

This master services agreement (“Agreement”) to furnish hosted software and/or services described herein and in the documents referenced herein (collectively, “Services”) is made by and between UCLA Health, an operating subdivision of the Regents of the University of California, a California public corporation (“UCLA”), which includes but is not limited to the Ronald Reagan UCLA Medical Center, UCLA Medical Center Santa Monica, Resnick Neuropsychiatric Hospital at UCLA, Mattel’s Children’s Hospital at UCLA, and the Supplier, [Supplier legal name] , located at [Supplier’s address], (“Supplier”). UCLA and Supplier shall individually be referred to as “Party” and collectively, “Parties.”

1. **DEFINITIONS**

Whenever used in this Agreement, any schedules, exhibits, or addenda to this Agreement, or any Source Code escrow agreement between UCLA and Supplier, the following terms shall have the meanings assigned below. Other capitalized terms used in this Agreement are defined in the context in which they are used.

* 1. *"****Agreement****"* means this Hosted Software License & Services Agreement between UCLA and Supplier, inclusive of all schedules, exhibits, attachments, addenda and other documents incorporated by reference.
	2. *"****Authorized User****",* notwithstanding any attached schedules, means: (a) UCLA, including its employees, authorized agents, volunteers of UCLA; (b) Third Party consultants, auditors and other independent contractors performing services for UCLA; (c) any governmental, accrediting or regulatory bodies lawfully requesting or requiring access to any system on which the Hosted Software may be in use; and (d) external users collaborating with UCLA.
	3. ***“Confidential Information”*** means any (i) information that a disclosing Party treats in a confidential manner and that is marked “Confidential Information” prior to disclosure to the other Party. (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 also does not include: (a) Information which the "Receiving Party" can demonstrate by written records was known to them prior to the effective date of the Agreement; (b) 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 the parties; (c) is disclosed by the Party that has received Confidential Information with the prior written approval of the other Party; (d) was known by the Receiving Party at the time of disclosure; or (e) was developed independently by the Receiving Party without use of the Confidential Information; (f) is obtained lawfully from a third party; or (iv) is disclosed under the California Public Records Act or legal process.

* 1. *"****Documentation****"* means, collectively: (a) all materials published or otherwise made available to UCLA by Supplier that relate to the functional, operational and/or performance capabilities of the Hosted Software; (b) all user, operator, system administration, technical, support and other manuals and all other materials published or otherwise made available by Supplier that describe the functional, operational and/or performance capabilities of the Hosted Software; (c) any Requests for Information and/or Responses for Proposals (or documents of similar effect) issued by UCLA, and the responses thereto from Supplier, and any document which purports to update or revise any of the foregoing; and (d) the results of any Supplier “Use Cases Presentation”, “Proof of Concept” or similar type presentations or tests provided by Supplier to UCLA.
	2. ***"Enhancements****"* means any improvements, modifications, upgrades, updates, fixes, revisions and/or expansions to the Hosted Software that Supplier may develop or acquire and incorporate into its standard Version of the Hosted Software or which the Supplier has elected to make generally available to its licensees.
	3. ***“Intellectual Property Rights”*** includes without limitation all right, title, and interest in and to all (a) Patent and all filed, pending, or potential applications for Patent, including any reissue, reexamination, division, continuation, or continuation‑in‑part applications throughout the world now or hereafter filed; (b) trade secret rights and equivalent rights arising under the common law, state law, federal law, and laws of foreign countries; (c) copyrights, other literary property or authors rights, whether or not protected by copyright or as a mask work, under common law, state law, federal law, and laws of foreign countries; and (d) proprietary indicia, trademarks, tradenames, symbols, logos, and/or brand names under common law, state law, federal law, and laws of foreign countries.
	4. ***“Project Manager”*** means the individual who shall serve as each Party’s point of contact with the other Party’s personnel as provided in this Agreement. The initial Project Managers and their contact information are set forth in the Notices section below and may be changed by a Party at any time upon written notice to the other Party.
	5. ***“Hosted Software”*** means the Supplier’s computer programs, (and any third party’s software provided by Supplier) who’s software is hosted to UCLA pursuant to this Agreement, that provide the functionality and/or produce the results described in the Documentation, including without limitation all Enhancements thereto, all interfaces, and all third-party-Hosted-Software, Supplier has subcontracted to provide UCLA including open source software.
	6. *"****Support Services****"* means the technical support, error correction, updates and support, provided by Supplier to UCLA in order to use the Hosted Software provided by Supplier to UCLA.
	7. *"****Third Party****"* means persons, corporations and entities other than Supplier, UCLA or any of their employees, contractors or agents.
1. **TERM AND TERMINATION**
	1. The term of the Agreement will be for three (3) years from EFFECTIVE DATE, 2020 through EFFECTIVE DATE, 20XX (“Initial Term”) and is subject to earlier termination as provided below. UCLA will have the option to renew for four successive one-year periods (Renewal Term) under the same terms.
	2. Renewal.
	3. Annual: After the initial term, If UCLA opts to renew for annual renewal term’s, Supplier may not increase fees more than the lesser of CPI-All Index or two percent (2%) annually.
	4. Multi-year renewal. In the event UCLA decides to renew a 2 year term for another two years, then rates shall not increase by more than a one-time 3% over the prior two year term rates.

In the event of an agreement, initially lasting two years, UCLA may terminate the Agreement for convenience after the first year, by giving Supplier at least thirty (30)calendar days' written notice.

Upon such termination, Supplier shall provide a pro-rated refund of any fees UCLA paid for the unused pre-paid portion.

* 1. Three year term: In the event UCLA decides to renew a 3 year term, for another 3 years, then rates shall not increase by more than a one-time 5% over the prior term’s rates.

In the event of an agreement, initially lasting three years, UCLA may terminate the Agreement for convenience after the first 18 months, by giving Supplier at least thirty (30)calendar days' written notice.

Upon such termination, Supplier shall provide a pro-rated refund of any fees UCLA paid for the unused pre-paid portion.

* 1. If UCLA terminates one of its Purchase Orders, the Agreement with respect to such Purchase Order will terminate, but the Agreement, with respect to all other ongoing Purchase Order(s), shall remain in full force and effect.
	2. UCLA or Supplier may terminate the Agreement for cause by giving the other Party at least fifteen (15) days' written notice to cure a breach of the Agreement, (Cure Period). If the breaching Party fails to cure the breach within the Cure Period, the non-breaching Party may immediately terminate the Agreement.
	3. UCLA may terminate a Supplier’s Statement of Work or any Purchase Order(s), and the Agreement with respect to such Statement of Work and/or Purchase Order(s) for cause, by giving Supplier the written notice at least fifteen (15) days or the length of the Cure Period on the SOW to cure the breach. (whichever is longer) If the breaching party fails to cure the breach within the Cure Period, the non-breaching party may immediately terminate the Statement of Work or Purchase Order.
1. **SCOPE OF AGREEMENT**
	1. The Hosted Software and/or Support Services included under this Agreement are as specified in the Scope of Work Attachment.
	2. Supplier agrees to extend the terms and conditions of this Agreement, including pricing, to all current and future UC Locations at their request.
2. **GRANT OF HOSTED SOFTWARE ACCESS**
	1. Supplier grants to UCLA an irrevocable, unlimited user, non-exclusive, right to access the hosted software for the term of this agreement for UCLA and its Authorized Users to use the Hosted Software and Documentation to conduct UCLA business at any and all locations where UCLA business may be conducted. For the purposes of this Agreement, “UCLA business” shall include, but not be limited to, use for production, internal development, testing, quality assurance, training and support purposes.

* 1. Supplier will provide any name changes that have occurred with any Hosted Software provided to UCLA under this Agreement within thirty (30) days and/or within thirty (30) days of UCLA’s request.

* 1. If Supplier incorporates the functionality of the Hosted Software under this Agreement into a different product and discontinues the UCLA hosted software, UCLA may, exercise the option to transition to the remaining available hosted product at the same cost UCLA was paying for the discontinued software.
	2. UCLA retains the right to keep backup, disaster recovery/use and archival data copies at a Third Party disaster or data recovery site that is geographically separate from UCLA.

* 1. Testing, development, backup, disaster recovery/use and archival use of hosted software shall be available to UCLA at no additional cost.
1. **HOSTED SOFTWARE**

**5.1 RESTRICTIONS**

UCLA understands and agrees that, except as permitted by this Agreement, it may not: (a) sell, lease, license, sub-license or otherwise distribute the Hosted Software or Documentation, except to other locations of UCLA; (b) use the Hosted Software for the purposes of providing commercial data processing services to Third Parties, such as commercial use in a service bureau, timesharing, remote batch, or other similar commercial operation; (c) create or attempt to create, or permit others to create or attempt to create, by reverse engineering or other process, the Hosted Software; and (d) export, re-export, divert or transfer the Hosted Software or Documentation to any country that is embargoed by U.S. Executive Order.

1. **ACCEPTANCE**

UCLA shall have ninety (90) days from the date of first usage to determine whether the Hosted Software complies in all material respects with the Documentation and any critical functionality stated in the SOW as included. (and any requirements provided to supplier, to which Supplier stated they met.) Within this period, UCLA shall notify Supplier in the event has identified any such material discrepancies (to “Reject”). If UCLA Rejects the Hosted Software, UC shall provide a written list of items that must be corrected. On receipt of UCLA’s notice, Supplier shall promptly commence, at no additional charge to UCLA, all reasonable efforts to complete, as quickly as possible, such necessary corrections, repairs and modifications to the Hosted Software as will permit it to be ready for retesting and review, but in no event shall such corrective measures exceed twenty (20) days from receipt of UCLA’s notice. The evaluation process shall resume, as set forth above. If UCLA Accepts the Hosted Software, it shall issue a written “Acceptance Notice.” The date of such Acceptance Notice shall be deemed the “Acceptance Date.” If UCLA determines the Hosted Software, as revised, still does not comply in all material respects with the Documentation, UCLA may either: (1) afford Supplier the opportunity to repeat the correction and modification process as set forth above at no additional cost or charge to UCLA, or (2) depending on the nature and extent of the failure in UCLA’s sole judgment, terminate this Agreement. The foregoing correction and modification procedure shall be repeated until the Hosted Software is Accepted or UCLA elects to terminate the Agreement as provide above.

In the event of termination under this Section, Supplier shall pay to UCLA within ten (10) business days of written notice of termination, all sums paid to Supplier by UCLA under this Agreement for the Hosted Software, including all prepaid Support and Maintenance Services fees.

1. **FEES, INVOICING, PAYMENT AND TAXES**
	1. All invoices must be itemized according to this Agreement and applicable Statement of Work and include the Agreement and/or Purchase Order Number, payment remittance instructions, Customer name, and a description of the Services performed. UCLA payment terms are net 30 days upon receipt of an acceptable invoice unless otherwise stated in the Agreement.

Supplier shall submit invoices with documentation and PO # to:

**UCLA Health Accounts Payable**

**757 Westwood Plaza**

**Box 951676**

**Los Angeles, CA 90095-1676**

* 1. For purposes of calculating the price of renewals or expansions beyond the initial UC signing this Agreement, Supplier shall aggregate, and participating UC’s shall get the benefit of, all net purchases of Services made by all participating UC’s. Supplier will review, on an annual basis, the combined net purchases of Services for participating UC’s during the term of this Agreement and make appropriate changes and adjustments to pricing to reflect the pricing for which participating UC’s qualify. Pricing details may be specified in the SOW attached to this Agreement.
	2. UCLA agrees to pay all net undisputed amounts due to Supplier in accordance with the hosted software and support fee schedules set forth in the Statement of Work attached to this Agreement. Such fees will be payable after receipt and acceptance of the Hosted Software by UCLA and within thirty (30) calendar days of UCLA’s receipt of an acceptable Supplier’s invoice or the invoice due date, whichever is later. UCLA shall not be subject to late payment fees.
	3. The specific hosting costs and support fees are covered in the attached Statement of Work.
	4. If an invoiced amount is disputed in good faith by UCLA then UCLA shall work with the Supplier to resolve the dispute. UCLA may suspend the payment of all disputed amounts until the dispute is resolved. All of Supplier’s obligations shall continue unabated until dispute resolution.
	5. UCLA will have the option to acquire additional hosted sites throughout the duration of the Agreement at the same or lower per unit cost as the initial purchase. For Support and Maintenance Services, UCLA will have the option to acquire sites for a monthly pro-rated portion of the same or lower per unit cost as the initial purchase.
	6. Taxes required for the Hosted Software purchase by UCLA under this Agreement will be based on the current sales and use tax regulations of the State of California as they apply to Hosted Software purchases. Supplier must pay all other taxes.
	7. Supplier shall provide UCLA with an acceptable invoice for the Hosted Software acquired no later than thirty (30) calendar days prior to the invoice payment due date. Invoices shall provide and itemize, as applicable:
1. Supplier name, address, phone number, and Federal Tax Identification Number;
2. UCLA Purchase Order number;
3. Description of Hosted Software, including quantity (number of seats or sign-ins) ordered;
4. Date(s) of fulfillment and/or date(s) of Training and/or date(s) of Transition Assistance;
5. Supplier’s list price per unit for each item, applicable discounts, UCLA’s price per unit for each item, and extended price;
6. Applicable taxes;
7. Other applicable charges;
8. Total invoice price;
9. Payment terms including any available prompt payment discounts; and
10. Supplier’s Project Manager Name, Title, Location, and Department.
	1. To support the California Sales and Use tax exempt status of electronically downloaded software allowed under California Regulation 1502(f)(1)(D), Supplier invoices for all purchases made under this Agreement must include the following text, whenever applicable:

“All products purchased under this agreement are available via electronic download only. No tangible media or documentation will be available or shipped under this agreement. Access to the products purchased under this agreement is in no way dependent upon any tangible media that may have been received prior to, or separately from this agreement.”

1. **DISTRIBUTION**
	1. All products purchased under this Agreement are hosted by Supplier or a high-quality third party and available to UCLA participating locations.
	2. Supplier will not send UCLA any Software that UCLA is not covered for under this Agreement to use unless some protection (such as license keys) that will protect UCLA from having Software installed in error exists. UCLA retains the right to remove any such Software in case of accidental installation.
2. **ORDERING PROCEDURES**

Unless otherwise provided in the Agreement, Supplier may not begin providing Services until UCLA (or participating UC’s) approves and executes a Statement of Work and Purchase Order for the Services.

Supplier (including Supplier web site) must direct all inquiries from all UCLA units regarding obtaining the hosted services available under this Agreement to the contact listed in the Notices section herein, UCLA’s coordinating office for this Agreement.

1. **REPORTING**
	1. Supplier shall provide UCLA with Supplier’s current retail, government, non-profit and academic price lists for the Hosted Software upon each annual anniversary of this Agreement, and within five (5) business days of any mid-term changes to any of the above referenced price lists.
2. **WARRANTIES, REPRESENTATIONS AND COVENANTS**
	1. UCLA shall have the right to return the Hosted Software Access for any reason, and shall receive a full refund of all payments, for a period of ninety (90) days after purchase (the “Warranty Period”).
	2. Hosted Software Warranty. Supplier represents and warrants that the Hosted Software provided under this Agreement shall function substantially in accordance with the Documentation and the Core Functionality identified in the SOW shall produce results substantially as represented. Supplier shall offer UCLA warranty coverage equal to or greater than that offered by Supplier to any of its customers.

Supplier’s obligations for breach of the Hosted Software Warranty shall be limited to using its reasonable efforts, at its own expense, to correct or replace that portion of the Hosted Software which fails to conform to such warranty, and, if Supplier is unable to correct any breach in the Hosted Software Warranty by thirty (30) days after UCLA provides notice of such breach, UCLA may, in its sole discretion, either extend the time for Supplier to cure the breach or terminate this Agreement and receive a full refund of all amounts paid to Supplier under this Agreement, including the Hosted Software license Fee, Support and Maintenance Services Fee, and any other fees stated herein.

* 1. Services Warranty. Supplier represents, warrants and agrees that it shall perform its obligations required by this Agreement in a professional manner, in accordance with the highest applicable industry practices and standards and in compliance with all applicable laws and regulations; provided, however, that where this Agreement specifies a particular standard or criteria for performance, this warranty shall not diminish that standard or criteria for performance.
	2. Disabling Code Warranty. Supplier represents, warrants and agrees that the Hosted Software does not contain and will not receive from Supplier any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design, including surveillance Hosted Software or routines which may, or is designed to, permit access by any person, or on its own, to erase, or otherwise harm or modify the Hosted Software or any UCLA system or data (a "Disabling Code"). Examples of a Disabling Code shall include without limitation, any limitations that are triggered by: (a) the Hosted Software being used a certain number of times, or after the lapse of a certain period of time; (b) the occurrence or lapse of any similar triggering factor or event. In the event a Disabling Code is identified, Supplier shall take all steps necessary, at no additional cost to UCLA, to: (a) restore and/or reconstruct any and all data lost by UCLA as a result of Disabling Code; (b) furnish to UCLA a new copy of the Hosted Software without the presence of Disabling Codes; and, (c) install and implement the new copy of the Hosted Software at no additional cost to UCLA. This warranty shall remain in full force and effect as long as the Grant of Hosted Software Access remains in effect.
	3. Intellectual Property Warranty. Supplier represents, warrants and agrees that: Supplier has all Intellectual Property Rights necessary to provide access to the Hosted Software to UCLA in accordance with the terms of this Agreement; Supplier is the sole owner or is a valid licensee of the Hosted Software and has secured all necessary licenses, consents, and authorizations with respect to the use of the Hosted Software to the full extent contemplated herein, including, but not limited to: all Source Code, text, pictures, audio, video, logos and copy contained therein; the Hosted Software does not and shall not infringe upon any patent, copyright, trademark or other proprietary right or violate any trade secret or other contractual right of any Third Party; and there is currently no actual or threatened suit against Supplier by any Third Party based on an alleged violation of such right. This warranty shall survive the expiration or termination of this Agreement.
	4. Warranty of Authority. Each Party represents and warrants that it has the right to enter into this Agreement. Supplier represents and warrants that it has the unrestricted right to provide access to the Hosted Software, and that it has the financial viability to fulfill its obligations under this Agreement. Supplier represents, warrants and agrees that the Hosted Software shall be free and clear of all liens, claims, encumbrances or demands of Third Parties. Supplier represents and warrants that it has no knowledge of any pending or threatened litigation, dispute or controversy arising from or related to the Hosted Software. This warranty shall survive the expiration or termination of this Agreement.
	5. Third Party Warranties and Indemnities. Supplier will assign to UCLA all Third Party warranties and indemnities that Supplier receives in connection with any products provided to UCLA. To the extent that Supplier is not permitted to assign any warranties or indemnities through to UCLA, Supplier agrees to specifically identify and enforce those warranties and indemnities on behalf of UCLA to the extent Supplier is permitted to do so under the terms of the applicable Third Party agreements.
	6. Date/Time Change Warranty. Supplier represents and warrants to UCLA that the Hosted Software provided will accurately process date and time-based calculations under circumstances of change including, but not limited to: century changes and daylight saving time changes. Supplier must repair any date/time change defects at Supplier’s own expense.
	7. Compliance with Laws Warranty. Supplier represents and warrants to UCLA that it will comply with all applicable laws, including its tax responsibilities, pertaining to the Agreement and its provision of the Hosted Software to UCLA.
	8. Security compliance Warranty: In the event UCLA IT department determines Supplier does not meet UCLA’s security requirements, UCLA may terminate the agreement and receive a pro-rated refund of any prepaid and unused Hosted Software, or prepaid and unused Support Services fees or any prepaid but not-performed services.
	9. THE WARRANTIES SET FORTH ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE SOFTWARE PURSUANT TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.
1. **Fair Wage/Fair Work**

/ X /      Supplier is not required to pay the UCLA Fair Wage (defined as $15 per hour as of 10/1/17) when providing the Services. (Applies to $100,000 or greater in annual on-site services)

/\_\_\_/    Supplier is required to pay Prevailing Wages when providing the Goods and/or Services under this Agreement.

If the Services will be performed at one or more UCLA Locations, do not involve furnishing goods, and are not subject to extramural awards containing sponsor-mandated terms and conditions, Supplier warrants that it is in compliance with applicable federal, state and local working conditions requirements, and that Supplier pays its employees performing the Services no less than the UCLA Fair Wage. Supplier agrees UCLA may conduct such UCLA Fair Wage/Fair Work interim compliance audits as UCLA reasonably requests, as determined in UCLA’s sole discretion. Supplier agrees to post UCLA Fair Wage/Fair Work notices, in the form supplied by UCLA, in public areas (such as break rooms and lunch rooms) frequented by Supplier employees who perform Services. UCLA Fair Wage/Fair Work Resources can be found here <https://www.ucop.edu/procurement-services/procurement-systems/fairwage-fairwork-ppaca.html>

For Services that exceed $100,000 annually and are not subject to prevailing wage requirements, Supplier will, a) at Supplier’s expense, provide an annual independent audit performed by Supplier’s independent auditor or independent internal audit department [(http://na.theiia.org/standards-guidance/topics/Pages/Independence-and-Objectivity.aspx)](https://na.theiia.org/standards-guidance/topics/Pages/Independence-and-Objectivity.aspx) in compliance with UCLA’s required audit standards and procedures [http://www.ucop.edu/procurement-services/\_files/fw-fw-annual-audit-standards-procedures.pdf,](http://www.ucop.edu/procurement-services/_files/fw-fw-annual-audit-standards-procedures.pdf%2C) concerning Supplier’s compliance with this provision, and b) ensure that in the case of a UCLA interim audit, its auditor makes available to UCLA its UCLA Fair Wage/Fair Work papers for the most recently audited time period. Supplier agrees to provide UCLA with a UCLA Fair Wage/Fair Work certification annually, in a form acceptable to UCLA, 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.

1. **GENERAL INDEMNIFICATION**

Supplier will defend, indemnify, and hold harmless UCLA, 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.

No limitation of liability set forth elsewhere in this Agreement is applicable to the Intellectual Property Infringement Indemnification, Breach of customer PHI, or third party personal injury claims.

1. **INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION**
	1. Supplier shall indemnify, defend and hold UCLA harmless from any and all actions, proceedings, or claims of any type brought against UCLA alleging that the Hosted Software and/or Documentation or UCLA's use of the Hosted Software and/or Documentation constitutes a misappropriation or infringement upon any patent, copyright, trademark, or other proprietary right or violates any trade secret or other contractual right of any Third Party. Supplier agrees to defend against, and hold UCLA harmless from, any claims and to pay all litigation costs, all reasonable attorneys' fees, settlement payments and all judgments, damages, costs or expenses awarded or resulting from any claim.
	2. UCLA agrees to provide Supplier with notice of any such claim or action and to permit Supplier to defend any claim or action, and that UCLA will cooperate fully in such defense. UCLA 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.
	3. If the Hosted Software and/or Documentation, or any part thereof, is the subject of any claim for infringement of any patent, copyright, trademark, or other proprietary right or violates any trade secret or other contractual right of any Third Party, or if it is adjudicated by a court of competent jurisdiction that the Hosted Software and/or Documentation, or any part thereof, infringes any patent, copyright, trademark, or other proprietary right or violates any trade secret or other contractual right of any Third Party, and UCLA's use of the Hosted Software and/or Documentation, or any part of it, is enjoined or interfered with in any manner, Supplier shall, at its sole expense and within thirty (30) calendar days of such injunction or interference, either: (a) procure for UCLA the right to continue using the Hosted Software and/or Documentation free of any liability for infringement or violation; (b) replace or modify the Hosted Software and/or Documentation, or parts thereof, with non-infringing Hosted Software and/or Documentation of equivalent or better functionality including the Core Functionality identified in any SOW and shall produce results to the reasonably satisfactory to UCLA.
	4. Supplier shall have no obligation to indemnify UCLA in proportion and to the extent a claim results from: (a) UCLA using the Hosted Software in a manner contrary to the provisions of this Agreement and such misuse is the cause of the infringement or misappropriation; or (b) UCLA's use of the Hosted Software in combination with any product, software or system not authorized, approved or recommended by Supplier and such combination is the cause of the infringement or misappropriation.
2. **INSURANCE**

Supplier, at its sole cost and expense, will insure its activities in connection with providing UCLA the Goods and/or Services specified in this Agreement and obtain, keep in force, and maintain the following insurance with the minimum limits set forth below, unless specified 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 UCLA premises or transports UCLA employees, officers, invitees, or agents in the course of supplying the Goods and/or Services to UCLA.)

 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. UCLA and, if so requested, UCLA’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 UCLA 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 UCLA 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. In the event Appendix DS applies to this Agreement, Supplier, at its sole cost and expense, will obtain, keep in force, and maintain one or more insurance policies that provide coverage for technology, professional liability, data protection, and/or cyber liability. Typically referred to as Privacy, Technology and Data Security Liability, Cyber Liability, or Technology Professional Liability insurance, it will cover liabilities for financial loss due to the acts, omissions, or intentional misconduct of Supplier, its officers, employees, agents, subsuppliers, 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: (i) costs to notify parties whose data were lost or compromised; (ii) costs to provide credit monitoring and credit restoration services to parties whose data were lost or compromised; (iii) costs associated with third party claims arising from the confirmed or suspected Breach or loss of Institutional Information, including litigation costs and settlement costs; (iv) any investigation, enforcement, fines and penalties, or similar miscellaneous costs; and (v) any payment made to a third party as a result of extortion related to a confirmed or suspected Breach.

 The following Technology Professional Liability insurance coverage is based on an initial assessment of the Agreement’s scope:

* 1. “ “ - This insurance policy mus­­­t have minimum limits of $500,000 each occurrence and $500,000 in the aggregate.
	2. “ “ - This insurance policy must have minimum limits of $1,000,000 each occurrence and $1,000,000 in the aggregate.
	3. “ X “ - This insurance policy must have minimum limits of $5,000,000 each occurrence and $5,000,000 in the aggregate.
	4. “ “ - This insurance policy must have minimum limits of $10,000,000 each occurrence and $10,000,000 in the aggregate.

 H. The coverages referred to under part A and B of this Article must include UCLA as an additional insured. *All Suppliers are required to submit a COI listing UCLA as an additional insured entity as part of UCLA’s new supplier onboarding process.* 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 UCLA 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 UCLA.

1. **CONFIDENTIALITY**
	1. Each Party acknowledges that certain information that it shall acquire from the other is of a special and unique character and constitutes Confidential Information.
	2. Both parties agree to use reasonable efforts to keep confidential any Confidential Information of the other Party.
	3. The Receiving Party agrees to exercise the same degree of care and protection with respect to the Confidential Information that it exercises with respect to its own similar Confidential Information and not to directly or indirectly provide, disclose, copy, distribute, republish or otherwise allow any Third Party to have access to any Confidential Information without prior written permission from the disclosing Party. However: (a) either Party may disclose Confidential Information to its employees and authorized agents who have a need to know; (b) either Party may disclose Confidential Information if so required to perform any obligations under this Agreement; and (c) either Party may disclose Confidential Information if so required by law (including court order or subpoena).
	4. Nothing in this Agreement shall in any way limit the ability of either party to comply with any laws or legal process concerning disclosures by public entities. Supplier acknowledges that any responses, materials, correspondence, documents or other information provided to UCLA are subject to applicable state and federal law, including the California Public Records Act, and that the release of Confidential Information in compliance with those acts or any other law will not constitute a breach or threatened breach of this Agreement.
	5. Supplier agrees to hold UCLA’s Confidential Information, and any information derived therefrom, in strict confidence. Supplier will not access, use or disclose Confidential Information other than to carry out the purposes for which UCLA disclosed the Confidential Information to Supplier, except as permitted or required by applicable law, or as otherwise authorized in writing by UCLA. 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 UCLA 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 UCLA 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 UCLA.
	6. Each Party reserves the right to have the terms of this Agreement and associated information reviewed by a designated Third Party advisor who is under a Confidentiality Agreement.
2. **PERSONAL INFORMATION**

During the course of this Agreement, should Supplier come into possession of any personal information related to UCLA’s Authorized Users that is considered sensitive, nonpublic personal data or contains individually identifiable information, Supplier may not disclose this information to any Third Party under any circumstances. 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 UCLA and Supplier, records will normally become the applicable UCLA Customer’s property, and subject to state law and UCLA policies, as applicable, governing privacy and access to files. When collecting the information, Supplier must inform the individual that the record is being made, and the purpose of the record. Use of recording devices in discussions with employees is permitted only as specified in this Agreement or applicable Statement of Work.

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

/ X /       It is NOT anticipated that the Supplier will require access to PHI as defined in the Agreement.

/\_\_\_/    It is anticipated that the Supplier will require access to PHI as defined in the Agreement.

1. **No Access to PHI.** It is not anticipated that Supplier will require access to “Protected Health Information,” as defined by the privacy and security standards of HIPAA, the regulations promulgated thereunder by the U.S. Department of Health and Human Services, or “Medical Information” (collectively with Protected Health Information, “PHI”), as defined by the California Confidentiality of Medical Information Act, California Civil Code §§ 56-56.16 or California Health and Safety Code §1280.15 and California Civil Code §§ 1798.82 and 1798.29 in order to perform its obligations under the Agreement. However, in the event that Supplier has unintentionally received PHI, Supplier will notify UCLA immediately and Supplier shall use commercially reasonable efforts to return the PHI to UCLA, as applicable, and to maintain the confidentiality of the PHI. Additionally, in the event the nature of the Good and/or Services change such as to require Supplier to have access to PHI, Supplier will notify UCLA, as applicable, and Supplier will execute and deliver the UCLA HIPAA Business Associate Agreement.
2. **Access to PHI.** It is anticipated that Supplier will have access to “Protected Health Information,” as defined by the privacy and security standards of HIPAA, the regulations promulgated thereunder by the U.S. Department of Health and Human Services, or “Medical Information” (collectively with Protected Health Information, “PHI”), as defined by the California Confidentiality of Medical Information Act, California Civil Code §§ 56-56.16 or California Health and Safety Code §1280.15 and California Civil Code §§ 1798.82 and 1798.29 in order to perform its obligations under the Agreement. As part of the Agreement, Supplier will execute and deliver the UCLA HIPAA Business Associate Agreement, attached hereto. Any and all of UCLA’s medical records and charts created at UCLA’s facilities as a result of performance under this Agreement shall be and shall remain the property of UCLA. Both during and after the term of this Agreement, Supplier shall be permitted to inspect and/or duplicate any individual charts or records which are: (2) necessary to assist in the defense of any malpractice or similar claim; (2) relevant to any disciplinary action; (3) for educational or research purposes; and/or (4) necessary for Supplier to ensure compliance with all regulatory requirements. Such inspection and/or duplication shall be permitted and conducted pursuant to commonly accepted standards of patient confidentiality in accordance with applicable federal, state and local laws.
3. **TITLE/OWNERSHIP**
	1. UCLA acknowledges that Supplier holds all right, title and interest in any copyrights, patents, trade secrets and any other Intellectual Property Rights in the Hosted Software. Nothing in this Agreement shall be construed to convey any title or ownership rights to the Hosted Software to UCLA.
	2. All data created and/or processed by the Hosted Software is and shall remain the property of UCLA and shall in no way become attached to the Hosted Software, nor shall Supplier have any rights in or to the data of UCLA.
	3. Any documents, forms, compilations and/or spreadsheets that are generated from the utilization of the functionality of the Hosted Software are not the intellectual property of the Supplier, and can be used by UCLA in its ordinary course of business, including but not limited to UCLA sharing such documents with Third Parties.

In the event that UCLA develops any enhancements, modifications, improvements, expansions and revisions of or to the Hosted Software (collectively, the “User Modifications”), all right, title and interest in and to such User Modifications, as well as related copyright, patent, trade secret, and other related proprietary rights therein, shall rest with UCLA, provided that UCLA agrees that it will only use such User Modifications for UCLA business. UCLA shall have no obligation to make such User Modifications available to Supplier, but to the extent that User Modifications are provided to Supplier, they will be provided AS IS, WITHOUT WARRANTY OF ANY KIND, AND UCLA SPECIFICALLY DISCLAIMS IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

1. **USE OF UCLA NAME & TRADEMARKS**

Supplier will not use the UCLA name, abbreviation of the UCLA 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 UCLA 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 UCLA’s prior written approval. Supplier agrees to comply at all times with California Education Code Section 92000.

1. **AUDIT**
	1. This Agreement is subject to the examination and audit of the Auditor General of the State of California or Comptroller General of the United States or designated Federal authority for a period of up to five (5) years after final payment under the Agreement. UCLA, 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.
	2. Supplier is responsible for keeping accurate records related to its performance and obligations under this Agreement. In particular, records will be kept documenting any price, cost or budget computations required under the Agreement.
	3. Supplier agrees that UCLA or its authorized representative has the right to audit any directly pertinent books, documents, papers and records related to transactions and/or performance of the terms and conditions of the Agreement. Supplier shall make available to UCLA or its representative all such records and documents for audit on Supplier’s premises during regular business hours within ten (10) business days of a written request for availability. Supplier agrees to either: (a) allow UCLA to make and retain copies of those documents useful for documenting the audit activity and results; or (b) sequester the original or copies of those documents which UCLA identifies for later access by UCLA.
	4. Supplier further agrees to disclose to UCLA within ninety (90) days of receipt any independent auditors’ reports which bear directly on the performance or administration of this Agreement.
	5. UCLA’s right to audit shall also apply to agents and subcontractors hired by Supplier for the purpose of fulfilling the Agreement.
2. **DISPUTE RESOLUTION**
	1. Designated Supplier and UCLA Project Managers shall meet as often as is reasonably required to review the performance of the parties under this Agreement and to resolve any disputes.
	2. If a dispute arises and these representatives are unable to resolve the dispute within ten (10) business days, then the dispute will be escalated to an executive level representative of each Party with the authority to resolve such matters. Supplier and UCLA executives must meet to resolve any disputes.
	3. This article does not prohibit a Party from seeking judicial relief at any time.
	4. Supplier shall continue performance of obligations under this Agreement while resolving any outstanding invoices or disputes.
3. **ASSIGNMENT**

This Agreement shall be binding on the parties and their successors (through merger, acquisition or other process) and permitted assigns.

1. **NOTICES**

As provided in the Agreement, notices may be given by overnight delivery or by certified mail with return receipt requested, at the addresses specified below. Copies of written hard copy notification(s) must be sent to all participating UC’s for each site. Additionally, e-mail notices pertaining to this Agreement may be used, but will require confirmation of receipt to be considered legal notice.

For UCLA, regarding **Breaches or Security Incidents** as defined under Appendix D. – Data Security Exhibit:

|  |
| --- |
| Elizabeth Ruszczyk  |
| 310-794-6763 |
| eruszczyk@mednet.ucla.edu |
| 924 Westwood Blvd. Suite 810 |
| Los Angeles, CA 90024 |

For UCLA, regarding other **contract issues** relating to this Agreement:

|  |
| --- |
| Don Parks |
| (818) 970-6634 |
| dparks@mednet.ucla.edu |
| 10920 Wilshire Blvd, Suite 750 |
| Los Angeles, CA 90024 |

Notices pertaining to a specific Purchase Order shall be directed to the address and contact specified in such Statement of Work or Purchase Order.

For Supplier:

**Name:**

**Phone:**

**Email:**

**Address:**

* 1. All Notices sent in accordance with the foregoing shall be deemed received by the intended recipient: (a) upon personal delivery; or (b) one (1) business day following deposit with an overnight courier service submitted in time for next day delivery.
	2. Either Party may change its notice contact information above by written notice to the other Party.
1. **EQUITABLE RELIEF**

Not withstanding anything contained in this Agreement to the contrary, the parties shall be entitled to seek injunctive or other equitable relief whenever the facts or circumstances permit.

1. **COUNTERPARTS, ONE AGREEMENT**

This Agreement may be executed in multiple counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute one and the same instrument. For purposes hereof, a facsimile or emailed copy of this Agreement, including the signature pages hereto, shall be deemed an original, and each Party agrees that it will not contest the validity of the execution of this Agreement solely on the basis of any signature being a facsimile or electronic transmission. Notwithstanding the foregoing, the parties shall each deliver original execution copies of this Agreement to one another as soon as practicable following execution thereof. If this Agreement is executed in counterparts, no signatory hereto shall be bound by this Agreement until all parties have executed a counterpart of this Agreement.

1. **SURVIVAL CLAUSE**

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

1. **ENTIRE AGREEMENT**

This Agreement, together with all of the incorporated exhibits, schedules, attachments, and proposals and addenda, constitutes the entire, final and exclusive Agreement between the parties with respect to the subject matter herein and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, between the parties. The parties expressly disclaim the right to claim the enforceability or effectiveness of any oral modifications to this Agreement or any amendments based on course of dealing, waiver, release, estoppel or other similar legal theory. No shrink-wrap, click-wrap, or other end user terms and conditions or agreements (“Additional Terms”) provided with any Hosted Software or products hereunder shall be binding on UCLA, even if use of such Hosted Software or products requires an affirmative “acceptance” of those Additional Terms before access is permitted. All such Additional Terms shall be of no force and effect and shall be deemed rejected by UCLA in their entirety. Any amendment or modification to this Agreement shall be effective only if in writing and signed by duly authorized representatives of both Supplier and UCLA.

The authorized signatory from each Party has read the Agreement, understands it and is authorized to bind his/her organization. This Agreement becomes binding when signed by the authorized signatory of both parties.

1. **INCORPORATED DOCUMENTS**

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

a) Appendix A. Business Associate Agreement (BAA)

b) Appendix B. – Data Security (Appendix DS)

c) Appendix C. Statement of Work (SOW)

d) Appendix D. – Service Level Agreement (SLA)

UCLA enters into this Agreement conditioned upon its terms and the terms of Incorporated Documents in the order of precedence as provided above controlling the transaction contemplated by the Parties and superseding any and all other terms and conditions.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date.

THE REGENTS OF THE [SUPPLIER NAME]

UNIVERSITY OF CALIFORNIA

ON BEHALF OF UCLA HEALTH

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(Signature) (Signature)

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(Printed Name) (Printed Name)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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(Date) (Date)

***Appendix A.***

***Statement of Work***

1. **CORE FUNCTIONALITY: Supplier shall provide hosted software with the following core functionality:**
2. **SUPPORT SERVICES**

Supplier shall provide UCLA with the following Support Services:

* 1. Support Services are included in the license and hosting fees unless the parties agree herein that they are separate.
	2. Supplier may not withdraw Support or Hosting Services for any product without twelve (12) months advance notice to UCLA, and then only if Supplier is withdrawing Support and Maintenance Services from all of its customers.
	3. Any UCLA participant may, in its sole discretion, discontinue usage, Support Services on any Hosted Software and/or product with no effect on other UCLA location’s.
		1. Supplier shall provide telephone and online assistance to UCLA for the purpose of answering questions relating to the Hosted Software, including (a) clarification of functions and features of the Hosted Software; (b) clarification of the Documentation; (c) guidance in the operation of the Hosted Software; and (d) error verification, analysis, and correction, including the failure to produce results in accordance with the Documentation.
	4. Such assistance shall be provided by Supplier via telephone and live, online chat staffed by help desk technicians sufficiently trained and experienced to identify and resolve most support issues and who shall respond to all UCLA requests for support within one business day after receiving a request for assistance.
		1. Supplier shall provide a current list of persons and telephone numbers for UCLA to contact to enable UCLA to escalate its support requests for issues that cannot be resolved by a help desk technician or for circumstances where a help desk technician does not respond within the time specified herein.
1. The following provisions shall be applicable to the correction of Hosted Software errors:
	* 1. If UCLA detects what it considers to be an error in the Hosted Software which causes it not to conform to, or produce results in accordance with, the Documentation, then UCLA shall by telephone or e-mail notify Supplier of the error.
		2. Supplier shall respond per the SLA to UCLA’s initial request for assistance in correcting or creating a workaround for a Hosted Software error. Supplier’s response shall include assigning fully-qualified technicians to work with UCLA to diagnose and correct or create a workaround for the Hosted Software error and notifying UCLA’s representative making the initial request for assistance of Supplier’s efforts, plans for resolution of the error, and estimated time required to resolve the error. Supplier shall correct errors caused by the Hosted Software by modifying the Hosted Software and making the updated Hosted Software available to all participating UCLA sites.
		3. The Project Managers, or such persons as otherwise designated by UCLA and Supplier, shall serve as said parties' contacts for all communications relating to Hosted Support Services. Each Party may change its own contact person by written notice to the other Party.
2. The following provisions shall set forth Supplier’s obligations to provide Enhancements:
	* 1. Supplier shall generally enhance and improve the Hosted Software for as long as UCLA elects to receive and pays for Support Services.
		2. Supplier shall provide to UCLA during the Support Term for use in accordance with this Agreement, at no additional charge, (a) any and all Enhancements which it develops with respect to the Hosted Software; (b) any and all Enhancements necessary to operate the Hosted Software on the current and prior version of web browser software; (d) any and all Enhancements required by federal or state governmental, or professional regulatory mandates related to UCLA’s use of the Hosted Software; and (e) the Documentation associated with any Enhancements.
		3. Except as otherwise provided in a signed addendum to this Agreement, nothing herein shall obligate Supplier to enhance the Hosted Software in any particular respect or on any particular date. The decision as to whether and/or when, to enhance the Hosted Software will be within Supplier’s discretion.
3. Supplier will provide UCLA with advance notice of proposed product changes as well as product road maps relating to the Hosted Software and Support Services provided to UCLA under this Agreement.

**TRAINING**

* 1. Any training Services will be provided by Supplier at UCLA at mutually agreeable dates and times, but no later than 30 days following the implementation at the UCLA site governed by this Agreement.
	2. Description, frequency and timing of any negotiated training services will be covered in the Statement of Work attached to this Agreement.

***Appendix B.***

 ***Service Legal Agreement***

**SOFTWARE RELIABILITY**

Supplier understands and agrees that Hosted Software shall be available at 99.5% of the time.

With the exception of pre-scheduled maintenance periods, Supplier shall provide a level of availability equal to 99.5 percent of 7x24 uptime (net maintenance). The availability metric is measured and calculated as the total system server and website application uptime during the quarter (in minutes) divided by the total time in a quarter, less any scheduled maintenance periods (in minutes), multiplied by 100 to yield a percentage (i.e. 99.5 percent)

Any Maintenance downtime during the Help Desk hours stated below, shall not take longer than 10 minutes and Supplier shall make reasonable efforts to notify UCLA prior to any maintenance during this window. Supplier shall provide the following credits to UCLA for any quarter, when Application availability falls within these thresholds:

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**Table A. Availability Credits.**

|  |
| --- |
| **Application Availability Credits** |
| **Availability Range** | **Credit Amount** |
| Between 99% & 99.5% | 5% of the quarter’s hosting fees |
| Between 98 & 99% | 10% of the quarter’s hosting fees |
| Between 98% & 97% | 15% of the quarter’s hosting fees |
| Between 93% & 95% | 20% of the quarter’s hosting fees |
| Between 90% & 93% | 22% of the quarter’s hosting fees |
| Between 87% & 90% | 25% of the quarter’s hosting fees |
| Between 83% & 87% | 27% of the quarter’s hosting fees |
| Between 80% & 83%. | 30% of the quarter’s hosting fees |
| Less than 80% | 35% of the quarter’s hosting fees |

There shall be no more than one of the above credits for Application Availability during any quarter, and UCLA shall receive the highest credit amount warranted per the above Table A., during that quarter.

UCLA may terminate the Agreement immediately, in the event the hosted Service does not meet the following Application availability thresholds during the contract term:

* Application availability falls below 85% or less in 1 or more quarters.
* Application availability falls below 90% or less in 2 or more quarters.
* Application availability falls below 99% or less in 3 or more quarters.

**Incident Response:**

If the incident materially impacts any UCs, they will be notified as soon as possible. After the event, the response team engages in a retrospective meeting to identify how to prevent future incidents.

The following table will be used to determine the severity of the problem, along with the corresponding time commitment for a response to the issue.

Table A. Response and Resolution Times

|  |  |  |  |
| --- | --- | --- | --- |
| **Severity of** **Problem**  | **Example of Scenario**  | **Supplier Response Service Level** | **Supplier Resolution Service Level** |
| Critical/Supplier Unavailable  | UC is completely unable to use the Supplier Platform. UC is severely impacted by a malfunction or inaccessible portion of Supplier.  | Response within 30 minutes during help desk hours and immediate action from the team noted above.  | Resolution ASAP but within or escalation 3 hours. |
| Urgent  | High-impact problem where UC is able to use the Supplier Platform, but in a significantly impaired fashion; there is a time-sensitive issue important to long term productivity that is not causing an immediate work stoppage; or there is significant UC concern.  | Response within 1 hour.  | Resolution ASAP but within 3 hours. |
| Important  | Important issue that does not have significant current productivity or accessibility impact.  | Response or escalation within 6 hours.  | Resolution or escalation within 3 hours.  |
| Monitoring / Individual user questions  | An individual user is having difficulty accessing Supplier or has questions about the platform. Issue requiring no further action beyond monitoring for follow-up, if needed.  | Response or escalation within 6 hours, prompt communication of relevant information to UC as needed.  | Resolution or escalation within 4 hours. |
| Informational  | Request for information only.  | Acknowledgement of request  | Acknowledgement of request  |

* In the event Supplier does not meet a Table A. SLA Response or Resolution threshold, for a Critical or Urgent severity level Problem, there shall be a $1,000 credit issued to UC.
* In the event Supplier does not meet a Table A. SLA Response or Resolution threshold, for an Important severity level Problem, there shall be a $200 credit issued to UC.
* Any Supplier credit may be used for any services Supplier offers and shall not expire. Supplier shall issue to UC a SLA statement for every month there is a SLA credit change or a credit outstanding, detailing the reason for the credit. If there are credit’s outstanding at the end of the initial contract term, UC may request a check from Supplier in the amount of the credit or applied to any mutually agreed contract renewal term.
* In the event of Termination by UC for cause stated in this SLA Exhibit, or expiration of the Agreement or a not-renewed SOW, any credit owed to UC shall be payable by Supplier within 30 days of such termination or expiration.