



**UNIVERSITY
OF
CALIFORNIA**

Purchasing Agreement # 2019.001535

As a result of the Request for Proposal “UC System-wide RFP – Audio Visual Goods and Services – Feb 4 2019”, the Agreement to furnish certain goods and services described herein and in the documents referenced herein (“Goods and/or Services”) is made by and between The Regents of the University of California, a California public corporation (“UC”) on behalf of the University of California, and the supplier named below (“Supplier”). This Agreement is binding only if it is negotiated and executed by an authorized representative with the proper delegation of authority.

Signal Perfection LTD. (A wholly owned subsidiary of AVI-SPL)

The terms and conditions of this Agreement will supersede and take precedence over those of any pre-existing agreement between any UC Location and Supplier as of the Effective Date of this 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 term of the Agreement will be from 11/10/19 and through 11/9/2024 and is subject to earlier termination as provided below. It may be extended upon the agreement of the parties.

The initial term of the Agreement will be from 11/10/19 and through 11/9/2024 (Initial Term) and is subject to earlier termination as provided below. UC may renew the Agreement for 3 (three) successive **1 (one)** -year periods (each, a Renewal Term), by providing Supplier with at least **15** calendar days’ written notice before the end of the Initial Term or any Renewal Term.

- b) UC may terminate the Agreement for convenience by giving Supplier at least **30** calendar days' written notice.
- c) UC or Supplier 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 a Purchase Order for the Goods and/or Services.

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

Refer to Statement of Work for Pricing. 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.

Each UC Location will specify these terms in a Statement of Work or Purchase Order, as the case may be.

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

All domestic ground shipments shall be FOB Destination, Freight Prepaid and Included. Any handling fees shall also be included in the pricing.

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.

Supplier agrees to extend pricing and Services to the California State University institutions (CSU) and the California Community Colleges (CCC) under the following conditions:

- i) Supplier agrees to extend the same product pricing and Services to the CSU and CCC campuses under the terms of this Agreement, but under separate agreements with CSU and CCC.
- ii) All contractual administration issues regarding this Agreement (e.g. terms and conditions, extensions, renewals, etc.) will remain UC's responsibility. Operational issues, fiduciary responsibility, payment issues, performance issues and liabilities, and disputes involving individual CSU or CCC campuses will be addressed, administered, and resolved by Supplier and the appropriate CSU or CCC campus. UC, CSU and CCC are separate and distinct governmental entities. As such, CSU's and CCC's administrative units and campuses are financially separate from UC and will be responsible for their respective individual commitments, financial and otherwise.

Settlement Method and Terms

Notwithstanding the provisions of Article 3 of the Terms and Conditions of Purchase, the Settlement Method and Terms will be as follows: Settlement Method and/or Terms, in accordance with the capabilities of Supplier and the location (refer to Campus Capabilities Chart).

5. Notices

As provided in the UC Terms and Conditions of Purchase, notices may be given by email, which will be considered legal notice only if such communications include the following text in the Subject field: FORMAL LEGAL NOTICE – [insert, as the

case may be, Supplier name or University of California]. If a physical format notice is required, it must be sent by overnight delivery or by certified mail with return receipt requested, at the addresses specified below.

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

Name	David Rusting
Phone	510-987-0086
Email	David.rusting@ucop.edu
Address	1111 Franklin Street
	Oakland, CA 94607

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

Name	Monte Ratzlaff
Phone	510-987-0858
Email	Monte.ratzlaff@ucop.edu
Address	1111 Franklin Street
	Oakland, CA 94607

To UC, regarding contract issues not addressed above:

Name	Michael Wegmann
Phone	510-987-0428
Email	Michael.wegmann@ucop.edu
Address	260 Cousteau Place Suite 150
	Davis, CA 95618

To Supplier:

Name	Cindy Turner
Phone	813 884-7168 X2062
Email	Cindy.turner@avispl.com
Address	6301 Benjamin Road, Suite 101
	Tampa, FL 33634

6. Intellectual Property, Copyright and Patents

The Goods and/or Services involve Work Made for Hire

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

7. Patient Protection and Affordable Care Act (PPACA)

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

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

8. Prevailing Wages

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

9. Fair Wage/Fair Work

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

10. 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 Public Contract Code Section 10515).

11. 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 – Signal Perfection LTD. (A wholly owned subsidiary of AVI-SPL)

12. 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, and renewals) will remain UC’s responsibility except as outlined in the above referenced Request for Proposal “UC System-wide RFP – Audio Visual Goods and Services – Feb 4 2019.” Operational 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. Service-Specific and/or Goods-Specific Provisions

Audio Visual Equipment and applicable Services

14. Records about Individuals

Records created pursuant to the Agreement that contain personal information about individuals (including statements made by or about individuals) may become subject to the California Information Practices Act of 1977, which includes a right of access by the subject individual. While ownership of confidential or personal information about individuals is subject to negotiated agreement between 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.

15. Incorporated Documents

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

- a) Statement of Work – Attachment A
- b) UC Terms and Conditions of Purchase, dated 09/04/18.
- c) Appendix Data Security and Privacy, dated 05/24/18.
- d) Appendix Business Associate Agreement dated 05/16/17
- e) Appendix Electronic Commerce date 09/19/17
- f) Request for Proposal - "UC System-wide RFP – Audio Visual Goods and Services – Feb 4 2019"

16. Entire Agreement

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

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

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

THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA

DocuSigned by:

Justin Sullivan

Signature ID: 084C40B...

Justin Sullivan Director

(Printed Name, Title)

11/8/2019

(Date)

Signal Perfection LTD. (A wholly owned subsidiary of AVI-SPL)



(Signature)

Steve Benjamin , Executive Vice President
(Printed Name, Title)

11-7-2019

(Date)

Statement of Work - Attachment A
Purchasing Agreement #2019.001535

1. DESCRIPTION/GOODS and SERVICES SCOPE

1.1. Goods Scope

The scope of the Goods component includes, but is not limited to, Supplier providing audio and visual Goods (see below categories) that will provide maximum value to the UC through enhanced technology, superior customer service, streamlined processes, and lower total cost of ownership.

Categories

- Flat Panel Displays
- Video Inputs/Audio/Video
- Conferencing systems/cameras/encoder and decoder/etc.
- Audio Systems
- Projection Screens
- Video Projectors
- Control Systems
- Wireless Presentation-video inputs
- Lecture Capture
- Accessories
- Other (Cabling, etc.)

1.2. Services Scope:

The scope of the Services component includes, but is not limited to, the ability to develop and coordinate the design, installation, integration, and maintenance of audio visual systems with the UC staff who are responsible for finalizing and testing enterprise operations and, at the direction of UC, with project architect and construction personnel. Supplier will be responsible for deploying a complete system that operates according to the design and specifications, regardless of who installed the various components, specified by any UC Location. UC may request the following services:

- Design/Consultation
- Installation
- Integration
- Maintenance Services.

- 1.3. Supplier agrees to extend the terms and conditions of this Agreement, including pricing, to all current and future UC Locations of the University of California and its Affiliates as further detailed at <https://www.universityofcalifornia.edu/uc-system/parts-of-uc>, (“UC Locations”).

2. PRICING

- 2.1. During the Initial Term and any subsequent Renewal Terms, the Goods and Services will be available for UC purchase, at UC’s sole discretion, as stated in Exhibit 1 UC Goods and Services Pricing & Discounts and Exhibit 2 Participating Agencies Goods and Services Pricing & Discounts. There will be no additional separate charges, fees, handling or other incidental costs other than noted in the Exhibits or approved by UC.
- 2.2. Supplier was advised that there is no mandatory use policy at UC, and Supplier must compete with other suppliers for UC orders.

3. PROGRAM REQUIREMENTS

- 3.1. Substitutions: No substitutions of alternate items for Goods and Services ordered will be permitted except with the express approval from authorized UC personnel. Supplier will not substitute and/or interchange a different brand or generic Goods or package size, other than the specific Goods ordered, without authorization from UC.
- 3.2. Minimum Order: There will be no minimum order requirement during the Initial Term and any subsequent Renewal Terms.
- 3.3. Order Packaging and Labeling: Each order will be individually wrapped and labeled. Labeling requirements may include but are not limited to:
 - 3.3.1. End-user name.
 - 3.3.2. Building name or number.
 - 3.3.3. Street address.
 - 3.3.4. Department name.
 - 3.3.5. Room number.
 - 3.3.6. Purchase order number.
 - 3.3.7. Goods description.
 - 3.3.8. Quantity.
 - 3.3.9. Number of packages and the total number of packages for the order if more than one (e.g. Box 1 of 3)
 - 3.3.10. Catalog number of the Goods ordered.
 - 3.3.11. Open 32 character field for internal identification.
 - 3.3.12. Internal customer order numbers.

3.3.13. Other information, as requested by the ordering department.

3.4. Staging of Goods: Supplier agrees to assemble, test, and stage Goods for multiple pending projects as needed by UC and will work with UC on a delivery schedule that meets the project deadlines. This service will include the following:

- 3.4.1. Quality control inspections of all hardware prior to integration into the various systems.
- 3.4.2. Preparation of internal areas of the racks for installation of cabling.
- 3.4.3. Installation of internal rack power distribution systems.
- 3.4.4. Installation of hardware into the racks as shown on the rack elevation drawings.
- 3.4.5. Installation of internal rack wiring.
- 3.4.6. Verification of internal rack wiring and wire/cable numbering.
- 3.4.7. Installation of interconnection wiring between the racks.
- 3.4.8. Testing of individual racks..
- 3.4.9. Installation of control software.
- 3.4.10. Testing and operating of multiple racks as a complete system
- 3.4.11. "Burn in" quality-control testing of multiple racks as a complete audio-visual system.
- 3.4.12. Initial modifications to show control software.
- 3.4.13. Acceptance of tested and "burned in" systems by the project manager and senior engineer.
- 3.4.14. Photographic documentation of racks and other hardware items.
- 3.4.15. Racks will be protected in preparation for shipping and palletized as per AVI-SPL's custom shipping standards.
- 3.4.16. When required, delivery of the racks to the site via air ride trucks.

3.5. Delivery:

3.5.1. Receiving Locations: Supplier agrees to provide delivery to all of UC current and future authorized personnel and delivery points within the United States of America, as stated on the purchase order by UC. Any shipments outside the United States of America may require additional customs and Value Added Tax (VAT) charges as well as international freight charges.

3.5.2. All domestic ground shipments shall be FOB Destination.

3.5.3. Rush Delivery Requirements: Supplier agrees to provide best effort to deliver UC emergency orders based on stock availability within twenty four (24) hours after receipt of order and UC will pay for the expedited freight delivery or use UC carrier account number. Rush delivery orders for next day delivery must be requested by UC prior to 1:00 pm Pacific Time. Supplier cannot guarantee, but agrees to use good faith efforts to provide next day delivery for rush orders placed after 1:00pm Pacific Time by UC.

If rush delivery freight charge is approved by UC, Supplier must itemize freight and service charges separately from Goods and apply taxes only as is appropriate per the California State Board of

Equalization tax guidelines. The UC will be responsible for payment to Supplier of all sales tax applicable to the purchase of the Goods and Services. If requested, any non-taxable shipping charges (e.g. UPS or other third- party freight charges) must be separated from taxable shipping (e.g. handling charges).

3.6. Returns:

3.6.1 Supplier grants UC return Goods rights and full credit for Goods returned when the return request is made by UC to Supplier within thirty (30) days from date of invoice. Supplier agrees to work with UC on a case by case basis to extend the return period to compensate for any time lost due to shipment delay. All return shipping will be at no charge. Credit for returned items will be issued within Fourteen (14) days from receipt of Goods by Supplier, referencing the original Purchase Order and invoice number(s) to which the credit applies.

3.6.2 Returned Goods must be shipped to Supplier in as new condition. Specifically, as new condition includes the following guidelines:

- 1) All Goods must be returned in their original boxes.
- 2) Original protective wrapping may be missing but the original packaging is intact and pristine.
- 3) There are no signs of wear on the item or its packaging.
- 4) All manuals and instructions are included in their original form.
- 5) All accessories including power cords, connective cables and digital media must be included with the returned item.

3.7. Returns for Replacement:

3.7.1. After the 30 days return period stated above, the number of repair attempts before a Goods will be returned to Supplier will be no more than three (3) times and a replacement with new or factory reconditioned par/unit will be shipped as quickly as possible.

3.7.2. Overnight replacements or loaner equipment: Supplier will work with UC to maximize classroom up-time. This may include providing loaner units at no cost to UC when equipment is down, if available from the manufacture.

3.8. Training:

3.8.1 If requested, Supplier will provide technical training of UC Location staff, instructing them on AV Technology System operation for Supplier installed systems or integration, maintenance and troubleshooting. If requested, demonstrate to the UC Location representative any back—end (LAN, Serial or otherwise) system access or control which might be required for maintenance or troubleshooting in the future.

3.8.2 Supplier will provide a complete close out documentation process to turn over all drawings, manuals, custom quick user guides, custom

programming and DSP files.

3.9. Program Management: Supplier will provide the necessary staff and resources to provide program management functions as outlined including, but not limited to:

3.9.1 Program Manager: Supplier will assign a Program Manager (PM) who will have the overall responsibility for managing the UC/Supplier relationship, as well as a dedicated Account Manager (AM) who will have the overall account management responsibility per UC Location. PM and AM are subject to UC approval.

3.9.2 Program Administration: Supplier must provide the necessary staff, infrastructure, and other resources at a level sufficient to ensure efficient, effective, and continually improving fulfillment of its obligations under this Agreement, including, but not limited to:

- 3.9.2.1. Supplier must maintain full service capabilities at all times to all UC locations.
- 3.9.2.2. Provide a toll-free 800 number for Customer Service calls for all service related issues and available 24X7, 365 days a year.
- 3.9.2.3. Coordinate contract/program implementation, including designating associated Project Manager.
- 3.9.2.4. Account management for on-going contract monitoring, maintenance and communication.
- 3.9.2.5. Supplier must maintain an account management team for each UC Location as detailed in Exhibit 3 for all administrative and sales support from 8 a.m. to 5 p.m. PST Monday through Friday. In addition, Supplier will have one point of contact for the UC IT Commodity manager for any system-wide communications.
- 3.9.2.6. To insure customer service satisfaction, Supplier is required to call customer 3 days after equipment installation or integration by Supplier and training. Customer will be defined as a designated user for that UC Location. If the call is not answered by the UC Location, Supplier's representative will leave a voicemail with references to the order in question and with call back information.
- 3.9.2.7. Supplier's account representative must make frequent on-site visits, at no cost to UC, sufficient to effectively address and resolve issues related to the fulfillment of Suppliers obligations under the Agreement including, but not limited to: customer orders, problems, and invoice disputes; increase sales activity; advice regarding cost reduction and process improvement opportunities; assist in resolving problems; onsite technical support; demonstrate Goods and Services; provide training; and other customer services as required for the efficient operation of the program.
- 3.9.2.8. Supplier will assign a field sales team at no cost to UC to include the following services:
 - 3.10.2.8.1. Coordinate local education
 - 3.10.2.8.2. All estimates at no charge to UC.
 - 3.10.2.8.3. Consulting

- 3.10.2.8.4. Pre-Sales Support
- 3.10.2.8.5. Post-Sales Support

3.10. Order Procedures: Orders placed will be binding when they have been accepted by an authorized representative of Supplier and an acknowledged copy of such acceptance has been communicated to UC. Each such order for any Goods and Services covered by this Agreement and all documents issued as a result thereof, will be governed by this Agreement.

3.10.1. Each order quote will specify the following:

3.10.1.1. Goods:

- Line Item Quantity
- Line Item Manufacturer and Model number
- Line item Description
- Line item Price: MSRP
- Line item Price: Discount off MSRP
- Line item Price: Other discount of MSRP, e.g. volume discounts
- Line item Price: final price to UC after discounts
- Line Item other costs e.g. overnight shipping cost if requested by UC
- Any Goods over \$5,000 and classified by UC as a capital, tangible asset with a useful life longer than a year that is not intended for sale in the regular course of business, must be listed as separate line items or quantity (1) one.

3.10.1.2. Services:

- Attach detailed Statement of work (SOW) agreed to by UC location
- Type of service provided
- Billable job title for each individual working on project to include total standard billable hourly rate and hours worked.
- All overtime expensed pre-approved by UC
- Travel charges/expenses will not be permitted unless approved by a UC locations for a specific project. Any expenses that UC agrees to reimburse will be reimbursed under UC's Travel Policy, which may be found at <http://www.ucop.edu/central-travel-management/resources/index.html>.

3.10.2. All Goods and Services quotes must be – time and materials not to exceed. Any adjustments must be approved by the UC location, and any Supplier initiated change orders cannot exceed 10% of the original quote.

3.10.3. 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.

3.11. Goods Certification: Supplier hereby certifies and warrants that all Goods and Services sold to UC under this Agreement:

- 3.11.1. Will be new and genuine;
- 3.11.2. Will be provided to UC in the manufacturer's original packaging unless otherwise requested by UC or supplied for installation;
- 3.11.3. Will purchase Goods and Services that are manufactured for retail sale in the United States;
- 3.11.4. Will be purchased from legal and reputable channels, which are understood to be the manufacturer or authorized representatives of the manufacturer.

4. PERFORMANCE REQUIREMENTS AND DELIVERABLES

For any professional services engagements leveraging this Agreement, as directed by each UC Location in a separate SOW with reference to the Agreement, each UC Location and Supplier will agree upon a baseline for scope of each engagement and will create an SOW to include but not limited to:

- 4.1. Define the boundaries of scope control.
- 4.2. Removal and decommissioning of existing AV systems.
- 4.3. Assembly, configuration, testing and adjustments, audio system programming, control programming, acceptance testing.
- 4.4. Architecture development, Implementation and migration planning, Proof-of-concept test design and planning, Technical training development and delivery, Infrastructure configuration and testing.
- 4.5. Installation and de-installation Services
- 4.6. Identify responsibilities.
- 4.7. Establish the agreed upon schedule for work activities.
- 4.8. Supplier will develop a process to monitor progress and provide weekly status reports.
- 4.9. Create and maintain an issue log to identify, document, and resolve issues.
- 4.10. Payment plan based upon work completed.
- 4.11. Personnel access requirements per UC Location.
- 4.12. Supplier personnel certification requirements.
 - 4.12.1. All technicians, installers, consultants, engineers, designers and programmers must have at least CTS certification

- 4.12.2. Based upon the services detailed in the SOW, Supplier personnel may be required to have CTS-I or CTS-D certifications depending on the service and stated in the location SOW.
 - 4.12.3. Other certifications will be requested on a case by case bases and documented in the UC Location SOW.
- 4.13. Services Support: Supplier will provide the following general services or any other detailed services as detailed in the location SOW:
- 4.13.1. Installation of UC Furnished goods and or goods supplied by supplier.
 - 4.13.2. Integration of specified equipment that may not have been provisioned or installed by the supplier.
 - 4.13.3. Coordinate all the order/installation process, inquiries regarding order status, and pricing concerns.
 - 4.13.4. Based on the design documents, Supplier engineers will conduct a technical implementation kick-off meeting.
 - 4.13.5. Supplier will follow implementation plan, test plan and back-up plan.
 - 4.13.6. Once installation is complete Supplier will assist with follow up support for agreed upon duration following network cutover.
 - 4.13.7. Supplier will provide as-built documentation based on the proposed design and implementation plan and configuration scripts.
 - 4.13.8. Supplier will conduct project acceptance meeting to provide project transition and knowledge transfer to the UC Location personnel.
 - 4.13.9. Upon completion of system design and/or programming services, the UC location will own the design documents and both the compiled and un-compiled control codes.
 - 4.13.10. Provide a workmanship warranty of at least 1 year for all Services at no cost to UC. Additional warranties will be identified in the UC Location SOW.

5. WARRANTY AND SUPPORT

- 5.1. Supplier will extend or pass through to UC all third-party manufacturer warranties and support to the extent they exceed the equipment warranty.
- 5.2. Should UC require a higher level of support, UC Location will order and Supplier will provide up to 24X7X365 support with onsite assistance from Supplier Manufacturer.
- 5.3. UC may perform all maintenance and configuration changes without a Supplier maintenance contract and without incurring costs.

6. SERVICE LEVEL STANDARDS

6.1. Supplier will provide consistent exceptional customer service to all UC Locations. The following chart outlines the baseline expectations of UC for standard service metrics. It is necessary that these minimums be upheld throughout the Initial Term and any subsequent Renewal Terms and that Supplier provides reports on these benchmarks for each UC Location during every Business Review.

6.2. If Supplier falls below the service level expectations it will be escalated to that UC Location's IT Purchasing/Commodity manager and to UCOP to determine a mutually agreed upon corrective action plan to resolve the concern. If the service levels do not improve to the satisfaction of the UC the issue may ultimately result in termination of this Agreement. The minimum quality of service standards set forth below recognize that occasional errors are likely; however, Supplier further agrees to use best efforts to achieve 100% quality of service level.

6.3. Expected Delivery and Transit Lead Times:

Rush delivery	- within 24 hours
Pick up returns scheduled	- within 3 business days
Credit/Re-invoice	- within 5 business days after return pick up
Request for reports	- within 5 business days for non-custom
Quote turnaround time	- within 1 business day (for standard requests)
Return customer calls	- within 30 minutes
Post Project Response time	-onsite within 8 hours
Warranty Service Repair	-onsite within 48 hours
Purchase order fill rate	-95%
Order accuracy	-98%
Delivery On-time	-98%
Invoice/billing accuracy	-98%
Customer service satisfaction	-95%

Expected Response times to system issues based on purchased level of services agreed to by both client and Supplier and outlined in a separated UC Location SOW.

7. REPORTING

7.1. Supplier will provide UC, at a minimum, the following periodic reports (by UC Location) as specified using UC provided templates if available:

Report	Frequency
<p>Total Sales Detail: Total sales by UC Location providing Supplier part number, manufacture part number, UC PO#, item description, item quantity Manufacturer MSRP, UC contracted discount, UC final price, and total cost of goods by PO. Services: type of services, cost by service, total cost of services.</p>	<p>Quarterly to UC IT Commodity Manager</p>
<p>Service Level Standards Tracking as detailed in Section 6</p>	<p>On Demand: Reports to be generated within 5 business days</p>
<p>Response time for service call and Speed to repair</p>	<p>as needed (please define what this report would include)24 Hours</p>
<p>Quote Turnaround Time</p>	<p>as needed</p>
<p>Invoice accuracy and Billing error correction history</p>	<p>as needed</p>
<p>Inventory Accuracy</p>	<p>as needed</p>

7.2. Supplier agrees to provide other reports as reasonably requested by UC during the Initial Term and any subsequent Renewal Terms at no additional cost to UC.

8. BUSINESS REVIEWS

UC seeks to obtain the most value from each QBR for both UC and Suppliers. In order to do so, UC expects the following to be included in any QBR presentation:

8.1. Sales Data

- 8.1.1. UC Fiscal Year to Date (beginning July 1).
- 8.1.2. UC Fiscal Year to Date for the previous year.
- 8.1.3. Last 12 month spend.
- 8.1.4. Last 12 month spend for the prior year.

- 8.1.5. Outreach and promotions
 - 8.1.5.1. Meetings with end users.

- 8.1.6. Accounting Issues
 - 8.1.6.1. Past due invoices.
 - 8.1.6.2. User issues.
 - 8.1.6.3. Invoice mismatches.

- 8.1.7. SLA Scorecard discussions.

- 8.1.8. In addition, Supplier is to provide UC with all materials at least five (5) business days in advance to allow UC time to review and determine an appropriate agenda.

- 8.1.9. Supplier and Manufacturer to engage in strategic roadmap discussions with UC.

9. NEW GOODS AND SERVICES

The UC recognizes that Goods and Services additions to the Supplier's offerings are likely to occur during this Agreement. Additions will be considered under the following methods:

- 9.1. Goods and Services will be categorized with similar Goods and Services or Goods and Services into existing market commodity codes/Goods and Services.

families/replacement line items previously defined and agreed to by the UC with-respect to the discount structure.

9.2. In the event the Supplier adds a new specialty Goods and Services line which represents Goods and Services that are substantially different from the Goods and Services or brands represented in the existing market commodity codes/Goods and Services line families/line items, the UC and the Supplier may enter into, negotiations to establish a discount structure, net price, or total cost for the Goods and Services(s) if the UC agrees that the Goods and Services(s) are not covered under an existing market commodity code/Goods and Services line family/line item. The Supplier will provide appropriate documentation to support its position for special pricing. Negotiations must be completed prior to any purchase orders being processed. In the event the UC and Supplier cannot come to agreement, UC may at its sole opinion conduct a separate formal bidding process.

**Exhibits
to
Statement of Work**

UC Goods and Services Pricing & Discounts	Exhibit 1
Goods and Services Pricing & Discounts Participating Agencies	Exhibit 2
Account Management Team	Exhibit 3

Exhibit 3 Account Management Team



www.avispl.com

Support Team for University of California

Integration, Installation, Services

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**UNIVERSITY
OF
CALIFORNIA**

Terms and Conditions of Purchase

ARTICLE 1 – GENERAL

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

ARTICLE 2 – TERM AND TERMINATION

- A. As applicable, the term of the Agreement (“Initial Term”) will be stated in the Agreement. Following the Initial Term, the Agreement may be extended by written mutual agreement.
- B. UC’s obligation to proceed is conditioned upon the appropriation of state, federal and other sources of funds not controlled by UC (“Funding”). UC will have the right to terminate the Agreement without damage, penalty, cost or further obligation in the event that through no action or inaction on the part of UC, the Funding is withdrawn.
- C. UC may, by written notice stating the extent and effective date thereof, terminate the Agreement for convenience in whole or in part, at any time with not less than the number of days’ notice stated elsewhere in the Agreement. As specified in the termination notice, UC will pay Supplier as full compensation the pro rata Agreement price for performance through the later of the date that (i) UC provided Supplier with notice of termination or (ii) Supplier’s provision of Goods and/or Services will terminate.
- D. UC may by written notice terminate the Agreement for Supplier’s breach of the Agreement, in whole or in part, at any time, if Supplier refuses or fails to comply with the provisions of the Agreement, or so fails to make progress as to endanger performance and does not cure such failure within a reasonable period of time, or fails to supply the Goods and/or Services within the time specified or any written extension thereof. In such event, UC may purchase or otherwise secure Goods and/or Services and, except as otherwise provided herein, Supplier will be liable to UC for any excess costs UC incurs thereby.

ARTICLE 3 – PRICING, INVOICING METHOD, AND SETTLEMENT METHOD AND TERMS. Pricing is set forth in the Agreement or Purchase Order Number. Unless otherwise agreed in writing by UC, Supplier will use the invoicing method and payment settlement method (and will extend the terms applicable to such settlement method) set forth in UC’s [Supplier Invoicing, Terms & Settlement Matrix](#). UC will pay Supplier, upon submission of acceptable invoices, for Goods and/or Services provided and accepted. Invoices must be itemized and reference the Agreement or Purchase Order number. UC will not pay shipping, packaging or handling expenses, unless specified in the Agreement or Purchase Order. Unless otherwise provided, freight is to be FOB destination. Any of Supplier’s expenses that UC agrees to reimburse will be reimbursed under UC’s Travel Policy, which may be found at <http://www.ucop.edu/central-travel-management/resources/index.html>. Where applicable, Supplier will pay all taxes imposed on Supplier. Notwithstanding any other provision to the contrary, UC will not be responsible for any fees, interest or surcharges Supplier wishes to impose.

ARTICLE 4 – INSPECTION. The Goods and/or Services furnished will be exactly as specified in the Agreement, free from all defects in Supplier’s performance, design, 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 Goods and/or Services furnished are found to be incomplete, or not as specified, UC may reject them, require Supplier to correct them without charge, or require provision of such Goods and/or Services at a reduction in price that is equitable under the circumstances. If Supplier is unable or refuses to correct such deficiencies within a time UC deems reasonable, UC may terminate the Agreement in whole or in part. Supplier will bear all risks as to rejected Goods and/or Services and, in addition to any costs for which Supplier may become liable to UC under other provisions of the Agreement, will reimburse UC for all transportation costs, other related costs incurred, or payments to Supplier in accordance with the terms of the Agreement for unaccepted Goods and/or Services and materials and supplies incidental thereto. Notwithstanding final acceptance and payment, Supplier will be liable for latent defects, fraud or such gross mistakes as amount to fraud.

ARTICLE 5 – ASSIGNED PERSONNEL; CHARACTER OF SERVICES

Supplier will provide the Services as an independent contractor and furnish all equipment, personnel and materiel sufficient to provide the Services expeditiously and efficiently, during as many hours per shift and shifts per week, and at such locations as UC may so require. Supplier will devote only its best-qualified personnel to work under the Agreement. Should UC inform Supplier that anyone providing the Services is not working to this standard, Supplier will immediately remove such personnel from providing Services and he or she will not again, without UC's written permission, be assigned to provide Services. At no time will Supplier or Supplier's employees, sub-suppliers, agents, or assigns be considered employees of UC for any purpose, including but not limited to workers' compensation provisions.

ARTICLE 6 – WARRANTIES

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

- A. General Warranties. Supplier agrees that the Goods and Services furnished under the Agreement will be covered by the most favorable warranties Supplier gives to any customer for the same or substantially similar goods or services, or such other more favorable warranties as specified in the Agreement. The rights and remedies so provided are in addition to and do not limit any rights afforded to UC by any other article of the Agreement.
- B. Permits and Licenses. Supplier agrees to procure all necessary permits or licenses and abide by all applicable laws, regulations and ordinances of the United States and of the state, territory and political subdivision or any other country in which the Goods and/or Services are provided.
- C. Federal and State Water and Air Pollution Laws. Where applicable, Supplier warrants that it complies with the requirements in UC Business and Finance Bulletin BUS-56 (Materiel Management; Purchases from Entities Violating State or Federal Water or Air Pollution Laws). Consistent with California Government Code 4477, these requirements do not permit UC to contract with entities in violation of Federal or State water or air pollution laws.
- D. Accessibility Requirements. Supplier warrants that:
 1. It complies with California and federal disabilities laws and regulations; and
 2. The Goods and Services will conform to the accessibility requirements of WCAG 2.0AA.
 Supplier agrees to promptly respond to and resolve any complaint regarding accessibility of its Goods and/or Services.
- E. Warranty of Quiet Enjoyment. Supplier warrants that Supplier has the right to use all intellectual property that will be needed to provide the Goods and/or Services.
- F. California Child Abuse and Neglect Reporting Act ("CANRA"). Where applicable, Supplier warrants that it complies with CANRA.
- G. 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.
- H. UC Code of Conduct for Trademark Licensees. 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>.
- I. Outsourcing (Public Contract Code section 12147) Compliance. Supplier warrants that if the Agreement will displace UC employees, no funds paid under the Agreement will be used to train workers who are located outside of the United States, or plan to relocate outside the United States as part of the Agreement. Additionally, Supplier warrants that no work will be performed under the Agreement with workers outside the United States, except as described in Supplier's bid. If Supplier or its subsupplier 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.

ARTICLE 7 – INTELLECTUAL PROPERTY, COPYRIGHT AND PATENTS

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

"work made for hire" doctrine of U.S. copyright law, Supplier hereby irrevocably assigns to UC all right, title, and interest to and in such Deliverables and any copyrights or trademarks thereto.

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

B. Goods and/or Services Not Involving Work Made for Hire.

1. If the Goods and/or Services do not involve work made for hire, and in the event that Supplier uses any Pre-Existing Materials in the Deliverables in which Supplier has an ownership interest, UC is hereby granted, and will have, a non-exclusive, royalty-free, irrevocable, perpetual, paid-up, worldwide license (with the right to sublicense) to make, have made, copy, modify, make derivative works of, use, perform, display publicly, sell, and otherwise distribute such Pre-Existing Materials in connection with the Deliverables.
2. The Deliverables must be new and original. Supplier must not use any Pre-Existing Materials in the Deliverables without UC's prior written permission.
3. Whenever any invention or discovery is made or conceived by Supplier in the course of or in connection with the Agreement, Supplier will promptly furnish UC complete information with respect thereto and UC will have the sole power to determine whether and where a patent application will be filed and to determine the disposition of title to and all rights under any application or patent that may result.
4. Supplier is specifically subject to an obligation to, and hereby does, assign all right, title and interest in any such intellectual property rights to UC as well as all right, title and interest in tangible research products embodying any such inventions whether the inventions are patentable or not. Supplier agrees to promptly execute any additional documents or forms that UC may require in order to effectuate such assignment.

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

ARTICLE 8 – INDEMNITY

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.

ARTICLE 9 – INSURANCE

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

- A. Commercial Form General Liability Insurance (contractual liability included) with limits as follows:
- | | |
|--|--------------|
| 1. Each Occurrence | \$ 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 Goods and/or 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.

ARTICLE 10 – USE OF UC NAME AND TRADEMARKS

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

ARTICLE 11 – FEDERAL ACQUISITION REGULATIONS – COMMERCIAL GOODS AND SERVICES

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

- A. FAR 52.203-13, Contractor Code of Business Ethics and Conduct;
- B. FAR 52.219-8, Utilization of Small Business Concerns;
- C. FAR 52.222-4, 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 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.

ARTICLE 12 – 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.

ARTICLE 13 – LIENS

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

ARTICLE 14 – PREMISES WHERE SERVICES ARE PROVIDED

- A. Cleaning Up. Supplier will at all times keep UC premises where the Services are performed and adjoining premises free from accumulations of waste material or rubbish caused by its employees or work of any of its sub-suppliers, and, at the completion of the Services; will remove all rubbish from and about the premises and all its tools, scaffolding, and surplus materials, and will leave the premises "broom clean" or its equivalent, unless more exactly specified. In case of dispute between Supplier and its sub-suppliers as to responsibility for the removal of the rubbish, or if it is not promptly removed, UC may remove the rubbish and charge the cost to Supplier.
- B. Environmental, Safety, Health and Fire Protection. Supplier will take all reasonable precautions in providing the Goods and Services to protect the health and safety of UC students, staff, faculty, visitors, and members of the public to minimize danger from all hazards to life and property, and will comply with all applicable environmental protection, health, safety, and fire protection regulations and requirements (including reporting requirements). In the event that Supplier fails to comply with such regulations and requirements, UC may, without prejudice to any other legal or contractual rights of UC, issue an order stopping all or any part of the provision of the Goods and/or Services; thereafter a start order for resumption of providing the Goods and/or Services may be issued at UC's discretion. Supplier will not be entitled to make a claim for extension of time or for compensation or damages by reason of or in connection with such stoppage. Supplier will have sole responsibility for the safety of all persons employed by Supplier and its sub-suppliers on UC premises, or any other person who enters upon UC premises for reasons relating to the Agreement. Supplier will at all times maintain good order among its employees and all other persons who come onto UC's premises at Supplier's request and will not engage any unfit or unskilled person to provide the Goods and/or Services. Supplier will confine its employees and all other persons who come onto UC's premises at Supplier's request or for reasons relating to the Agreement and its equipment to that portion of UC's premises where the Services are to be provided or to roads leading to and from such work sites, and to any other area which UC may permit Supplier to use. Supplier will take all reasonable measures and precautions at all times to prevent injuries to or the death of any of its employees or any other person who enters upon UC premises at Supplier's request. Such measures and precautions will include, but will not be limited to, all safeguards and warnings necessary to protect workers and others against any conditions on the premises that could be dangerous and to prevent accidents of any kind whenever the Goods and/or Services are being provided in proximity to any moving or operating machinery, equipment or facilities, whether such machinery, equipment or facilities are the property of or are being operated by, Supplier, its sub-suppliers, UC or other persons. To the extent compliance is required, Supplier will comply with all relevant UC safety rules and regulations when on UC premises.
- C. Tobacco-free Campus. UC is a tobacco-free institution. Use of cigarettes, cigars, oral tobacco, electronic cigarettes and all other tobacco products is prohibited on all UC owned or leased sites.

ARTICLE 15 – LIABILITY FOR UC - FURNISHED PROPERTY

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

ARTICLE 16 – COOPERATION

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

ARTICLE 17 – ADDITIONAL TERMS APPLICABLE TO THE FURNISHING OF GOODS

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

- A. Price Decreases. Supplier agrees immediately to notify UC of any price decreases from its suppliers, and to pass through to UC any price decreases.
- B. Declared Valuation of Shipments. Except as otherwise provided in the Agreement, all shipments by Supplier under the Agreement for UC's account will be made at the maximum declared value applicable to the lowest transportation rate or classification and the bill of lading will so note.
- C. Title. Title to the Goods purchased under the Agreement will pass directly from Supplier to UC at the f.o.b. point shown, or as otherwise specified in the Agreement, subject to UC's right to reject upon inspection.
- D. Changes. Notwithstanding the terms in Article 34, Amendments, UC may make changes within the general scope of the Agreement in drawings and specifications for specially manufactured Goods, place of delivery, method of shipment or packing of the Goods by

giving notice to Supplier and subsequently confirming such changes in writing. If such changes affect the cost of or the time required for performance of the Agreement, UC and Supplier will agree upon an equitable adjustment in the price and/or delivery terms. Supplier may not make changes without UC's written approval. Any claim of Supplier for an adjustment under the Agreement must be made in writing within thirty (30) days from the date Supplier receives notice of such change unless UC waives this condition in writing. Nothing in the Agreement will excuse Supplier from proceeding with performance of the Agreement as changed hereunder. Supplier may not alter or misbrand, within the meaning of the applicable Federal and State laws, the Goods furnished.

- E. Forced, Convict and Indentured Labor. Supplier warrants that no foreign-made Goods furnished to UC pursuant to the Agreement will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction. If UC determines that Supplier knew or should have known that it was breaching this warranty, UC may, in addition to terminating the Agreement, remove Supplier from consideration for UC contracts for a period not to exceed one year. This warranty is in addition to any applicable warranties in Articles 6 and 11.
- F. Export Control. If any of the Goods is export-controlled under the International Traffic in Arms Regulations (22 CFR §§ 120-130), the United States Munitions List (22 CFR § 121.1), or Export Administration Regulations (15 CFR §§ 730-774) 500 or 600 series, or controlled on a military strategic goods list, Supplier agrees to provide UC (the contact listed on the Purchase Order) with written notification that identifies the export-controlled Goods and such Goods' export classification.

ARTICLE 18 – CONFLICT OF INTEREST

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

- A. An investment worth \$2,000 or more in Supplier or its affiliate;
- B. A position as director, officer, partner, trustee, employee or manager of Supplier or its affiliate;
- C. Receipt during the past 12 months of \$500 in income or \$440 in gifts from Supplier or its affiliate; or
- D. A personal financial benefit from the Agreement in the amount of \$250 or more.

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

ARTICLE 19 – AUDIT REQUIREMENTS

The Agreement is subject to the examination and audit of the California State Auditor 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.

ARTICLE 20 – PROHIBITION ON UNAUTHORIZED USE OR 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 will control in the event that one or both appendices is incorporated into the Agreement and conflicts with the provisions of this Article.

ARTICLE 21 – UC WHISTLEBLOWER POLICY

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

ARTICLE 22 – SUSTAINABLE PROCUREMENT GUIDELINES

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

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

- A. Sustainability Marketing Standards. Supplier sustainability related claims, where applicable, must meet University of California recognized certifications and standards set forth in the UC Sustainable Procurement Guidelines and/or meet the standards of Federal Trade Commission's (FTC) Green Guides.
- B. Electronic Transfer of Supplier Information. Suppliers, when interacting with the University, shall be prohibited from providing hard copies of presentations, marketing material, or other informational materials. Suppliers will be required to present all information in electronic format that is easily transferable to University staff. Materials may be provided in hard copy or physical format if specifically required or requested by a UC representative.
- C. Packaging Requirements. All packaging must be compliant with the Toxics in Packaging Prevention Act (AB 455) and must meet all additional standards and requirements set forth in the UC Sustainable Practices Policy. In addition, the University requires that all packaging meet at least one of the criteria listed below:
 - a. Uses bulk packaging;
 - b. Uses reusable packaging (e.g. totes reused by delivery service for next delivery);
 - c. Uses innovative packaging that reduces the weight of packaging, reduces packaging waste, or utilizes packaging that is a component of the product;
 - d. Maximizes recycled content and/or meets or exceeds the minimum post-consumer content level for packaging in the U.S. Environmental Protection Agency Comprehensive Procurement Guidelines;
 - e. Uses locally recyclable or certified compostable material.
- D. Expanded Polystyrene (EPS) Ban. No EPS shall be used in foodservice facilities for takeaway containers. By 2020, the University will be prohibited from procuring Goods containing, or that are provided in packaging containing, Expanded Polystyrene (EPS) other than that utilized for laboratory supply or medical packaging and products where no functional alternatives exist.
- E. E-Waste Recycling Requirements. All recyclers of University of California electronic equipment must be e-Steward certified by the Basel Action Network (BAN).
- F. Hosted and Punch-out Catalog Requirements. Suppliers enabled with eProcurement hosted catalog functionality must clearly identify products with UC-recognized certifications, as defined by the UC Sustainable Procurement Guidelines, in both hosted and punchout catalog e-procurement environments.

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

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

- A. If Supplier is an Applicable Large Employer (as defined under Treasury Regulation Section 54.4980H-1(a)(4)):
 1. Supplier offers health coverage to its full-time employees who are performing Services for UC;
 2. Supplier's cost of enrolling such employees in Supplier's health plan is factored into the fees for the Services; and

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

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

ARTICLE 24 - PREVAILING WAGES

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

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

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

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

ARTICLE 25 – FAIR WAGE/FAIR WORK

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

Work notices, in the form supplied by UC, in public areas (such as break rooms and lunch rooms) frequented by Supplier employees who perform Services.

For Services 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), 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.

ARTICLE 26 – MEDICAL DEVICES

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

Medical Device as used herein will have the meaning provided by the U.S. Food and Drug Administration ("FDA") and means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component part, or accessory which is: (i) recognized in the official National Formulary, or the United States Pharmacopoeia, or any supplement to them; (ii) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in 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 Goods and/or Services or Supplier's use of any product in providing Goods and/or Services hereunder, Supplier will: (i) perform security testing and validation for each such Goods and/or Services or product, as applicable; (ii) perform a security scan by an anti-virus scanner, with up-to-date signatures, on any software embedded within any Goods and/or Services or products, 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 all Goods and/or Services provided to UC, and other products 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 products used by Supplier or Goods and/or Services delivered to UC under this Agreement as well as files, scripts, messaging services and data will be removed from all such Goods or products following installation, and that all hardware ports and drives not required for use or operation of such Goods and/or Services or products 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 all of the Goods and/or Services provided to UC, and other products used in the course of providing such Goods and/or Services, meet and comply with all cyber-security guidance and similar standards promulgated by the U.S. Food and Drug Administration and any other applicable regulatory body.

If the Goods and/or Services entail provision or use of medical devices, 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(s) in its performance of Services. If Supplier provides MDS2 form(s) to UC concurrently with

its provision of Goods and/or Services, UC will have a reasonable period of time to review such MDS2 form(s), and if the MDS2 form(s) is unacceptable to UC, then UC in its sole discretion may return the Goods or terminate the Agreement with no further obligation to Supplier.

ARTICLE 27 – FORCE MAJEURE

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

ARTICLE 28 – ASSIGNMENT AND SUBCONTRACTING

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

ARTICLE 29 – NO THIRD-PARTY RIGHTS

Nothing in the Agreement is intended to make any person or entity that is not a signer to the Agreement a third-party beneficiary of any right created by this Agreement or by operation of law.

ARTICLE 30 – OTHER APPLICABLE LAWS

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

ARTICLE 31 – NOTICES

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

ARTICLE 32 – SEVERABILITY

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

ARTICLE 33 – WAIVER

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

ARTICLE 34 – AMENDMENTS

The Parties may make changes in the Goods and/or Services or otherwise amend the Agreement, but only by a writing signed by both Parties’ authorized representatives.

ARTICLE 35 – GOVERNING LAW AND VENUE

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

ARTICLE 36 – SUPPLIER TERMS

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

ARTICLE 37 – 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; 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.



ARTICLE 1 – PURPOSE AND SCOPE OF APPLICATION

- A. This Data Security and Privacy Appendix is designed to protect the University of California’s (UC) Non-public Information and UC Information Resources (defined below). This Appendix describes the data security and privacy obligations of Supplier and its sub-suppliers that connect to UC Information Resources and/or gain access to Non-public Information (defined below).
- B. Supplier agrees to be bound by the obligations set forth in this Appendix. To the extent applicable, Supplier also agrees to impose, by written contract, the terms and conditions contained in this Appendix on any third party retained by Supplier to provide services for or on behalf of the UC.

ARTICLE 2 – DEFINED TERMS

- A. Breach. Breach means the unauthorized acquisition, access, use or disclosure of Non-public Information that compromises the security, confidentiality or integrity of such information.
- B. Non-public Information. Supplier’s provision of Services under this Agreement may involve access to certain information that UC wishes to be protected from further use or disclosure. Non-public Information shall be defined as: (i) Protected Information (defined below); (ii) information UC discloses, in writing, orally, or visually, to Supplier, or to which Supplier obtains access to in connection with the negotiation and performance of the Agreement, and which relates to UC, its students or employees, its third-party vendors or licensors, or any other individuals or entities that have made confidential information available to UC or to Supplier acting on UC’s behalf (collectively, “UC Users”), marked or otherwise identified as proprietary and/or confidential, or that, given the nature of the information, ought reasonably to be treated as proprietary and/or confidential; (iii) trade secrets; and (iv) business information.
- C. Protected Information. Protected Information shall be defined as information that identifies or is capable of identifying a specific individual, including but not limited to personally-identifiable information, medical information other than Protected Health Information as defined under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the HIPAA regulations (including, but not limited to 45 CFR § 160.103), Cardholder Data (as currently defined by the Payment Card Industry Data Security Standard and Payment Application Standard Glossary of Terms, Abbreviations, and Acronyms), student records, or individual financial information that is subject to laws restricting the use and disclosure of such information, including but not limited to Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 *et seq.*); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g); the federal Fair and Accurate Credit Transactions Act (15 USC § 1601 *et seq.*) and the Fair Credit Reporting Act (15 USC § 1681 *et seq.*).
- D. UC Information Resources. UC Information Resources shall be defined as those devices, networks and related infrastructure that UC owns, operates or has obtained for use to conduct UC business. Devices include but are not limited to, UC-owned or managed storage, processing, communications devices and related infrastructure on which UC data is accessed, processed, stored, or communicated, and may include personally owned devices. Data includes, but is not limited to, Non-public Information, other UC-

created or managed business and research data, metadata, and credentials created by or issued on behalf of UC.

- E. Work Product. Work Product shall be defined as works-in-progress, notes, data, reference materials, memoranda, documentation and records in any way incorporating or reflecting any Non-public Information and all proprietary rights therein, including copyrights. Work Product is subject to the Agreement's Intellectual Property, Copyright and Patents Article. For the avoidance of doubt, Work Product shall belong exclusively to UC and unless expressly provided, this Appendix shall not be construed as conferring on Supplier any patent, copyright, trademark, license right or trade secret owned or obtained by UC.

ARTICLE 3 – ACCESS TO UC INFORMATION RESOURCES

- A. In any circumstance when Supplier is provided access to UC Information Resources, it is solely Supplier's responsibility to ensure that its access does not result in any access by unauthorized individuals to UC Information Resources. This includes conformance with minimum security standards in effect at the UC location(s) where access is provided. Any Supplier technology and/or systems that gain access to UC Information Resources must contain, at a minimum, the elements in the Computer System Security Requirements set forth in Attachment 1 to this Appendix. No less than annually, Supplier shall evaluate and document whether Supplier's practices accessing UC Information Resources comply with the terms of this Appendix. Documentation of such evaluation shall be made available to UC upon UC's request. Regardless of whether UC requests a copy of such evaluation, Supplier shall immediately inform UC of any findings of noncompliance and certify when findings of non-compliance have been addressed.
- B. Supplier shall limit the examination of UC information to the least invasive degree of inspection required to provide the Goods and/or Services. In the event Goods and/or Services include the inspection of a specific threat to or anomaly of UC's Information Resources, Supplier shall limit such inspection in accordance with the principle of least perusal. Supplier will notify UC immediately upon such events.
- C. With UC's prior written consent, Supplier may alter a UC Information Resource to the extent such alteration is specifically required for Supplier to provide Goods and/or Services to UC pursuant to the Agreement.

ARTICLE 4 – SECURITY PATCHES AND UPDATES

Supplier is required to perform patches and updates in connection with the Goods and/or Services provided to UC as follows:

- A. Devices and Software Provided Directly to UC. Supplier will make available to UC any patches and other updates to system security software or firmware utilized by Supplier in its provision of Goods and/or Services no later than the earlier of thirty (30) days of its commercial release or as recommended by Supplier or Supplier's sub-supplier.
- B. Supplier's Internal Systems and Services Necessary for Supplier to Fulfill its Obligations to UC. Supplier will regularly apply security patches and functional updates to its internal systems software and firmware.

ARTICLE 5 – COMPLIANCE WITH APPLICABLE LAWS, FAIR INFORMATION PRACTICE PRINCIPLES AND UC POLICIES

- A. Supplier agrees to comply with all applicable state, federal and international laws, as well as industry best practices, governing the collection, access, use, disclosure, safeguarding and destruction of Protected Information. Additionally Supplier will comply as applicable with the *Fair Information Practice Principles*, as defined by the U.S. Federal Trade Commission. Such principles would typically require Supplier to have a privacy policy, and a prominently-posted privacy statement or notice in conformance with such principles. If collecting Protected Information electronically from individuals on behalf of UC, Supplier’s prominently-posted privacy statement will be similar to those used by UC (UC’s sample Privacy Statement for websites is available at <http://www.ucop.edu/information-technology-services/policies/it-policies-and-guidelines/records-mgmt-and-privacy/files/sampleprivacystatement.doc>). Supplier also agrees, to the extent applicable, to comply with UC’s Business and Finance Bulletin IS-2, *Inventory, Classification, and Release of UC Electronic Information* (<https://policy.ucop.edu/doc/7020447/BFB-IS-2>), and IS-3, *Electronic Information Security* (<https://policy.ucop.edu/doc/7000543/BFB-IS-3>).
- B. Supplier shall make available to UC all products, systems, and documents necessary to allow UC to audit Supplier’s compliance with the terms of this Article 5. UC shall have the right to audit Supplier’s compliance with its Information Security Plan and the obligations set forth in Attachment 1.
- C. UC reserves the right to monitor Supplier’s connectivity to UC Information Resources while Supplier accesses Non-public Information.

ARTICLE 6 – PROHIBITION ON UNAUTHORIZED USE OR DISCLOSURE OF NON-PUBLIC INFORMATION

Supplier agrees to hold UC’s Non-public Information, and any information derived from such information, in strictest confidence. Supplier will not access, use or disclose Non-public Information other than to carry out the purposes for which UC disclosed the Non-public 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 Non-public Information or any information derived from such information. If required by a court of competent jurisdiction or an administrative body to disclose Non-public Information, Supplier will notify UC in writing immediately upon receiving notice of such requirement and prior to any such disclosure, to give UC an opportunity to oppose or otherwise respond to such disclosure (unless prohibited by law from doing so). Supplier’s transmission, transportation or storage of Non-public Information outside the United States, or access of Non-public Information from outside the United States, is prohibited except on prior written authorization by UC.

ARTICLE 7 – SAFEGUARD STANDARD

Supplier agrees to protect the privacy and security of Non-public Information according to all applicable laws and regulations, by commercially-acceptable standards, and no less rigorously than it protects its own confidential information, but in no case less than reasonable care. Supplier will implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of the Non-public Information. All Protected Information stored on portable devices or media must be encrypted in accordance with the Federal Information Processing Standards (FIPS) Publication 140-2. Supplier will ensure that such security measures are regularly reviewed and revised to address evolving threats and vulnerabilities while Supplier has responsibility for the Non-public Information under the terms of this

Appendix. Prior to agreeing to the terms of this Appendix, and periodically thereafter (no more frequently than annually) at UC's request, Supplier will provide assurance, in the form of a third-party audit report or other documentation acceptable to UC, such as SOC2 Type II, demonstrating that appropriate information security safeguards and controls are in place.

ARTICLE 8 – INFORMATION SECURITY PLAN

- A. Supplier acknowledges that UC is required to comply with information security standards for the protection of Protected Information as required by law, regulation and regulatory guidance, as well as UC's internal security program for information and systems protection.
- B. Supplier will establish, maintain and comply with an information security plan ("Information Security Plan"), which will contain, at a minimum, such elements as those set forth in Attachment 1 to this Appendix.
- C. Supplier's Information Security Plan will be designed to:
 - i. Ensure the security, integrity and confidentiality of Non-public Information;
 - ii. Protect against any anticipated threats or hazards to the security or integrity of such information;
 - iii. Protect against unauthorized access to or use of such information that could result in harm or inconvenience to the person that is the subject of such information;
 - iv. Reduce risks associated with Supplier having access to UC Information Resources; and
 - v. Comply with all applicable legal and regulatory requirements for data protection.
- D. On at least an annual basis, Supplier will review its Information Security Plan, update and revise it as needed, and submit it to UC upon request. At UC's request, Supplier will make modifications to its Information Security Plan or to the procedures and practices thereunder to conform to UC's security requirements as they exist from time to time. If there are any significant modifications to Supplier's Information Security Plan, Supplier will notify UC within 72 hours.

ARTICLE 9 – RETURN OR DESTRUCTION OF NON-PUBLIC INFORMATION

Within 30 days of the termination, cancellation, expiration or other conclusion of this Appendix, Supplier will return the Non-public Information to UC unless UC requests in writing that such data be destroyed. This provision will also apply to all Non-public Information that is in the possession of subcontractors or agents of Supplier. Such destruction will be accomplished by "purging" or "physical destruction," in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88. Supplier will certify in writing to UC that such return or destruction has been completed.

If Supplier believes that return or destruction of the Non-public Information is technically impossible or impractical, Supplier must provide UC with a written statement of the reason that return or destruction by Supplier is technically impossible or impractical. If UC determines that return or destruction is technically impossible or impractical, Supplier will continue to protect the Non-public Information in accordance with the terms of this Appendix.

ARTICLE 10 – NOTIFICATION OF CORRESPONDENCE CONCERNING NON-PUBLIC INFORMATION

Supplier agrees to notify UC immediately, both orally and in writing, but in no event more than two (2) business days after Supplier receives correspondence or a complaint regarding Non-public Information, including but not limited to, correspondence or a complaint that originates from a regulatory agency or an individual.

ARTICLE 11 – BREACHES OF NON-PUBLIC INFORMATION

- A. **Reporting of Breach:** Supplier will report any confirmed or suspected Breach to UC immediately upon discovery, both orally and in writing, but in no event more than two (2) business days after Supplier reasonably believes a Breach has or may have occurred. Supplier’s report will identify: (i) the nature of the unauthorized access, use or disclosure, (ii) the Non-public Information accessed, used or disclosed, (iii) the person(s) who accessed, used, disclosed and/or received Non-public Information (if known), (iv) what Supplier has done or will do to mitigate any deleterious effect of the unauthorized access, use or disclosure, and (v) what corrective action Supplier has taken or will take to prevent future unauthorized access, use or disclosure. Supplier will provide such other information, including a written report, as reasonably requested by UC. In the event of a suspected Breach, Supplier will keep UC informed regularly of the progress of its investigation until the uncertainty is resolved.

- B. **Coordination of Breach Response Activities:** Supplier will fully cooperate with UC’s investigation of any Breach involving Supplier and/or the Services, including but not limited to making witnesses and documents available immediately upon Supplier’s reporting of the Breach. Supplier’s full cooperation will include but not be limited to Supplier:
 - i. Immediately preserving any potential forensic evidence relating to the Breach, and remedying the Breach as quickly as circumstances permit
 - ii. Promptly (within 2 business days) designating a contact person to whom UC will direct inquiries, and who will communicate Supplier responses to UC inquiries;
 - iii. As rapidly as circumstances permit, applying appropriate resources to remedy the Breach condition, investigate, document, restore UC service(s) as directed by UC, and undertake appropriate response activities;
 - iv. Providing status reports to UC on Breach response activities, either on a daily basis or a frequency approved by UC;
 - v. Coordinating all media, law enforcement, or other Breach notifications with UC in advance of such notification(s), unless expressly prohibited by law; and
 - vi. Ensuring that knowledgeable Supplier staff is available on short notice, if needed, to participate in UC-initiated meetings and/or conference calls regarding the Breach.

- C. **Grounds for Termination.** Any Breach may be grounds for immediate termination of the Agreement by UC.

- D. **Assistance in Litigation or Administrative Proceedings.** Supplier will make itself and any employees, subcontractors, or agents assisting Supplier in the performance of its obligations available to UC at no cost to UC to testify as witnesses, or otherwise, in the event of a Breach or other unauthorized disclosure of Non-public Information caused by Supplier that results in litigation, governmental investigations, or administrative proceedings against UC, its directors, officers, agents or employees based upon a claimed violation of laws relating to security and privacy or arising out of this Appendix.

ARTICLE 12 – ATTORNEY'S FEES

In any action brought by a party to enforce the terms of this Appendix, the prevailing party will be entitled to reasonable attorney's fees and costs, including the reasonable value of any services provided by in-house counsel. The reasonable value of services provided by in-house counsel will be calculated by applying an hourly rate commensurate with prevailing market rates charged by attorneys in private practice for such services.

ARTICLE 13 – INDEMNITY

The Agreement includes an Indemnity provision, but for the avoidance of doubt regarding a Breach involving Protected Information, Supplier's indemnification obligations under the Agreement will include the following fees and costs which arise as a result of Supplier's breach of this Appendix, negligent acts or omissions, or willful misconduct: any and all costs associated with notification to individuals or remedial measures offered to individuals, whether or not required by law, including but not limited to costs of notification of individuals, establishment and operation of call center(s), credit monitoring and/or identity restoration services; time of UC personnel responding to Breach; fees and costs incurred in litigation; the cost of external investigations; civil or criminal penalties levied against UC; civil judgments entered against UC; attorney's fees, and court costs.

ARTICLE 14 – ADDITIONAL INSURANCE

In addition to the insurance required under the Agreement, Supplier at its sole cost and expense will obtain, keep in force, and maintain an insurance policy (or policies) that provides coverage for privacy and data security breaches. This specific type of insurance is typically referred to as Privacy, Technology and Data Security Liability, Cyber Liability, or Technology Professional Liability. In some cases, Professional Liability policies may include some coverage for privacy and/or data breaches. Regardless of the type of policy in place, it needs to include coverage for reasonable costs in investigating and responding to privacy and/or data breaches with the following minimum limits unless UC specifies otherwise: \$1,000,000 Each Occurrence and \$5,000,000 Aggregate.

**FIRST AMENDMENT TO APPENDIX – DATA SECURITY AND PRIVACY
SAFEGUARD STANDARD FOR PAYMENT CARD DATA (IF APPLICABLE)**

- A. Supplier agrees that it is responsible for the security of Cardholder Data (as currently defined by the Payment Card Industry Data Security Standard and Payment Application Standard Glossary of Terms, Abbreviations, and Acronyms) that it possesses (if any), including the functions relating to storing, processing and transmitting Cardholder Data. In this regard, Supplier represents and warrants that it will implement and maintain certification of Payment Card Industry (“PCI”) compliance standards regarding data security, and that it will undergo independent third party quarterly system scans that audit for all known methods hackers use to access private information and vulnerabilities that would allow malicious software (e.g., viruses and worms) to gain access to or disrupt UC Information Resources. These requirements, which are incorporated herein, can be found at https://www.pcisecuritystandards.org/document_library. Supplier agrees to provide at least annually, and from time to time at the written request of UC, current evidence (in form and substance reasonably satisfactory to UC) of compliance with these data security standards, which has been properly certified by an authority recognized by the payment card industry for that purpose.
- B. In connection with credit card transactions processed for UC, Supplier will provide reasonable care and efforts to detect fraudulent payment card activity. In performing the Services, Supplier will comply with all applicable rules and requirements, including security rules and requirements, of UC’s financial institutions, including its acquiring bank, the major payment card associations and payment card companies. If during the term of an Agreement with UC, Supplier undergoes, or has reason to believe that it will undergo, an adverse change in its certification or compliance status with the PCI standards and/or other material payment card industry standards, it will promptly notify UC of such circumstances.
- C. Supplier further represents and warrants that software applications it provides for the purpose of performing Services related to processing payments, particularly credit card payments, are developed in accordance with all applicable PCI standards, and are in compliance with all applicable PCI standards, including but not limited to Payment Application Data Security Standards (PA-DSS), Point to Point Encryption Solution Requirements (P2PE) including approved card readers or Point of Interaction (POI). As verification of this, Supplier agrees to provide at least annually, and from time to time upon written request of UC, current evidence (in form and substance reasonably satisfactory to UC) that any such application it provides is certified as complying with these standards and agrees to continue to maintain that certification as may be required.
- D. Supplier will immediately notify UC if it learns that it is no longer PCI compliant under one of the standards identified above, or if any software applications or encryption solutions are no longer PCI compliant.

ATTACHMENT 1

- A. Supplier will develop, implement, and maintain a comprehensive Information Security Plan that is written in one or more readily accessible parts and contains administrative, technical, and physical safeguards. The safeguards contained in such program must be consistent with the safeguards for protection of Protected Information and information of a similar character set forth in any state or federal regulations by which the person who owns or licenses such information may be regulated.

- B. Without limiting the generality of the foregoing, every comprehensive Information Security Plan will include, but not be limited to:
 - i. Designating one or more employees to maintain the comprehensive Information Security Plan;

 - ii. Identifying and assessing internal and external risks to the security, confidentiality, and/or integrity of any electronic, paper or other records containing Protected Information and of UC Information Resources, and evaluating and improving, where necessary, the effectiveness of the current safeguards for limiting such risks, including but not limited to:
 - a. Ongoing employee (including temporary and contract employee) training;
 - b. Employee compliance with policies and procedures; and
 - c. Means for detecting and preventing security system failures.

 - iii. Developing security policies for employees relating to the storage, access and transportation of records containing Protected Information outside of business premises.

 - iv. Imposing disciplinary measures for violations of the comprehensive Information Security Plan rules.

 - v. Preventing terminated employees from accessing records containing Protected Information and/or UC Information Resources.

 - vi. Overseeing service providers, by:
 - a. Taking reasonable steps to select and retain third-party service providers that are capable of maintaining appropriate security measures to protect such Protected Information and UC Information Resources consistent with all applicable laws and regulations; and
 - b. Requiring such third-party service providers by contract to implement and maintain such appropriate security measures for Protected Information.

 - vii. Placing reasonable restrictions upon physical access to records containing Protected Information and UC Information Resources and requiring storage of such records and data in locked facilities, storage areas or containers.

 - viii. Restrict physical access to any network or data centers that may have access to Protected Information or UC Information Resources.

- ix. Requiring regular monitoring to ensure that the comprehensive Information Security Plan is operating in a manner reasonably calculated to prevent unauthorized access to or unauthorized use of Protected Information and UC Information Resources; and upgrading information safeguards as necessary to limit risks.
- x. Reviewing the scope of the security measures at least annually or whenever there is a material change in business practices that may reasonably implicate the security or integrity of records containing Protected Information and of UC Information Resources.
- xi. Documenting responsive actions taken in connection with any incident involving a Breach, and mandating post-incident review of events and actions taken, if any, to make changes in business practices relating to protection of Protected Information and UC Information Resources.

Computer System Security Requirements

To the extent that Supplier electronically stores or transmits Protected Information or has access to any UC Information Resources, it will include in its written, comprehensive Information Security Plan the establishment and maintenance of a security system covering its computers, including any wireless system, that, at a minimum, and to the extent technically feasible, will have the following elements:

- A. Secure user authentication protocols including:
 - i. Control of user IDs and other identifiers;
 - ii. A secure method of assigning and selecting passwords, or use of unique identifier technologies, such as biometrics or token devices;
 - iii. Control of data security passwords to ensure that such passwords are kept in a location and/or format that does not compromise the security of the data they protect;
 - iv. Restricting access to active users and active user accounts only; and
 - v. Blocking access to user identification after multiple unsuccessful attempts to gain access or the limitation placed on access for the particular system.
 - vi. Periodic review of user access, access rights and audit of user accounts.
- B. Secure access control measures that:
 - i. Restrict access to records and files containing Protected Information and systems that may have access to UC Information Resources to those who need such information to perform their job duties; and
 - ii. Assign unique identifications plus passwords, which are not vendor supplied default passwords, to each person with computer access, which are reasonably designed to maintain the integrity of the security of the access controls.
- C. Encryption of all transmitted records and files containing Protected Information.
- D. Adequate security of all networks that connect to UC Information Resources or access Protected Information, including wireless networks.
- E. Reasonable monitoring of systems, for unauthorized use of or access to Protected Information and UC Information Resources.

- F. Encryption of all Protected Information stored on Supplier devices, including laptops or other portable storage devices.
- G. For files containing Protected Information on a system that is connected to the Internet or that may have access to UC Information Resources, reasonably up-to-date firewall, router and switch protection and operating system security patches, reasonably designed to maintain the integrity of the Protected Information.
- H. Reasonably up-to-date versions of system security agent software, including intrusion detection systems, which must include malware protection and reasonably up-to-date patches and virus definitions, or a version of such software that can still be supported with up-to-date patches and virus definitions, and is set to receive the most current security updates on a regular basis.
- I. Education and training of employees on the proper use of the computer security system and the importance of Protected Information and network security.

With reasonable notice to Supplier, UC may require additional security measures which may be identified in additional guidance, contracts, communications or requirements.

**FIRST AMENDMENT TO APPENDIX – DATA SECURITY AND PRIVACY
GENERAL DATA PROTECTION REGULATION DATA PROTECTION AMENDMENT**

During the course of providing Services to, or on behalf of, UC pursuant to the Agreement between UC and Supplier dated _____, Supplier may access or otherwise process personal data as defined below. The Parties agree that with respect to the processing of personal data pursuant to the Agreement or this Data Protection Amendment (“DPA”), UC is the data controller (and shall hereinafter be referred to as the “Controller”), and Supplier is the data processor (and shall hereinafter be referred to as the “Processor”). The Parties have agreed that the Processor will provide the Services to the Controller pursuant to and in accordance with the terms and conditions of the Agreement and this DPA. In the event of a conflict between the terms of this DPA and the Agreement, the terms of this DPA shall govern. Supplier agrees to be bound by the obligations set forth in this DPA. To the extent applicable, Supplier also agrees to impose, by written contract, the terms and conditions contained in this DPA on any third party retained by Supplier to provide services for or on behalf of UC.

A. Definitions

Capitalized terms used but not defined in this DPA will have the meanings set forth in the Agreement. The following capitalized terms shall have the meanings set forth herein:

1. **“Data”** means all personal data processed by (or on behalf of) the Processor for the Controller under or in connection with the Agreement, including in the provision of the Services. “Data” as used herein shall also be considered UC Protected Information as defined in Appendix DS;
2. **“Data Subjects’ Rights”** means the rights of data subjects as provided in the GDPR including, but not limited to, rights of access, rectification, erasure, restriction of processing, data portability, objection, and the right not to be subject to automated decision making (including profiling);
3. **“EEA”** means European Economic Area;
4. **“EU”** means the European Union;
5. **“GDPR”** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;
6. **“data subject,” “personal data,” “personal data breach,” “process/processing,” “pseudonymisation,” and “supervisory authority,”** shall each have the meaning as in the GDPR;
7. **“Subprocessor”** means any third party: (i) who is engaged by the Processor to carry out specific processing activities relating to Data for or on behalf of the Controller; or (ii) to whom the Processor subcontracts any of its obligations in connection with the Agreement.

B. Scope of Processing Data

1. Processor shall process Data solely for the purposes of performing the Services and for the same duration of the Agreement, except as otherwise agreed to in writing by the Parties. The scope and

further details of Processor's processing activities of Data pursuant to the Agreement DPA are set forth in Addendum A to this DPA.

2. To the extent any additional information is required to be included in the Addendum pursuant to the GDPR or any other applicable EU Member State or EEA state law, or this Agreement otherwise requires amendment, the Parties will cooperate to amend this DPA in a writing signed by both Parties.

C. Subprocessors

1. Except as otherwise set forth in the Addendum, the Processor shall not engage any Subprocessor, or subcontract any of its obligations under or in connection with the Agreement to any Subprocessor, without the prior specific written consent of the Controller.
2. If the Controller approves of any Subprocessor pursuant to the Addendum, the Processor shall give the Controller prior written notice of any intended changes concerning the addition or replacement of such Subprocessors to allow the Controller to approve or object to such changes. Such notice shall include details of the processing activity or activities to be conducted by the applicable Subprocessor and the identity and contact details of such Subprocessor.
3. The Processor shall ensure that any Subprocessor approved by Controller in accordance with this Section C is subject to obligations in a written agreement requiring such Subprocessor to comply with the obligations of this DPA, including, but not limited to, providing sufficient guarantees to implement appropriate technical and organizational measures as required by GDPR. If any Subprocessor fails to fulfill its data protection obligations, the Processor shall remain fully liable to the Controller for the performance or non-performance of such Subprocessor.
4. Upon request, the Processor shall provide a copy of each Subprocessor agreement entered into pursuant to this Section C to the Controller.

D. Obligations of the Processor

1. The Processor shall, and shall ensure that each of its employees, approved Subprocessors and any other individual acting under its authority who has access to the Data shall:
 - a. process Data in accordance with the terms of this Agreement, DPA or any other written instructions of the Controller, and only to the extent and in the manner necessary to provide Services, and for no other purpose(s). In the event EU or Member State law requires Processor to process in a manner not expressly authorized by this Agreement or the Controller's written instructions, the Processor shall promptly inform the Controller of the applicable legal requirement before processing, unless prohibited from doing so on important public interest grounds, consistent with EU or Member State law;
 - b. keep the Data confidential and ensure that any person authorized to process the Data for or on behalf of the Processor (including but not limited to any Processor employees and staff and approved Subprocessors) has agreed to keep the Data confidential, or is otherwise under a statutory obligation to protect the confidentiality of the Data; and

- c. upon reasonable request from the Controller, provide an up-to-date copy of the Data in the format requested by the Controller.
2. In carrying out its obligations under the Agreement and this DPA, the Processor shall comply with all applicable laws and regulations relating to privacy or data protection, including, but not limited to, GDPR.
3. In accordance with GDPR, and taking into consideration the state of the art, costs of implementation and the nature, scope, context and purposes of processing the Data pursuant to this Agreement, as well as the risks to the rights and freedoms of natural persons and the risks to processing the Data, the Processor represents and warrants that it shall implement appropriate technical and organizational security measures appropriate to such risks, including, as appropriate: (i) the pseudonymisation and encryption of the Data; (ii) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; (iii) the ability to restore the availability of and access to the Data in a timely manner in the event of a physical or technical incident; and (iv) a process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing.
4. The Processor's technical and organizational security measures to protect Data shall include, without limitation, the measures set forth in Appendix DS.
5. The Processor shall assist the Controller in ensuring compliance with Controller's obligations as a Controller by: (a) cooperating with Controller's implementation of appropriate technical and organizational security measures to ensure the security of processing Data; (b) cooperating with Controller notifications to supervisory authorities and/or data subjects, as applicable, of any breaches of Data; (c) cooperating with Controller's conduct of data protection impact assessments, including but not limited to, any requirements to consult with a supervisory authority as required by GDPR. Processor shall also cooperate with additional obligations of Controller that may be required of it pursuant to GDPR and other applicable data protection laws.
6. In the event of any suspected or actual personal data breach, the Processor shall notify the Controller (via the individual identified by UC in the Agreement to receive Notices relating to Appendix DS on behalf of UC) orally and in writing (including by e-mail) immediately after becoming aware of such breach. All breach reporting of Data shall otherwise be consistent with Article 11 of Appendix DS.
7. Except for transfers of Data to the Controller, the Processor shall not process or transfer any Data to any country outside the EEA except pursuant to prior written approval of the Controller, and at all times in compliance with GDPR and other applicable data protection laws.
8. This section is only applicable if Processor's Services include the collection of personal data directly from data subjects: In the event Processor's Services include the collection of personal data directly from data subjects that is to be provided to Controller, unless the parties otherwise agree, the Processor shall be responsible for ensuring that such processing of personal data complies with GDPR requirements, including, but not limited to, obtaining a lawful basis to process the personal data.
9. This section is only applicable if Processor's Services include the transfer of personal data it has collected or obtained from the EEA to Controller: In the event Processor is transferring personal data it has

collected or otherwise obtained from data subjects in the EEA to Controller for the purposes of performing Services, unless the parties otherwise agree on another transfer mechanism which satisfies GDPR requirements, such transfers shall be governed by the Standard Contractual Clauses set forth in Addendum B to this DPA. Processor acknowledges that Controller is subject to U.S. federal and state laws and regulations, including but not limited to public disclosure laws and regulations that may require the retention and disclosure of information that is the subject of the Agreement. Any liability, claims or damages of Controller shall be limited to the acts or omissions of the Controller. Processor acknowledges that Controller is a U.S. state public institution and is prohibited from assuming liability for the conduct of persons other than Controller's officers, agents, employees, students, invitees, and/or guests.

10. The Processor shall return or destroy Data consistent with the provisions of Article 9 of Appendix DS. In the event EU, EU Member State law or EEA state law requires the storage of such Data, the Processor shall promptly inform the Controller of such requirement.

E. Data Subjects' Rights

1. Except as otherwise set forth in writing by Controller, the Controller shall be responsible for providing data subjects with any information required under GDPR at the time of collecting such data subjects' personal data, as well as any information requested by data subjects relating to the processing of their personal data.
2. The Processor shall notify the Controller (via the individual identified by UC in the Agreement to receive Notices relating to Appendix DS on behalf of UC) in writing (including by e-mail) of each and any request that it receives from a data subject relating to a Data Subject Right. Such written notification shall be made promptly no later than two (2) business days following receipt of the request, and shall include any information in the Processor's custody or control that may assist the Controller to respond to the request.
3. Unless otherwise required by applicable EU, EU Member State law or EEA state law, the Processor shall not respond to any such requests or other communications the Processor receives from data subjects, without the prior written consent of the Controller.
4. The Processor shall assist the Controller in Controller's obligations to respond to requests for exercising Data Subjects' Rights by using appropriate technical and organizational measures, to the extent practicable given the nature of the processing of Data.

F. Accountability

1. Upon written request from the Controller, the Processor shall make available to the Controller all information necessary to demonstrate compliance with its obligations under this DPA. The Processor shall make its records, documents, facilities, processes and individuals reasonably available to Controller or Controller's designee for audits or inspections to demonstrate compliance with this DPA.
2. The Processor shall immediately inform the Controller if, in the Processor's opinion, any instruction from the Controller with respect to the processing of Data pursuant to this Agreement violates or contradicts GDPR, or other applicable EU, EU Member State or EEA state data protection laws or regulations.

Addendum A: Scope of Processing Data

This Addendum is part of the Appendix GDPR and includes details of the processing of Data as required by the Agreement.

1. Processor is processing Data on behalf of the Controller for purposes of the performance of Services described in this Agreement. Data shall be processed for the duration of the term of this Agreement, except as otherwise specifically set forth herein.
2. The purposes(s) of the processing of Data to be carried out by the Processor on behalf of the Controller includes but is not limited to: administration of payroll to employees; quality improvement of laboratory testing, etc.
3. The Data to be processed by the Processor on behalf of the Controller in the performance of Services includes the following: NAME, TITLE, CONTACT INFORMATION, BIRTHDATE, AGE, IDENTIFICATION NUMBERS, ACADEMIC RECORDS, FINANCIAL DATA, the Data also could include the following sensitive data –racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, genetic data, biometric data, data concerning health, data concerning sex life or sexual orientation, or data relating to criminal convictions or offenses. If the Processor becomes aware that additional personal data not identified above has been received from the Controller, the Processor shall immediately notify the Controller.
4. The Data to be processed by the Processor on behalf of the Controller in the performance of Services relates to the following categories of data subjects: E.G., PATIENTS, STUDENTS, DONORS, EMPLOYEES, SUPPLIERS, CONSULTANTS
5. Controller authorizes the Processor to subcontract the following processing activities to the following Sub-processors: None.
6. Other than to the United States as may be required for the performance of Services, and for which the Controller has a lawful basis to transfer the Data to the United States pursuant to GDPR, the Processor may transfer Data to the following countries outside of the EEA: “None”



UNIVERSITY OF CALIFORNIA

APPENDIX – HIPAA BUSINESS ASSOCIATE

ARTICLE 1 – GENERAL

- A. UC and Supplier desire to protect the privacy and provide for the security of Protected Health Information (as that term is defined herein) used by or disclosed to Supplier in compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the regulations promulgated thereunder by the U.S. Department of Health and Human Services (45 CFR Parts 160, 162 and 164, the HIPAA Regulations), the Health Information Technology for Economic and Clinical Health Act of 2009 (the HITECH Act), California Health and Safety Code §1280.15, California Civil Code §§1798.82 and 1798.29, and other applicable laws and regulations. The purpose of this Appendix is to satisfy certain standards and requirements of HIPAA, the HIPAA Regulations, including 45 CFR § 164.504(e), and the HITECH Act, including Subtitle D, part 1, as they may be amended from time to time.
- B. Supplier is or may be a Business Associate as defined under HIPAA. UC wishes to disclose to Supplier certain information, some of which may constitute Protected Health Information or Medical Information. UC has designated all of its HIPAA health care components as a single component of its hybrid entity and therefore this Appendix is binding on all other UC health care components (collectively, the Single Health Care Component or the SHCC). This Appendix is effective on the date of the Agreement under which Supplier provides Goods and/or Services to UC (Effective Date).
- C. This Appendix applies only if and to the extent Supplier is functioning as a Business Associate to the SHCC.

ARTICLE 2 – DEFINITIONS Except as set forth in this Article 2, capitalized terms used in this Appendix shall have the meaning provided by HIPAA, the HIPAA Regulations, the HITECH Act, California Health and Safety Code §§ 1798.82 and 1798.29, and other applicable laws and regulations.

- A. “Agent” means a person or entity, including a sub-supplier or Workforce Member, who has an agency relationship to Supplier and who is required to receive Protected Health Information or Medical Information to provide the Goods and/or Services in the Agreement.
- B. “Breach” means the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information, and shall have the meaning given to such term under HIPAA and the HIPAA regulations, including 45 CFR §164.402, as well as California Civil Code §§ 1798.29 and 1798.82.
- C. “Destruction” means the use of a technology or methodology by which the media on which the PHI is stored or recorded has been shredded, destroyed, cleared, or purged, as appropriate, such that the PHI cannot be read, retrieved, or otherwise reconstructed. Redaction is inadequate for the purposes of destruction.
- D. “Electronic Health Record” means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff, and shall have the meaning given to such term under the HITECH Act, including Section 13400(5).

- E. "Electronic PHI" means PHI that is transmitted by or maintained in electronic media and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including 45 CFR § 160.103. For the purposes of this Appendix, Electronic PHI includes all computerized data, as defined in California Civil Code §§ 1798.29 and 1798.82.
- F. "Encryption" means a technology or methodology that utilizes an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key, and such confidential process or key that might enable decryption has not been breached, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including 45 CFR § 164.304.
- G. "Information System" means an interconnected set of information resources under the same direct management control that shares common functionality. A system normally includes hardware, software, information, data, applications, communications, and people, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including 45 CFR § 164.304.
- H. "Medical Information" means any individually identifiable information, in electronic or physical form, in possession of or derived from a provider of health care, health care service plan, pharmaceutical company, or contractor regarding a patient's medical history, mental or physical condition, or treatment and shall have the meaning given to such term under California Civil Code § 56.05.
- I. "PHI" means Protected Health Information and Medical Information, collectively.
- J. "Protected Health Information" means any information, including Electronic PHI, whether oral or recorded in any form or medium: (i) that relates to the past, present, or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to 45 CFR § 160.103. For the purposes of this Appendix, Protected Health Information includes all medical information and health insurance information as defined in California Civil Code § 1798.82.
- K. "Secretary" means the Secretary, Department of Health and Human Services, or his or her designee.
- L. "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an Information System, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including 45 CFR § 164.304.
- M. "UC's PHI" means any PHI that Supplier acquires, accesses, uses, discloses, modifies, or destroys in providing Goods and/or Services for UC.
- N. "Unsecured PHI" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of an Encryption or Destruction technology or methodology specified by the Secretary in guidance issued under Section 13402(h)(2) of the HITECH Act on the Health and Human Services Web site, as such guidance may be revised from time to time, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including 45 CFR § 164.402.

ARTICLE 3 –SUPPLIER’S RESPONSIBILITIES

- A. Permitted Uses and Disclosures of PHI. Supplier may use, access and/or disclose PHI received by Supplier pursuant to the Agreement between Supplier and UC, but only for the purpose of providing the Goods and/or Services required of Supplier by the Agreement or as otherwise required by law. Supplier may not

use, access and/or disclose PHI in any manner that would violate HIPAA if done by UC; except that (i) Supplier may use PHI for Supplier's proper management and administration, if necessary and subject to the requirements in Article 3.B herein, and (ii) Supplier may use PHI to provide data aggregation services relating to the health care operations of UC if expressly provided for in the Agreement. To the extent Supplier carries out one or more of UC's obligations under Subpart E of 45 CFR Part 164, Supplier must comply with the requirements of Subpart E that apply to UC in the performance of such obligation(s).

1. Minimum Necessary. With respect to the use, access, or disclosure of PHI by Supplier as permitted pursuant to this Appendix or the Agreement, Supplier shall limit such use access, or disclosure, to the Minimum Necessary to accomplish the intended purpose of such use, access, or disclosure. Supplier shall determine what constitutes the Minimum Necessary to accomplish the intended purpose in accordance with HIPAA, the HIPAA Regulations and any applicable guidance issued by the Secretary.

2. Documentation of Disclosures. With respect to any disclosures of UC'S PHI by Supplier as permitted under this Article 3, Supplier shall document such disclosures including, but not limited to, the date of the disclosure, the name and, if known, the address of the recipient of the disclosure, a brief description of the PHI disclosed, and a brief description of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure. Notwithstanding any record retention requirements elsewhere in the Agreement, for each disclosure of UC'S PHI, Supplier agrees to retain this accounting for a period of at least six (6) years from the date of such disclosure.

3. Electronic Transaction Standards. Where applicable, Supplier shall adhere to the transaction standards as specified in 45 CFR Parts 160 and 162.

B. Other Permitted Uses and Disclosures of PHI. Subject to the limitation in Article 3.C below, Supplier may, if necessary and only to the extent necessary, use, access or disclose PHI (i) for Supplier's proper management and administration, or (ii) to carry out Supplier's legal responsibilities. Supplier shall obtain reasonable assurances from the person to whom PHI is being disclosed that, as required under this Appendix, the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed. Supplier shall require that any Breaches or Security Incidents be immediately reported to Supplier. Supplier shall then report the Breach or Security Incident to UC in accordance with Article 3.G.

C. Nondisclosure of PHI. Supplier is not authorized and shall not use, access or further disclose UC's PHI other than as permitted or required under the Agreement, including this Appendix, or as required by law or regulation.

1. Disclosures Required by Law. In the event Supplier is or may be required by law to disclose PHI, including, but not limited to, pursuant to service with legal process or a request from a governmental agency, Supplier shall promptly notify UC of such requirement, and in any case, within five (5) business days of its receipt of such legal process or request. Supplier shall give UC reasonable opportunity to oppose such disclosure or take other appropriate action before Supplier discloses the PHI.

2. UC Consent Required. Supplier shall not disclose PHI without UC's consent unless pursuant to a valid and specific court order or to comply with a requirement for review of documents by a governmental regulatory agency under its statutory or regulatory authority to regulate the activities of either party.

D. Prohibition on Sale of PHI for Remuneration. Subject to the limitations set forth in 45 CFR § 164.502, Supplier shall not directly or indirectly receive remuneration in exchange for any of UC's PHI unless Supplier first obtains authorization from UC.

E. Security Standards. Supplier shall take appropriate security measures (i) to protect the confidentiality, integrity and availability of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of UC and (ii) to prevent any use or disclosure of the PHI other than as provided by the Agreement and this

Appendix. Appropriate security measures include the implementation of the administrative, physical and technical safeguards specified in Subpart C of 45 CFR Part 164 of the HIPAA Security Rule.

- F. Security Documentation. Supplier shall maintain the policies and procedures implemented to comply with Article 3.E in written form (paper or electronic). If an action, activity or assessment is required to be documented, Supplier shall maintain a written record (paper or electronic) of the action, activity, or assessment, shall retain the documentation for six (6) years from the date of its creation or the date when it last was in effect, whichever is later, make documentation available to those persons responsible for implementing the procedures to which the documentation pertains, and review documentation periodically, and update as needed, in response to environmental or operational changes affecting the security of the PHI.
- G. Notification of Breaches and Security Incidents. Supplier shall notify UC in writing as soon as possible, but in no event more than ten (10) business days, after Supplier becomes aware of any Breach or Security Incident involving UC's PHI. Supplier shall be deemed to be aware of any Breach or Security Incident as of the first day on which such Breach or Security Incident is known or reasonably should have been known to its officers, employees, agents or sub-suppliers. Supplier shall identify as soon as practicable each individual whose unsecured PHI has been, or is reasonably believed by Supplier to have been, accessed, acquired, or disclosed during such Breach or Security Incident. Supplier shall cooperate in good faith with UC in the investigation of any Breach or Security Incident. For purposes of this Appendix, the Parties agree that UC is on continued notice of the general pings and other routine attempted unauthorized accesses to Supplier's system and there is no need for further notification under this Appendix.
- H. Prompt Corrective Actions. In addition to the notification requirements in Article 3.G, and with prior notice to UC, Supplier shall take (i) prompt corrective action to remedy any Breach or Security Incident, (ii) mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Supplier, and (iii) take any other action required by applicable federal and state laws and regulations pertaining to such Breach or Security Incident.
 - 1. Notification of Corrective Action and Provision of Policies. As soon as possible, but no later than fifteen (15) calendar days after discovery of the Breach or Security Incident, Supplier shall provide written notice to UC of (i) the actions initiated by Supplier to mitigate any harmful effect of such Breach or Security Incident and (ii) the corrective action Supplier has initiated or plans to initiate to prevent future similar Breaches or Security Incidents. UC shall have the right to make recommendations to Supplier regarding its corrective action, and Supplier shall reasonably consider, and work with UC, to implement such recommendations. Upon UC's request, Supplier will also provide to UC a copy of Supplier's policies and procedures that pertain to the Breach or Security Incident involving UC's PHI, including procedures for curing any material breach of this Appendix.
- I. Use and Disclosure of De-Identified UC Data by Supplier. Supplier may only use or disclose UC de-identified data only if the de-identified data meets the standard and implementation specifications for de-identification under 45 CFR § 164.514 and (i) such use or disclosure is provided for in the Agreement or (ii) Supplier receives UC's prior written consent.
- J. Supplier's Obligation to Provide Materials. Supplier shall make certain relevant information concerning the use, disclosure, or security of UC's PHI available to UC upon UC's request with the following restrictions. Supplier shall make its internal practices, books, and records relating to the use, disclosure, or security of UC's PHI available to any state or federal agency, including the U.S. Department of Health and Human Services, for purposes of determining UC's and/or Supplier's compliance with federal and state privacy and security laws and regulations.
- L. Right to Review Supplier's Processes. UC has the right, at its discretion, to review facilities, systems, procedures, records, books, agreements, policies and procedures relating to the use and/or disclosure of UC's PHI to determine Supplier's compliance with federal and state privacy and security laws and

regulations. Except in the instance UC has received credible information of a Breach or Security Incident involving Supplier and UC's PHI, UC agrees to provide at least thirty (30) days' notice via a written request of its intent to review Supplier's processes and Supplier shall make available to UC and its authorized agents, during normal business hours, all facilities, systems, procedures, records, books, agreements, policies and procedure.

- M. Supplier is required to disclose PHI (i) to the Secretary when required to investigate or determine UC's compliance with HIPAA, and (ii) to UC, the individual, or the individual's designee, as necessary to satisfy UC's obligations under 45 CFR 164.524(c)(2)(ii) and (3)(ii) with respect to an individual's request for an electronic copy of PHI.
- N. Regulatory Compliance. In connection with all matters related to the Agreement and this Appendix, Supplier (i) acknowledges that it may not use or disclose PHI in a manner that would violate the requirements of federal or state law if done by UC, and (ii) shall comply with all applicable federal and state laws and regulations, including, but not limited to HIPAA; the HIPAA Regulations; 45 CFR §§ Parts 160, 162, and 164; the HITECH Act, Subtitle D, part 1; California Civil Code § 1798.29 and California Health and Safety Code § 1280.15, as they may be amended from time to time.

ARTICLE 4 - Parties' Responsibilities with Respect to Rights of Individuals

- A. Individual's Right to Request Restrictions of PHI. If an individual or his or her representative requests that Supplier restrict the use and disclosure of the individual's PHI, Supplier shall notify UC in writing within five (5) business days after receipt of any request. Upon written notice from UC that it agrees to comply with the requested restrictions, Supplier agrees to comply with any instructions to modify, delete, or otherwise restrict the use and disclosure of the subject's PHI.
- B. Individual's Request for Amendment of PHI. If the Agreement provides that an individual may request Supplier to amend the individual's PHI, Supplier shall inform UC within five (5) business days after receipt of any request by or on behalf of the subject of the PHI to amend the PHI that Supplier maintains for or on behalf of UC. Supplier shall, within twenty (20) calendar days after receipt of a written request, make the subject's PHI available to UC as may be required to fulfill UC's obligations to amend PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR § 164.526. Supplier shall, as directed by UC, incorporate any amendments to UC's PHI into copies of such PHI maintained by Supplier.
- C. Individual's Request for an Accounting of Disclosures of PHI. If the Agreement provides that an individual may request an accounting of disclosures of the individual's PHI, Supplier shall document all disclosures of PHI and, within twenty (20) calendar days after receipt of a written request, make available to UC, and, if authorized in writing by UC, to the subject of the PHI, such information maintained by Supplier or its agents as may be required to fulfill UC's obligations to provide an accounting for disclosures of UC's PHI pursuant to HIPAA, the HIPAA Regulations, including, but not limited to, 45 CFR § 164.528, and the HITECH Act, including, but not limited to Section 13405(c).
- D. Access to Certain Information in Electronic Format. If the Agreement provides that Supplier will use or maintain Electronic Health Records with respect to PHI on behalf of UC, Supplier shall, upon request of UC, provide UC with the requested Electronic Health Record in an electronic format.

ARTICLE 5 – Agents

- A. In accordance with 45 CFR § 164.502(e)(1)(ii), to the extent Supplier contracts with Agents in the provision of Goods and/or Services pursuant to the Agreement, Supplier agrees that such Agents may create, receive, maintain or transmit PHI solely for the purpose of providing Goods and/or Services provided for in the Agreement.

- B. Supplier shall require all Agents agree to the same restrictions and conditions that are imposed on Supplier by this Appendix, and to provide written assurance of such agreement, including, but not limited to, Articles 3.E (Security Standards), 3.F (Security Documentation) and 3.G (Notification of Breaches and Security Incidents).

ARTICLE 6 – TERMINATION AND OTHER REMEDIES

- A. Material Breach. If UC determines that Supplier has violated a material term of this Appendix, UC may take any of the following actions, at its option:
 - 1. Terminate all applicable agreements, including this Appendix, immediately.
 - 2. Provide Supplier with notification of termination of the applicable agreements, including the Agreement and this Appendix, unless Supplier, within five (5) business days, provides a plan to cure the breach and, within fifteen (15) business days, cures the breach.
 - 3. If termination is not feasible, upon UC's request, Supplier shall:
 - (a) at its expense, provide a third-party review of the outcome of any plan implemented under Article 6.A.2. to cure the breach; or
 - (b) at its expense, submit to a plan of monitoring and reporting to demonstrate compliance with this Appendix.
- B. Effect of Termination: Return and/or Destruction of PHI held by Supplier or its Agents. Upon termination, expiration or other conclusion of the Appendix for any reason, Supplier shall return or, at UC's option, provide for the Destruction of all of UC's PHI, that Supplier and/or its Agents and sub-suppliers still maintain in any form, and shall retain no copies of UC's PHI. Within thirty (30) calendar days after the termination of this Appendix, Supplier shall both complete such return and/or Destruction and certify in writing to UC that such return or Destruction has been completed.
- C. Return or Destruction Not Feasible. If Supplier represents to UC that return or Destruction of UC's PHI is not feasible, Supplier must provide UC with a written statement of the reason that return or Destruction by Supplier or its Agents is not feasible. If UC determines that return or Destruction is not feasible, this Appendix shall remain in full force and effect and shall be applicable to any and all of UC's PHI held by Supplier or its Agents.

ARTICLE 7 – CHANGES TO THIS APPENDIX

- A. Compliance with Law. The parties acknowledge that state and federal laws and regulations relating to electronic data security and privacy are rapidly evolving and that additional obligations and responsibilities may be imposed on Supplier to ensure compliance with the new laws and regulations. The parties specifically agree to comply with all applicable laws and regulations and take such action as may be necessary to implement the standards and requirements of HIPAA, the HIPAA Regulations, the HITECH Act, and other applicable state and federal laws and regulations relating to the security or confidentiality of PHI, without need to amend or modify this Appendix. UC will update this Appendix from time to time as required by applicable laws and regulations, and Supplier agrees to sign a revised Appendix upon UC's reasonable request.

ARTICLE 8 – MISCELLANEOUS PROVISIONS

- A. Assistance in Litigation or Administrative Proceedings. Supplier shall make itself, and any employees or

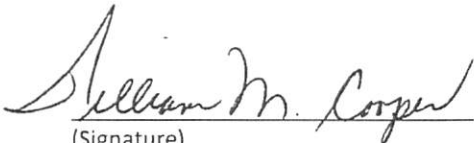
Agents assisting Supplier in the performance of its obligations under the Agreement or this Appendix, available to UC at no cost to UC to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings against UC, its directors, officers, agents or employees based upon claimed violation of HIPAA, the HIPAA Regulations or other laws relating to PHI security and privacy.

- B. Order of Precedence. To the extent that the terms of any other agreement(s) between UC and Supplier are inconsistent with the terms of this Appendix, the terms of this Appendix will control.
- C. Survival. The obligations of Supplier under Articles 3.A, 3.C, 3.D, 3.E, 3.F, 3.G, 3.H, 3.I, 3.J, 3.L, 3.M, 4.A, 4.D, 5.A, 7.A, 8.A, and 8.B of this Appendix shall survive the termination of any agreement between UC and Supplier.

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

**THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA**

SUPPLIER



 (Signature)

William M. Cooper AVP+CPO

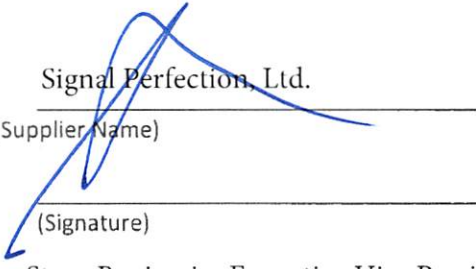
 (Printed Name, Title)

5/24/17

 (Date)

Signal Perfection, Ltd.

(Supplier Name)



 (Signature)

Steve Benjamin, Executive Vice President

 (Printed Name, Title)

11-7-2019

 (Date)



UNIVERSITY OF CALIFORNIA

Appendix- Electronic Commerce

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

SECTION 1 - GENERAL TERMS

Each UC Location offers an electronic web-based purchasing and catalog system to facilitate the purchase of Goods and/or Services from UC suppliers. UC Locations' eProcurement systems currently are provided by two suppliers. This Appendix sets forth the terms and conditions that will govern Supplier's sale of Goods and/or Services through UC's eProcurement systems.

SECTION 2 - DEFINITIONS

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

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

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

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

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

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

Punch-Out Catalog means a Catalog, hosted by Supplier on Supplier's Site. Users may access this Punch-Out Catalog via an internet link provided by Supplier to UC that redirects a User from the campus eProcurement site to Supplier Site. The Punch-Out Catalog will permit: (a) Users to access the Supplier Website when a User selects the Punch-Out Catalog; (b) User to create an Order through the eProcurement sites; and (c) UC eProcurement sites to forward an Order to Supplier for confirmation and Order processing along with Order status inquiry.

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

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

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

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

SECTION 3 – RIGHT TO USE

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

SECTION 4 – ESTABLISHMENT/MAINTENANCE OF CATALOG; SITE RESPONSIBILITY; LICENSE

(a) Establishment and Maintenance. The parties agree to electronically link the functionality of their respective systems, using commercially reasonable efforts. Supplier will provide its Catalog(s) to UC in a file format that will interface seamlessly with UC's eProcurement systems. These Catalog files will be in compliance with each UC Location's eProcurement system and Order Data will be transmitted according to the appropriate cXML or xCBL standards as the case may be. For Hosted Catalogs, Supplier must provide UC with updated versions of the Catalog file with, at a minimum, full descriptions and images that Supplier currently utilizes for items offered in its proprietary websites and Punch-Out Catalogs. The parties will update each other regarding eCommerce specifications as needed from time to time.

Supplier must notify UC's Contract Administrator at least three (3) weeks in advance of the proposed Go Live Date if it will be requesting additions, deletions or modifications to the Catalogs. After such advance notification, Supplier must provide UC with Catalog files containing the requested additions, deletions or modifications with no less than the lead time directed by UC's Contract Administrator; provided, however, that for all Catalogs that Supplier requests to have a January 1 Go Live Date, Supplier must submit proposed files no later than December 1. Upon UC's approval of the new Catalog file, Supplier will make the updated version of the Catalog file effective on the Go Live Date on which UC and Supplier agree. If UC rejects a Catalog more than once because it does not meet UC's acceptance criteria, the Contract Administrator will suspend Supplier's price/content change until the date of Supplier's next contracted change.

If there is a conflict between a price in a Hosted Catalog and a Punch-Out Catalog, UC will be invoiced at the lower price. If the price discrepancy is due to UC's failure to timely update a Hosted Catalog, Supplier may charge the higher price and UC will work with Supplier to rectify the problem as quickly as possible.

All Supplier-provided pricing in any Catalogs, whether Hosted or Punch-Out, will be inclusive of all shipping, handling, fees and charges of any sort, except applicable taxes.

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

UC's Terms and Conditions of Purchase state that the Goods and/or Services must be exactly as specified in the Agreement. For the avoidance of doubt, this means that Supplier may not, without UC's prior consent, substitute items, change SKU numbers or change the number of items in a package in any Catalog.

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

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

SECTION 5 – USER SUPPORT

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

(b) Supplier Duties. Supplier will provide all customer support relating to the Catalog, Supplier Goods and/or Services and Supplier Sites in a manner consistent with the customer support that Supplier provides to other customers, and

at least as good as the customer support that Supplier provides to customers who are purchasing through means other than websites.

SECTION 6 – PROPRIETARY RIGHTS

UC's Terms and Conditions of Purchase contains provisions regarding the parties' rights and responsibilities with respect to intellectual property relating to the Goods and Services. Without altering those provisions, the parties additionally agree as follows. UC may require Supplier to "brand" Supplier's Punch-Out Catalog with one or more UC Marks. If UC requires Supplier to utilize one or more UC Marks on Supplier's Punch-Out Catalog, UC will provide the appropriate artwork and such artwork will be deemed to have been provided with a limited, non-exclusive, non-sublicensable right for Supplier to use it solely for the purpose of a UC-branded Punch-Out Catalog hosted by Supplier and subject to the following terms:

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

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

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

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

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

(b) Modifications. UC will not modify or remove any of the proprietary rights markings in the Catalog. UC will not modify the Catalog, except as supplied by Supplier. UC will not make any representations or warranties, or provide

any information, to any third party regarding any Supplier Goods and/or Services (including, but not limited to, any representations or warranties of any information regarding availability, delivery, pricing, characteristics, qualifications or specifications thereof). If UC believes in good faith that any Supplier information does not conform to the requirements of the associated UC Agreement or this Appendix, UC will be entitled to withdraw the Catalog from UC eProcurement sites. In such a case, UC will promptly notify the Supplier of the actions it has taken and will work with the Supplier promptly to resolve UC's concerns. When UC's concerns are satisfactorily resolved, UC will promptly restore the Catalog, if appropriate. UC will have no liability to the Supplier or anyone else for exercising these rights.

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

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

SECTION 7 – MULTIPLE SUPPLIERS

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

SECTION 8 – WARRANTY DISCLAIMER

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

SECTION 9 – DISPUTES AND CHANGES IN THE SERVICES

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

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

SECTION 10 – ADDITIONAL CONTRACTUAL TERMS

In addition to the provisions of Section 4, these provisions will govern the Catalogs. If the provisions of Sections 4 and 10 conflict, this Section will govern; provided, however, that regardless of the provisions of this Section, Supplier must provide UC with Catalog files containing the requested additions, deletions or modifications with no less than the lead time directed by UC's Contract Administrator and that for all Catalogs that Supplier requests to have a January 1 Go Live Date, Supplier must submit proposed files no later than December 1.

Annual Number of Catalogs: Supplier is allowed to submit no more than 2 catalogs per calendar year, with changes as follows:

- Content Additions, Deletions and Other Non-pricing Edits: biannually
- Price Changes: once per year

Maximum Number of SKUs: **[insert number]**

Acceptable Categories within Catalog: **[list categories]**

Sample Calendar of Changes: **[adapt as needed; this version assumes one pricing change per year and three content changes per year]**

UC's Fiscal Quarter	Calendar Quarter	Month	New Pricing	Content Updates
FQ3	Q1	January		
		February		2/15 File Submission
		March		3/1 Go Live
FQ4	Q2	April		
		May		5/15 File Submission
		June		6/1 Go Live
FQ1	Q3	July		
		August		8/15 File Submission
		September		9/1 Go Live
FQ2	Q4	October		
		December	12/1 File Submission	
		Following January	1/1 Go Live	