents or sub-suppliers. The notification to UC shall include, to the extent possible, each individual whose unsecured PHI has been, or is reasonably believed by BA to have been, accessed, acquired, used or disclosed during such Incident. BA shall further provide UC with any other available information that UC is required to include in a notification to affected individuals at the time of the notification to UC, or promptly thereafter as information becomes available. BA shall take prompt corrective action to remedy any such Incident, and, as soon as possible, shall provide to UC in writing: (i) the actions initiated by the BA to mitigate, to the extent practicable, any harmful effect of such Incident; and (ii) the corrective action BA has initiated or plans to initiate to prevent future similar Incidents.
- E. Ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of the BA agree to the same restrictions, conditions, and requirements that apply to the BA with respect to such PHI.
- F. If BA maintains PHI in a Designated Record Set, BA shall make the PHI in the Designated Record Set available to UC, or if directed by UC to the Individual or the Individual’s designee, as necessary to satisfy UC’s obligations under 45 C.F.R. § 164.524.
- G. If BA maintains PHI in a Designated Record Set, BA shall make any amendments directed or agreed to by UC pursuant to 45 C.F.R. § 164.526, or take other measures as necessary to satisfy UC’s obligations under 45 C.F.R. § 164.526.

- H. Maintain and make available the information required to provide an accounting of disclosures to UC, or if directed by UC to the Individual, as necessary to satisfy UC's obligations under 45 C.F.R. § 164.528.
- I. Make its internal practices, books, and records, relating to the Use and Disclosure of PHI available to UC, and to the Secretary for purposes of determining UC's compliance with HIPAA, HITECH and their implementing regulations.

### 3. PERMITTED USES AND DISCLOSURES BY BA

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

### 4. TERM AND TERMINATION

- A. Termination for Cause. UC may terminate this Appendix BAA and any Underlying Agreement(s), if UC determines BA has violated a material term of the Appendix BAA.
- B. Upon termination of this Appendix BAA for any reason, with respect to PHI received from UC, or created, maintained, or received by BA on behalf of UC, BA shall return to UC, or if agreed to by UC, destroy, all such PHI that BA still maintains in any form, and retain no copies of such PHI.

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

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

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

#### THE REGENTS OF THE UNIVERSITY OF CALIFORNIA



\_\_\_\_\_  
(Signature)

Paul Williams, Chief Procurement Officer  
\_\_\_\_\_  
(Printed Name, Title)

August 10, 2021  
\_\_\_\_\_  
(Date)

#### BUSINESS ASSOCIATE

\_\_\_\_\_  
(Supplier Name)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name, Title)

\_\_\_\_\_  
(Date)



## ARTICLE 1. PURPOSE AND INTRODUCTION

- A. In the course of providing the Goods and/or Services contemplated by the Agreement, Supplier may gain access to the University of California's (UC) Institutional Information and/or IT Resources (both defined below). In such an event, UC and Supplier desire to appropriately protect Institutional Information and IT Resources. The purpose of this Appendix-Data Security is to specify Supplier's cybersecurity and risk management responsibilities when Supplier has access to Institutional Information and/or IT Resources.
- B. Any capitalized terms used here have the meaning ascribed to such terms as set forth in the Agreement or Incorporated Documents.
- C. Supplier must provide commercially acceptable cybersecurity and cyber risk management to protect Institutional Information and/or IT Resources. This must include, but is not limited to the Supplier:
  1. Developing and documenting a plan that protects Institutional Information and IT Resources.
    - Supplier must responsibly execute this plan.
    - Supplier's approach must conform to a recognized cybersecurity framework designed for that purpose.<sup>1</sup>
    - Supplier's information security plan must be supported by a third-party review or certification. Supplier may only use an alternative to a third-party review if approved by the responsible UC Information Security Officer.
  2. Conducting an accurate and thorough assessment of the potential risks to and vulnerabilities of the security of the Institutional Information and/or IT Resources. Supplier must mitigate anticipated risks effectively. This includes implementing commercially acceptable security policies, procedures, and practices that protect Institutional Information and/or IT Resources.
  3. Updating its plan to effectively address new cybersecurity risks.
  4. Complying with pertinent contractual and regulatory responsibilities.
  5. Providing UC with evidence of compliance with Supplier's information security plan.
  6. Keeping UC informed with timely updates on risks, vulnerabilities, Security Incidents, and Breaches.
  7. Keeping UC informed of any measures UC must perform to ensure the security of Institutional Information and IT Resources.

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<sup>1</sup> Examples include the latest versions of PCI DSS, NIST CSF, CIS Critical Security Controls, ISO 27002, NIST SP 800-53 and NIST SP 800-171.

- D. If, in the course of providing the Goods and/or Services under the Agreement, Supplier engages in transactions with UC affiliated individuals (including but not limited to: students, staff, faculty, customers, patients, guests, volunteers, visitors, research subjects, etc.), as a benefit and result of the Agreement, Supplier must treat any data about UC affiliated individuals that Supplier creates, receives, and/or collects in the course of those transactions with the same level of privacy and security protections and standards as required of Institutional Information by this Appendix.
- E. Supplier agrees to be bound by the obligations set forth in this Appendix. To the extent applicable, Supplier also agrees to impose, by written contract, the same terms and conditions contained in this Appendix on any sub-supplier retained by Supplier to provide or assist in providing the Goods and/or Services to UC.
- F. To the extent that a requirement of this Appendix conflicts with those of any other UC Agreement or Incorporated Document, the most stringent requirement (including but not limited to: least risk to UC, shortest time, best practice, etc.) will apply.

## ARTICLE 2. DEFINED TERMS

- A. **“Breach”** means: (1) Any disclosure of Institutional Information to an unauthorized party or in an unlawful manner; (2) Unauthorized or unlawful acquisition of information that compromises the security, confidentiality, or integrity of Institutional Information and/or IT Resources; or (3) The acquisition, access, use, or disclosure of protected health information (PHI) or medical information in a manner not permitted under the Health Insurance Portability and Accountability Act (HIPAA) or California law.
- B. **“Illicit Code”** means: (1) Any code UC would not reasonably expect to be present or operating; (2) Hidden software or functionality with adverse or undesired actions or consequences; (3) Code that replicates or transmits Institutional Information or activates operating systems or other similar services without the express knowledge and approval of UC; (4) Code that alters, damages, or erases any Institutional Information or software without the express knowledge and approval of UC; or (5) Code or apparatus that functions in any way as a: key lock, node lock, time-out, “back door,” “trap door,” “booby trap,” “dead drop device,” “data scrambling device,” or other function, regardless of how it is implemented, which is intended to alter or restrict the use of or access to any Institutional Information and/or IT Resources.
- C. **“Institutional Information”** means: Any information or data created, received, and/or collected by UC or on its behalf, including but not limited to: application logs, metadata, and data derived from such data.
- D. **“IT Resource”** means: IT infrastructure, cloud services, software, and/or hardware with computing and/or networking capability that is Supplier owned/managed or UC-owned, or a personally owned device that stores Institutional Information, is connected to UC systems, is connected to UC networks, or is used for UC business. IT Resources include, but are not limited to: personal and mobile computing systems and devices,

mobile phones, printers, network devices, industrial control systems (including but not limited to: SCADA, PLCs, DPC, Operational Technology, etc.), access control systems, digital video monitoring systems, data storage systems, data processing systems, backup systems, electronic and physical media, biometric and access tokens, Internet of Things (IoT), or any other device that connects to any UC network.

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

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

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

### ARTICLE 3. ACCESS TO INSTITUTIONAL INFORMATION AND IT RESOURCES

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

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

B. In the event that Goods and/or Services include the review of a specific Security Incident or a threat to or anomaly in Institutional Information or IT Resources, Supplier must limit inspection to the least invasive degree necessary required to perform the investigation.

**ARTICLE 4. SUPPLIER'S INFORMATION SECURITY PLAN AND RESPONSIBILITIES**

- A. Supplier acknowledges that UC must comply with information security standards as required by law, regulation, and regulatory guidance, as well as by UC's internal security program that protects Institutional Information and IT Resources.
- B. Supplier must establish, maintain, comply with, and responsibly execute its information security plan.
- C. Supplier's initial information security plan is attached as Exhibit 2 and incorporated by reference.
- D. Updates to Exhibit 2 will occur as follows:
  - 1. On an annual basis, Supplier will review its information security plan, update it as needed, and submit it upon written request by UC.
  - 2. In the event of a Major Change, Supplier will review its information security plan, update it as needed, and submit it to UC as detailed herein.
- E. If Supplier makes any material modifications to its information security plan that will affect the security of Institutional Information and IT Resources, Supplier must notify UC within seventy-two (72) calendar hours and identify the changes.
- F. Supplier's Information Security Plan must:
  - 1. Ensure the security (including but not limited to: confidentiality, integrity, and availability) of Institutional Information and IT Resources through the use and maintenance of appropriate administrative, technical, and physical controls;
  - 2. Protect against any reasonably anticipated threats or hazards to Institutional Information and IT Resources;
  - 3. Address the risks associated with Supplier having access to Institutional Information and IT Resources;
  - 4. Comply with applicable regulations and/or external obligations listed in Exhibit 1;
  - 5. Comply with all applicable legal and regulatory requirements for data protection, security, and privacy;
  - 6. Clearly document the cybersecurity responsibilities of each party;
  - 7. Follow UC records retention requirements outlined in the Statement of Work (SOW) or in UC's Terms and Conditions;
  - 8. Prevent the sharing of passwords or authentication secrets that provide access to Institutional Information and/or IT Resources;
  - 9. Prevent the use of passphrases (passwords) or other authentication secrets that are common across customers or multiple unrelated UC sites or units;
  - 10. Prevent unauthorized access to Institutional Information and IT Resources;
  - 11. Prevent unauthorized changes to IT Resources;
  - 12. Prevent the reduction, removal, or turning off of any security control without express written approval from UC;

13. Prevent the creation of new Supplier accounts to access Institutional Information and IT Resources without express written approval from UC;
14. Prevent the storing, harvesting, or passing through of UC credentials (username, password, authentication secret, or other factor); and
15. Prevent the use or copying of Institutional Information for any purpose not authorized under the Agreement or any associated Statement of Work (SOW).

## ARTICLE 5. REQUESTS FROM UC AND EVIDENCE OF COMPLIANCE

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

## ARTICLE 6. NOTIFICATION OF MAJOR CHANGES AND VULNERABILITY DISCLOSURES

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

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<sup>2</sup> Common Vulnerabilities and Exposures (CVE) is a dictionary-type list of standardized names for vulnerabilities and other information related to security exposures maintained by The MITRE Corporation. CVE aims to standardize the names for all publicly known vulnerabilities and security exposures. The goal of CVE is to make it easier to share data across separate vulnerability databases and security tools. The CVE list can be found at: [cve.mitre.org](https://cve.mitre.org)

**ARTICLE 7. RETURN AND DISPOSAL OF INSTITUTIONAL INFORMATION**

- A. Within thirty (30) calendar days of the termination, cancellation, expiration, or other conclusion of the Agreement, Supplier must return all Institutional Information to UC and then dispose of the Institutional Information in possession of Supplier as detailed herein. This provision also applies to all Institutional Information that is in the possession of sub-suppliers or agents of Supplier.
- B. Such disposal will be accomplished using the methods described in UC's Institutional Information Disposal Standard (<https://security.ucop.edu/policies/institutional-information-disposal.html>) or an alternative approved by UC.
- C. Supplier will certify in writing to UC that such return and/or disposal has been completed.
- D. If Supplier believes that return and/or disposal of Institutional Information is technically impossible or impractical, Supplier must provide UC with a written statement explaining the reason for this conclusion. If UC determines that return and/or disposal is technically impossible or impractical, Supplier will continue to protect the Institutional Information in accordance with the terms of this Appendix for as long as the Institutional Information is in Supplier's possession.

**ARTICLE 8. NOTIFICATION OF CORRESPONDENCE CONCERNING INSTITUTIONAL INFORMATION**

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

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

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



2. Escalation and identifying information, such as ticket numbers, system identifiers, etc.;
  3. The nature of the Breach and/or Security Incident;
  4. The Institutional Information and/or IT Resources affected;
  5. What Supplier has done or will do to mitigate any deleterious effect; and
  6. What corrective action Supplier has taken or will take to prevent future Security Incidents.
- B. Supplier will provide other information as reasonably requested by UC.
- C. In the event of a suspected Breach and/or Security Incident, Supplier will keep UC informed regularly of the progress of its investigation until the incident is resolved.
- D. **Coordination of Breach Response or Security Incident Activities:** Supplier will fully cooperate with UC's investigation of any Breach and/or Security Incident involving Supplier and/or Goods and/or Services. Supplier's full cooperation will include, but not be limited to, Supplier:
1. Promptly preserving any potential forensic evidence relating to the Breach and/or Security Incident;
  2. Remedying the Breach and/or Security Incident as quickly as circumstances permit;
  3. Promptly, but no more than seventy two (72) calendar hours after the discovery of Breach and/or Security Incident, designating a contact person to whom UC will direct inquiries and who will communicate Supplier responses to UC inquiries;
  4. As rapidly as circumstances permit, assigning/using appropriate resources to remedy, investigate, and document the Breach and/or Security Incident, to restore UC service(s) as directed by UC, and undertake appropriate response activities;
  5. Providing status reports to UC regarding Breach and Security Incident response activities, either on a daily basis or a frequency approved by UC;
  6. Coordinating all media, law enforcement, or other Breach and/or Security Incident notifications with UC in advance of such notification(s), unless expressly prohibited by law;
  7. Ensuring that knowledgeable Supplier employees are available on short notice, if needed, to participate in UC and Supplier initiated meetings and/or conference calls regarding the Breach and/or Security Incident; and
  8. Ensuring that knowledgeable Supplier employees and agents participate in after-action analysis, including root cause analysis and preventive action planning.
- E. **Breaches and Security Incidents – Corrective And Preventive Action:** As a result of a Breach and/or Security Incident impacting Institutional Information and/or IT Resources, and upon UC's request, Supplier must prepare a report detailing corrective and preventive actions. The report must include:

1. A mutually agreed upon timeline for the corrective and preventive actions based on the nature of the Breach and/or Security Incident;
  2. Identification and description of the root causes; and
  3. Precise steps Supplier will take to address the failures in the underlying administrative, technical, and/or physical controls to mitigate damages and future cyber risk.
- F. **Costs:** Supplier must reimburse UC for reasonable costs related to responding to Breaches impacting Institutional Information and IT Resources caused by Supplier. This includes all costs associated with notice and/or remediation of the Breach.
- G. **Grounds for Termination:** Any Breach may be grounds for termination of the Agreement by UC. Agreement obligations to secure, dispose, and report continue through the resolution of the Breach and/or Security Incident.

#### ARTICLE 10. ILLICIT CODE WARRANTY

- A. Supplier represents and warrants that the Goods and/or Services do not contain Illicit Code.
- B. To the extent that any Goods and/or Services have Illicit Code written into them, Supplier will be in breach of this Agreement, and no cure period will apply.
- C. Supplier agrees, in order to protect UC from damages that may be intentionally or unintentionally caused by the introduction of Illicit Code, to promptly isolate or otherwise secure and then return Institutional Information and/or IT Resources.
- D. Supplier acknowledges that it does not have any right to electronically hold Institutional Information or assert any claim against UC by withholding the Goods and/or Services using Illicit Code.
- E. Should Supplier learn of the presence of Illicit Code, Supplier will promptly provide UC with written notice explaining the scope and associated risk.
- F. Supplier represents and warrants that it will take commercially reasonable steps to promptly remove Illicit Code.
- G. Supplier represents and warrants that even if Illicit Code is unintentionally installed via any method, Supplier will never utilize the Illicit Code.
- H. This provision does not relate to malware or viruses that attack the running IT Resource. These are covered under ARTICLE 9 - COORDINATING, REPORTING, AND RESPONDING TO BREACHES AND SECURITY INCIDENTS.

#### ARTICLE 11. BACKGROUND CHECKS

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

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<sup>3</sup> See Exhibit 1.

that the employee, sub-supplier, or agent presents a risk to Institutional Information and IT Resources.

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

## Exhibit 1 – Institutional Information

### 1. Protection Level Classification<sup>4</sup>:

☐ Protection Level 1

☐ Protection Level 2

☐ Protection Level 3

☐ Protection Level 4

**Explanation:** [Optional, add detail if needed, may be covered in SOW]

The Protection Level determines the applicable cyber security insurance requirement in the Terms and Conditions.

### 2. Institutional Information data element descriptors:

Select all data types that apply:

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

<sup>4</sup> For reference see: <https://security.ucop.edu/policies/institutional-information-and-it-resource-classification.html>

- R. ☐ Other: \_\_\_\_\_
- S. ☐ Other: \_\_\_\_\_

### 3. Institutional Information Regulation or Contract Requirements:

Select all regulations or external obligations that apply to inform UC and the Supplier of obligations related to this Appendix:

#### Privacy (\* indicates data security requirements are also present)

- A. ☐ California Confidentiality of Medical Information Act (CMIA) \*.
- B. ☐ California Consumer Privacy Act (CCPA).
- C. ☐ California Information Practices Act (IPA).
- D. ☐ European Union General Data Protection Regulation (GDPR)\*.
- E. ☐ Family Educational Rights and Privacy Act (FERPA) \*.
- F. ☐ Federal Policy for the Protection of Human Subjects ("Common Rule").
- G. ☐ Genetic Information Nondiscrimination Act (GINA).
- H. ☐ Gramm-Leach-Bliley Act (GLBA) (Student Financial Aid) \*.
- I. ☐ Health Insurance Portability and Accountability Act/Health Information Technology for Economic and Clinical Health Act (HIPAA/HITECH) \*.
- J. ☐ Substance Abuse and Mental Health Services Administration SAMHSA (CFR 42 Part 2).
- K. ☐ The Fair and Accurate Credit Transaction Act (FACTA).
- L. ☐ The Fair Credit Reporting Act (FCRA).

#### Data Security

- M. ☐ Chemical Facility Anti-Terrorism Standards (CFATS).
- N. ☐ Defense Federal Acquisition Regulations (DFARS).
- O. ☐ Export Administration Regulations (EAR).
- P. ☐ Federal Acquisition Regulations (FARS).
- Q. ☐ Federal Information Security Modernization Act (FISMA).
- R. ☐ International Traffic in Arms Regulations (ITAR).
- S. ☐ Payment card data (PCI, PCI DSS).
- T. ☐ Toxic Substances Control Act (TSCA).
- U. ☐ Other: \_\_\_\_\_
- V. ☐ Other: \_\_\_\_\_
- W. ☐ Other: \_\_\_\_\_
- X. ☐ Other: \_\_\_\_\_

## Exhibit 2

# Supplier's Initial Information Security Plan

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



## Appendix- Electronic Commerce

This Electronic Commerce Appendix specifies the electronic commerce requirements applicable to Supplier in providing the Goods and/or Services.

### **SECTION 1 - GENERAL TERMS**

Each UC Location offers an electronic web-based purchasing and catalog system to facilitate the purchase of Goods and/or Services from UC suppliers. UC Locations' eProcurement systems currently are provided by multiple service providers. Eight of the ten UC campuses utilize the same platform but may require separate implementations, as will the remaining campuses and/or Medical Centers. This Appendix sets forth the terms and conditions that will govern Supplier's sale of Goods and/or Services through UC's eProcurement systems.

### **SECTION 2 - DEFINITIONS**

**Catalog(s)** refers to the list of detailed product information, agreement pricing, manufacturer part numbers and/or service descriptions relating to the Goods and/or Services to be offered either as a Punch-out Catalog, a Hosted Catalog or in a combination. This may include the creation of multiple Hosted Catalogs.

**eProcurement and eCommerce** are used interchangeably to mean UC's electronic web-based purchasing and catalog systems. Each UC location has a branded eProcurement site.

**Go Live Date** means the date on which a Catalog will be active.

**Hosted Catalog** means a Catalog that is a properly formatted computer file supplied to all UC Locations through the Locations' respective eProcurement systems.

**Order** means a purchase order for Goods and/or Services placed by a User through an eProcurement system.

**Order Data** means all data and information relating to Orders, including, without limitation, the specifics of a given transaction.

**Punch-out Catalog** means a Catalog hosted by Supplier on Supplier's Site. Users may access this Punch-out Catalog via an Internet link provided by Supplier to UC that redirects a User from the Location's eProcurement system to Supplier Site.

**Supplier Mark** means Supplier's name, trade name and/or trademarks, service mark, or any derivation thereof.

**Supplier Site** means an internet site operated and maintained by Supplier that has been made subject to this Appendix.

**UC Mark** means UC's name, trade name and/or trademarks, service marks, or any derivation thereof.

**User** means an individual authorized by a UC location to use an eProcurement system.

### **SECTION 3 – RIGHT TO USE**

UC grants to Supplier the right to sell Goods and/or Services to UC through the eProcurement systems, subject to the terms of this agreement. Supplier will be responsible for any cost of operation or dispute with regard to its interface with UC's eProcurement systems.

#### **SECTION 4 – e-PROCUREMENT SYSTEM RESPONSIBILITIES; MAINTENANCE OF CATALOG(S); LICENSE**

##### **(a) e-Procurement System Responsibilities.**

Except as otherwise set forth herein, each party will be responsible, at its own expense, for: (i) developing, operating and maintaining its relevant system(s); (ii) acquiring and maintaining its server hardware and software (or obtaining third-party hosting services) for its relevant system(s); and (iii) maintaining Internet connectivity.

The supplier will enable its catalog with any UC location that requests one, as long as it is not out of the scope of the terms of the agreement or this appendix. The parties agree to electronically link the functionality of their respective systems, using commercially reasonable efforts.

Purchase Order and Invoice/Credit Memo Data will be transmitted between the systems according to the appropriate method for each University location, cXML, xCBL or EDI standards being preferred. Other methods of PO or Invoice/Credit Memo transmission will only be allowed at the discretion of each University location.

A supplier's Punch-out site (if applicable) will permit: (a) Users to access the Supplier Site when a User selects the Punch-out Catalog; (b) Supplier site to send back user selected items to Location's eProcurement system; (c) User to create an Order through the Location's eProcurement system; and (d) UC eProcurement systems to forward an Order to Supplier for confirmation and Order processing along with Order status inquiry.

Supplier must be able to accommodate orders and invoices for multiple UC locations sharing a single eProcurement platform. Supplier must be able to identify the Punch-out session and transmitted PO as being from the individual locations. If providing a Punch-out catalog, Supplier must be able to accommodate multiple UC locations on a single platform using a single Punch-out site, unless requested otherwise by UC.

##### **(b) Maintenance of Hosted and Punch-out Catalogs.**

Supplier will provide its Catalog(s) to UC in a file format that will interface seamlessly with UC's eProcurement systems. These Catalog files will be in compliance with each UC Location's eProcurement system.

UC makes no guarantee of a Go Live Schedule for establishment of a new catalog Systemwide, as each Location is a separate enablement and subject to resource availability. Timelines will be estimated and adjusted by UC as needed for concurrent implementations.

For Hosted Catalogs, Supplier must provide UC with updated versions of the Catalog file with, at a minimum, full descriptions and images that Supplier currently utilizes for items offered in its proprietary websites and Punch-out Catalogs. The parties will update each other regarding eCommerce specifications as needed from time to time.

Supplier must notify UC's Contract Administrator at least three (3) weeks in advance of the proposed Go Live Date if it will be requesting additions, deletions, or modifications to the Catalogs. After such advance notification, Supplier must provide UC with Catalog files containing the requested additions, deletions, or modifications with no less than the lead time specified in Section 10 of this appendix. In addition, for price file updates with a mutually agreed upon activation of January 1, Supplier must submit proposed files at least five (5) weeks prior to the first working day in January. Upon UC's approval of the new Catalog file, UC and Supplier will confirm the Go Live Date; the updated version of the Catalog file will be made effective on that Go Live date. If UC rejects a Catalog more than once because it does not meet UC's acceptance criteria, the Contract Administrator will suspend Supplier's price/content change until the date of Supplier's next acceptable contracted change.

If there is a conflict between a price in a Hosted Catalog and a Punch-out Catalog, UC will be invoiced at the lower price. Supplier must notify UC in advance when substituting items, changing SKU numbers or changing the number of items in a package in any Catalog.



Content in Supplier catalog is limited to the categories specified in this agreement, with additional categories allowed at UC's discretion. Supplier agrees that UC may block Catalog items at the category and/or SKU level.

The University will require Supplier to clearly identify products as Hazardous Materials, Radioactive, and Controlled Substances in the Supplier's catalog, whether Hosted or Punch-out. For Punch-out the identifier will be returned to the cart of the Location's eProcurement system, in a manner/field acceptable to the Location.

The University will require Supplier to clearly identify products with UC-recognized sustainability/green certifications in both hosted and Punch-out catalogs. UC's Contract Administrator will work with Supplier to ensure that contract items that meet the UC criteria for Green/Sustainable products will be prioritized in all product searches. Products that do not meet UC's minimum criteria requirements may be blocked in all hosted catalogs and Punch-out catalogs at UC's discretion.

Supplier is responsible for providing UC with Catalogs that contain accurate pricing and data in accordance with the Agreement. If UC determines there are errors in the pricing or data attributes of a Catalog, UC will notify Supplier of those errors in writing and reject the Catalog. Supplier will have no more than ten (10) business days to review and correct the errors.

(c) License.

Supplier hereby grants to UC, at no additional cost, a limited, non-exclusive, royalty-free right to link to and access the Supplier Site from the eProcurement sites, subject to the terms and conditions herein and solely for the purpose of permitting Users to access the Services. All Supplier Marks will remain the sole property of Supplier.

(d) Accessibility Requirements.

Supplier agrees that Supplier will make available Goods/Services accessible to people with disabilities and conform to the technical requirements of the relevant Revised Standards of Section 508 of the federal Rehabilitation Act. In addition, Supplier warrants that:

- i. Any catalog content provided to UC will comply with the accessibility requirements of WCAG 2.0AA.
- ii. Supplier will promptly respond to and resolve any complaint regarding accessibility of any catalog content provided to UC.

## **SECTION 5 – USER SUPPORT**

(a) UC Duties. Each UC Location will provide its Users with initial contact and system support assistance on all functionality and use issues for eProcurement (including links to the Supplier Site). When known, UC will promptly notify Supplier of any such issues relating to the Catalog, the Supplier Site, and/or other Supplier materials/systems.

(b) Supplier Duties. Supplier will provide all customer support relating to the Catalog, Supplier Goods and/or Services, Invoicing/Payment/Credits, and Supplier Sites in a manner consistent with the customer support that Supplier provides to other customers, and at least as good as the customer support that Supplier provides to customers who are purchasing through any other means.

## **SECTION 6 – PROPRIETARY RIGHTS**

UC's Terms and Conditions of Purchase contains provisions regarding the parties' rights and responsibilities with respect to intellectual property relating to the Goods and Services. Without altering those provisions, the parties additionally agree as follows: UC may require Supplier to "brand" Supplier's Punch-out Catalog with one or more UC Marks. If UC requires Supplier to utilize one or more UC Marks on Supplier's Punch-out Catalog, UC will provide the appropriate artwork and such artwork will be deemed to have been provided with a limited, non-exclusive, non-sub-

licensable right for Supplier to use it solely for the purpose of a UC-branded Punch-out Catalog hosted by Supplier and subject to the following terms:

- (i) Supplier may not make any additional use of the UC Marks without UC's prior written approval.

Supplier's use of the UC Marks in the Punch-out Catalog must acknowledge UC's ownership of the UC Marks. Supplier will include all notices and legends with respect to UC trademarks, trade names, or copyrights as may be required by applicable trademark and copyright laws or which may be reasonably requested by UC. Supplier agrees not to claim any title to UC Marks or any right to use UC Marks except as permitted by this Appendix. Upon termination of this Appendix or the Agreement, all rights to UC Marks conveyed by UC to Supplier will cease and Supplier will destroy or return to UC all media with UC Marks. UC specifically reserves any and all rights to UC Marks not specifically granted to Supplier.

Supplier grants to UC the right to use Supplier's trademarks, logos, trade names, and service marks for the purpose of promoting UC eProcurement sites to the UC community. UC acknowledges Supplier's right, title, and interest in and to Supplier's Marks and Supplier's exclusive right to use and license the use of Supplier Marks and agrees not to claim any title to Supplier Marks or any right to use Supplier Marks except as permitted by this Appendix. UC will include all notices and legends with respect to Supplier trademarks, trade names, or copyrights as may be required by applicable trademark and copyright laws or which may be reasonably requested by Supplier. Upon termination of this Appendix, all rights to Supplier Marks conveyed by Supplier to UC will cease and UC will destroy or return to Supplier all media with Supplier Marks. Supplier specifically reserves any and all right to Supplier Marks not specifically granted to UC.

- (ii) The licenses granted in the previous paragraphs regarding UC Marks and Supplier Marks are subject to the ongoing approval of the party owning the respective trademarks, logos, trade names, or copyrights. Such ongoing approval includes the ability to terminate – at any time, for any reason, and in the sole discretion of the owner of the respective trademarks, logos, trade names, or copyrights – the trademark licenses provided in the preceding paragraphs for any particular trademark, logo, trade name, or copyrighted work without necessarily terminating this Appendix. Each party agrees not to take any action that will adversely reflect upon or damage the goodwill, reputation, or the brand value of the other party. Each party further agrees not to take any action that is inconsistent with the other party's ownership of the respective trademarks, trade names, or copyrights. At all times (including following termination of the Agreement), Supplier agrees to comply with Section 92000 of California's Education Code.

(a) Grant of License. Supplier hereby grants UC a non-exclusive, royalty-free: (i) license to use, copy, transmit, and display the Catalog, any information contained therein and the Supplier Marks for the purposes of permitting Customers to access information about and order Supplier Goods and/or Services from a Catalog and (ii) if Supplier is using a Punch-out Catalog, right to link to and access the Punch-out Catalog on the Supplier Site, for the purposes of permitting Customers to access the Supplier Website and permitting Customers to order Supplier Goods and/or Services.

(b) Modifications. UC will not modify or remove any of the proprietary rights markings in the Catalog. UC will not modify the content of the Catalog, except as indicated by Supplier, but may require Supplier to make and submit modifications if required as part of this agreement. However, for hosted catalogs, UC reserves the right to attach flags to catalog items as an aid to shoppers in selecting preferred items, such as green or recycled. UC will not make any representations or warranties, or provide any information, to any third party regarding any Supplier Goods and/or Services (including, but not limited to, any representations or warranties of any information regarding availability, delivery, pricing, characteristics, qualifications or specifications thereof). If UC believes in good faith that any Supplier information does not conform to the requirements of the associated UC Agreement or this Appendix, UC will be entitled to withdraw the Catalog from UC eProcurement sites. In such a case, UC will promptly notify the Supplier of the actions it has taken and will work with the Supplier promptly to resolve UC's concerns. When UC's

concerns are satisfactorily resolved UC will promptly restore the Catalog, if appropriate. UC will have no liability to the Supplier or anyone else for exercising these rights.

(c) Acknowledgment. Each party acknowledges that the technology embodied in the other party's Site may be based on patented or patentable inventions, trade secrets, copyrights or other intellectual property or proprietary rights ("Intellectual Property Rights") owned by the other party and its applicable licensors.

(d) UC Rights. As between the parties, UC will be the sole owner of – or, with respect to any items licensed by UC, will retain all rights to all Intellectual Property Rights associated with UC eProcurement sites, including any modifications, updates, enhancements or upgrades to any of the foregoing, as well as any Order Data generated or collected on such site (collectively, the "UC Materials"). Except as provided herein, Supplier may not copy or use in any way, in whole or in part, any UC Materials without UC's prior written approval. Any permitted copies of such property, in whole or in part, alone or as part of a derivative work, will remain UC's sole property. Supplier agrees to reproduce and include UC's copyright, trademark and other proprietary rights notices on any permitted copies of UC Materials including, without limitation, partial copies and copied materials in derivative works. Supplier will not copy or reproduce any third-party copyrighted or trademarked materials, which appear on or are otherwise associated with any UC eProcurement site without UC's prior written consent.

## **SECTION 7 – MULTIPLE SUPPLIERS**

Supplier acknowledges that all UC eProcurement sites are intended to facilitate Users' ability to obtain Goods and/or Services from more than one supplier. Nothing in this Appendix will be construed to prevent UC from entering into similar agreements with any third parties including, without limitation, suppliers that may be in competition with Supplier.

## **SECTION 8 – WARRANTY DISCLAIMER**

UC does not warrant that access to UC eProcurement sites will be uninterrupted or that the results obtained by use of UC eProcurement sites will be error-free.

## **SECTION 9 – DISPUTES AND CHANGES IN THE SERVICES**

(a) UC and Supplier agree to negotiate in good faith to resolve problems, questions and disputes.

(b) Where improvements and clarifications can be made in the business processes related to eProcurement, both parties agree to incorporate such changes as long as they are mutually agreed upon.

## **SECTION 10 – ADDITIONAL CONTRACTUAL TERMS**

In addition to the provisions of Section 4, Section 10 provisions will govern the Catalogs. If the provisions of Sections 4 and 10 conflict, Section 10 will govern.

Type(s) of Catalog(s): At UC's campus discretion, Supplier is allowed to implement a **[specify hosted, Punch-out, or both]** catalog in the UC eProcurement systems. Supplier will be required to comply with UC Location e-commerce requirements on a location by location basis, which includes the decision to move forward with Punch-out or Hosted. Any deviation from the type(s) specified herein must first be agreed upon by UC's Contract Administrator.

Annual Number of Catalogs: Supplier is allowed to submit no more than **[number]** catalogs per calendar year, with changes as follows:

- Content Additions, Deletions and Other Non-pricing Edits: **[insert number of times Supplier can change its content; quarterly or biannually would be recommended]**
- Price Changes: **[insert number of times Supplier can change its price; once per year would be recommended]**

- Allowable level of price change (\$/%) will be in accordance with the terms of this agreement.
- If a price file includes both content and pricing changes, it will count toward the pricing allocation.

Lead time: Supplier must load the Catalog price file into the e-Procurement system **[insert number, 10 is the minimum]** working days prior to the planned go-live date. (Exception – for January 1 updates to enabled catalogs, Supplier must submit the price file no later than 5 weeks prior, as specified in section 4.)

**Buyer – [Choose those that apply]:**

- Number of catalog/price file versions to be supported for this agreement: **[insert number]**
- If more than one catalog/price file version is supported, please include a description/justification (e.g., special pricing for cores): **[insert description]**
- Maximum Number of SKUs allowed: **[insert number]** (optional)
- Categories allowed within Catalog: **[list specific categories]** or
- Categories blocked within Catalog: **[list specific categories]**