



# UC HEALTH MASTER PURCHASING AGREEMENT

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The master purchasing agreement (“Agreement”) to furnish certain services described herein and in the documents referenced herein (“Services”) is made by and between UC Health, an operating subdivision of the Regents of the University of California, a California public corporation (“UC”), with a location of 1111 Broadway, 14<sup>th</sup> Floor, Oakland, California 94607, acting for the benefit of UC locations and UC affiliate locations as defined herein and the supplier, [NAME OF SUPPLIER], a [ ] corporation, located at [ADDRESS OF SUPPLIER] (“Supplier”). UC and Supplier shall individually be referred to as “Party” and collectively, “Parties.”

## 1. UC Health and Scope of Customers

- (a) UC Health represents five academic medical centers located at the Davis, Irvine, Los Angeles, San Diego, and San Francisco campuses, as well as UC’s medical and health professional schools and associated research programs, and student health and counseling centers.
- (b) “UC Location” used herein shall mean: (i) any UC campus, medical center, affiliated national laboratory, or program, as further described at <http://www.universityofcalifornia.edu/uc-system/parts-of-uc>; (ii) any entity that, after the full execution of this Agreement, is acquired or created by any location referenced in (i); and (iii) any entity that merges into or consolidates with any location referenced in (i) and, after such merger or consolidation, the surviving entity is a location as referenced in (i).

The terms of this Agreement will be extended to UC Locations listed in Appendix A. Accordingly, each UC Location listed in Appendix A is also referred to as a “Customer” under this Agreement.

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

- (c) UC Affiliate Locations.

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

UC and each of the UC Affiliate Locations are separate and distinct entities. As such, each administrative unit and campus under the control of UC, and each administrative unit and campus under the control of any of the UC Affiliate Locations, is financially separate and each shall be responsible for its respective



individual commitments, financial or otherwise, and none shall be responsible for the performance or non-performance of any of the others.

The terms of this Agreement will be extended to UC Affiliate Locations listed in Appendix A. Accordingly, each UC Affiliate Location listed in Appendix C is also referred to as a “Customer” under this Agreement.

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

In the event Supplier will have access to PHI, as defined by the privacy and security standards of HIPAA, UC Affiliate Location Customers may require Supplier to execute and deliver a HIPAA business associate agreement with respect to performance of Services for such Customer.

- (d) Unless otherwise provided in the Agreement, UC, through Customer(s), will not be obligated to purchase a minimum amount of Services from Supplier. Neither UC, nor any Customer, will be penalized, monetarily or otherwise, for not achieving any projected net purchases. Additional Goods, including Goods that enhance or update any existing Service will be added to the Agreement at the same price as the respective Goods pricing to the extent consistent with applicable laws. In the event a new Good or Service is introduced by Supplier that fundamentally differs from current Goods or Services listed in Appendix A due to its manner of operation or result achieved, the price(s) of such good(s) or service(s) will be negotiated before addition to this Agreement.
- (e) Supplier will make available to any Customer its improved pricing basis, terms or conditions resulting from increased usage or aggregation of activity by multiple Customers. All contractual administration issues (e.g., terms and conditions, extensions and renewals), operational issues, fiduciary responsibility, payment issues, performance issues and liabilities, and disputes involving individual Customers will be addressed, administered, and resolved by each Customer. Any delay in payment or other operational issue involving one Customer will not adversely affect any other Customer.
- (f) No Customer shall amend, alter or otherwise modify the terms of this Agreement. All modifications, amendments and alterations to this Agreement shall be mutually agreed to between UC and Supplier. All other modifications, amendments and alterations shall be null and void.
- (g) Notwithstanding any other provision to the contrary, UC will not be responsible for any fees, interest or surcharges Supplier wishes to impose

## 2. Term of Agreement/Termination

- (a) **[Buyer: select one of the following alternatives]**

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

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

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

The term of the Agreement will commence on **Date** and is subject to termination for convenience or in



the case of a breach as provided below. Otherwise, it will remain in force until terminated by either Party with at least \_\_ calendar days' written notice. **[Buyer: Number of days will depend on Services, and time needed to obtain replacement if necessary.]**

- (b) UC may terminate the Agreement for convenience by giving Supplier at least thirty (30) calendar days' written notice.
- (c) UC or Supplier may terminate the Agreement for cause by giving the other Party at least fifteen (15) days' written 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.
- (d) Each Customer or Supplier may terminate a Customer's Statement of Work or any of Customer's Purchase Order(s), and the Agreement with respect to such Statement of Work and/or Purchase Order(s) and Customer only, for cause, by giving the other party written notice least the length of the Cure Period to cure the breach. If the breaching party fails to cure the breach within the Cure Period, the non-breaching party may immediately terminate the Agreement.
- (e) If a Customer terminates Supplier's Statement of Work or Purchase Order(s), the Agreement, with respect to such Customer, will immediately terminate. If Customer terminates one of its Purchase Orders, the Agreement with respect to such Purchase Order also will terminate, and the Agreement, with respect to all other ongoing Purchase Order(s) of Customer, shall remain in full force and effect. Supplier's right to terminate a Customer of this Agreement only extends to that particular Customer, and not to any other UC Location or UC Affiliate Location which is also a Customer.
- (f) In the event of termination by a Customer, such Customer shall be relieved of all obligations to Supplier, except for outstanding payments due under the terms of this Agreement. In the event of termination by UC, UC and each Customer shall be relieved of all obligations to Supplier, except for outstanding payments due under the terms of this Agreement.

### 3. Purchase Order

Unless otherwise provided in the Agreement, Supplier may not begin providing Services to UC until a fully executed master Agreement is on record. No payments will be made in advance of Services received except as specified and agreed upon in this Agreement.

### 4. Invoices and Pricing

- (a) All invoices must be itemized according to this Agreement and include the Agreement and/or Purchase Order Number, payment remittance instructions, Customer name, and a description of the Services delivered.
- (b) UC payment terms are net thirty (30) unless otherwise stated in the Agreement. Unless the Agreement is amended in writing, the total price for Services may not exceed \$\_\_\_\_\_.
- (c) For purposes of calculating UC and Customers' use of Supplier's Services and purchase price of such Services, Supplier shall aggregate, and UC and each Customer shall get the benefit of, all net purchases of Services made by all Customers. Supplier will review, on a quarterly annual basis, the combined net purchases of Services for all Customers during the term of this Agreement and shall make appropriate changes and adjustments to pricing to reflect the pricing for which Customers qualify in accordance with Appendix A of this Agreement.
- (d) Unless otherwise agreed to in writing by UC, Supplier will use the invoicing method and payment



settlement method (and will extend the terms applicable to such settlement method) set forth in [UC's Supplier Invoicing, Terms and Settlement Matrix](#). UC will pay Supplier, upon submission of acceptable invoices, for Services provided and accepted. To the extent the Agreement extends to multiple UC Locations and UC Affiliate Locations, each Customer will pay Supplier, upon submission of acceptable invoices, for Services provided and accepted by such Customer. All invoices must be itemized and reference the Agreement or PO number, and as applicable, the Customer name. No Customer, including UC, will pay cartage, shipping, packaging or boxing expenses, unless specified in the Agreement. 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 Meal and Travel Expense 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. Notwithstanding any other provision to the contrary, UC will not be responsible for any fees, interest or surcharges Supplier wishes to impose.

- (e) Notwithstanding any other provision to the contrary, UC will not be responsible for any fees, interest or surcharges Supplier wishes to impose

## 5. Notices

Notices may be given by overnight delivery or by certified mail with return receipt requested, at the addresses specified below

To UC regarding the Terms of this Agreement or its related Appendices, Exhibits or Attachments:

Name Eimee Miura, Director of Procurement and Strategic Sourcing Department  
Email [EMiura@mednet.ucla.edu](mailto:EMiura@mednet.ucla.edu)  
Address 10920 Wilshire Blvd., Suite 750 Los Angeles, CA 90024

With a Copy to:

Name  
Email  
Address

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

Name David Rusting  
Email [david.rusting@ucop.edu](mailto:david.rusting@ucop.edu)  
Address 1111 Franklin Street, Oakland CA 94607

To UC, regarding Breaches or Security Incidents as defined under Appendix – HIPAA Business Associate:

Name Monte Ratzlaff  
Email [monte.ratzlaff@ucop.edu](mailto:monte.ratzlaff@ucop.edu)  
Address 1111 Franklin Street, Oakland CA 94607

Notices pertaining to a specific Purchase Order or Customer shall be directed to the address(es) specified in such Customer's Statement of Work or Purchase Order.

To Supplier:

Name \_\_\_\_\_



Email \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

## 6. Intellectual Property, Copyright and Patents

The Services involve Work Made for Hire.

The Services **do not** involve Work Made for Hire.

### A. Services Involving Work Made for Hire.

1. Unless UC indicates that the Services do not involve work made for hire, Supplier acknowledges and agrees that any deliverables provided to UC by Supplier in the performance of the Agreement, and any intellectual property rights therein, (hereinafter the "Deliverables") will be owned by UC. The Deliverables will be considered "work made for hire" under U.S. copyright law ("Work Made For Hire") and all right, title, and interest to and in such Deliverables including, but not limited to, any and all copyrights or trademarks, will be owned by UC. In the event that it is determined that UC is not the owner of such Deliverables under the "work made for hire" doctrine of U.S. copyright law, Supplier hereby irrevocably assigns to UC all right, title, and interest to and in such Deliverables and any copyrights or trademarks thereto.
2. The Deliverables must be new and original. Supplier must not use any pre-existing copyrightable or trademarked images, writings, or other proprietary materials (hereinafter "Pre-Existing Materials") in the Deliverables without UC's prior written permission. In the event that Supplier uses any Pre-Existing Materials in the Deliverables in which Supplier has an ownership interest, UC is hereby granted, and will have, a non-exclusive, royalty-free, irrevocable, perpetual, paid-up, worldwide license (with the right to sublicense) to make, have made, copy, modify, make derivative works of, use, perform, display publicly, sell, and otherwise distribute such Pre-Existing Materials in connection with the Deliverables.
3. Whenever any invention or discovery is made or conceived by Supplier in the course of or in connection with the Agreement, Supplier will promptly furnish UC complete information with respect thereto and UC will have the sole power to determine whether and where a patent application will be filed and to determine the disposition of title to and all rights under any application or patent that may result.
4. Supplier is specifically subject to an obligation to, and hereby does, assign all right, title and interest in any such intellectual property rights to UC as well as all right, title and interest in tangible research products embodying any such inventions whether the inventions are patentable or not. Supplier agrees to promptly execute any additional documents or forms that UC may require in order to effectuate such assignment.

### B. Services Not Involving Work Made for Hire.

1. If UC has specifically specified elsewhere in this Agreement that the Services do not involve work made for hire, and in the event that Supplier uses any Pre-Existing Materials in the Deliverables in which Supplier has an ownership interest, UC is hereby granted, and will have, a non-exclusive, royalty-free, irrevocable, perpetual, paid-up, worldwide license (with the right to sublicense) to make, have made, copy, modify, make derivative works of, use, perform, display publicly, sell, and otherwise distribute such Pre-Existing Materials in connection with the Deliverables.
2. The Deliverables must be new and original. Supplier must not use any Pre-Existing Materials in the Deliverables without UC's prior written permission.
3. Whenever any invention or discovery is made or conceived by Supplier in the course of or in connection with the Agreement, Supplier will promptly furnish UC complete information with respect thereto and UC



will have the sole power to determine whether and where a patent application will be filed and to determine the disposition of title to and all rights under any application or patent that may result.

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

- C. General. Should the 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 prompt 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 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 Services, or (ii) replace or otherwise modify the affected portion of the Services to make them non-infringing, or obtain a reasonable substitute product for the affected portion of the Services, provided that any replacement, modification or substitution under this paragraph does not effect a material change in the 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.

## 7. Patient Protection and Affordable Care Act (PPACA)

The Services involve temporary or supplementary staffing and are subject to the PPACA warranties in the Terms and Conditions.

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

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

- A. If Supplier is an Applicable Large Employer (as defined under Treasury Regulation Section 54.4980H-1(a)(4)):
  - 1. Supplier offers health coverage to its full-time employees who are performing Services for UC;
  - 2. Supplier’s cost of enrolling such employees in Supplier’s health plan is factored into the fees for the Services; and
  - 3. The fees for the Services are higher than what the Services would cost if Supplier did not offer health coverage to such full-time employees.
- B. If Supplier is not an Applicable Large Employer (as defined above):
  - 1. Supplier offers group health coverage to its full-time employees who are performing Services for UC and such coverage is considered Minimum Essential Coverage (as defined under Treasury Regulation Section 1-5000A-2) and is Affordable (as defined under Treasury Regulation Section 54.4980H-5(e)); or
  - 2. Supplier’s full-time employees who are performing services for UC have individual coverage and such coverage satisfies the PPACA requirements for mandated individual coverage.

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

## 8. Prevailing Wages

Supplier is required to pay prevailing wages when providing the Services.

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



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 not pay 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.

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

## 9. Fair Wage/Fair Work

Supplier is required to pay the UC Fair Wage (defined as \$15 per hour as of 10/1/17) when providing the Services.

Supplier is not required to pay the UC Fair Wage when providing Services unless Services exceed \$100,000 annually.

If the Services will be performed at one or more UC Locations, do not 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, 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. UC Fair Wage/Fair Work Resources can be found here <https://www.ucop.edu/procurement-services/procurement-systems/fair-wage-fairwork-ppaca.html>

For Services that exceed \$100,000 annually and are not subject to prevailing wage requirements, Supplier will, a) at Supplier’s expense, provide an annual 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>) in compliance with UC's required audit standards and procedures ([http://www.ucop.edu/procurement-services/\\_files/fw-fw-annual-audit-standards-procedures.pdf](http://www.ucop.edu/procurement-services/_files/fw-fw-annual-audit-standards-procedures.pdf)), concerning Supplier's compliance with this provision, and b) ensure that in the case of a UC interim audit, its auditor makes available to UC its UC Fair Wage/Fair Work work papers for the most recently audited time period. Supplier agrees to provide UC with a UC Fair Wage/Fair Work certification annually, in a form acceptable to UC, no later than ninety days after each one year anniversary of the agreement's effective date, for the twelve months immediately preceding the anniversary date.

## **10. Federally Funded Contracts; Grants and Cooperative Agreements**

Supplier is subject to the terms outlined below.

Supplier is not subject to the terms outlined below.

- (a) For federally-funded contracts, the Contract Number is: \_\_\_\_\_.
- (b) For contracts funded by a grant or cooperative agreement, the grant or cooperative agreement number is: \_\_\_\_\_.

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

- A. FAR 52.203-13, Contractor Code of Business Ethics and Conduct;
- B. FAR 52.219-8, Utilization of Small Business Concerns;
- C. FAR 52.222-04, Contract Work Hours and Safety Standards Act;
- D. FAR 52.222-17, Nondisplacement of Qualified Workers;
- E. FAR 52.222-21, Prohibition of Segregated Facilities;
- F. FAR 52.222-26, Equal Opportunity;
- G. FAR 52.222-35, Equal Opportunity for Veterans;
- H. FAR 52.222-36, Equal Opportunity for Workers with Disabilities;
- I. FAR 52.222-37, Employment Reports on Veterans;
- J. FAR 52.222-40, Notification of Employee Rights Under the National Labor Relations Act;
- K. FAR 52.222-41, Service Contract Act Labor Standards;
- L. FAR 52.222-50, Combating Trafficking in Persons;
- M. FAR 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements;
- N. FAR 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services-Requirements;
- O. FAR 52.222-54, Employment Eligibility Verification;
- P. FAR 52.222-55, Minimum Wages Under Executive Order 13658;
- Q. FAR 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations; and
- R. FAR 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels.

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





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

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

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

## **12. Indemnification**

Supplier will defend, indemnify, and hold harmless UC, its officers, employees, and agents, from and against all losses, expenses (including, without limitation, reasonable attorneys' fees and costs), damages, and liabilities of any kind resulting from or arising out of the Agreement, including the performance hereunder of Supplier, its officers, employees, agents, sub-suppliers, or anyone directly or indirectly employed by Supplier, or any person or persons under Supplier's direction and control, provided such losses, expenses, damages and liabilities are due or claimed to be due to the acts or omissions of Supplier, its officers, employees, agents, sub-suppliers, or anyone directly or indirectly employed by Supplier, or any person or persons under Supplier's direction and control.

UC agrees to provide Supplier with prompt notice of any such claim or action and to permit Supplier to defend any claim or action, and that UC will cooperate fully in such defense. UC retains the right to participate in the defense against any such claim or action, and the right to consent to any settlement, which consent will not unreasonably be withheld.

In addition, Supplier represents and warrants that sale or use of the Services provided by Supplier shall not infringe any United States patent, copyright or trademark. Supplier, shall at its own expense, indemnify, hold harmless and defend UC from and against any third party claims, liabilities, damages, costs and expenses (including reasonable attorneys' fees, expert fees and court costs) to the extent caused by a breach of the above warranty. The obligation of indemnification for infringement will not apply to the extent such infringement is caused by improper use, or the negligence or wrongful conduct of UC or a Customer.

## **13. Insurance**

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

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



- C. If applicable, Professional Liability Insurance with a limit of two million dollars (\$2,000,000) per occurrence 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. 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.
- G. The coverages referred to under A and B of this Article must include UC as an additional insured. It is understood that the coverage and limits referred to under A, B and C of this Article will not in any way limit Supplier's liability. Supplier will furnish UC with certificates of insurance (and the relevant endorsement pages) evidencing compliance with all requirements prior to commencing work under the Agreement. Such certificates will:
  - 1. Indicate that The Regents of the University of California has been endorsed as an additional insured for the coverage referred to under A and B of this Article. This provision will only apply in proportion to and to the extent of the negligent acts or omissions of Supplier, its officers, agents, or employees.
  - 2. Include a provision that the coverage will be primary and will not participate with or be excess over any valid and collectible insurance or program of self-insurance carried or maintained by UC.

## 14. Service Specific Provisions

### (a) Description of Services

The Services available to Customer(s) under this Agreement are identified in **Appendix B** to this Agreement.

### (b) Key Personnel

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

Name

Phone

Email

Address

#### Supplier's Account Management Team is:

Name



Phone

Email

Address

Name

Phone

Email

Address

Name

Phone

Email

Address

**(c) Subcontractors authorized to render Services under this Agreement**

**[Buyer: Names should be listed only if Agreement permits use of subcontractors]:**

Name of Subcontractor	Services the Subcontractor will perform

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

**(d) Reporting Requirements**

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

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

**(e) UC Incentives [Buyer: Include any incentives and discounts, and consider the following terms:]**

Patronage Incentive. During the Term of the Agreement, and any extension(s) to the Term, Supplier agrees to provide each Customer a quarterly patronage incentive in the amount equal to \_\_\_\_ percent (\_\_\_\_%) of the total sales of Services (“Patronage Incentive”). The amount of quarterly Patronage Incentive provided to each Customer will be calculated based on the total quarterly sales to each Customer. This Patronage Incentive will be used by each Customer to provide support in the implementation,



administration, and management of the successful bidder(s) program in order to maximize Customer participation and/or other purposes at Customer’s discretion. Each participating Customer will have the right to modify proposal pricing for the individual Customer up to \_\_ percent (\_% ) in the event Customer(s) decide not to implement a Patronage Incentive program. With respect to Customers that are UC Locations, the Patronage Incentive will be issued to The Regents of the University of California and mailed to each UC Location participating in the incentive program, at the addresses provided by UC. In the event the Agreement extends and applies to UC Affiliate Locations, with respect to Customers that are UC Affiliate Locations, the Patronage Incentive will be issued to the appropriate entity or individual, as specified by such Customer, and mailed to each UC Affiliate Location participating in the incentive program, at the address provided by such UC Affiliate Location.

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. Each Customer’s eligibility to benefit from Earned Incentives on a Customer-wide and/or Customer-by-Customer basis will be reviewed annually, prior to \_\_\_\_\_ 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:

Transaction payment via EFT/ACH	- ____%
Average dollar amount per line (\$45 and more)	- ____%
On-line orders:	- ____%
Prompt payment discount:	
20 days	- ____%
15 days	- ____%
10 days	- ____%
5 days	- ____%
Volume rebate (UC aggregate annual spend over \$____m)	- ____%

**(f) Acceptance Criteria and Testing**

**[Buyer: Provide details of the Acceptance Criteria and testing which each Deliverable or Milestone must meet to be accepted, if specifics aren’t defined.]**

**[Buyer: Indicate any additional financial or other considerations resulting from acceptance testing]**

**(g) Changes to the Services**

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

**(h) No Mandatory Use**



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

**(i) Inspection**

The Services furnished will be exactly as specified in the Agreement, free from all defects in Supplier's performance, design, workmanship 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 Services furnished are found to be incomplete, damaged, defective, not as specified or shipped in error, UC may reject them, require Supplier to correct them without charge, or require provision of such Services at a reduction in price that is equitable under the circumstances. If Supplier is unable or refuses to correct such items within a time UC deems reasonable, UC may terminate the Agreement in whole or in part.

**15. Records about Individuals**

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

**16. Access to Protected Health Information or Medical Information**

It is anticipated that the Supplier will require access to PHI and is subject to the terms in B below.

It is NOT anticipated that the Supplier will require access to PHI and is subject to the terms in A below.

**A. No Access to PHI. Unless UC so specifically indicates in any of the Incorporated Documents,** it is not anticipated that Supplier will require access to "Protected Health Information," as defined by the privacy and security standards of HIPAA, the regulations promulgated thereunder by the U.S. Department of Health and Human Services, or "Medical Information" (collectively with Protected Health Information, "PHI"), as defined by the California Confidentiality of Medical Information Act, California Civil Code §§ 56-56.16 or California Health and Safety Code §1280.15 and California Civil Code §§ 1798.82 and 1798.29 in order to perform its obligations under the Agreement. However, in the event that Supplier has unintentionally received PHI, Supplier will notify UC immediately and Supplier shall use commercially reasonable efforts to return the PHI to UC, as applicable, and to maintain the confidentiality of the PHI. Additionally, in the event the nature of the Good and/or Services change such as to require Supplier to have access to PHI, Supplier will notify UC, as applicable, and Supplier will execute and deliver the UC HIPAA Business Associate Agreement.

**B. Access to PHI. If UC specifically indicates in any of its Incorporated Documents,** it is anticipated that Supplier will have access to "Protected Health Information," as defined by the privacy and security standards of HIPAA, the regulations promulgated thereunder by the U.S. Department of Health and Human Services, or "Medical Information" (collectively with Protected Health Information, "PHI"), as defined by the California Confidentiality of Medical Information Act, California Civil Code §§ 56-56.16 or California Health and Safety Code §1280.15 and California Civil Code §§ 1798.82 and 1798.29 in order to perform its obligations under the Agreement. As part of the Agreement between UC, Supplier will execute and deliver the UC HIPAA Business Associate Agreement, attached hereto. Any and all of UC's medical records and charts created at UC's facilities as a result of performance under this Agreement shall be and shall remain the



property of UC. Both during and after the term of this Agreement, Supplier shall be permitted to inspect and/or duplicate any individual charts or records which are: (2) necessary to assist in the defense of any malpractice or similar claim; (2) relevant to any disciplinary action; (3) for educational or research purposes; and/or (4) necessary for Supplier to ensure compliance with all regulatory requirements. Such inspection and/or duplication shall be permitted and conducted pursuant to commonly accepted standards of patient confidentiality in accordance with applicable federal, state and local laws.

## 17. New Technology

- (a) UC and Supplier believe an essential element of advancing the core objectives and mission of UC is to encourage the development of health care technology that significantly improves the quality, process and/or outcome of care. In support of this belief, the Parties acknowledge that certain products and implants which incorporate breakthrough technologies have the potential to significantly improve non-clinical operational efficiency, or improved clinical outcomes when compared to the level of safety, operational efficiency, process of care and/or outcomes delivered through use of the products covered under this Agreement (hereafter, "New Technology Products").
- (b) New Technology Products shall be disclosed to UC promptly upon such products' commercial availability.
- (c) New Technology Products will not be provided to UC without prior review and approval by UC. Should such New Technology Products become available, UC will conduct an evaluation to determine if the product meets facility criteria and clinical needs. Supplier shall cooperate with UC's efforts to evaluate such New Technology Products, including, but not limited to, providing UC with information and/or training pertaining to the products. If UC agrees to accept a New Technology Product following evaluation, UC and Supplier shall negotiate final pricing and product conversion (if required) based on the contract pricing of the nearest comparable product(s) available to UC for purchase under the Agreement for which pricing has been mutually agreed upon at the time of release. Following the negotiation of pricing terms for such approved New Technology Products, the parties shall amend in writing any of the Incorporated Documents as necessary to identify the New Technology Products available to UC and Customers under this Agreement, and the pricing agreed upon. Invoices that contain New Technology Products that are not listed as approved products under any of the Incorporated Documents, as amended, will be free of charge to UC and the applicable Customer and will not be paid for.
- (d) During the contract period, Supplier may release new versions of existing technology ("Updated Technology"). If it is determined that a new version of existing technology causes an existing product available to UC and Customers under the Agreement to become obsolete, Supplier will provide the updated technology at the existing contract price.

## 18. General Warranties

Supplier makes the following warranties. Supplier acknowledges that failure to comply with any of the warranties in the Agreement will constitute a material breach of the Agreement and UC will have the right to terminate the Agreement without damage, penalty, cost or further obligation.

- A. General Warranties. Supplier agrees that the Services furnished under the Agreement will be covered by the most favorable warranties Supplier gives to any customer for the same or substantially similar services, or such other more favorable warranties as specified in the Agreement. The rights and remedies so provided are in addition to and do not limit any rights afforded to UC by any other article of the Agreement.
- B. Permits and Licenses. Supplier agrees to procure all necessary permits or licenses and abide by all applicable laws, regulations and ordinances of the United States and of the state, territory and political subdivision or any other country in which the 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. Accessibility Requirements. Supplier warrants that: It complies with California and federal disabilities laws and regulations; and The 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 Services.
- E. California Child Abuse and Neglect Reporting Act ("CANRA"). Where applicable, Supplier warrants that it complies with CANRA.
- F. Debarment and Suspension. Supplier warrants that it is not presently debarred, suspended, proposed for debarment, or declared ineligible for award of federal contracts or participation in federal assistance programs or activities.
- G. 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>.
- H. Outsourcing (Public Contract Code 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 (a) UC may terminate the Agreement without further obligation for noncompliance, and (b) 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.

## 19. 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.

## 20. Equal Opportunity Affirmative Action

Supplier will abide by the requirements set forth in Executive Orders 11246 and 11375. Where applicable, Supplier will abide by 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), incorporated by reference with this statement: "This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability." With respect to activities occurring in the State of California, Supplier agrees to adhere to the California Fair Employment and Housing Act. Supplier will provide UC on request a breakdown of its labor force by groups as specified by UC, and will discuss with UC its policies and practices relating to its affirmative action programs. Supplier will not maintain or provide facilities for employees at any establishment under its control that are segregated on a basis prohibited by federal law. Separate or single-user restrooms and necessary dressing or sleeping areas must be provided, however, to ensure privacy.



## 21. 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.

## 22. Premises Where Services are Provided

Supplier is subject to the terms outlined below.

Supplier is not subject to the terms outlined below.

- 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 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 Services; thereafter a start order for resumption of providing the 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 Services. Supplier will confine its employees and all other persons who come onto UC's premises at Supplier's request or for reasons relating to the Agreement and its equipment to that portion of UC's premises where the Services are to be provided or to roads leading to and from such work sites, and to any other area which UC may permit Supplier to use. Supplier will take all reasonable measures and precautions at all times to prevent injuries to or the death of any of its employees or any other person who enters upon UC premises at Supplier's request. Such measures and precautions will include, but will not be limited to, all safeguards and warnings necessary to protect workers and others against any conditions on the premises that could be dangerous and to prevent accidents of any kind whenever the 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.

### **23. 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.

### **24. Cooperation**

Supplier and its sub-suppliers, if any, will cooperate with UC and other suppliers and will ensure 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 finished and complete job of its kind.

### **25. 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.

### **26. Audit Requirements**

The 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 or cooperative agreement 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.

### **27. Prohibition on Unauthorized Use of Disclosure of Confidential Information**

Supplier agrees to hold UC's Confidential Information, and any information derived therefrom, in strict confidence. Confidential Information shall be defined as any information disclosed by UC to Supplier for the purposes of providing the Good and/or Services which is (i) marked as "Confidential" at the time of disclosure; (ii) 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 include information 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. Supplier will not access, use or disclose Confidential Information other than to carry out the purposes for which UC disclosed the Confidential Information to Supplier, except as permitted or required by applicable law, or as otherwise authorized in writing by UC. For avoidance of doubt, this provision prohibits Supplier from using for its own benefit Confidential Information and any information derived therefrom. If required by a court of competent jurisdiction or an administrative body to disclose Confidential 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. Supplier's transmission, transportation or storage of Confidential Information outside the United States, or access of Confidential Information from outside the United States, is prohibited except with prior written authorization by UC. UC's Appendix – Data Security and Privacy and/or Appendix – HIPAA Business Associate.

To the extent the Agreement extends to multiple UC Locations and UC Affiliate Locations, Supplier's obligations in this Section shall apply to each Customer's Confidential Information.

## **28. 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.

## **29. Environmentally Preferable Products**

Supplier will use environmentally preferable products and services (i.e., products and services with a lesser or reduced effect on human health and the environment), to the maximum possible extent consistent with the Agreement. Information on environmentally preferable products and services is available at: <http://www.epa.gov/opptintr/epp/>.

## **30. Electronic Medical Devices**

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

Medical Device as used herein will have the meaning provided by the U.S. Food and Drug Administration ("FDA") and means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component part, or accessory which is: (i) recognized in the official National Formulary, or the United States Pharmacopoeia, or any supplement to them; (ii) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, or (iii) intended to affect the structure or any function of the body of man or other animals, and which does not achieve any of its primary intended purposes through chemical action within or on the body of man 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 Services hereunder, Supplier will: (i) perform security testing and validation for each such Services or Medical Device, as applicable; (ii) perform a security scan by an anti-virus scanner, with up-to-date



signatures, on any software embedded within any Services or Medical Device, as applicable, in order to verify that the software does not contain any known viruses or malware; (iii) conduct a vulnerability scan encompassing all ports and fuzz testing; and (iv) provide UC with reports for (i) – (iii). Supplier warrants that all security testing performed by Supplier covers all issues noted in the “SANS WE TOP 25” and/or “OWASP Top 10” documentation.

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 Services delivered to UC under this Agreement as well as files, scripts, messaging services and data will be removed from all such Services or Medical Device following installation, and that all hardware ports and drives not required for use or operation of such 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.

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 Services, meet and comply with all cyber-security guidance and similar standards promulgated by the FDA and any other applicable regulatory body.

If the 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 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.

### **31. Government Health Care Programs**

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

### **32. Compliance with Laws**

Supplier represents and warrants that it is currently, and shall remain throughout the term of the Agreement, in material compliance with applicable laws, rules and regulations, including, but not limited to, those relating to participation in the Medicare and Medi-Cal programs, the False Claims Act, the Civil Monetary Penalties Law, the Federal anti-kickback statute, and corresponding state laws; the Health Insurance Portability and Accountability



Act of 1996, as amended, and its implementing regulations (“HIPAA”), the California Confidentiality of Medical Information Act (“CMIA”), and all other applicable, state, local and federal requirements.

The Parties acknowledge that this Agreement, together with other contracts between Supplier and UC, will be included on the master list of physician contracts maintained by UC, as applicable

### **33. Access to Books and Records**

- a. As and to the extent required by law, upon the written request of the Secretary of the U.S. Department of Health and Human Services (“Secretary”) or the U.S. Comptroller General or any of their duly authorized representatives, Supplier shall make available those contracts, books, documents and records necessary to verify the nature and extent of the costs of providing the Services under the Agreement. Such inspection shall be available for up to four (4) years after the provision of such Services.
- b. If Supplier is requested to disclose books, documents or records pursuant to this Section for any purpose, Supplier shall notify UC of the nature and scope of such request within ten (10) days of receiving such request, and Supplier shall make available, upon written request by UC, all such books, documents or records.
- c. If Supplier carries out any of the duties of the Agreement through a subcontract with a value of \$10,000.00 or more over a twelve (12) month period with a related individual or organization (as that term is defined in 42 C.F.R. § 420.300), Supplier agrees to include this requirement in any such subcontract.
- d. Supplier shall indemnify and hold harmless UC if any amount of reimbursement is denied or disallowed because of Supplier’s failure to comply with the obligations set forth in this Section. Such indemnity shall include, but not be limited to, the amount or reimbursement denied, plus any interest, penalties and legal costs.
- e. This Section is included pursuant to and is governed by the requirements of 42 U.S.C. § 1395x(v)(1) and the regulations thereto. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by UC or Supplier by virtue of the Agreement.

### **34. No Requirement to Refer; Fair Market Value**

The Parties expressly acknowledge and agree that it is their intent to comply fully with all federal, state, and local laws, rules, and regulations. Supplier and UC each declare their intent that none of the terms of the Agreement are in exchange for any direct or indirect patient referrals or any arranged for, recommended, or promised referrals of patients. It is not the purpose nor is it a requirement of the Agreement to offer or receive any remuneration or benefit of any nature or to solicit, require, induce, or encourage the referral of any patient, the payment for which may be made in whole or in part by Medicare or Medi-Cal. No payment made or received under the Agreement is in return for the referral of patients or in return for the purchasing, leasing, ordering, or arranging for or recommending the purchasing, leasing, or ordering of any goods, service, item, or product for which payment may be made in whole or in part under Medicare or Medi-Cal. Any payments made by UC, to Supplier represent the fair market value of the Services rendered under this Agreement and are not in any way related to or depend upon referrals by and between the Parties. Supplier shall disclose to UC and Customer, as applicable, the existence of any financial relationship Supplier currently has or enters in to during the term of the Agreement with a physician (or entity composed of or employing a physician) who Supplier has reason to believe is a member of the medical staff of any UC facility, as applicable. The Agreement is not intended to influence a medical professional’s judgment in choosing the medical facility appropriate for the proper care and treatment of her or his patients.

### **35. Disclosure of Discounts**

UC acknowledges that discounts, rebates, credit, free services, coupons or other things of value which it may



receive from Supplier under the Agreement constitute a discount or reduction in price for purposes of 42 U.S.C. paragraph 1320a-7(b)(3)(A). UC agrees to file all appropriate reports and to properly disclose and reflect all such discounts, rebates, credit, free services, coupons or other things of value or any price reductions in any report filed in connection with state or federal cost reimbursement programs. However, UC agrees not to disclose the prices or the terms and conditions of purchases from Supplier to any person except as required by law in such reports or otherwise.

### **36. Auditing**

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

### **37. Force Majeure**

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

### **38. Assignment and Subcontracting**

Except as to any payment due hereunder, Supplier may not assign or subcontract the Agreement without UC's written approval. In case such consent is given, the assignee or subcontractor will be subject to all of the terms of the Agreement.

### **39. No Third-Party Rights**

Nothing in this Agreement 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.

### **40. 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.

### **41. Notices**

A Party to the Agreement 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.

### **42. 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.



### 43. Waiver

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.

### 44. Amendments

This Agreement may not be changed, altered, modified or amended except by mutual written agreement of the Parties. All other modifications, amendments and alterations shall be null and void.

### 45. 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 campus is located or, where the procurement covers more than one campus or the Office of the President, the exclusive venue is Alameda County, California.

### 46. 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.

### 47. Additional Terms

**[Buyer: Include any additional Terms for inclusion in this Agreement:]**

### 48. Survival Clause

Upon expiration or termination of the Agreement, the following provisions will survive: WARRANTIES; INTELLECTUAL PROPERTY, COPYRIGHT AND PATENTS; INDEMNITY; USE OF UC NAMES AND TRADEMARKS; LIABILITY FOR UC-FURNISHED PROPERTY; COOPERATION; TERMS APPLICABLE TO THE FURNISHING OF GOODS; ACCESS TO BOOKS AND RECORDS; AUDIT REQUIREMENTS; PROHIBITION ON UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION; GOVERNING LAW AND VENUE, and, to the extent incorporated into the Agreement, the terms of the APPENDIX–DATA SECURITY and/or APPENDIX–BUSINESS ASSOCIATES.

### 49. Incorporated Documents

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

- (a) List of UC Locations and Affiliate Locations – Appendix A
- (b) Customer Standard Services SOW – Appendix B **[Buyer: attach list of available Goods and/or Services and Price List]**
- (c) **[Buyer: List others, with all incorporated documents being in order of precedence]**



## 50. 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.

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

In the event of any conflict between the articles, attachments, specifications or provisions which constitute the contract, the following order of precedence shall apply: fully executed amendment/addendum, this Agreement, incorporated document(s), purchase order, statement of work.

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

Signature page follows



The Agreement is signed below by the Parties' duly authorized representatives.

VENDOR:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title





\_\_\_\_\_  
Date

## **APPENDIX A – LOCATIONS**

The following UC Locations may, but are not required to participate this Agreement unless agreed to otherwise.

UCSF  
UCLA Health  
UC Davis  
UC Irvine  
UC San Diego

## **APPENDIX B - SOW**