



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, Office of the President 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.

**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.

**Order of Precedence:** Should any conflict arise between the terms of this Agreement and language set forth in the RFP or attachments, the inconsistency shall be resolved by giving precedence in the following order:

1. This agreement – Purchasing Agreement # **2023003491** (corrected #, 09/05/23) MB
2. CalUSource Questionnaire Response as submitted for RFX #002815
3. Incorporated Documents as outlined in Section 15.0 of this Purchasing Agreement

### 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

- a) The initial term of the Agreement will be from **September 1, 2023**, and through **August 31, 2028** (Initial Term) and is subject to earlier termination as provided below. Either Party may renew the Agreement for **5** successive **one**-year periods (each, a Renewal Term), by providing the other with at least **30** calendar days’ written notice before the end of the Initial Term or any Renewal Term.
- b) Either Party may terminate the Agreement for convenience by giving the other party at least **30** calendar days’ written notice.
- c) Either Party or the other party may terminate the Agreement for cause by giving the other party at least **15** 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

Unless otherwise provided in the Agreement, Supplier may not begin providing Goods and/or Services until UC approves, and Supplier accepts a Purchase Order for the Goods and/or Services.

Purchase Orders are required for scheduled services. If Purchase Order not available for Emergency/On-Site Non-Scheduled Services pricing will comply with Attachment B – Pricing Schedule. UC location responsible in providing Purchase Order for emergency/non-scheduled services to supplier in a reasonable time.

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## 4. Pricing, Invoicing Method, and Settlement Method and Terms

### 4.1 Pricing As outlined in **Attachment B – Pricing Schedule**

#### a. Price Increases

After the first twelve (12) months term, or longer term as negotiated between UC and the Supplier, of any resulting contract, the Supplier will have an opportunity to request price increases. Requests for price increases may only be made once each year, in writing, 60 days in advance of the contract anniversary date or the beginning of the calendar year (whichever is agreed-to in the contract). In each twelve (12) month period, the proposed price increase will not exceed 3.00% or CPI, whichever is less, for any standard line item specified in the Final Pricing document. If the Supplier does not opt to request a price increase during a given year, that year's price change is noted as Zero (0), or as a forfeited option.

#### b. Price Decreases

Supplier is advised that there is no mandatory use policy within the System. Supplier shall guarantee that manufacturer and/or Supplier price decreases be passed on to System immediately.

#### c. Products/Services

At a minimum Supplier shall offer the System the lowest net prices and/or the highest discounts it makes available to any other entity, including other Universities, hospitals, government agencies or entities where the economic and service requirements are substantially similar. If Supplier catalog or list price of Products and Services is reduced, System shall benefit from a corresponding price reduction. Such decreases shall be passed along to Locations immediately.

#### d. Price Compliance

Labor rates and material discount will follow pricing structure as defined in Attachment B – Pricing Schedule in response to RFP 002815. The lower local hourly rate and/or higher material discount will be extended to affiliated location in the UC System. The same rule applies to an affiliated lab or building within the UC System. Approval is to be given by the UCOP procurement department or local campus procurement.

*(Example: If UC Campus has a rate of \$100/hr. with 20% Material Discount and neighboring UC Health has a rate of \$120/hr. with 40% Material discount, then the adjusted rate of the UC location will be \$100/hr. with 40% Material Discount.)*

#### e. Special Bid Pricing

Any Location in the System may request Special Bid Pricing from the awarded Supplier(s) for volume purchases of any product(s) and/or service(s). The System expectation is that Special Bid Pricing may be negotiated based on volume of purchases exceeding \$50K per order. These types of requests will only come from those buyers authorized by the Materiel Management Department of each System Location

Refer to Statement of Work or Purchase Order for Pricing. For systemwide agreements, 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.

See UC's Procure to Pay Standards <http://www.ucop.edu/procurement-services/files/Matrix%20for%20website.pdf> for the options that will be considered. In the case of systemwide agreements, each UC Location will specify these terms in a Statement of Work or Purchase Order, as the case may be.]

For non-systemwide agreements, the Invoicing Method, and Settlement Method and Terms are addressed below.

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4.2 **Invoicing Method**

Notwithstanding the provisions of Article 3 of the Terms and Conditions of Purchase, Supplier will be required to use the following Invoicing Method.

Notwithstanding the provisions of Article 3 of the Terms and Conditions of Purchase, UC will pay freight and shipping/handling as follows.

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 by amendment to the Agreement.

4.3 **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 follows: **Option 1 preferred Virtual/Ghost Card: NET, Alternative: ACH 2%10 Net 30**

- a. Settlement Matrix link provided for reference purposes only.  
[http://www.ucop.edu/procurement-services/\\_files/Matrix%20for%20website.pdf](http://www.ucop.edu/procurement-services/_files/Matrix%20for%20website.pdf)

4.4 **Earned Incentive**

During the Term of the Agreement, and any extension(s) to the Term, Supplier agrees to provide Earned Incentives to UC, which will be calculated as follows. UC's eligibility to benefit from Earned Incentives on a system-wide and/or campus-by-campus basis will be reviewed annually, prior to December 1 of each contract year and Supplier may change the basis for calculating the Earned Incentives in succeeding contract years with UC's agreement. Earned Incentives will be provided in the form of an additional discount as follows:

- Volume Discounts:**
- UC aggregate annual spend over \$3M - 1%
- UC aggregate annual spend over \$6M - 2%

The proposals for each participating campus will be modified to reflect the applicable discount in the year following achievement of the Volume Discounts thresholds listed above.

5. **Program Requirements**

5.1 **Program Management.**

Supplier will provide the necessary staff and resources to support UC's program management function as outlined in the RFP and Supplier's Response including, but not limited to:

- Marketing the program to increase sales activity;
- Coordinating program implementation;

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Providing superior customer service;  
Promoting alternate Services to reduce cost and to meet UC sustainability objectives;  
Demonstrating new Services;  
Managing the continuous improvement process;  
Providing on-going contract monitoring and maintenance;  
Offering Services cost reduction and process improvement opportunities to UC;  
Conducting monthly account review meetings

### 5.2 **Participation**

- a. All new services are to complete **Attachment A – Statement of Work**.
- b. All documents are to be submitted to Section 7 Key Personnel - Supplier Account Manager.

### 5.3 **Key Performance Indicators - Key Task and Activities, Deliverables and Completion Timeframe.**

During the Term of the Agreement, and any extension(s) of the Term, Supplier will provide the minimum service standards as described in the goals of the Key Performance Indicators (KPI). The minimum service standards set forth recognize that occasional errors are likely; however, Supplier further agrees to use its best efforts to achieve 100% of service levels. Should the service level fall below the minimum and Supplier does not take corrective action within fourteen (14) days following UC written notification, UC reserves the right to terminate the Agreement immediately. Details defined in **Attachment C – KPI's**.

<b>Supplier Obligations</b>				
	<b>Task</b>	<b>Activities</b>	<b>Deliverables</b>	<b>Completion Date and Timeframe</b>
1	Services and Products	Provide Services and Products as needed, as defined in <b>Attachment A - Statement of Work</b>	Services and Products	As requested by individual UC Campus
2	Quarterly KPI Reports	Provide quarterly KPI reports as described in <b>Section 5.3</b> and detailed in <b>Attachment C - Reporting</b>	Quarterly KPI Report	30 days following the end of quarter
3	Quarterly Purchase Report	Provide quarterly purchase reports as described in <b>Quarterly Attachment D - Quarterly Reports</b>	Quarterly Purchase Report	10 days following the end of quarter

### 5.4 **Reporting Requirements**

- a. Quarterly KPI and Purchase Reports as described in **Attachment C & D**.
- b. Supplier agrees to provide other reports as reasonably requested by UC during the Term of the Agreement and any extension(s) to the Term at no additional cost to UC.
- c. Report all Facilities Management and Construction projects.

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**5.5 Returns**

Supplier agrees to accept Goods returned by UC, in its original packaging, if in resalable condition and if made within thirty (30) days of original shipment. UC Campus to obtain an RMA number for proper return. Custom parts made to order are non-cancelable/return, orders are to be noted to UC for notification purposes.

**5.6 Credit**

Requests for credit can be transmitted by the ordering UC personnel via the established order management system (telephone, fax, paper return form, and web-based). Chargebacks and credit memos will be issued to UC ordering departments in the current month's billing period. Return items will be credited at cost. If Goods were purchased via UC purchasing card, credit must be issued to the same purchasing card.

**5.7 Out of Stock Items**

If there is an out-of-stock situation of any ordered inventoried item(s), the out-of-stock item will be added to the back-order file and will be delivered to UC when the item is in stock without a further order being submitted.

**5.8 Surveys**

Supplier will, at UC's request, conduct customer surveys of UC orders through questionnaires. The content of these surveys will be approved by UC. UC will be responsible for the tabulation of these surveys.

**6.0 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 confirmed or suspected Breaches as defined under Appendix – Data Security: to below and Notification will be provided to individual UC Campus where suspected breach occurred.

<b>Name</b>	Office of the UC Systemwide Chief Information Security Officer
<b>Phone</b>	510 987 0457, option #2 during business hours, 510 987 0363 after normal business hours
<b>Email</b>	infosec@ucop.edu
<b>Address</b>	1111 Franklin Street, Oakland, CA 94607

To UC, regarding contract issues not addressed above:

<b>Name</b>	Marilyn Biscotti
<b>Phone</b>	510 587 6095
<b>Email</b>	Marilyn.biscotti@ucop.edu
<b>Address</b>	1111 Franklin Street, Oakland, CA 94607

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**7.0 Key Personnel**

To Supplier: (UCOP POINT OF CONTACT)

<b>Name</b>	Cory Trusty
<b>Phone</b>	858 337 4581, cell
<b>Email</b>	cory.trusty@jci.com
<b>Address</b>	9630 Ridgehaven Ct, Ste A
	San Diego, CA 92123

**7.1 Supplier's Account Manager Team: Please refer to Attachment F****7.2 Subcontractors authorized to render Services under this agreement: Refer to Attachment G.****8.0 Intellectual Property, Copyright and Patents [select one] NOT APPLICABLE**

/\_\_\_/ The Goods and/or Services involve Work Made for Hire

/✘/ The Goods and/or Services **do not** involve Work Made for Hire**9.0 Patient Protection and Affordable Care Act (PPACA) [select one] NOT APPLICABLE**

/✘/ Because the Services involve temporary or supplementary staffing, they are subject to the PPACA warranties in the T&amp;Cs.

/\_\_\_/ The Services do not involve temporary or supplementary staffing, and they are not subject to the PPACA warranties in the T&amp;Cs.

**10.0 Prevailing Wages [Check if Prevailing Wage requirement does not apply]**

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

**11.0 Fair Wage/Fair Work**

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

**12.0 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 – Johnson Controls, Inc. **[Buyer: insert Supplier name].**

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### **13.0 Cooperative Purchasing**

Supplier agrees to extend for Goods and/or Services to participating agencies (public and private schools, colleges, and universities, cities, counties, non-profits and all governmental entities) registered with OMNIA Partners, Public Sector under the terms of this agreement. All contractual administration issues (e.g. terms and conditions, extensions/renewals, product pricing and Core List) will remain UC's responsibility except as outlined in the above referenced Request for Proposal # 002815 – Building Management Systems. Operations issues, fiduciary responsibility, payment issues, performance issues and liabilities, and disputes involving individual participating agencies will be addressed, administered, and resolved by each participating agency.

### **13.0 Records about Individuals**

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

### **14.0 Changes to the Services**

UC may desire to change the Goods and/or Services following execution of an SOW. If so, UC will submit a written Amendment to Supplier describing the changes in appropriate detail. If an Amendment does not require Supplier to incur any additional material costs or expenses, then Supplier will make the modification within thirty (30) business days of Supplier's receipt of UC's Amendment. If an Amendment does require that Supplier incur additional material costs or expenses, then Supplier in good faith will provide UC with a written, high level, non-binding assessment of the costs and expenses and the time required to perform the modifications required by the Amendment, within thirty (30) business days of Supplier's receipt of UC's Amendment. UC will notify Supplier in writing within thirty (30) business days after receipt of Supplier's response to the Amendment as to whether UC wishes Supplier to implement the Amendment based on the response. UC will compensate Supplier for implementation of an Amendment in accordance with the terms and conditions of the relevant Amendment and Supplier's response to the Amendment, if any. Supplier's implementation of an Amendment will not delay the performance of Service's and/or the delivery of deliverables not reasonably affected by an Amendment.

### **15.0 Buy American Act (41 U.S.C. 83)**

Supplier represents and UC acknowledges that Supplier is unable to certify compliance with Buy American Act (41 U.S.C. 83) ("BAA") for all products and therefore Supplier cannot accept any Statement of Work that will require BAA certification. UC shall not submit any Statement of Work that requires BAA certification. If UC submits any such Statement of Work to Supplier, the parties agree that Supplier shall not be deemed in breach of this Agreement for its inability to provide BAA certification. For any project that may potentially be funded by any other federal government funds, UC will notify the Supplier and Supplier will assess its qualification under such funding.

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## **16.0 Incorporated Documents**

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.

- a) UC Terms and Conditions, revised 12/14/21
- b) UC Appendix – Data Security, dated 08/20/21
  - a. Exhibit 1 – UC Campus Institutional Protection Information
- c) OMNIA Documents as Outlined in RFP 002815
  - a. Exhibit A – National Cooperative Contract Objectives
  - b. Exhibit B – Administration Agreement
  - c. Exhibit C – MICPA
  - d. Exhibit D – Principal Agency Certificate
  - e. Exhibit E – Contract Sales Reporting
  - f. Exhibit F – Federal Funds
  - g. Exhibit G – New Jersey Compliance Form
- d) UC Requestion for Proposal RFP 002815
- e) Attachment A – Statement of Work
- f) Attachment B – Pricing Schedule
- g) Attachment C – Key Performance Indicators (Metric, Category, Measurement, Goal)
- h) Attachment D – Quarterly Purchase Reports (Name/Identifier; description; requirement status)
- i) Attachment E – Professional Services; Labor Category and Description
- j) Attachment F – Account Management Team
- k) Attachment G – Subcontractors Name with Good and/or Services Providing
- l) Attachment H – Training Programs (Value-Add)
- m) Attachment I – Scholarship & Internship Programs (Value-Add)
- n) Attachment J – Utility Incentive Programs (Value-Add)
- o) Attachment K – Data Security Programs (Value-Add)
- p) Attachment L – eCommerce Programs (Value-Add)
- q) Attachment M – Miscellaneous Programs/Opportunities (Value-Add, List if Applicable)



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17.0 Entire Agreement

The Terms and Conditions of this agreement will supersede and take precedence over those of any pre-existing agreements between any UC Location and supplier as of the effective date of this agreement.

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

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

JOHNSON CONTROLS, INC.

DocuSigned by: Sean Parker

DocuSigned by: Greg Cominos

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(Signature)

(Signature)

Sean Parker

Greg Cominos

Associate Director - Strategic Sourcing

VP Commercial Sales

(Printed Name, Title)

(Printed Name, Title)

8/24/2023

8/11/2023

(Date)

(Date)