



These Terms and Conditions of Purchase ("Terms and Conditions") govern the provision of the equipment, materials, and supplies ("Goods") and/or services ("Services") furnished by Supplier (together, the "Goods and/or Services") under the UC Purchase Order ("PO") or agreement entered into by UC and Supplier (which, together with these Terms and Conditions and any other documents incorporated by reference, constitute the "Agreement"). As used herein, the term "Supplier" includes Supplier and its sub-suppliers at any tier, and "UC" refers to The Regents of the University of California, a corporation described in California Constitution Art. IX, Sec. 9, on behalf of the UC locations identified in the Agreement (each a "UC Location"). UC and Supplier individually will be referred to as "Party" and collectively as "Parties." Any terms not defined in these Terms and Conditions will have the meaning ascribed to such term in any of the other documents incorporated in and constituting the Agreement. Supplier accepts all of the Agreement's terms and conditions either in writing, by shipping any portion of the Goods, or performing any portion of the Services.

If the Agreement refers to a proposal, then the terms of that proposal become part of the Agreement, but only to the extent the proposal terms specify the Goods and/or Services ordered, prices, and/or delivery, and to the extent that they are not inconsistent with the terms and conditions of the Agreement.

Any additional terms that Supplier includes in an order form or other document not incorporated into the Agreement, or in any click-through, or other end user terms and conditions or agreements provided with any Goods and/or Services hereunder ("Additional Terms"), will not be binding on UC, even if use of such Goods and/or Services requires an affirmative "acceptance" of such Additional Terms before access is permitted. Any such Additional Terms will be of no force and effect, and are rejected by UC in their entirety, unless UC expressly agrees to such Additional Terms in writing as provided for in these Terms and Conditions.

## ARTICLE 1: TERM AND TERMINATION

**1.1 Term.** The term of the Agreement is as set forth in the Agreement.

**1.2 Extension.** The Agreement may be extended by written mutual agreement unless otherwise stated in the Agreement.

**1.3 Non-appropriation of Funding.** UC's obligation to proceed is conditioned upon the appropriation of state, federal and other sources of funds whether controlled by UC ("Funding") or not. 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 of UC, Funding is not appropriated or is withdrawn.

**1.4 Termination for Convenience.** UC may, by written notice stating the extent and effective date thereof, terminate the Agreement for convenience in whole or in part, at any time. The effective date of such termination shall be consistent with any requirements for providing notice specified in the Agreement, or immediate if no such terms are set forth in the Agreement. As specified in the termination notice, UC will pay Supplier as full compensation the pro rata Agreement price for performance through the later of the date that: (i) UC provided to Supplier in the notice of termination; or (ii) Supplier's provision of Goods and/or Services will terminate.

**1.5 Termination for Cause.** UC may by written notice terminate the Agreement for Supplier's breach of the Agreement, in whole or in part, at any time, if any of the following apply:

- (a)** Supplier refuses or fails to comply with the provisions of the Agreement or applicable law;
- (b)** Supplier fails to make progress as to endanger performance within five (5) business days;



- (c) Supplier does not cure such failure within 15 business days;
- (d) Supplier fails to supply the Goods and/or Services in the manner or within the time specified in the written notice of termination or any written extension thereof; or
- (e) Supplier does not comply with all applicable state and federal laws relating to providing Goods and Services to UC, including but not limited to laws and policies relating to wages, benefits, and fair labor practices.

In such event, UC may purchase or otherwise secure Goods and/or Services elsewhere and, except as otherwise provided herein, Supplier will be liable to UC for any excess costs UC incurs thereby.

**1.6 Appendices.** If any of the following appendices are incorporated into the Agreement, they will control in the event that the appendices conflict with the provisions of this Article: (i) UC's Appendix – Data Security; (ii) Appendix – BAA; and/or (iii) Appendix – GDPR.

## ARTICLE 2: PRICING AND INVOICING, AND LIENS

**2.1 Pricing.** Pricing is set forth in the Agreement, and the amount UC is charged and responsible for shall not exceed the amount specified in the Agreement unless UC has given prior written approval.

**2.2 Invoicing.** Unless otherwise stated in the Agreement, Supplier shall use the invoicing methods and payment settlement methods agreed to upon supplier enablement at the UC Location. UC will pay Supplier, following submission of acceptable invoices according to agreed-upon payment terms, for Goods and/or Services provided and accepted. Invoices must be itemized and must reference the Agreement or PO number. Supplier invoicing shall be subject to verification by UC and its authorized representatives; Supplier will provide supporting documentation and information upon request by UC. UC will not pay shipping, packaging, or handling expenses, unless specified in the Agreement. Unless otherwise provided, freight is to be Free on Board ("FOB") destination on domestic shipments, and Delivered Duty Paid ("DDP") for international shipments. Any reimbursement of Supplier's expenses that UC agrees to will be reimbursed pursuant to UC's Travel Policy, which may be found at <http://www.ucop.edu/central-travel-management/resources/index.html>. Where applicable, Supplier will pay all taxes imposed on Supplier in connection with its performance under the Agreement, including any federal, state, and local income, sales, use, excise and other taxes or assessments. Notwithstanding any other provision to the contrary, UC will not be responsible for any fees, interest or surcharges Supplier wishes to impose.

**2.3 Liens.** Supplier agrees upon request to furnish UC with a sworn statement setting forth the work performed or material furnished by sub-suppliers and material men, and the amounts due and to become due to each. Prior to final payment, Supplier will, upon UC request, submit a complete set of vouchers showing the payments that 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 may withhold final payment until Supplier delivers to UC a complete release of all liens arising out of the Agreement or complete set of receipts in full. In either case, UC may require Supplier to submit an affidavit that, as far as Supplier has knowledge or information, the receipts include all the labor and materials for which a lien could be filed. If any sub-supplier refuses to furnish a release or receipt in full, Supplier may furnish a bond satisfactory to UC to indemnify UC 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 3: INSPECTION

The Goods and/or Services furnished will be as specified in the Agreement, free from all defects in Supplier's performance, design, skill, and materials, and will be subject to inspection and testing by UC unless otherwise provided in the Agreement. If, prior to final acceptance, any Goods and/or Services are found to be incomplete, or not as specified, UC may reject them, require Supplier to correct them at the sole cost of Supplier, or require provision of such Goods and/or Services at a fair and reasonable reduction in price. Supplier bears all risks as to rejected Goods and/or Services. In addition to any costs for which Supplier may become liable to UC under other provisions of the Agreement, Supplier 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 or payment, Supplier will be liable for latent defects, fraud, or such gross mistakes as amount to fraud.

### ARTICLE 4: INTELLECTUAL PROPERTY, COPYRIGHT, PATENTS, AND DATA RIGHTS

#### 4.1 Rights to Deliverables.

- (a) **Ownership of Deliverables.** UC owns any deliverables due to UC as set forth in the Agreement, including intellectual property rights therein (hereinafter the "Deliverables"), unless UC agrees in writing that the Goods and/or Services do not involve work made for hire. The Deliverables will be considered "work made for hire" under U.S. copyright law, and UC will own all right, title, and interest to and in such Deliverables including, but not limited to, any and all copyrights or trademarks. 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.
- (b) **Pre-Existing Materials.** In the event Supplier uses any pre-existing patented, copyrightable or trademarked images, writings, or other proprietary materials of Supplier or any third party (hereinafter "Pre-Existing Materials") in the performance of the Agreement, Supplier hereby grants to UC, and will secure for UC from any third-party owner, 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.
- (c) **Inventions and Discoveries.** Whenever Supplier makes or conceives of any invention or discovery in the direct performance of providing Goods and/or Services to UC under the Agreement, Supplier will promptly furnish UC with complete information with respect thereto. In addition, whenever Supplier makes or conceives of any invention or discovery that incorporates UC Institutional Information (collectively "UC Inventions"), Supplier will promptly furnish UC with complete information with respect thereto. UC will have the sole discretion to make any and all decisions regarding the filing, management, and disposition of UC Inventions, including any patent applications and patent rights covering UC Inventions. As used herein, "Institutional Information" means any information or data created, received, and/or collected by UC or on its behalf, including but not limited to application logs, metadata, and data derived from such data.
- (d) **Supplier Assignment.** Supplier hereby assigns to UC all right, title and interest in any intellectual property rights to UC Inventions as well as all right, title and interest in tangible research products embodying UC Inventions. Supplier agrees to promptly execute any documentation needed for



such assignment and to ensure that Supplier's employees do the same as necessary to perfect title of UC Inventions for UC.

**4.2 General.** Should the Goods, Services, Pre-Existing Materials, and/or Deliverables 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, 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; (ii) replace or otherwise modify the affected portion of the Goods and/or Services to make them non-infringing; or (iii) obtain a reasonable substitute product for the affected portion of the Goods and/or Services. Any replacement, modification or substitution under this paragraph shall not affect 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.

**4.3 UC Rights to Institutional Information.** Institutional Information shall belong exclusively to UC and, unless expressly provided, this Agreement shall not be construed as conferring on Supplier any patent, copyright, trademark, license right or trade secret owned or obtained by UC. Any right for Supplier to use Institutional Information is solely provided on a non-exclusive basis, and only to the extent required for Supplier to provide the Goods or Services under the Agreement.

## ARTICLE 5: LIABILITY FOR UC MATERIALS

To the extent UC furnishes Supplier with, or Supplier otherwise uses, any UC materials in connection with the Agreement ("UC Materials"), Supplier assumes complete liability for such UC Materials. Supplier agrees to pay for any UC Materials Supplier damages or otherwise is not able to account for to UC's reasonable satisfaction. Unless otherwise expressly provided in writing by UC, Supplier shall not obtain title to any UC Materials. For clarity, UC Materials may include Institutional Information. Supplier will use UC Materials for the limited purpose of performing hereunder. Supplier will not transfer UC Materials, or parts thereof, to any third party without express written consent of UC. UC MAKES NO REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY OR FITNESS OF THE UC MATERIALS FOR ANY PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, NOR ANY OTHER WARRANTY OF ANY KIND. No other right or license to the UC Materials is granted to Supplier or implied as a result of transferring UC Materials hereunder. In no event will Supplier use the UC Materials in human subjects.

## ARTICLE 6: 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 (collectively, "UC Name"), in any form or manner in advertisements, reports, or other information released to the public, or place a UC Name 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.



If the Goods will bear the UC Name, Supplier must hold a valid license from UC and comply with UC's Trademark Licensing Code of Conduct policy, available at <http://policy.ucop.edu/doc/3000130/TrademarkLicensing>.

#### **ARTICLE 7: PROHIBITION ON UNAUTHORIZED USE OR DISCLOSURE OF INSTITUTIONAL INFORMATION**

**7.1 Prohibition on Access, Use and Disclosure of Institutional Information.** Supplier will not access, use, or disclose Institutional Information, other than to carry out the purposes for which UC disclosed the Institutional Information to Supplier, except as required by applicable law, or as otherwise authorized in writing by UC prior to Supplier's disclosure. Supplier shall have the limited right to disclose Institutional Information to Supplier's employees provided that: (i) Supplier shall disclose only such Institutional Information as necessary for the Supplier to perform its obligations under this Agreement; and (ii) Supplier informs such employees of the obligations governing the access, use and disclosure of Institutional Information prior to Supplier's disclosure. Supplier shall be liable for any breach of this Agreement by its employees. For avoidance of doubt, this provision prohibits Supplier from using for its own benefit Institutional Information and any information derived therefrom. The sale of Institutional Information is expressly prohibited. For the avoidance of doubt, Supplier use of artificial intelligence (AI) systems with UC Institutional Information is not permitted except with prior written consent from the Chancellor or delegatee for the applicable UC Location(s) or as explicitly set forth in the SOW. "AI system" has the meaning provided in NIST AI RMF 1.0, as may be amended from time to time.

**7.2 Compliance with Applicable Laws and Industry Best Practices.** Supplier agrees to comply with all applicable state, federal, and foreign laws, as well as industry best practices, governing the collection, access, use, disclosure, safeguarding, and destruction of Institutional Information. Supplier agrees to protect the privacy and security of Institutional Information according to all applicable laws and industry best practices. Further, Supplier agrees to protect Institutional Information at least as rigorously as it protects its own information and in no case less than reasonable care.

**7.3 Confidential Institutional Information.** Supplier agrees to hold UC's Confidential Institutional Information, and any information derived therefrom, in strict confidence. Confidential Institutional Information shall be defined as any Institutional Information that is:

- (a)** marked as "Confidential" at the time of disclosure;
- (b)** if disclosed orally, identified at the time of such oral disclosure as confidential, and reduced to writing as "Confidential" within thirty (30) days of such oral disclosure; or
- (c)** 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. As applicable to Supplier's Services, Confidential Institutional Information includes any information that identifies or is capable of identifying a specific individual.

**7.4 Exceptions.** Information will not be considered Confidential Institutional Information to the extent:

- (a)** Supplier can demonstrate by written records it was lawfully known to Supplier prior to the effective date of the Agreement and not subject to any other confidentiality agreement in effect between Supplier and UC;
- (b)** it 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;
- (c)** it is obtained lawfully from a third party; or



- (d) it is disclosed under the California Public Records Act or valid legal process.

**7.5 Required Disclosures of Institutional Information.** If Supplier is required by a court of competent jurisdiction, or a governmental administrative body with jurisdiction, to disclose Institutional Information, Supplier will notify UC in writing immediately upon receiving notice of such requirement and prior to any such disclosure (unless Supplier is prohibited by law from doing so), to give UC an opportunity to oppose or otherwise respond to such disclosure. To the extent Supplier is still required to disclose Institutional Information, Supplier will furnish only that portion that is legally required and

will exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be afforded to any Confidential Institutional Information.

**7.6 No Offshoring.** Supplier's transmission, transportation or storage of Institutional Information outside the United States, or access of Institutional Information from outside the United States, is prohibited except with prior written authorization by UC.

**7.7 Conflict in Terms.** UC's Appendix – Data Security, Appendix – BAA, and/or Appendix GDPR will control in the event one or more appendices is incorporated into the Agreement and conflicts with the provisions of this Article.

**7.8 Injunctive Relief.** Supplier acknowledges that remedies at law would be inadequate to protect UC against any actual or threatened breach of this Section by Supplier, and, without prejudice to any other rights and remedies otherwise available to UC, Supplier agrees to the granting of injunctive relief in UC's favor without proof of actual damages.

**7.9 Third-Party Analytics.** Supplier agrees not to use any third-party analytics services, software, or tools of any kind (including but not limited to any user analytics or website analytics tool that shares Institutional Information with a third party, such as Google Analytics or Meta Pixel) in connection with the performance of its obligations under this Agreement without first obtaining the express written consent of the UC Location Chancellor or their delegatee. In the event Supplier wishes to use any third-party analytics services, software, or tools, Supplier must first obtain such express written consent, which consent may be withheld in UC's sole discretion. Supplier acknowledges and agrees that any use of third-party analytics services, software, or tools without such express written consent shall constitute a material breach of this Agreement that is incapable of cure by Supplier and, therefore, may result in the termination of the Agreement by UC, at UC's sole election.

## ARTICLE 8: FEDERAL FUNDS

**8.1** Supplier 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) Commercial Transactions.** For commercial transactions involving funds on a federal contract (federal awards governed by the FAR), the following provisions apply, as applicable:

- (i) FAR 52.203-13, Contractor Code of Business Ethics and Conduct;
- (ii) FAR 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights;
- (iii) FAR 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements;
- (iv) FAR 52.219-8, Utilization of Small Business Concerns;
- (v) FAR 52.222-21, Prohibition of Segregated Facilities;



- (vi) FAR 52.222-26, Equal Opportunity;
- (vii) FAR 52.222-35, Equal Opportunity for Veterans;
- (viii) FAR 52.222-36, Equal Opportunity for Workers with Disabilities;
- (ix) FAR 52.222-37, Employment Reports on Veterans;
- (x) FAR 52.222-40, Notification of Employee Rights Under the National Labor Relations Act;
- (xi) FAR 52.222-41, Service Contract Labor Standards;
- (xii) FAR 52.222-50, Combating Trafficking in Persons;
- (xiii) FAR 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment -Requirements;
- (xiv) FAR 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services -Requirements;
- (xv) FAR 52.222-54, Employment Eligibility Verification;
- (xvi) FAR 52.222-55, Minimum Wages Under Executive Order 13658;
- (xvii) FAR 52.222-62, Paid Sick Leave under Executive Order 13706;
- (xviii) FAR 52.224-3, Privacy Training;
- (xix) FAR 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations;
- (xx) FAR 52.233-1, Disputes; and
- (xxi) FAR 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels.

- (b) **Non-Commercial Transactions.** For non-commercial transactions involving funds on a federal contract, the UC Appendix titled 'Federal Government Contracts Special Terms and Conditions (Non-Commercial Items or Services)' and located at <https://procurement.ucop.edu/resources/ppolicies> is hereby incorporated herein by reference.
- (c) **Federal Grants or Cooperative Agreements.** For transactions involving funds on a federal grant or cooperative agreement (federal awards governed by CFR Title 2, Subtitle A, Chapter II, Part 200) the following provisions apply, as applicable:

- (i) **Rights to Inventions.** If Supplier is a small business firm or nonprofit organization, and is providing experimental, development, or research work under this transaction, Supplier must comply with the requirements of 3 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."
- (ii) **Clean Air Act.** Supplier agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. § 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- (iii) **Byrd Anti-Lobbying.** Supplier certifies that it will not, and has not, used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352.
- (iv) **Procurement of Recovered Materials.** If Supplier is a state agency or agency of a political subdivision of a state, Supplier complies with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.
- (v) **Domestic Preferences for Procurements.** As appropriate and to the extent consistent with law, Supplier should, to the greatest extent practicable under a federal award, provide a



preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

**(d) Definitions.** 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:

- (i) **Debarment, Suspension.** Neither Supplier nor its principals are presently debarred, suspended, or proposed for debarment by the U.S. government (see FAR 52.209-6);
- (ii) **Compliance Reports.** Supplier has filed all compliance reports required by the Equal Opportunity clause (see FAR 52.222-22); and
- (iii) **Supplier Classifications.** 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.
- (iv) **Byrd Anti-Lobbying.** Supplier certifies that it will not, and has not, used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.

## ARTICLE 9: INDEMNITY AND LIABILITY

**9.1 Indemnity.** To the fullest extent permitted by law, Supplier will defend, indemnify, and hold harmless UC, its officers, employees, and agents, from and against all claims, losses, expenses (including, without limitation, reasonable attorneys' fees and costs), damages, and liabilities of any kind ("Claims") resulting from or arising out of the Agreement, provided such Claims 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 and to permit Supplier to defend any Claim, and that UC will cooperate fully in such defense. UC retains the right to participate in the defense against any such Claim, and the right to consent to any settlement, which consent will not unreasonably be withheld.

**9.2 Data Breach Costs.** Supplier shall reimburse or otherwise be responsible for any costs, fines or penalties imposed against UC as a result of Supplier's Breach of Institutional Information and/or failure to cooperate with UC's response to such Breach. As used herein, "Breach" means:

- (a) Any disclosure of Institutional Information to an unauthorized party or in an unlawful manner;
- (b) Unauthorized or unlawful acquisition of information that compromises the security, confidentiality, or integrity of Institutional Information and/or IT Resources; or



- (c) The acquisition, access, use, or disclosure of Protected Health Information or medical information in a manner not permitted under the Health Insurance Portability and Accountability Act (HIPAA) or California law.

"IT Resources" means IT infrastructure, cloud services, software, and/or hardware with computing and/or networking capability that is Supplier owned/managed, or UC-owned, or a personally owned device that stores Institutional Information, is connected to UC systems, is connected to UC networks, or is used for UC business.

## ARTICLE 10: INSURANCE

**10.1 Supplier 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:
- (i) Each Occurrence \$ 1,000,000
  - (ii) Products/Completed Operations Aggregate \$ 2,000,000
  - (iii) Personal and Advertising Injury \$ 1,000,000
  - (iv) General Aggregate \$ 2,000,000
- (b) **Business Automobile Liability Insurance.** 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) **Professional Liability Insurance.** If applicable, Professional Liability Insurance with a limit of two million dollars (\$2,000,000) per occurrence or claim with an aggregate of not less than two million dollars (\$2,000,000). If this insurance is written on a claims-made form, it will continue for three years following termination of the Agreement. The insurance will have a retroactive date of placement prior to or coinciding with the effective date of the Agreement.
- (d) **Workers' Compensation.** Workers' Compensation as required by applicable state law and Employer's Liability with limits of one million dollars (\$1,000,000) per occurrence.

**10.2 Fidelity Bond or Crime Coverage.** 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 subsuppliers will be named as "Loss Payee, as Their Interest May Appear" in such Fidelity Bond.

**10.3 Appendix – Data Security (DS).** In the event Appendix - Data Security (DS) applies to this Agreement, Supplier, at its sole cost and expense, will obtain, keep in force, and maintain one or more insurance policies that provide coverage for technology, professional liability, data protection, and/or cyber liability. Typically referred to as Privacy, Technology and Data Security Liability, Cyber Liability, or Technology Professional Liability insurance, it will cover liabilities for financial loss due to the acts, omissions, or intentional misconduct of Supplier, its officers, employees, agents, sub-suppliers, or anyone directly or indirectly employed by Supplier, or any person or persons under Supplier's direction



and control, in connection with the performance of this Agreement, as well as all Supplier costs, including damages it is obligated to pay UC or any third party, that are associated with any confirmed or suspected Breach or compromise of Institutional Information. In some cases, Professional Liability policies may include some coverage for data breaches or loss of Institutional Information. Regardless of the type of policy(ies) in place, such coverage will include without limitation:

- (a) costs to notify parties whose data were lost or compromised;
- (b) costs to provide credit monitoring and credit restoration services to parties whose data were lost or compromised;
- (c) costs associated with third party claims arising from the confirmed or suspected Breach or loss of Institutional Information, including litigation costs and settlement costs;
- (d) any investigation, enforcement, fines and penalties, or similar miscellaneous costs; and
- (e) any payment made to a third party as a result of extortion related to a confirmed or suspected Breach.

The following insurance coverage is based on the highest Protection Level Classification of Institutional Information identified in Exhibit 1 to Appendix - Data Security (DS):

- (i) P1 - This insurance policy must have minimum limits of \$500,000 each occurrence and \$500,000 in the aggregate.
- (ii) P2 - This insurance policy must have minimum limits of \$1,000,000 each occurrence and \$1,000,000 in the aggregate.
- (iii) P3 and P4, less than 70,000 records - this insurance policy must have minimum limits of \$5,000,000 each occurrence and \$5,000,000 in the aggregate.
- (iv) P3 and P4, 70,000 or more records - this insurance policy must have minimum limits of \$10,000,000 each occurrence and \$10,000,000 in the aggregate.

Protection Level Classifications are defined in the UC Systemwide Information Security Classification of Information and IT Resources: <https://security.ucop.edu/policies/institutional-information-and-itresource-classification.html>

**10.4 Additional Requirements.** 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 (3) 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.

**10.5 UC Additional Insured; Certificates of Insurance.** The coverages referred to under 10.1(a) (Commercial Form General Liability Insurance) and 10.2(b) (Business Automobile Liability Insurance) of this Article must include UC as an additional insured. It is understood that the coverage and limits referred to under 10.1(a) (Commercial Form General Liability Insurance) and 10.2(b) (Business Automobile Liability Insurance) and 10.1(c) (Professional Liability Insurance) 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 (and any endorsement pages as applicable) will:

- (a) Indicate that The Regents of the University of California has been endorsed as an additional insured for the coverage referred to under 10.1(a) (Commercial Form General Liability Insurance) and 10.2(b) (Business Automobile Liability Insurance) of this Article.



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

#### ARTICLE 11: ADDITIONAL WARRANTIES

**Supplier Warranties.** Failure to comply with any of the warranties in the Agreement will constitute a material breach of the Agreement. In addition to any warranties set forth elsewhere herein, Supplier represents, warrants and covenants:

- 11.1** Supplier is not, and will not become during the Agreement term, subject to any restrictions that might restrict or prohibit Supplier from performing the Services or providing the Goods ordered hereunder.
- 11.2** Supplier will comply with all applicable laws, rules, and regulations in performing Supplier's obligations hereunder, including but not limited to procuring all necessary permits or licenses.
- 11.3** The Goods and/or Services shall be rendered with promptness and diligence and shall be executed in a skilled manner by competent personnel, in accordance with prevailing industry standards.
- 11.4** Supplier has developed a business interruption and disaster recovery program and is executing such program to assess and reduce the extent to which Supplier's systems may be susceptible to errors or failures in various crisis or force majeure situations.
- 11.5 Water and Air Pollution.** As applicable, Supplier 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, UC is prohibited from contracting with entities in violation of Federal or State water or air pollution laws.
- 11.6 Accessibility.** As applicable to the Goods and/or Services provided under the Agreement:
- (a) Supplier complies with California and federal disability laws and regulations applicable to Supplier and UC;
  - (b) Supplier warrants that the Goods and/or Services provided will meet or exceed the accessibility requirements of the UC Information Technology Accessibility policy (IMT-1300, <https://policy.ucop.edu/doc/7000611>) in place as of the effective date of the Agreement and failure to meet or exceed such policy shall constitute a material breach of under the Agreement. This warranty shall include any of the following Good and/or Services provided by the Supplier: hardware, software, website development and/or maintenance, and any other information technology, including textbooks or any other documents.
  - (c) Supplier agrees to promptly respond to and make all reasonable efforts to resolve complaints regarding accessibility of its Goods and/or Services within a reasonable and mutually agreeable timeline. In determining this remediation timeline, Supplier and UC shall in good faith consider any relevant factors, including but not limited to, UC's liability exposure (e.g., public facing Goods and/or Services versus Goods and/or Services used only by a handful of employees), the scope of alleged accessibility issues and their severity, and the urgency in remediating the complainant's alleged accessibility issues.
  - (d) To the fullest extent permitted by law, the indemnity clause herein (Article 9) shall apply to any complaint, claim, or actions relating to the accessibility of Supplier's Goods and/or Services to persons with disabilities.
- 11.7 California Child Abuse and Neglect Reporting Act ("CANRA").** Where applicable, Supplier complies with the California Child Abuse and Neglect Reporting Act ("CANRA").



**11.8 Debarment, Suspension, U.S. Government Restricted Party Lists.** Supplier is not on the U.S. government's Denied Parties List, the Unverified List, the Entities List, the Specially Designated Nationals and Blocked Parties List, and neither it nor its employees and agents is now nor has ever been debarred, suspended, excluded, sanctioned, or otherwise declared ineligible for award of federal contracts or participation in any government sponsored program, including any federal or state health care program (e.g., Medicare, Medi-Cal), and no proceedings, investigations, or inquiries are currently pending or threatened by any federal or state agency as a result of which Supplier or its employees or agents could be excluded, sanctioned, debarred or otherwise made ineligible from participation in any government sponsored program or sanctioned for any violation of any rule or regulation of such programs (excluding denial of reimbursement or payment of any specific claim or claims). Supplier will immediately provide written notice to UC of any such pending or threatened investigation or inquiry upon becoming aware of such investigation or inquiry. Any breach of this Section shall give UC the right to terminate the Agreement immediately for cause.

**11.9 Equal Opportunity Affirmative Action.** Supplier will abide by the requirements set forth in Executive Orders 11246 and 11375. Where applicable, Supplier will comply with 41 CFR §§ 60-1.4(a), 60300.5(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 Supplier 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.

**11.10 Covered Telecommunications Equipment.** The Goods and/or Services will not require Supplier to use for UC, or provide to UC to use, "covered telecommunications equipment or services" as a substantial or essential component of any system, or as critical technology as part of any system, within the meaning of Federal Acquisition Regulation ("FAR") Section 52.204-25. Supplier will provide "Timely Notice" to UC of any changes to the statements, confirmations or representations made in its proposal response or in any information provided as part of the contract award process, including in particular any changes to the certifications or representations made regarding NDAA Section 889. Timely Notice means that Supplier will notify UC in writing within three (3) business days of any changes to the representations or confirmations made in relation to NDAA Section 889. Notice shall include the representations or confirmations made and the changes to those representations or confirmations. The notice shall be provided by a Supplier representative authorized to bind the Supplier.

**11.11 Cooperation.** Supplier and its sub-suppliers, if any, will cooperate with UC and other suppliers and will not hinder, delay, or interfere with the progress of their work.



**11.12 Conflict of Interest.** 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. 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: an investment worth \$2,000 or more in Supplier or its affiliate;

- (a) a position as director, officer, partner, trustee, employee or manager of Supplier or its affiliate;
- (b) receipt during the past 12 months of \$500 in income or \$440 in gifts from Supplier or its affiliate; or
- (c) 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.

**11.13 Outsourcing (Public Contract Code section 12147).** If the Agreement will displace UC employees, Supplier will not use any funds paid to Supplier under this Agreement to train workers who are located outside of the United States, or plan to relocate outside the United States as part of the Agreement. If displacing UC employees, Supplier will ensure that no work will be performed under the Agreement with workers outside the United States, except as described in Supplier's bid. If Supplier or its sub-supplier performs the Agreement with workers outside the United States during the Agreement term and Supplier did not describe such work in its bid, Supplier acknowledges and agrees that: (i) UC may, without further obligation, terminate the Agreement for noncompliance; and (ii) Supplier will forfeit to UC the amount UC paid for the percentage of work that was performed with workers outside the United States and not described in Supplier's bid.

## ARTICLE 12: PREMISES WHERE SERVICES ARE PROVIDED

The following provisions apply to the extent Services are performed on UC Premises (defined as any location owned or leased by UC):

**12.1. Cleaning Up.** Supplier will keep UC Premises where the Services are performed and adjoining premises free from accumulations of waste caused by its employees or sub-suppliers; 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 a 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.

**12.2. Environmental, Safety, Health, and Fire Protection.** Supplier will take all reasonable precautions in providing the Goods and/or Services to protect the health and safety of UC employees, agents, and members of the public; to minimize danger from all hazards to life and property; and to comply with all applicable environmental protection, health, safety, and fire protection regulations and requirements (including reporting requirements). In the event Supplier fails to comply with such regulations and requirements, UC may, without prejudice to any other rights of UC, issue an order stopping any or all 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 is solely responsible 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 at Supplier's request or 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 unqualified 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 that 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 UC Premises at Supplier's request or for reasons relating to the Agreement. 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.

- 12.3. Smoke and Tobacco Free Policy.** Per the UC Smoke and Tobacco Free Policy, UC is a smoke and tobacco-free institution. All UC campuses, labs and medical centers have adopted this policy to improve the health and safety of all students, staff, faculty, patients, and visitors. The policy prohibits the use of cigarettes, e-cigarettes, cigars, snuff, snus, water pipes, pipes, hookahs, chew, unregulated electronic nicotine delivery system, and any other non-combustible tobacco product at all UC campuses, medical centers, and facilities. (See website: <https://www.ucop.edu/safety-and-loss-prevention/environmental/program-resources/uc-smoke-free/uc-smoke-tobacco-free.html>)

#### ARTICLE 13: ADDITIONAL TERMS APPLICABLE TO THE FURNISHING OF GOODS

This Article applies to the extent Supplier furnishes Goods:

- 13.1 Price Decreases.** Supplier agrees immediately to notify UC of any price decreases from its suppliers and to pass through to UC any price decreases.
- 13.2 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.
- 13.3 Title to Goods.** Title to the Goods purchased under the Agreement will pass directly from Supplier to UC at the Free On Board (FOB) destination on domestic shipments, and Delivered Duty Paid ("DDP") for international shipments, or as otherwise specified in the Agreement, subject to UC's right to reject upon inspection and/or testing.
- 13.4 Changes.** Notwithstanding the provisions of Article 18.7 (Amendments) herein, 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 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, 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.
- 13.5 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 (1) year.

**13.6 Export Control.** Supplier agrees to provide UC (the contact listed on the Agreement) with written notification that identifies the export-controlled Goods and such Goods' export classification if any of the Goods is export-controlled under the International Traffic in Arms Regulations (ITAR) (22 CFR §§ 120-130), the Export Administration Regulations (15 CFR §§ 730-774) 500 or 600 series, or controlled on a military strategic goods list. Supplier agrees to provide UC (the contact listed on the Agreement) with written notification if Supplier will be providing information necessary for the operation, installation (including on-site installation), maintenance (checking), repair, overhaul, and refurbishing of the Goods that is beyond a standard user manual (i.e."Use" technology as defined under the EAR 15 CFR § 772.1), or "Technical Data" (as defined under the ITAR 22 CFR § 120.10).

#### ARTICLE 14: AUDIT REQUIREMENTS

The Agreement, and any pertinent records involving transactions relating to this Agreement, is subject to the examination and audit of the California State Auditor and 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 its authorized representatives, and if the underlying grant, cooperative agreement, or federal contract so provides, the underlying 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 but not limited to the costs of administering the Agreement.

#### ARTICLE 15: SUSTAINABLE PROCUREMENT

**Sustainable Practices.** 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 UC 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 UC Sustainable Practices Policy (<https://policy.ucop.edu/doc/3100155>) ("Policy") and the UC Sustainable Procurement Guidelines ("Guidelines"): <https://procurement.ucop.edu/suppliers/what-sustainable-procurement-uc/policy>.

In accordance with the Policy, Supplier will adhere to the following requirements and standards, as applicable. Supplier acknowledges that failure to comply with this Article 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.

**15.1 Standards.** Supplier must meet UC-recognized certifications and standards set forth in the Guidelines and/or meet the standards of Federal Trade Commission's Green Guides.

**15.2 Electronic Format.** Supplier, when interacting with UC, shall be prohibited from providing hard copies of presentations, marketing material, or other informational materials, unless otherwise required by



the Agreement or requested by UC. Supplier will be required to present all information in electronic format.

**15.3 Packaging Requirements.** All packaging must comply with the Toxics in Packaging Prevention Act and meet all standards and requirements set forth in the Policy. In addition, UC requires that all packaging meet at least one of the criteria listed below:

- (a) uses bulk packaging;
- (b) uses reusable packaging (e.g. totes reused by delivery service for next delivery);
- (c) uses innovative packaging that reduces the weight of packaging, reduces packaging waste, or utilizes packaging that is a component of the product;
- (d) maximizes recycled content and/or meets or exceeds the minimum post-consumer content level for packaging in the U.S. Environmental Protection Agency Comprehensive Procurement Guidelines; or
- (e) uses locally recyclable or certified compostable material.

**15.4 Foodservice Foam Ban.** UC disallows packaging foam or expanded polystyrene (EPS) for takeaway containers or other food service items, in any UC-owned or -operated food service facility.

**15.5 Product Packaging Foam Ban.** UC prohibits all contracted and non-contracted suppliers from selling or distributing packaging foam (other than that utilized for laboratory supply or medical packaging) to UC campuses. Packaging foam is defined as any open or closed cell, solidified, polymeric foam used for cushioning or packaging including, but not limited to, low-density polyethylene foam, polypropylene foam, polystyrene foam (i.e. expanded polystyrene), polyurethane foam, polyethylene foam, polyvinyl chloride foam, and microcellular foam. Not included in this ban are easily biodegradable, plant-based foams such as those derived from corn or mushrooms.

**15.6 E-Waste Recycling Requirements.** All recyclers of UC electronic equipment must be e-Steward certified by the Basel Action Network.

**15.7 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 Guidelines, in both hosted and punch-out catalog e-procurement environments.

## ARTICLE 16: UC HEALTH TERMS

**Applicability.** The following applies in the event and to the extent Supplier is providing Goods and/or Services to any component of UC Health, which includes UC's medical centers; UC health care providers; UC health clinics, including but not limited to its occupational health, student health and counseling centers; clinical operations of UC's medical and health professional schools; and/or UC health plans.

**16.1 Compliance with Laws.** Supplier represents and warrants that it is currently, and shall remain throughout the term of the Agreement, in material compliance with applicable laws, rules and regulations, including, but not limited to, those relating to participation in the Medicare and MediCal programs, the False Claims Act, the Civil Monetary Penalties Law, the State and Federal AntiKickback Statutes, Stark Law, and corresponding state laws; the Health Insurance Portability and Accountability Act of 1996, as amended, and its implementing regulations ("HIPAA"), the California Confidentiality of Medical Information Act ("CMIA"), and all other applicable, state, local and federal requirements. The Parties acknowledge that this Agreement, together with other contracts between Supplier and UC, will be included on the main list of physician contracts maintained by UC, as applicable.



**16.2 Access to Books and Records.**

- (a) As and to the extent required by law, upon the written request of the Secretary of the U.S. Department of Health and Human Services ("Secretary") or the U.S. Comptroller General or any of their duly authorized representatives, Supplier shall make available those contracts, books, documents, and records necessary to verify the nature and extent of the costs of providing the Goods and/or Services under the Agreement. Such inspection shall be available for up to four (4) years after the provision of such Goods and/or Services.
- (b) If Supplier is requested to disclose books, documents, or records pursuant to this Section for any purpose, Supplier shall notify UC of the nature and scope of such request within ten (10) days of receiving such request, and Supplier shall make available, upon written request by UC, all such books, documents, or records.
- (c) If Supplier carries out any of the duties of the Agreement through a subcontract with a value of \$10,000 or more over a twelve (12) month period with a related individual or organization (as that term is defined in 42 C.F.R. § 420.300), Supplier agrees to include this requirement in any such subcontract.
- (d) Supplier shall indemnify and hold harmless UC if any amount of reimbursement is denied or disallowed because of Supplier's failure to comply with this Section 16.2 (Access to Books and Records). Such indemnity shall include, but not be limited to, the amount of reimbursement denied, plus any interest, penalties, and legal costs.

**16.3 No Requirement to Refer, Fair Market Value.** Supplier and UC each declare their intent that none of the terms of the Agreement are in exchange for any direct or indirect patient referrals or any arranged for, recommended, or promised referrals of patients. It is not the purpose nor is it a requirement of the Agreement to offer or receive any remuneration or benefit of any nature or to solicit, require, induce, or encourage the referral of any patient, nor the purchase, lease, order, arrangement, or recommendation to purchase, lease, or order any goods, services, items, or products for which payment may be made in whole or in part by Medicare or Medi-Cal or any other Federal Health Care program. Any payments made by UC to Supplier represent the fair market value of the Goods and/or Services rendered under this Agreement and are not in any way related to or depend upon referrals by and between the Parties. Supplier shall disclose to UC the existence of any financial relationship Supplier currently has or enters into during the term of the Agreement with a physician (or entity composed of or employing a physician) who Supplier has reason to believe is a member of the medical staff of any UC facility, as applicable. The Agreement is not intended to influence a medical professional's judgment in choosing the medical facility appropriate for the proper care and treatment of her or his patients.

**16.4 Disclosure of Discounts.** UC acknowledges that discounts, rebates, credit, free goods and/or services, coupons, or other things of value that it may receive from Supplier under the Agreement constitute a discount or reduction in price for purposes of 42 U.S.C. §1320a-7(b)(3)(A). UC agrees to file all appropriate reports and to properly disclose and reflect all such discounts, rebates, credit, free goods and/or services, coupons or other things of value or any price reductions in any report filed in connection with state or federal cost reimbursement programs.

**16.5 Protected Health Information or Medical Information.**

- (a) **PHI, Defined.** As used herein, PHI shall collectively refer to "Protected Health Information," as defined by the privacy and security standards of HIPAA, the regulations promulgated thereunder by the U.S. Department of Health and Human Services, and "Medical Information", as defined



by the California Confidentiality of Medical Information Act, California Civil Code §§ 56-56.16 or California Health and Safety Code §1280.15 and California Civil Code §§ 1798.82 and 1798.29.

- (b) Ownership.** Any and all of UC's medical records and charts created at UC's facilities as a result of performance under this Agreement shall be and shall remain the property of UC.
- (c) No Access to PHI.** In the event Supplier does not require access to PHI in order to perform Services pursuant to this Agreement, and Supplier has unintentionally received PHI, Supplier will notify UC immediately and Supplier shall use commercially reasonable efforts to return the PHI to UC, as applicable, and to maintain the confidentiality of the PHI. Additionally, in the event the nature of the Goods and/or Services change such as to require Supplier to have access to PHI, Supplier will notify UC, as applicable, and Supplier will execute and deliver the UC Appendix - Business Associate or modify the terms of this Agreement.
- 16.6 Compliance Auditing.** Supplier shall allow UC to audit Supplier's compliance with this Article on UC Health Terms at least quarterly. If upon audit by UC, non-compliance in regard to UC policies, and/or this Agreement, is identified, UC may give notice to cure the deficiency, and if such deficiency is not cured to UC'S reasonable satisfaction, UC may terminate this Agreement.
- 16.7 Medical Devices.** This Section 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.
- (a)** "Medical Device" as used herein will have the meaning of "device" as set forth in 21 U.S.C. § 321(h).
- (b)** Supplier warrants that prior to UC's purchase or lease of any Medical Device or Supplier's use of any Medical Device in providing Goods and/or Services hereunder, Supplier will: (1) perform security testing and validation for each such Goods and/or Services or Medical Device, as applicable; (2) perform security scans to detect malware on any software embedded within any Goods and/or Services or Medical Device, as applicable, in order to verify that the software does not contain any known malware; (3) conduct a vulnerability scan encompassing all ports and fuzz testing; and (4) provide UC with reports for compliance with (1) – (3).
- (c)** Supplier warrants that all Goods or Medical Devices comply with U.S. Food and Drug Administration's most current guidance or regulation for the quality system related to the cybersecurity and the Management of Cybersecurity in Medical Devices, and that Supplier will maintain compliance with any updates to such guidance or regulations.
- (d)** Supplier will provide UC with reasonably up-to-date patches, firmware and security updates for any Medical Device provided to UC, and any other Medical Device used in the course of providing Services, as applicable. All such patches and other security updates will be made available to UC within thirty (30) days of its commercial release or as otherwise recommended by Supplier or Supplier's sub-supplier, whichever is earlier.
- (e)** Supplier warrants that all software and installation media not specifically required for any Medical Device used by Supplier or Goods and/or Services delivered to UC under this Agreement as well as files, scripts, messaging services and data will be removed from all such Goods and/or Services or Medical Device following installation, and that all hardware ports and drivers not required for use or operation of such Goods and/or Services or Medical Device will be disabled at time of installation. In addition, Medical Devices must be configured so that only Supplierapproved applications will run on such Medical Devices.



- (f) 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.
- (g) If the Goods and/or Services entail provision or use of a Medical Device, Supplier will provide UC with a completed Manufacturer Disclosure Statement for Medical Device Security (MDS2) form for each such Medical Device before UC is obligated to purchase or lease such Medical Device or prior to Supplier's use of such device in its performance of Services. If Supplier provides an MDS2 form to UC concurrently with its provision of Goods and/or Services, UC will have a reasonable period of time to review such MDS2 form, and if the MDS2 form is unacceptable to UC, then UC in its sole discretion may return the Goods or terminate the Agreement with no further obligation to Supplier.

#### ARTICLE 17: NOTICES

A Party must send any notice required to be given under the Agreement by overnight delivery or by certified mail with return receipt requested, to the other Party's representative at the address specified by such Party. Notice 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 Supplier Name or University of California as appropriate].

#### ARTICLE 18: MISCELLANEOUS

**18.1 Rights and Remedies.** The rights and remedies provided in this Agreement are in addition to and do not limit any rights or remedies afforded to UC under law.

**18.2 Independent Contractor.** Supplier will provide the Services as an independent contractor. At no time will Supplier or Supplier's employees, sub-suppliers, agents, or assigns be considered employees of UC for any purpose, including but not limited to workers' compensation provisions. Supplier shall not have the power nor right to bind or obligate UC, and Supplier shall not hold itself out as having such authority. Supplier shall be responsible for all Services performed by Supplier's employees, agents, and subcontractors, and shall be responsible for ensuring payment of all unemployment, social security, payroll, contributions, and other taxes with respect to such employees, agents, and subcontractors.

**18.3 Assigned Personnel; Character of Services.** Supplier will devote only qualified personnel to work under the Agreement. Should UC inform Supplier that anyone providing the Services is not working to this standard, Supplier will immediately remove such personnel from providing Services and those individuals will not again be assigned to provide Services without UC's written permission.

**18.4 Assignment and Subcontracting.** Except as to any payment due hereunder, Supplier may not assign or subcontract the Agreement without UC's prior written consent. In the event consent is given, the assignee or subcontractor will be subject to all of the terms and conditions of the Agreement.

**18.5 No Third-Party Beneficiaries.** Nothing in the Agreement, express or implied, is intended to make any person or entity that is not a signer to the Agreement a third-party beneficiary of any right created by this Agreement or by operation of law.

**18.6 Waiver.** No waiver of a provision or nonperformance of an obligation of the Agreement is effective unless it is in writing in accordance with Article 18.7 (Amendments) herein. Waiver or



nonenforcement by either Party of a provision of the Agreement will not constitute a waiver or nonenforcement of any other provision or of any subsequent breach of the same or any other provision.

**18.7 Amendments.** The Parties may make changes in the Goods and/or Services or otherwise amend the Agreement, but only by a writing signed by both Parties' authorized representatives. In the event there is a Material Change to the Agreement, the Parties agree to meet and confer in good faith in order to modify the terms of the Agreement. Each Party shall notify the other Party upon the occurrence of a Material Change. A Material Change as used herein refers to: (i) a change to the scope of Goods and/or Services to be provided by Supplier, as agreed to by UC; (ii) a change in the Institutional Information Supplier is required to create, receive, maintain or transmit in performance of the Agreement, such that the Protection Level Classification of such Institutional Information changes; (iii) changes in the status of the Parties; (iv) changes in flow down terms from external parties; and (iv) changes in law or regulation applicable to this Agreement.

**18.8 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.

**18.9 Assistance with Investigations or Proceedings.** Supplier will make itself and its employees, subcontractors, or agents assisting Supplier in the performance of its obligations reasonably available to UC at no cost to UC to testify as witnesses, or otherwise, in the event of third-party investigations or proceedings against UC, its directors, officers, agents, or employees relating to the Goods or Services.

**18.10 Headings.** The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provisions of this Agreement or any rights or obligations of the parties to this Agreement.

**18.11 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 19: FORCE MAJEURE

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



## ARTICLE 20: OTHER APPLICABLE LAWS

Supplier is responsible for fully understanding and complying with all requirements under federal, state, and local law including, but not limited to Part 4.3 of Division 2 of the California Labor Code (commencing with Section 1440) and Sections 1182.14 and 1182.15 of the California Labor Code.

## ARTICLE 21: GOVERNING LAW AND VENUE

California law controls the Agreement without regard to its conflict of law provisions. 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 22: 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 54.4980H1(a)(4)):
  - (i) Supplier offers health coverage to its full-time employees who perform Services for UC;
  - (ii) Supplier's cost of enrolling such employees in Supplier's health plan is factored into the fees for the Services; and
  - (iii) 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):
  - (i) Supplier offers group health coverage to its full-time employees who perform 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
  - (ii) Supplier's full-time employees who perform services for UC have individual coverage and such coverage satisfies PPACA requirements for mandated individual coverage.
- (c) Supplier acknowledges that UC is relying on these warranties to ensure UC's compliance with the PPACA Employer Shared Responsibility provision.

## ARTICLE 23: PREVAILING WAGES

The following provisions apply to the extent Supplier is providing Services constituting construction, alteration, installation, repair, or maintenance, of UC real property or improvements, constituting a "public works" under California Labor Code §§ 1720 et seq. and related regulations.

- (a) Supplier will comply, and will ensure that all sub-contractors (defined below) comply, with applicable California prevailing wage and related provisions, including but not limited to those set forth in California Labor Code Sections 1770, 1771, 1771.1, 1772, 1773, 1773.1, 1774, 1775, 1776, 1777.5, and 1777.6. For purposes of this Article, the term "sub-contractor" means a person or firm, of all tiers, that has a contract with Supplier or with a sub-contractor to provide a portion of



the Services. The term sub-contractor will not include suppliers, manufacturers, or distributors. Specifically, and not by way of limitation, if apprentice-able occupations are involved in providing the Services, Supplier must comply, and ensure that any sub-contractors comply, with Labor Code Section 1777.5. Supplier and any sub-contractor may not provide the Services unless currently registered and qualified to perform public work pursuant to Labor Code Sections 1725.5 and 1771.1. Supplier is solely responsible for tracking and ensuring proper payment of prevailing wages. Supplier will pay not less than the UC Fair Wage (defined \$15 per hour as of 10/1/17) for Services performed at UC Premises.

- (b)** Supplier will post at any job site: (i) notice of the general prevailing per diem wage rates as ascertained by the California Department of Industrial Relations (DIR), available at each UC Location's procurement office or online at the DIR, Division of Labor Statistics and Research, website (see e.g. <http://www.dir.ca.gov/DLSR/PWD/index.htm>) as amended from time to time; and (ii) any other notices required by DIR rule or regulation. By reference, such notices are made part of the Agreement.
- (c)** Supplier will pay not less than the prevailing wage rates, as specified in the DIR determination rate schedule and any amendments thereto, to all workers eligible for prevailing wages (including subcontractors) in providing the Services to UC.
- (d)** The Services are subject to compliance monitoring and enforcement by the DIR. Such enforcement may include, but not be limited to, penalties for each worker paid less than the prevailing rates as determined by the DIR. The amount of penalty is determined pursuant to applicable law. In the event UC pays such penalties to the DIR for Supplier or sub-contractor's non-compliance, such amounts may be deducted from the amounts due under the Agreement and shall be forfeited by Supplier. 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 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 24: FAIR WAGE/FAIR WORK

Upon the request by UC, any audit performed as part of Contracting for Covered Services and/or Regents Policy 5402 will suffice for the annual independent verification requirements under this Article 24. (All FW/FW supplier forms and resources needed for Article 24 located here:

<https://procurement.ucop.edu/suppliers/supplier-reporting-requirements/fwfw>)

If the Agreement: (a) is for Services that will be performed at one or more UC Locations, (b) does not solely involve the furnishing of Goods, and (c) is for Services that are not subject to extramural awards containing sponsor-mandated terms and conditions, the following terms of this Article on Fair Wage/Fair Work shall apply. Supplier warrants it complies with applicable federal, state, and local working conditions requirements, including but not limited to those set forth above, and that Supplier pays its employees performing the Services no less than the UC Fair Wage (defined \$15 per hour as of 10/1/17). Supplier agrees UC may conduct such UC Fair Wage/Fair Work audits as UC reasonably requests. Supplier agrees to



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

- (a) Upon request by UC, for Services rendered (actual spend) not subject to prevailing wage requirements in excess of \$100,000 in a year (under the Agreement or any combination of agreements for the same service), Supplier will: (A) at Supplier's expense, provide an annual independent verification performed by a licensed public accounting firm (independent accountant) or the Supplier's independent internal audit department (<http://na.theiia.org/standards-guidance/topics/Pages/Independence-and-Objectivity.aspx>) in compliance with UC's required verification standards and procedures, concerning Supplier's compliance with this provision; and (B) ensure that in the case of a UC audit, its independent accountant/independent internal auditor makes available to UC its work papers for UC Fair Wage/Fair Work for the most recent verification period. Supplier agrees to provide UC with a UC Fair Wage/Fair Work verification annually, in a form acceptable to UC, no later than ninety (90) days after the end of the 12-month period in which \$100,000 in spend is reached. Any audit performed as part of contracting for Covered Services and/or Regents Policy 5402 will suffice for the annual independent verification requirements under this Article.
- (b) The Fair Wage Fair Work annual independent verification requirement does not extend to contracts for professional services or consulting for which pre-certification has been provided to UC. Please see the UC Procurement/Supply Chain Management Policy BUS-43 (<https://policy.ucop.edu/doc/3220485/BFB-BUS-43>) for the definition of professional services and consulting.

#### ARTICLE 25: CONTRACTING FOR COVERED SERVICES

- 25.1** Covered Services, for the purpose of this Agreement, are defined as work customarily performed by employees in the American Federation of State, County, and Municipal Employees (AFSCME) Patient Care Technical (EX) and Service (SX) bargaining units. Covered Services include, but are not necessarily limited to, the following services: cleaning, custodial, janitorial, or housekeeping services; food services; laundry services; grounds keeping; building maintenance (excluding skilled crafts); transportation and parking services; security services; billing and coding services; sterile processing; hospital or nursing assistant services; and medical imaging or other medical technician services.
- 25.2** Supplier warrants that it provides its employees, and any contracted individuals (each a "Worker"), performing the Covered Services with wages and benefits of equivalent value to those received by UC employees, as defined by law and applicable UC policy, providing the same or similar services at the same, or nearest UC location ("wage and benefit parity rates"). The applicable wage and benefit parity rates are set forth in the Wage and Benefit Parity Appendix attached to the Agreement or in a clause in the Agreement.
- 25.3** UC updates its wage and benefit parity rates annually on or around April 1 of each year to reflect any adjustments to wages and benefits. UC will notify Supplier of any such adjustments and Supplier hereby agrees to execute a Wage and Benefit Parity Appendix, by written amendment to the Agreement, to reflect the adjusted wage and benefit parity rates. Supplier shall be responsible for adjusting Worker wages and benefits to conform with the new rates so that the adjusted rates are effective on or before June 1 of each year, and Supplier will notify UC of the adjustment. These dates



may be modified by UC from time to time. In the event of a change to these dates, UC will provide supplier with at least thirty (30) days' advanced notice.

- 25.4** Supplier fully acknowledges that should any Worker work (i) 1,000 hours in a rolling twelve (12) month period; or (ii) 35 percent time over a rolling thirty-six (36) month period on behalf of Supplier pursuant to the Agreement, that Worker will be deemed a "qualified individual" ("QI") and will be eligible for UC employment. Supplier acknowledges and agrees that should UC, at any time, (1) inform any Worker of their right to UC employment as a QI, or (2) make an offer of employment to any QI, and/or if the Worker accepts employment with UC, UC will not be in breach of the Agreement or in violation of any other legal obligation it has to Supplier.
- 25.5** Prior to any Worker performing Covered Services on behalf of Supplier, or within **fourteen (14) calendar days** of any request by UC, Supplier agrees to provide UC, or its designated representative, with the following for each Worker in the format requested by UC or UC's designated representative:
- (a)** The total hours worked by each Worker who performed services on behalf of Supplier pursuant to the Agreement. Upon request, Supplier shall report each Worker's name and hours worked providing Covered Services at a UC location. Failure to comply with the wage and benefit parity or the hours tracking/reporting requirements of this Article will be considered a breach of the Agreement;
  - (b)** Worker's personal contact information, including but not limited to: (i) name; (ii) personal cell phone number, (iii) personal email address, and (iv) home address;
  - (c)** Any other information required by statute, including but not limited to California Public Contract Code §§ 10510.50 *et seq.*, as may be amended from time to time;
  - (d)** Executed by the Worker, the Acknowledgment Letter that outlines the Workers' rights to UC career employment, the wage and benefit parity rate that applies to the Covered Services the Worker will perform, and notice that UC may share the following with AFSCME: the Worker's personal contact information outlined above and/or required by statute, hours worked, and any payroll and benefit records. The Acknowledgment Letter shall be provided to Supplier by UC or its authorized representative.;
  - (e)** Payroll records, including paystubs. Social Security numbers and information relating to garnishments should be redacted.;
  - (f)** Information pertaining to eligibility for and receipt of benefits credited toward a Worker's wage and benefit parity rate; and
  - (g)** Any other information required by law or UC policy as amended from time to time.
- 25.6** For all of the information referenced in this Article regarding Covered Services, per the direction of UC, Supplier shall submit such information directly to UC or via a third-party tool as UC may designate.
- 25.7** UC may from time to time provide AFSCME with a list of all of Supplier's Workers performing Covered Services, along with hours worked, payroll and benefit records, and personal contact information.
- 25.8** Upon request by UC or its authorized representative, Supplier also agrees to provide verification of an independent audit of wage and benefit parity compliance. This audit must be performed by Supplier's independent auditor or independent internal audit department and at Supplier's expense. Supplier agrees to provide UC requested verification, in a form acceptable to UC, no later than ninety (90) days after receiving request.



#### **ARTICLE 26: SURVIVAL**

Upon expiration or termination of the Agreement, this Article on Survival and the following provisions will survive: INTELLECTUAL PROPERTY, COPYRIGHT, PATENTS, AND DATA RIGHTS; LIABILITY FOR UC MATERIALS; USE OF UC NAMES AND TRADEMARKS; PROHIBITION ON UNAUTHORIZED USE OR DISCLOSURE OF INSTITUTIONAL INFORMATION; INDEMNITY AND LIABILITY; ADDITIONAL WARRANTIES; ADDITIONAL TERMS APPLICABLE TO THE FURNISHING OF GOODS; AUDIT REQUIREMENTS; UC HEALTH TERMS; GOVERNING LAW AND VENUE, and, to the extent incorporated into the Agreement, the terms of the APPENDIX–DATA SECURITY, APPENDIX–BAA, and/or APPENDIX–GDPR.