**UNIVERSITY OF CALIFORNIA OFFICE OF THE PRESIDENT**

**REQUEST FOR PROPOSAL**

 **RFP#UCOP2024RC02**

 Date Issued

:

 April 5, 2024


# SUBMITTAL DUE DATE: Friday, April 26, 2024, by 5:00pm, PST

**Procurement Contact**

**Theresa Gamache**

**Tel #:510-987-9711**

**email**: Theresa.Gamache@ucop.edu

**Return Response:**

***Via email:*** Theresa.Gamache@ucop.edu

**Subject line: PB CODING AI RFP**

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# RFP PROCESS SUMMARY

## A. Purpose & Objectives of the Request for Proposal (RFP)

The purpose of this Request for Proposal (“RFP”) is to invite qualified suppliers to prepare and submit proposals to the University of California, Office of the President (“UCOP”) for a comprehensive proposal including price for the implementation of a PB CODING AI solution in accordance with the requirements defined in this RFP.

The University of California (“UC Health”) may leverage the information, data, comments, or reactions obtained in this RFP as research for a future solicitation. This RFP constitutes an Invitation for Bid, Request for Proposal, however it is not to be construed as a commitment by the UC Health.

## B. Scope

**Proposed Scope of Services and specific topics:**

**Bidders need to include their plan to address each expectation in their proposals.**

* Development, management, implementation, migration, and testing of the PB CODING AI solution.
* A detailed Proof of Concept plan for the proposed implementation of the PB CODING AI solution including a committed and dedicated team.
* A detailed description of the proposed team including but not limited to their title, rates, and resumes.
* A detailed implementation timeline and a comprehensive financial estimate based on the ‘must-have’ requirements outlined in Exhibit “A.”
* State in the proposal the hours and associated fees for help desk, training, and on-line support.
* Fees for initial configuration if required. That includes relabeling and repurposing existing fields.
* What account management solutions are you using and are they cloud based?
* State your business partner being proposed for the implementation if not your own internal team and all itemized fees as a separate line item.
* Annual User License and Permissions Estimates:
* Create/Edit including redlining and negotiating = 100
* Review & Approve - 20
* View Only – Unlimited
* View Only – including the ability to set Audit permission timeframe

**Solution Summary**

Initial use cases are:

* Radiology (Professional)
	+ Approximately 499k charge sessions annually
* ED (Facility and Professional)
	+ Approximately 98k annual ED visits
* Other areas of interest
	+ Lab (Professional)
	+ Pathology (Professional)
	+ Cardiology Studies (Professional)
	+ Bedside / IP (Professional)
	+ OP Surgery
	+ OP Clinic
	+ Infusion (ED, IP, OP)

Names and locations where access to the PB Coding AI solution may be required:

* + **UC Davis**

UC Davis Medical Center, 2315 Stockton Blvd, Sacramento, CA 95817

* Overall Responsibility Program
	+ - The UC Health system requires its partner(s) to offer support that is required to run a health system and scale with us as we transform Revenue Cycle to state-of-the-art and Best in Class.
		- It is also the expectation of the UC Health system that any potential contract leverages the collective aggregate spend of the health systems, campus locations and affiliates.

Summary of Financial Reporting Requirements:

Any expectation of reimbursement for travel and business meal expenses incurred in the implementation of the PB CODING AI solution shall be consistent with the University of California Policy and Regulations Governing Travel and Entertainment, both of which may be found at <http://www.ucop.edu/central-travel-management/resources/index.html>.

## C. University of California Profile

The University of California Office of the President provides the organizational framework that enables the University of California Health to fulfill its teaching, research, patientcare, and public service missions. The University of California (UC) operates the largest health sciences instructional program in the nation, annually enrolling nearly 15,000 students and trainees (approximately 5.2 percent of total UC systemwide student enrollment) in 20 professional schools on seven health sciences campuses. These include six schools of medicine; four schools of nursing; three schools each of pharmacy and public health; two schools of dentistry; and one school each of optometry and veterinary medicine. Across the professions, UC programs are recognized nationally for their preparation of highly skilled clinicians, future faculty and leaders in research, industry, and public service. The University’s now 20 health professional schools and associated hospitals and clinics are referred to collectively as University of California Health (UCH). UCH includes six academic health centers, five of which own or operate their hospitals, and one that leverages community hospitals to deliver care. UC Davis Health, UC Irvine Health, UC Los Angeles Health, UC San Diego Health, and UCSF Health own or operate hospitals. UC Riverside Health provides clinical care through community facilities, along with owned or operated clinics.

The UC Health central office has a number of initiatives including the Supply Chain transformation which includes a strategic centralized contract management system to achieve the financial goals, ensure compliance to Public Contracting Codes, State and Local laws and improve the cycle time of our contracting Procurement Professionals.

## D. Issuing Office and Communications Regarding the RFP

This RFP, and any subsequent addenda to it, is being issued by UCOP Procurement Services on behalf of the University of California, Health, and its affiliate locations. RFP documents will be posted to UCLA Procurement website: <http://purchasing.uclahealth.org/bidding-on-jobs>

UCOP Revenue Cycle Program Manager is the sole point of contact regarding all procurement and contractual matters relating to the requirements described in this RFP. UCOP Procurement Sourcing is also the only office authorized to change, modify, clarify, etc., the specifications, terms, and conditions of this RFP and any Agreements(s) awarded as a result of this RFP.

Proposers are not permitted to communicate with any UCOP employee regarding this solicitation during the period between the RFP issue date and the announcement of awards, unless authorized by UCOP Procurement Sourcing and the sole point of contact named below.

All communications, including submission of RFP response and any requests for clarification concerning this RFP, must be submitted via email to the following:

 UCOP Revenue Cycle Program Manager:

 Theresa Gamache

 E-mail: Theresa.gamache@ucop.edu

 Phone: 510-987-9711

If a Proposer is found to be in violation of this provision, UCOP reserves the right to disqualify that Proposer from further consideration.

## E. RFP Schedule

Proposers interested in submitting proposals in response to this RFP should do so according to the schedule below. A Proposer may be disqualified for failing to adhere to the dates and times for performance specified. All times are Pacific Standard Time and dates are subject to change at the sole discretion of UCOP.

|  |  |  |  |
| --- | --- | --- | --- |
| **Task** | **Date\*** | **Time** | **Location** |
| **RFP Issuance Date**  | Friday, April 5, 2024 | Noon, PST  | UCLA Procurement & Strategic Sourcing website under UC Health[www.purchasing.uclahealth.org](http://www.purchasing.uclahealth.org) |
| **Bidders’ questions**  | Bidders can submit questions until Monday, April 15, 2024 | 5:00 PM, PST | Via Email to Theresa.gamache@ucop.edu |
| **Responses to Bidders’ questions** | UC will consolidate bidders’ questions and respond as they are received and will continue to do so until April 19, 2024 | 5:00 PM, PST | Responses will be posted on the UCLA Procurement & Strategic Sourcing website under UC Health[www.purchasing.uclahealth.org](http://www.purchasing.uclahealth.org) |
| **Bidders’ submission of Proposals**  | Friday, April 26, 2024 | 5:00 PM, PST | Via Email to Theresa.gamache@ucop.edu |
| **Round 1 - Review and Scoring by UC Evaluation Team** | Monday, April 29, 2024 – May 31, 2024 | 5:00 PM, PST | N/A |
| **Round 2 – Demos by invitation based on scoring criteria** | June 10, 2024 – June 14, 2024 | N/A | N/A |
| **Final scoring by UC Evaluation Team** | June 16 - 22, 2024  | N/A | N/A |
| **Final Reviews and award date of RFP** | June 24 - 28, 2024 | N/A | N/A |

 \*These dates are subject to change.

## F. Addenda to the RFP

Any changes, additions, or deletions to this RFP will be in the form of written addenda issued by UCOP via the UCOP Procurement Contact. Any addenda to this RFP will also be distributed to all <http://purchasing.uclahealth.org/bidding-on-jobs> participating Proposers via the UCLA website. UCOP will not be responsible for the failure of any prospective Proposer to receive such Addenda. All Addenda will become part of the RFP. UCOP shall have the unconditional and unqualified right to withdraw, cancel, or amend the RFP at any time without any liability.

## G. Instructions for Submitting Proposals

Proposals submitted in response to this RFP must be submitted via email to the contact listed in Section D, above, **no later than the time and due date reflected in Section E, above**. No other mailed, telephone, emailed, facsimiled, or late proposals will be considered**.**

Proposers must provide a complete, straightforward, concise response to all Guidelines, Questionnaires, Price Sheets, and any other information requested in the RFP as detailed in the RFP. Proposers warrant that all information provided is true and accurate. The submission of false, inaccurate, or otherwise misleading information may be grounds for disqualification from the RFP process, as well as jeopardize Proposer’s eligibility to participate in future UCOP business.

All response attachments are to be labeled with your company name and the title of the response

section to make it easy for the evaluators to find the referenced attachment, e.g., “Company XYZ

Proposal.”

Proposers must not provide superfluous materials such as marketing materials or website links in response to, or in lieu of, specific responses to the questions herein, and may be disqualified for providing superfluous materials.

Collusion among proposers is not allowed. If there is proof of collusion among proposers, all Proposals involved in the collusive action will be rejected.

Proposers must operate within the guidelines of all Federal and State Labor Codes. Late proposals will not be accepted.

## H. Proposer Questions

Each Proposer is expected to exercise their best professional independent judgment in analyzing the requirements of this RFP to ascertain whether additional clarification is necessary or desirable before responding. If there are any discrepancies in, omissions to, or questions about the information provided in the RFP or by any other source, a request must be submitted via the contact information listed in Section D, above by the stated deadline. Responses to individual Proposer questions will be made available to all Proposers that submit a notification of their intent to bid.

##  I. Proposal Evaluation and Agreement Award

1. Any Agreements(s) resulting from this RFP will be awarded to the most responsive and responsible Proposer(s) whose Proposal, in the opinion of UCOP, offers the greatest benefit to UCOP when considering the total value, including, but not limited to, the quality of the Goods and Services, and total cost (including prompt payment discounts, available volume discounts, and other elements of value to UCOP). A responsive Proposer is one whose offer satisfies the Requirements of this RFP. A responsible Proposer is one that is considered capable of performing and is otherwise eligible and qualified to perform in the manner stated in this RFP.

1. Proposals will be evaluated by UCOP using a Best Value Evaluation Methodology which is defined as the most advantageous balance of price, quality, service, performance, and other elements as defined by the University, achieved through methods in accordance with Public Contract Code Section 10507.8 and determined by objective performance criteria that may include price, features, long-term functionality, life-cycle costs, quality, overall sustainability, required services, current and past performance and the reduction of overall operating costs included in the proposal. The Evaluators will examine each Proposal to determine, through the application of uniform criteria, the ability of each Proposer to meet UCOP’s specifications.

1. UCOP may request additional information either from the Proposer or others, and Proposer presentations, sandbox testing, and make any other investigations as it deems necessary to verify the Proposer’s qualifications and ability to successfully meet the requirements of this RFP. UCOP also reserves the right to obtain Dun & Bradstreet reports, or similar independent reports for further indications of the Proposer’s ability.

1. Until an award is made, UCOP has the unconditional and unqualified right to allow a time extension for the submission of proposals. In this case, an RFP Addendum will indicate the new submission date.

1. UCOP reserves the right to reject any proposal in which the information submitted fails to satisfy UC requirements and/or the Proposer is unable to provide the information or documentation within the period requested. Any submitted proposal that fails to comply with the requirements of this RFP may be considered non-responsive and may not be evaluated or eligible for award of any subsequent contract.

1. UCOP may waive irregularities in a proposal provided that, in the judgment of UCOP, such action will not negate fair competition and will permit proper comparative evaluation of Proposals submitted. UCOP’s waiver of an immaterial deviation or defect shall in no way modify the RFP documents or excuse the Proposer from full compliance with the RFP specifications in the event the Agreement is awarded to that Proposer.

1. Any contract awarded pursuant to this RFP will include the requirements and specifications in the RFP, as well as the contents of the proposal response as accepted by UC and will be in writing.

UCOP’s selection may be made based on the initial proposals or may elect to negotiate with Proposers selected as finalists. UCOP reserves the right to negotiate the modification of proposed prices and/or terms and conditions with the Proposer offering the best value to UCOP prior to the execution of an Agreement. UCOP shall have the unconditional and unqualified right to withdraw, cancel, or amend the RFP at any time, without liability.

## J. Multi-Phased Initiative

This Initiative will consist of the following separate phases:

### 1. Phase I: Prerequisites

Proposer must acknowledge and agree to all requirements of the RFP as outlined in the Guidelines section in the RFP before advancing in the proposal process. Proposer must answer every question in the requirements to advance to the selection of Finalists.

**2. Phase II: Selection of Finalists**

Finalists will be identified based on the quality and responsiveness of the written proposals. Finalists must score a minimum number of points to enter Phase III – Finalist Presentations.

### 3. Phase III: Finalist Presentations (At UCOP Discretion)

1. The top finalists resulting from Phase II may advance to Phase III.
2. Proposers may be requested to conduct a Zoom or web-based presentation regarding the Proposer’s ability to provide the Goods and Services. However, UCOP may determine that presentations are not necessary. In the event presentations are conducted, information provided during the presentation process shall be taken into consideration when evaluating the stated criteria. UCOP will not reimburse the proposer for the costs associated with the presentation process.

## K. Proposal Preparation Costs

Without limitation, all costs incurred in the preparation and submission of Proposals and related documentation, including proposer’s presentations, demonstrations and provision of the Goods and Services to UC for independent testing purposes, will be borne by the Proposer.

 **L. Proposal Validity Period**

All Proposals and pricing shall remain available for UCOP acceptance for a minimum of one-hundred and eighty (180) days following the RFP closing date.

## M. Agreement Term

The term of the Agreement shall commence upon execution of the Agreement and will be for a period of three (3) years (the “Initial Term”) with an optional two one-year extensions (the “Renewal Terms”), at the sole discretion of UCOP. Pricing shall remain firm for the Initial Term and all Renewal Terms of any agreement which may be awarded pursuant to this RFP. All pricing must be verifiable and auditable from the date of the contract award.

All agreements resulting from this RFP shall be construed and enforced in accordance with the laws of the State of California.

## N. No Mandatory Use

Supplier is advised that there is no mandatory use policy at the University of California for agreements. As a result, UC does not guarantee any specific amount of business forthcoming from this RFP. A winning Supplier may still see some competition at any given UC location for any given Service.

## O. Disclosure of Records/Confidentiality of Information

1. All Proposal responses and related documents submitted to UCOP in response to this RFP will become the exclusive property of UCOP upon receipt and will not be returned.

1. Proposal response(s) which are incorporated into any resulting contract(s) with the University of California, may be subject to the State of California Public Records Act (CA State Government Code 6250, et. seq.). This Request for Proposal, together with copies of all documents pertaining to any award, if issued, shall be kept for a period of five (5) years from date of contract expiration or termination and made part of a file or record which shall be open to public inspection. Certain private, trade secret or confidential information may be considered exempt from the California Public Records Act. Any trade secret or company confidential information submitted as a part of this proposal shall be clearly marked “Trade Secret Information” or “Confidential Information.”

1. Should a request be made of the University of California for access to the information designated confidential or trade secret by the Proposer and, on the basis of that designation, UC denies the request, the Proposer may be responsible for all legal costs necessary to defend such action if the denial is challenged in a court of law.

1. Bidders may not distribute an announcement or news release regarding this RFP project without written approval by UCOP. Any materials to be provided to regulatory agencies, other entities, or the public will be submitted to UCOP for review and written approval, prior to disclosure.

## P. Audit Requirements

1. Any potential agreement issued as a result of this RFP shall be subject to the examination and audit of the Auditor General of the State of California for a period of three (3) years after final payment under the agreement.

1. UCOP, and if the applicable contract or grant so provides, the other contracting party or grantor (and if that be the United States, or any services or instrumentality thereof, then the Controller General of the United States) shall have access to and the right to examine any pertinent books, documents, papers, and records of the Proposer involving transactions and work related to any such agreement until the expiration of five (5) years after final payment hereunder.

1. The examination and audit will be confined to those matters connected with the performance of the agreement, including, but not limited to, pertinent books, documents, papers, and records of the Proposer involving transactions and work related to the agreement as well as the costs of administering the agreement.

## Q. Business Review/Business Reports

Supplier shall meet with UCOP for Regular Business Reviews to review contract usage and effectiveness, discuss current Goods and/or Services offerings and provide suggestions and discussion for continuous improvement in Goods and Services efficiencies, and address additional topics pertinent to the relationship towards UCOP’s strategic goals. For each Business Review the Supplier must provider pertinent performance and management reports detailing a wide range of information related to the resulting agreement.

## R. Errors and Omissions

If the Proposer discovers any discrepancy, error, or omission in this RFP or in any of the attached documents, UCOP shall be notified immediately, and a clarification/notification will be issued to all Proposers who have access to this RFP. No Proposer will be entitled to additional compensation for any error or discrepancy that appears in the RFP where UCOP was not notified, and a response provided. All Addendums of Clarification will be distributed to the Proposal Participants via the UCLA Procurement website.

## S. General Information

The Bidder shall not maintain or provide racially segregated facilities for employees at any establishment under the Bidder’s control. The Bidder agrees to adhere to the requirements set forth in Executive Orders 11246 and 11375, and with respect to activities occurring in the State of California, to the California Fair employment and Housing Act Government Code section 2900 et seq. Expressly, the Bidder shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, ancestry, medical condition, marital status, age, physical and mental handicap in regard to any position for which the employee or applicant for employment is qualified, or because he or she is a disabled veteran or veteran of the Vietnam era. The Bidder shall further specifically undertake an outreach effort in regards with the hiring, promotion and treatment of minority group persons, women, the handicapped, and disabled veterans, and veterans of the Vietnam era. The Bidder shall communicate this policy in both English and Spanish to all people as concerned within its company, with outside recruiting services and the minority community at large. The Bidder shall provide the University, upon request, a breakdown of it labor force by groups, specifying the above characteristics within job categories, and shall discuss with the University its policies and practices relating to its programs.

Outsourcing (Public Contract Code section 12147) Compliance. Supplier warrants that if the Agreement will displace UC employees, no funds paid under the Agreement will be used to train workers who are located outside of the United States, or plan to relocate outside the United States as part of the Agreement. Additionally, Supplier warrants that no work will be performed under the Agreement with workers outside the United States, except as described in Supplier’s bid. If Supplier or its sub supplier performs the Agreement with workers outside the United States during the life of the Agreement and Supplier did not describe such work in its bid, Supplier acknowledges and agrees that a) UC may terminate the Agreement without further obligation for noncompliance, and b) Supplier will forfeit to UC the amount UC paid for the percentage of work that was performed with workers outside the United States and not described in Supplier’s bid.

## T. Supplier Guidelines (Prerequisites)

The Guidelines Section of the RFP include mandatory prerequisites. Responses to the prerequisites must be included with submitted proposals; failure to do so may result in disqualification from participation. In the sole determination of UCOP, submission of exceptions or conditions may or may not be considered for inclusion in a final contract.

### 1. Instructions for UC Terms and Conditions

Proposers must accept, and Proposals must comply with the requirements of the attached University of California Health Terms and Conditions of Purchase dated 01/4/22. Please acknowledge that you have read, understand, and accept the attached UC Terms and Conditions of Purchase. UC reserves the right to update the UC Terms and Conditions at any time before the executed contract. Submission of a Proposal affirms Proposer’s understanding and acceptance of the University of California Terms and Conditions of Purchase unless specific exceptions are proposed, and alternative language or provisions are offered. If a Proposer is unwilling to accept some of the terms of the University of California Terms and Conditions of Purchase, then Proposer must attach to their proposal a document labelled “Exceptions UC Health Terms and Conditions” that states which specific section of the University of California Health Terms and Conditions of Purchase is an issue, explain your reasoning, and propose specific alternative language. The Exceptions document must be returned with the Proposal.

Article 2.B. UC’s obligation to proceed is conditioned upon the appropriation of state, federal and other sources of funds not controlled by UC ("Funding"). UC will have the right to terminate the Agreement without damage, penalty, cost, or further obligation in the event that through no action or inaction on the part of UC, the Funding is withdrawn.

 *I have read, understand, and accept Article 2.B. of the UC Terms and Conditions.* **Initial \_\_\_\_\_ Date \_\_\_\_\_**

Article 2.C. UC may, by written notice stating the extent and effective date thereof, terminate the Agreement for convenience in whole or in part, at any time. 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 Supplier with notice of termination or (ii) Supplier’s provision of Goods and/or Services will terminate.

*I have read, understand, and accept Article 2.C. of the UC Purchasing Agreement.* **Initial \_\_\_\_\_ Date \_\_\_\_\_\_**

*I have read, understand, and accept the UC Terms and Conditions.* **Initial \_\_\_\_\_ Date \_\_\_\_\_\_**

*Exceptions have been noted.*  **Initial \_\_\_\_\_ Date \_\_\_\_\_**

### 2. Instructions for Data Security Appendix

Proposers must accept, and Proposals must comply with the requirements of the attached University of California Appendix Data Security and Privacy dated 08/20/21. Please acknowledge that you have read, understand, and accept the attached UC Appendix Data Security and Privacy. UC reserves the right to update the UC Appendix at any time before the executed contract.

Submission of a Proposal affirms Proposer’s understanding and acceptance of the University of California Appendix Data Security and Privacy unless specific exceptions are proposed, and alternative language or provisions are offered. If a Proposer is unwilling to accept some of the terms of the University of California Appendix Data Security and Privacy, then Proposer must attach to their proposal a document labelled “Exceptions Appendix DS” that states which specific section of the University of California Appendix Data Security and Privacy is an issue, explain your reasoning, and propose specific alternative language. The Exceptions document must be returned with the Proposal.

*I have read, understand, and accept the UC Data Security Appendix.*  **Initial \_\_\_\_\_ Date \_\_\_\_\_\_**

##  *Exceptions have been noted.* Initial \_\_\_\_\_ Date \_\_\_\_\_\_

### 3. Instructions for UC Business Associate Appendix (If applicable)

Proposers must accept, and Proposals must comply with the requirements of the attached University of California Appendix-HIPAA Business Associate Agreement dated 08/10/21. Please acknowledge that you have read, understand, and accept the attached UC Appendix-HIPAA Business Associate Agreement. UC reserves the right to update the UC Appendix at any time before the executed contract.

Submission of a Proposal affirms Proposer’s understanding and acceptance of the University of California Appendix-HIPAA Business Associate Agreement. Please note that the UC BAA has been preapproved at the UC Office of the President level; therefore, very few exceptions to the Business Associate Appendix can be considered.

*I have read, understand, and accept the UC Business Associate Appendix****.* Initial \_\_\_\_ Date \_\_\_\_\_\_**

 *Exceptions have been noted.* **Initial \_\_\_\_ Date \_\_\_\_\_\_**

# 4. Instructions for Pricing

Each Bidder must include definitive pricing, including any and all costs, expenses, charges, and fees, based on the information contained in this RFP, and the following:

* Provide complete and detailed cost proposals for a three-year term.
* Include any/all software license fees (including third party, if applicable) and types, if prices differ,
* Consulting fees, including estimated travel expenses, if any;
* Adapters and implementation costs for each medical center using their PB Coding AI solution;
* Any other costs associated with the purchase, implementation, and maintenance of the system;
* Pricing for any options that are available;
* Provide examples of your company’s invoice consistent with the pricing proposals in this RFP.

**Please note:**

1. UCOP has the right to audit your company’s billing process at any time during the term of contract.
2. Please specify any and all ancillary charges and how these charges will be assessed and measured.

Any fees, charges, costs, or other monetary invoicing expenses that are not included in your pricing proposals hereto but are later presented to UCOP to become part of the contract negotiation process for this engagement, may be rejected by UCOP at the sole discretion of UCOP; moreover, such non-disclosures may disqualify bidder from this engagement.

1. Please indicate in detail what factors will be used to adjust pricing (if applicable) upward and downward, during the term of the contract.
2. Net terms are thirty (30) days from receipt of undisputed invoices, with no fees or interest for untimely payment.

 *I have read, understand, and accept the Instructions for Pricing.* **Initial \_\_\_\_\_\_\_ Date \_\_\_\_\_\_**

## U. Supplier Guidelines (Questionnaires and Attachments)

The following Questionnaires and additional documents are included with the RFP:

1. Supplier Written Questions (Excel spreadsheet) – Exhibit “A”
2. Project Proposal Questions
3. UC Health Terms and Conditions of Purchase
4. UC Data Security Appendix
5. UC Appendix-HIPAA Business Associate Agreement – Exhibit “B”
6. Institutional Information - Exhibit “C”
7. Supplier’s Initial Information Security Plan “Exhibit “D”

Each of the documents listed above requires the proposer to attach a set of responses. Please label the attachments with your company name and the title of the document, e.g., “*Company XYZ Supplier Information Questionnaire.”*

Failure to provide the information necessary to fully evaluate the bid response may result in disqualification of the bid.

**NOTICE:** The responses to the questions included in these documents are scored as part of basis for award.

## V. Certification of Proposal

 Company Name

 Federal Employer Identification # \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Contact Person/Title

 Address

 Telephone Number \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Fax: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

I certify that I am authorized to sign on behalf of the organization I represent for this offer and agree to all terms and conditions described herein.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Authorized Signature \_\_\_\_\_\_\_\_\_\_\_\_ Date

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Printed Name

Exhibits

**Project Proposal Questions – Exhibit A**

**Provide a proposal detailing the Supplier’s process to be used in providing the services described herein. The proposal should clearly indicate any major requirements that cannot be met by the Supplier. Highlight the major features of the proposal to assist the reader in determining generally how the qualifications of the Supplier and the proposal meets and exceeds the requirements proposed by the University.**

1. **Suppliers’ proposals must include responses to all questions and requirements in Exhibit “A” and ensure all information requested includes the following:**

Provide a detailed response clearly articulating the approach your firm would take to the UCOP Scope of Work. Suppliers’ response should be as detailed as possible and include the following:

* + Please provide a detailed description of the experience, qualifications, and expertise that your team will provide to UCH, as it pertains to this RFP
		- Please include resumes/CV (if applicable) of the proposed team
		- Description of your organization and proposed team experience on similar projects (Preferred California and healthcare experience)
		- Description of how your organization is qualified for this specific opportunity
	+ Describe your approach to assuring timely completion of services, including methods you will utilize.
	+ Please include any information demonstrating your capability of meeting and performing all specifications of this RFP from engagement to implementation, maintenance, and support.
	+ History of working with any departments or units in the Office of the President or any UC location.
	+ Describe data archival methods and data retention abilities.
	+ Describe in detail the User Roles and Permissions and how they are configured in the application.
	+ Describe in detail the implementation of the Proof of Concept (POC) of your application at the UC Davis location. Include in your implementation the timeline and migration of current data stored into the new PB Coding AI application.
	+ Propose test guidelines and path to approval of the POC.
	+ See Excel Sheet for additional mandatory questions

UC Health Terms and Conditions-(1/4/22)\* (these are the current Terms and conditions and the supplier may  be asked to accept a newer version at the time of award of an agreement)

**ARTICLE 1** – **GENERAL**

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

UC Health represents five academic medical centers located at the Davis, Irvine, Los Angeles, San Diego, and San Francisco campuses, as well as UC’s medical and health professional schools, and associated research programs, and student health and counseling centers.

1. Additional UC Locations.
2. As used herein, “Additional UC Location” shall mean: (i) any UC campus, medical center, affiliated national laboratory, or program, as further described at https://www.universityofcalifornia.edu/uc-system/parts-of-uc; (ii) any entity that, after the full execution of this Agreement, is acquired or created by any location referenced in (i); and (iii) any entity that merges into or consolidates with any location referenced in (i) and, after such merger or consolidation, the surviving entity is a location as referenced in (i).
3. Supplier agrees to provide the Goods and/or Services described in the Agreement and as priced in this Agreement to any Additional UC Location executing a UC Health Statement of Work (SOW), the form of which is attached to this Agreement as Attachment A or submitting a PO to Supplier. By execution of such Statement of Work or PO, such Additional UC Location on the one hand, and Supplier, on the other hand, shall be deemed, respectively, to have executed the Agreement (with appropriate changes to the signature block) as Parties, with such Additional UC Location taking on the obligations of the UC Location and Supplier taking on its obligations to such Additional UC Location.
4. Any change to a SOW or PO shall be applicable only to such UC Location and to such SOW or PO. Each UC Location is financially separate, and each shall be fully and solely responsible for its respective individual commitments, financial or otherwise, and none shall be responsible for performance or non-performance of any of the others. Any delay in payment or other operational issue involving one UC Location shall not adversely affect any other UC Location, and any breach of a UC Location’s obligations will subject only such UC Location to the applicable corrective action, but otherwise will have no adverse impact on any other UC Location.
5. UC Affiliates.
6. UC has entered, or will enter, into agreements with UC Affiliates that seek, through collaboration, to combine health care delivery services, procurement and/or contracting activities with efforts to obtain the best value goods and services while reducing total acquisition costs. As used herein, “UC Affiliate” shall mean: (i) any school, campus, facility, healthcare provider or payer, or entity that is not a UC Location (including any Additional UC Location) and that is, in whole or in part, owned or controlled by, or under common ownership with, UC, or that is managed, in whole or in part, by UC; (ii) any entity that, after the full execution of this Agreement, merges into or consolidates with any UC Location and which UC designates as a UC Affiliate; (iii) any entity into which any UC Location or UC Affiliate merges or consolidates and, after such merger or consolidation, the surviving entity is not a UC Location or UC Affiliate, and which UC designates as a UC Affiliate; (iv) any entity that merges into or consolidates with a UC Affiliate and, after such merger or consolidation, the surviving entity is a UC Affiliate; and (v) any entity, other than those described above, that UC and Supplier may agree in writing may be a UC Affiliate.
7. Supplier agrees to provide the Goods and/or Services described in this Agreement and as priced in this Agreement to any UC Affiliate executing a SOW. By execution of such SOW, such UC Affiliate Location on the one hand, and Supplier, on the other hand, shall be deemed, respectively, to have executed the Agreement (with changes to the appropriate signature block) as Parties, with such UC Affiliate taking on the obligations of the UC Location and Supplier taking on its obligations to such UC Affiliate.
8. UC and each of the UC Affiliates are separate and distinct legal entities and no fiduciary responsibility exists between UC and any UC Affiliate. As such, each UC Affiliate Location, is financially and legally separate and each shall be fully and solely responsible for its respective individual commitments, financial or otherwise, and none shall be responsible for performance or non-performance of any of the others. Any delay in payment or other operational issue involving one UC Affiliate shall not adversely affect any UC Location or other UC Affiliate, and any breach of a UC Affiliate’s obligations will subject only such UC Affiliate to the applicable corrective action, but otherwise will have no adverse impact on any UC Location or other UC Affiliate. Any change to a SOW or PO shall be applicable only to such UC Affiliate and to such SOW or PO.
9. For the avoidance of doubt, UC is not responsible for the acts or omissions of any UC Affiliate. UC Affiliate shall remain liable for each such UC Affiliate’s compliance or non-compliance with the terms of this Agreement as it pertains to POs or SOWs of such UC Affiliate.
10. Amendments. Except with respect to the type(s) Goods and or Services that will be provided to a UC Location or UC Affiliate, no Additional UC Location or UC Affiliate shall amend, alter, or otherwise modify the terms of this Agreement applicable to UC, including the Incorporated Documents, as defined herein. All modifications, amendments, and alterations to this Agreement, including the Incorporated Documents, shall be mutually agreed to by the original UC Location entering into the Agreement and Supplier. All other modifications, amendments and alterations shall be null and void to the extent applicable to UC. In the event an Additional UC Location or UC Affiliate desires to add terms that do not amend, alter, or otherwise revise any term applicable to other UC Locations that is contained in this Agreement, including the Incorporated Documents, such terms may be incorporated into the SOW or other agreement directly between the Supplier and such Additional UC Location or UC Affiliate.

**ARTICLE 2 – TERM AND TERMINATION**

1. As applicable, the term of the Agreement (“Initial Term”) will be stated in the Agreement. Following the Initial Term, the Agreement may be extended by written mutual agreement.
2. UC’s obligation to proceed is conditioned upon the appropriation of state, federal and other sources of funds not controlled by UC ("Funding"). UC will have the right to terminate the Agreement without damage, penalty, cost, or further obligation in the event that through no action or inaction on the part of UC, the Funding is withdrawn.
3. 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 Supplier with notice of termination or (ii) Supplier’s provision of Goods and/or Services will terminate.
4. UC may by written notice terminate the Agreement for Supplier’s breach of the Agreement, in whole or in part, at any time, if Supplier refuses or fails to comply with the provisions of the Agreement, or so fails to make progress as to endanger performance and does not cure such failure within five (5) business days or fails to supply the Goods and/or Services within the time specified or any written extension thereof. In such event, UC may purchase or otherwise secure Goods and/or Services and, except as otherwise provided herein, Supplier will be liable to UC for any excess costs UC incurs thereby.
5. In the event the Agreement is terminated prior to the first anniversary of the effective date of the Agreement, the parties shall not enter into a contract for the same or similar Goods or Services until the first anniversary of the effective date of the Agreement has passed.
6. To the extent the Agreement extends to Additional UC Locations and UC Affiliates (each a “Customer”), each such Customer shall have the right to terminate the Agreement with respect to such Customer’s SOW and/or PO(s) only, as provided to UC in the UC Terms and Conditions. Each Customer and Supplier shall have the same rights and obligations with respect to the termination of such Customer’s SOW or PO(s) as set forth in the UC Terms and Conditions.
7. If any of the following appendices are incorporated into the agreement, then they will control in the event that the appendices conflict with the provisions of this Article: UC’s Appendix – Data Security; Appendix – BAA; and/or Appendix – GDPR.

**ARTICLE 3 – PRICING, INVOICING METHOD, AND SETTLEMENT METHOD AND TERMS.**

Pricing is set forth in the Agreement or PO, 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. Unless otherwise agreed in writing by UC, Supplier will use the invoicing method and payment settlement method (and will extend the terms applicable to such settlement method) set forth in UC’s Supplier Invoicing, Terms & Settlement Matrix (https://www.ucop.edu/procurement-services/procurement-systems/supplier-invoicing,-terms-and-settlement-matrix.html). UC will pay Supplier, upon submission of acceptable invoices, for Goods and/or Services provided and accepted. Invoices must be itemized and reference the Agreement or PO number. UC will not pay shipping, packaging, or handling expenses, unless specified in the Agreement or PO. Unless otherwise provided, freight is to be FOB destination. Any of Supplier’s expenses that UC agrees to reimburse will be reimbursed under UC’s Travel Policy, which may be found at http://www.ucop.edu/central-travel-management/resources/index.html. Where applicable, Supplier will pay all taxes imposed on Supplier 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.

To the extent the Agreement extends to Additional UC Locations and UC Affiliates, Supplier will submit invoices following the designated invoice method set forth in such Customer’s SOW, or, if not set forth in such SOW, following the designated invoice method set forth in the Agreement. Each Customer will pay Supplier, upon submission of acceptable invoices, for Goods and/or Services provided and accepted by such Customer.

For purposes of calculating UC’s use of Supplier’s Goods and/or Services and purchase price of such Goods and/or Services, Supplier shall aggregate, and UC and each Customer shall get the benefit of, all net purchases of Goods and/or Services made by all Customers. Supplier will review, on a quarterly annual basis, the combined net purchases of Goods and/or Services for all Customers during the term of the Agreement and shall make appropriate changes and adjustments to pricing to reflect the pricing for which UC and Customers qualify in accordance with the terms of this Agreement.

**ARTICLE 4 – INSPECTION**

The Goods and/or Services furnished will be exactly as specified in the Agreement, free from all defects in Supplier's performance, design, skill, and materials, and, except as otherwise provided in the Agreement, will be subject to inspection and test by UC at all times and places. If, prior to final acceptance, any Goods and/or Services furnished are found to be incomplete, or not as specified, UC may reject them, require Supplier to correct them at the sole cost of Supplier, or require provision of such Goods and/or Services at a reduction in price that is equitable under the circumstances. If Supplier is unable or refuses to correct such deficiencies within a time UC deems reasonable, UC may terminate the Agreement in whole or in part. Supplier will bear all risks as to rejected Goods and/or Services and, in addition to any costs for which Supplier may become liable to UC under other provisions of the Agreement, will reimburse UC for all transportation costs, other related costs incurred, or payments to Supplier in accordance with the terms of the Agreement for unaccepted Goods and/or Services and materials and supplies incidental thereto. Notwithstanding final acceptance and payment, Supplier will be liable for latent defects, fraud, or such gross mistakes as amount to fraud.

**ARTICLE 5 –** **ASSIGNED PERSONNEL; CHARACTER OF SERVICES**

Supplier will provide the Services as an independent contractor and furnish all equipment, personnel and supplies sufficient to provide the Services expeditiously and efficiently, during as many hours per shift and shifts per week, and at such locations as UC may so require. Supplier will devote only its best-qualified personnel to work under the Agreement. Should UC inform Supplier that anyone providing the Services is not working to this standard, Supplier will immediately remove such personnel from providing Services and those individuals will not again be assigned to provide Services without UC’s written permission. 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 to UC for all Services performed by Supplier’s employees, agents, and subcontractors, including being responsible for ensuring payment of all unemployment, social security, payroll, contributions, and other taxes with respect to such employees, agents, and subcontractors.

**ARTICLE 6 – WARRANTIES**

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

1. General Warranties. Supplier represents, warrants and covenants that: (i) Supplier is free to enter into this Agreement and that Supplier is not, and will not become, during the Term, subject to any restrictions that might restrict or prohibit Supplier from performing the Services or providing the Goods ordered hereunder; (ii) Supplier will comply with all applicable laws, rules and regulations in performing Supplier’s obligations hereunder; (iii) 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 the prevailing industry standards; and if UC Appendix Data Security is NOT included:(iv) 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 hardware, software and embedded systems may be susceptible to errors or failures in various crisis (or force majeure) situations; (v) if Supplier uses electronic systems for creating, modifying, maintaining, archiving, retrieving or transmitting any records, including test results that are required by, or subject to inspection by an applicable regulatory authority, then Supplier represents and warrants that Supplier’s systems for electronic records are in compliance; and (vi) Supplier agrees that the Goods and/or Services furnished under the Agreement will be covered by the most favorable warranties Supplier gives to any customer for the same or substantially similar goods or services, or such other more favorable warranties as specified in the Agreement. The rights and remedies so provided are in addition to and do not limit any rights afforded to UC by any other article of the Agreement.
2. Permits and Licenses. Supplier agrees to procure all necessary permits or licenses and abide by all applicable laws, regulations, and ordinances of the United States and of the state, territory and political subdivision or any other country in which the Goods and/or Services are provided.
3. Federal and State Water and Air Pollution Laws. Where applicable, Supplier warrants that it complies with the requirements in UC Business and Finance Bulletin BUS-56 (Materiel Management; Purchases from Entities Violating State or Federal Water or Air Pollution Laws). Consistent with California Government Code 4477, these requirements do not permit UC to contract with entities in violation of Federal or State water or air pollution laws.
4. Web Accessibility Requirements.

**D(1)** As applicable to the Supplies and/or Services being provided under the Agreement, Supplier warrants that:

1. It complies with California and federal disability laws and regulations; and
2. The Goods and/or Services will conform to the accessibility requirements of WCAG 2.0AA.
3. Supplier agrees to promptly respond to and resolve any complaint regarding accessibility of its Goods and/or Services;

**D(2)** As applicable to the Supplies and/or Services being provided under the Agreement, Supplier warrants that:

1. It complies with California and federal disability laws and regulations; and
2. The Goods and/or Services will conform to the accessibility requirements of WCAG 2.0AA.
3. Within six (6) months of the signing of this Agreement, Supplier will complete the testing of the Goods and/or Services for level AA conformance with Web Content Accessibility Guidelines (WCAG) 2.0 and report those findings to the University. In the event that testing results in findings of non-compliance, Supplier will provide a remediation plan to the University within two (2) months of completion of testing, and will use reasonable efforts to adhere to any remediation timelines provided to the University; and
4. The University and its Authorized User may abridge, modify, translate, or create any derivative work based on the Goods and Services when necessary to allow Authorized Users with disabilities to access the Goods and Services.

**D(3)** As applicable to the Supplies and/or Services being provided under the Agreement, Supplier warrants that:

1. It will comply with California and federal disability laws and regulations; and
2. Supplier will promptly respond to remediate to any identified accessibility defects in the Goods and/or Services to conform to WCAG 2.0 AA; and
3. Supplier agrees to promptly respond to and use reasonable efforts to resolve and remediate any complaint regarding accessibility of its Goods and/or Services.
4. General Accessibility Requirements. Supplier warrants that:

1. It will comply with California and federal disability laws and regulations;

2. Supplier will promptly respond to remediate to any identified accessibility defects in the Goods and Services to conform to WCAG 2.0 AA; and

3. Supplier agrees to promptly respond to and use reasonable efforts to resolve and remediate any complaint regarding accessibility of its Goods and/or Services.

1. Warranty of Quiet Enjoyment. Supplier warrants that Supplier has the right of Quiet Enjoyment in and conveys the right of Quiet Enjoyment to UC for UC’s use of, any and all intellectual property that will be needed for Supplier’s provision, and UC’s use of, the Goods and/or Services provided by Supplier under the Agreement.
2. California Child Abuse and Neglect Reporting Act ("CANRA"). Where applicable, Supplier warrants that it complies with CANRA.
3. Debarment, Suspension, U.S. Government Restricted Party Lists. Supplier warrants that it 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 is not presently debarred, suspended, proposed for debarment, or otherwise declared ineligible for award of federal contracts or participation in federal assistance programs or activities.
4. UC Trademark Licensing Code of Conduct. If the Goods will bear UC’s name (including UC campus names, abbreviations of these names, UC logos, UC mascots, or UC seals) or other trademarks owned by UC, Supplier warrants that it holds a valid license from UC and complies with the Trademark Licensing Code of Conduct policy, available at http://policy.ucop.edu/doc/3000130/TrademarkLicensing.
5. Outsourcing (Public Contract Code section 12147) Compliance. Supplier warrants that if the Agreement will displace UC employees, no funds paid under the Agreement will be used to train workers who are located outside of the United States, or plan to relocate outside the United States as part of the Agreement. Additionally, Supplier warrants that no work will be performed under the Agreement with workers outside the United States, except as described in Supplier’s bid. If Supplier or its sub-supplier performs the Agreement with workers outside the United States during the life of the Agreement and Supplier did not describe such work in its bid, Supplier acknowledges and agrees that (i) UC may terminate the Agreement without further obligation 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.
6. Supplier warrants that the Goods and Services rendered under this Agreement 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 the 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 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.

**ARTICLE 7 – INTELLECTUAL PROPERTY, COPYRIGHT, PATENTS, AND DATA RIGHTS**

1. Goods and/or Services Involving Work Made for Hire.
2. Unless UC indicates that the Goods and/or Services do not involve work made for hire, Supplier acknowledges and agrees that any deliverables provided to UC by Supplier in the performance of the Agreement, and any intellectual property rights therein, (hereinafter the "Deliverables") will be owned by UC. The Deliverables will be considered "work made for hire" under U.S. copyright law and all right, title, and interest to and in such Deliverables including, but not limited to, any and all copyrights or trademarks, will be owned by UC. In the event that it is determined that UC is not the owner of such Deliverables under the "work made for hire" doctrine of U.S. copyright law, Supplier hereby irrevocably assigns to UC all right, title, and interest to and in such Deliverables and any copyrights or trademarks thereto.
3. The Deliverables must be new and original. Supplier must not use any pre-existing copyrightable or trademarked images, writings, or other proprietary materials (hereinafter "Pre-Existing Materials") in the Deliverables without UC’s prior written permission. In the event that Supplier uses any Pre-Existing Materials in the Deliverables in which Supplier has an ownership interest, UC is hereby granted, and will have, a non-exclusive, royalty-free, irrevocable, perpetual, paid-up, worldwide license (with the right to sublicense) to make, have made, copy, modify, make derivative works of, use, perform, display publicly, sell, and otherwise distribute such Pre-Existing Materials in connection with the Deliverables.
4. Whenever any invention or discovery is made or conceived by Supplier in the course of or in connection with the Agreement, Supplier will promptly furnish UC with complete information with respect thereto and UC will have the sole power to determine whether and where a patent application will be filed and to determine the disposition of title to and all rights under any application or patent that may result.
5. Supplier is specifically subject to an obligation to, and hereby does, assign all right, title, and interest in any such intellectual property rights to UC as well as all right, title and interest in tangible research products embodying any such inventions whether the inventions are patentable or not. Supplier agrees to promptly execute any additional documents or forms that UC may require in order to effectuate such assignment.
6. Goods and/or Services Not Involving Work Made for Hire.
7. If the Goods and/or Services do not involve work made for hire, and in the event that Supplier uses any Pre-Existing Materials in the Deliverables in which Supplier has an ownership interest, UC is hereby granted, and will have, a non-exclusive, royalty-free, irrevocable, perpetual, paid-up, worldwide license (with the right to sublicense) to make, have made, copy, modify, make derivative works of, use, perform, display publicly, sell, and otherwise distribute such Pre-Existing Materials in connection with the Deliverables.
8. The Deliverables must be new and original. Supplier must not use any Pre-Existing Materials in the Deliverables without UC’s prior written permission.
9. Whenever any invention or discovery is made or conceived by Supplier in the course of or in connection with the Agreement, Supplier will promptly furnish UC complete information with respect thereto and UC will have the sole power to determine whether and where a patent application will be filed and to determine the disposition of title to and all rights under any application or patent that may result.
10. Supplier is specifically subject to an obligation to, and hereby does, assign all right, title, and interest in any such intellectual property rights to UC as well as all right, title and interest in tangible research products embodying any such inventions whether the inventions are patentable or not. Supplier agrees to promptly execute any additional documents or forms that UC may require in order to effectuate such assignment.
11. General. Should the Goods and/or Services become, or in Supplier’s opinion be likely to become, the subject of a claim of infringement of any patent, copyright, trademark, trade name, trade secret, or other proprietary or contractual right of any third party, Supplier will provide written notice to UC of the circumstances giving rise to such claim or likely claim. In the event that UC receives notice of a claim of infringement or is made a party to or is threatened with being made a party to any claim of infringement related to the Goods and/or Services, UC will provide Supplier with notice of such claim or threat. Following receipt of such notice, Supplier will either (at Supplier’s sole election) (i) procure for UC the right to continue to use the affected portion of the Goods and/or Services, or (ii) replace or otherwise modify the affected portion of the Goods and/or Services to make them non-infringing, or obtain a reasonable substitute product for the affected portion of the Goods and/or Services, provided that any replacement, modification or substitution under this paragraph does not effect a material change in the Goods and/or Services’ functionality. If none of the foregoing options is reasonably acceptable to UC, UC will have the right to terminate the Agreement without damage, penalty, cost, or further obligation.
12. 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. 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.

**ARTICLE 8 – INDEMNITY** **AND LIABILITY**

To the fullest extent permitted by law, Supplier will defend, indemnify, and hold harmless UC, its officers, employees, and agents, from and against all losses, expenses (including, without limitation, reasonable attorneys' fees and costs), damages, and liabilities of any kind resulting from or arising out of the Agreement, including the performance hereunder of Supplier, its officers, employees, agents, sub-suppliers, or anyone directly or indirectly employed by Supplier, or any person or persons under Supplier's direction and control, provided such losses, expenses, damages and liabilities are due or claimed to be due to the acts or omissions of Supplier, its officers, employees, agents, sub-suppliers, or anyone directly or indirectly employed by Supplier, or any person or persons under Supplier's direction and control. UC agrees to provide Supplier with prompt notice of any such claim or action and to permit Supplier to defend any claim or action, and that UC will cooperate fully in such defense. UC retains the right to participate in the defense against any such claim or action, and the right to consent to any settlement, which consent will not unreasonably be withheld.

In the event Appendix DS applies to this Agreement, 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: (1) any disclosure of Institutional Information to an unauthorized party or in an unlawful manner; (2) unauthorized or unlawful acquisition of information that compromises the security, confidentiality or integrity of Institutional Information and/or IT Resources; and (3) 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.

Supplier shall indemnify and hold harmless UC if any amount of reimbursement is denied or disallowed because of Supplier’s failure to comply with **Article 38, Section C – Access to Books and Records**. Such indemnity shall include, but not be limited to, the amount or reimbursement denied, plus any interest, penalties, and legal costs.

To the extent the terms of this Agreement apply or extend to Additional UC Locations and UC Affiliates, Supplier will defend, indemnify, and hold harmless each Customer and its officers, employees, and agents on the same terms as those specified in the UC Terms and Conditions. To the extent the terms of the Agreement apply or extend to UC Affiliates, UC is not responsible for the acts or omissions of any UC Affiliate. UC Affiliates shall remain liable for each such UC Affiliate’s compliance or non-compliance with the terms of the Agreement as it pertains to the SOW or PO(s) of such UC Affiliate.

**ARTICLE 9** **–** **INSURANCE**

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

A. Commercial Form General Liability Insurance (contractual liability included) with limits as follows:

1. Each Occurrence $ 2,000,000

2. Products/Completed Operations Aggregate $ 5,000,000

3. Personal and Advertising Injury $ 2,000,000

4. General Aggregate $ 5,000,000

B. Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles with a combined single limit of not less than one million dollars ($1,000,000) per occurrence. (Required only if Supplier drives on UC premises or transports UC employees, officers, invitees, or agents in the course of supplying the Goods and/or Services to UC.)

C. If applicable, Professional Liability Insurance with a limit of two million dollars ($2,000,000) per occurrence 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 as required by applicable state law and Employer’s Liability with limits of one million dollars ($1,000,000) per occurrence.

E. If applicable, Supplier Fidelity Bond or Crime coverage for the dishonest acts of its employees in a minimum amount of one million dollars ($1,000,000). Supplier will endorse such policy to include a “Regents of the University of California Coverage” or “Joint Payee Coverage” endorsement. UC and, if so requested, UC’s officers, employees, agents, and sub-suppliers will be named as "Loss Payee, as Their Interest May Appear” in such Fidelity Bond.

F.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, 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: (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 insurance coverage is based on the highest Protection Level Classification of Institutional Information identified in Exhibit 1 to Appendix DS:

1. P1 - This insurance policy must have minimum limits of $500,000 each occurrence and $500,000 in the aggregate.

2. P2 - This insurance policy must have minimum limits of $1,000,000 each occurrence and $1,000,000 in the aggregate.

3. 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.

4. 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-it-resource-classification.html>

G. Additional other insurance in such amounts as may be reasonably required by UC against other insurable risks relating to performance. If the above insurance is written on a claims-made form, it will continue for three years following termination of the Agreement. The insurance will have a retroactive date of placement prior to or coinciding with the effective date of the Agreement. If the above insurance coverage is modified, changed, or cancelled, Supplier will provide UC with not less than fifteen (15) days’ advance written notice of such modification, change, or cancellation, and will promptly obtain replacement coverage that complies with this Article.

I. The coverages referred to under A and B of this Article must include UC as an additional insured. It is understood that the coverage and limits referred to under A, B and C of this Article will not in any way limit Supplier’s liability. Supplier will furnish UC with certificates of insurance (and the relevant endorsement pages) evidencing compliance with all requirements prior to commencing work under the Agreement. Such certificates will:

1. Indicate that The Regents of the University of California has been endorsed as an additional insured for the coverage referred to under A and B of this Article. This provision will only apply in proportion to and to the extent of the negligent acts or omissions of Supplier, its officers, agents, or employees.

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

**ARTICLE 10 – USE OF UC NAME AND TRADEMARKS**

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

**ARTICLE 11 – FEDERAL FUNDS**

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

* + 1. For commercial transactions involving funds on a federal contract (federal awards governed by the FAR), the following provisions apply, as applicable:
1. FAR 52.203-13, Contractor Code of Business Ethics and Conduct;
2. FAR 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights;
3. FAR 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements;
4. FAR 52.219-8, Utilization of Small Business Concerns;
5. FAR 52.222-17, Nondisplacement of Qualified Workers;
6. FAR 52.222-21, Prohibition of Segregated Facilities;
7. FAR 52.222-26, Equal Opportunity;
8. FAR 52.222-35, Equal Opportunity for Veterans;
9. FAR 52.222-36, Equal Opportunity for Workers with Disabilities;
10. FAR 52.222-37, Employment Reports on Veterans;
11. FAR 52.222-40, Notification of Employee Rights Under the National Labor Relations Act;
12. FAR 52.222-41, Service Contract Labor Standards;
13. FAR 52.222-50, Combating Trafficking in Persons;
14. FAR 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment - Requirements;
15. FAR 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services - Requirements;
16. FAR 52.222-54, Employment Eligibility Verification;
17. FAR 52.222-55, Minimum Wages Under Executive Order 13658;
18. FAR 52.222-62, Paid Sick Leave under Executive Order 13706;
19. FAR 52.224-3, Privacy Training;
20. FAR 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations;
21. FAR 52.233-1, Disputes; and
22. FAR 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels.
	* 1. 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 [www.ucop.edu/procurement-services/policies-forms/index.html](http://www.ucop.edu/procurement-services/policies-forms/index.html) is hereby incorporated herein by this reference.
		2. 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:
23. 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”.
24. 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).
25. 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.
26. Procurement of Recovered Materials. If Supplier is a state agency or agency of a political subdivision of a state, then Supplier must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.
27. 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.
	* 1. 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:
28. Neither Supplier nor its principals are presently debarred, suspended, or proposed for debarment by the U.S. government (see FAR 52.209-6);
29. Supplier has filed all compliance reports required by the Equal Opportunity clause (see FAR 52.222-22); and
30. 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.
31. 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 12 – 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), 60-300.5(a) and 60-741.5(a), incorporated by reference with this statement: **“This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.”** With respect to activities occurring in the State of California, Supplier agrees to adhere to the California Fair Employment and Housing Act. Supplier will provide UC on request a breakdown of its labor force by groups as specified by UC and will discuss with UC its policies and practices relating to its affirmative action programs. Supplier will not maintain or provide facilities for employees at any establishment under its control that are segregated on a basis prohibited by federal law. Separate or single-user restrooms and necessary dressing or sleeping areas must be provided, however, to ensure privacy.

**ARTICLE** **13 – LIENS**

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

**ARTICLE 14 – PREMISES WHERE SERVICES ARE PROVIDED**

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

**ARTICLE 15 – LIABILITY FOR UC - FURNISHED PROPERTY**

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

**ARTICLE 16 – COOPERATION**

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

**ARTICLE 17 – ADDITIONAL TERMS APPLICABLE TO THE FURNISHING OF GOODS**

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

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.
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.
3. Title. Title to the Goods purchased under the Agreement will pass directly from Supplier to UC at the f.o.b. point shown, or as otherwise specified in the Agreement, subject to UC’s right to reject upon inspection.
4. Changes. Notwithstanding the terms in Article 34, Amendments, UC may make changes within the general scope of the Agreement in drawings and specifications for specially manufactured Goods, place of delivery, method of shipment or packing of the Agreement by giving notice to Supplier and subsequently confirming such changes in writing. If such changes affect the cost of or the time required for performance of the Agreement, UC and Supplier will agree upon an equitable adjustment in the price and/or delivery terms. Supplier may not make changes without UC’s written approval. Any claim of Supplier for an adjustment under the Agreement must be made in writing within thirty (30) days from the date Supplier receives notice of such change unless UC waives this condition in writing. Nothing in the Agreement will excuse Supplier from proceeding with performance of the Agreement as changed hereunder. Supplier may not alter or misbrand, within the meaning of the applicable Federal and State laws, the Goods furnished.
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 year. This warranty is in addition to any applicable warranties in Articles 6 and 11.
6. Export Control. Export Control. Supplier agrees to provide UC (the contact listed on the PO) 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 PO) 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 18 – CONFLICT OF INTEREST**

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

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

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

**ARTICLE 19 – AUDIT REQUIREMENTS**

The Agreement, and any pertinent records involving transactions relating to 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. UC, and if the underlying grant, cooperative agreement, or federal contract so provides, the other contracting Party or grantor (and if that be the United States or an instrumentality thereof, then the Comptroller General of the United States) will have access to and the right to examine Supplier’s pertinent books, documents, papers, and records involving transactions and work related to the Agreement until the expiration of five (5) years after final payment under the Agreement. The examination and audit will be confined to those matters connected with the performance of the Agreement, including the costs of administering the Agreement.

**ARTICLE 20 – PROHIBITION ON UNAUTHORIZED USE OR DISCLOSURE OF INSTITUTIONAL INFORMATION**

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 is 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. For the avoidance of doubt, the sale of Institutional Information is expressly prohibited.
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, and no less rigorously than it protects its own information, but in no case less than reasonable care.
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 which is (i) marked as “Confidential” at the time of disclosure; (ii) 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; and (iii) if not marked as “Confidential,” information that would be considered by a reasonable person in the relevant field to be confidential given its content and the circumstances of its disclosure. Confidential Information will not be considered confidential to the extent that: (i) Supplier can demonstrate by written records was known to Supplier prior to the effective date of the Agreement; (ii) is currently in, or in the future enters, the public domain other than through a breach of the Agreement or through other acts or omissions of Supplier; (iii) is obtained lawfully from a third party; or (iv) is disclosed under the California Public Records Act or legal process. For the avoidance of doubt, as applicable to Supplier’s Services, Confidential Institutional Information may include any information that identifies or is capable of identifying a specific individual, including but not limited to:
	1. Personally identifiable information,
	2. Protected Health Information as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the HIPAA regulations (including, but not limited to 45 C.F.R. § 160.103),
	3. Medical information as defined by California Civil Code § 56.05,
	4. Cardholder data,
	5. Student records, or
	6. Individual financial information that is subject to laws restricting the use and disclosure of such information, including but not limited to:
		1. Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 *et seq*.);
		2. The federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2));
		3. The federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g);
		4. The federal Fair and Accurate Credit Transactions Act (15 U.S.C. § 1601 *et seq*.);
		5. The Fair Credit Reporting Act (15 U.S.C. § 1681 *et seq*); and
		6. Applicable international privacy laws, including, but not limited to the General Data Protection Regulation.
4. Required Disclosures of Institutional Information. If Supplier is required by a court of competent jurisdiction or an administrative body 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 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.
5. 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.
6. Conflict in Terms. UC’s Appendix – Data Security, Appendix – BAA, and/or Appendix GDPR will control in the event that one or more appendices is incorporated into the Agreement and conflicts with the provisions of this Article.
7. Acknowledgement. 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.

**ARTICLE 21 – UC WHISTLEBLOWER POLICY**

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

**ARTICLE 22 – SUSTAINABLE PROCUREMENT GUIDELINES**

Supplier will conduct business using environmentally, socially, and economically sustainable products and services (defined as products and services with a lesser or reduced effect on human health and the environment, and which generate benefits to the University as well as to society and the economy, while remaining within the carrying capacity of the environment), to the maximum possible extent consistent with the Agreement, and with the University of California Sustainable Practices Policy ([https://policy.ucop.edu/doc/3100155](https://policy.ucop.edu/doc/3100155/Sustainable%20Practices)) and the University of California Sustainable Procurement Guidelines:

<https://www.ucop.edu/procurement-services/_files/sustainableprocurementguidelines.pdf>.

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

1. Sustainability Marketing Standards. Supplier sustainability related claims, where applicable, must meet UC recognized certifications and standards set forth in the UC Sustainable Procurement Guidelines and/or meet the standards of Federal Trade Commission’s (FTC) Green Guides.
2. Electronic Transfer of Supplier Information. Suppliers, when interacting with the UC, shall be prohibited from providing hard copies of presentations, marketing material, or other informational materials. Suppliers will be required to present all information in electronic format that is easily transferable to UC staff. Materials may be provided in hard copy or physical format if specifically required or requested by a UC representative.
3. Packaging Requirements. All packaging must be compliant with the Toxics in Packaging Prevention Act (AB 455) and must meet all additional standards and requirements set forth in the UC Sustainable Practices Policy. In addition, UC requires that all packaging meet at least one of the criteria listed below:
	1. Uses bulk packaging;
	2. Uses reusable packaging (e.g., totes reused by delivery service for next delivery);
	3. Uses innovative packaging that reduces the weight of packaging, reduces packaging waste, or utilizes packaging that is a component of the product;
	4. 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;
	5. Uses locally recyclable or certified compostable material.
4. Foodservice Foam Ban. As of 2018, the University no longer allows packaging foam or expanded polystyrene (EPS) for takeaway containers or other food service items, in any University-owned or -operated food service facility.
5. Product Packaging Foam Ban. Beginning January 1st, 2020, the University will prohibit 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 (EPS)), polyurethane foam, polyethylene foam, polyvinyl chloride (PVC) foam, and microcellular foam. Not included in this ban are easily biodegradable, plant-based foams such as those derived from corn or mushrooms.
6. E-Waste Recycling Requirements. All recyclers of UC electronic equipment must be e-Steward certified by the Basel Action Network (BAN).
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 UC Sustainable Procurement Guidelines, in both hosted and punch-out catalog e-procurement environments.

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

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

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

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

**ARTICLE 24 - PREVAILING WAGES**

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

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

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

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

**ARTICLE 25 – FAIR WAGE/FAIR WORK**

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

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 (i) at Supplier’s expense, provide an annual independent verification (<https://www.ucop.edu/procurement-services/for-suppliers/fwfw-resources-suppliers.html>) 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 (<https://www.ucop.edu/procurement-services/for-suppliers/fwfw-resources-suppliers.html>), concerning Supplier’s compliance with this provision, and (ii) ensure that in the case of a UC interim 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 days after the end of the 12-month period in which $100,000 in spend is reached.

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 (<https://www.ucop.edu/procurement-services/for-suppliers/fwfw-resources-suppliers.html>). Please see the UC Procurement/Supply Chain Management Policy BUS-43 (<https://www.ucop.edu/procurement-services/policies-forms/business-and-finance/index.html>) for the definition of professional services and consulting.

**ARTICLE 26 – MEDICAL DEVICES**

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

Medical Device as used herein will have the meaning provided by the U.S. Food and Drug Administration (“FDA”) and means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component part, or accessory which is: (i) recognized in the official National Formulary, or the United States Pharmacopoeia, or any supplement to them; (ii) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in humans or other animals, or (iii) intended to affect the structure or any function of the body of humans or other animals, and which does not achieve any of its primary intended purposes through chemical action within or on the body of humans or other animals and which is not dependent upon being metabolized for the achievement of any of its primary intended purposes.

Supplier warrants that prior to UC’s purchase or lease of any Medical Device or Supplier’s use of any Medical Device in providing Goods and/or Services hereunder, Supplier will: (i) perform security testing and validation for each such Goods and/or Services or Medical Device, as applicable; (ii) 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; (iii) conduct a vulnerability scan encompassing all ports and fuzz testing; and (iv) provide UC with reports for (i) – (iii). Supplier warrants that all Goods or Medical Devices are compliant with FDA’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.

Throughout Supplier’s performance of this Agreement, Supplier will provide UC with reasonably up-to-date patches, firmware and security updates for any Medical Device provided to UC, and any other Medical Device used in the course of providing Services, as applicable. All such patches and other security updates will be made available to UC within thirty (30) days of its commercial release or as otherwise recommended by Supplier or Supplier’s sub-supplier, whichever is earlier.

Supplier warrants that all software and installation media not specifically required for any Medical Device used by Supplier or 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 Supplier-approved applications will run on such Medical Devices.

Supplier agrees that UC may take any and all actions that it, in its sole discretion, deems necessary to address, mitigate and/or rectify any real or potential security threat, and that no such action, to the extent such action does not compromise device certification, will impact, limit, reduce or negate Supplier’s warranties or any of Supplier’s other obligations hereunder.

Supplier warrants that any Medical Device provided to UC, and any other Medical Device used in the course of providing such Goods and/or Services, meet and comply with all cyber-security guidance and similar standards promulgated by the FDA and any other applicable regulatory body.

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 27 – 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, strikes or other labor disputes, transportation contingencies, freight embargoes, acts or orders of any government or agency or official thereof, earthquakes, fires, floods, unusually severe weather, epidemics, pandemics, 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 28 – ASSIGNMENT AND SUBCONTRACTING**

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

**ARTICLE 29 – NO THIRD-PARTY RIGHTS**

Nothing in the Agreement, 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.

**ARTICLE 30 – OTHER APPLICABLE LAWS**

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

**ARTICLE 31 – NOTICES**

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

To the extent the Agreement extends to Additional UC Locations and UC Affiliates, Notices pertaining to a specific PO or Customer shall be directed to the address(es) specified in such Customer’s SOW or PO.

**ARTICLE 32 – SEVERABILITY**

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

# ARTICLE 33 – WAIVER

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

**ARTICLE 34 – AMENDMENTS**

The Parties may make changes in the Goods and/or Services or otherwise amend the Agreement, but only by a writing signed by both Parties’ authorized representatives. 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. A Material Change as used herein refers to:

1. A change to the scope of Goods and/or Services to be provided by Supplier, as agreed to by UC;
2. 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;
3. Changes in the status of the parties;
4. Changes in flow down terms from external parties; and
5. Changes in law or regulation applicable to this Agreement.

Each party shall notify the other party upon the occurrence of a Material Change.

**ARTICLE 35 – GOVERNING LAW****AND** **VENUE**

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

**ARTICLE 36 – ASSISTANCE IN LITIGATION OR ADMINISTRATIVE 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 investigations, or proceedings against UC, its directors, officers, agents, or employees relating to the Goods or Services.

**ARTICLE 37 – SUPPLIER TERMS**

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

**ARTICLE 38 – UC HEALTH TERMS**

1. Government Health Care Programs. Neither Supplier nor its employees nor agents is now nor has ever been excluded, suspended, debarred, or otherwise sanctioned or made ineligible from participation in any government sponsored program, including any federal or state health care program (e.g., Medicare, Medi-Cal), and no proceedings, investigations, or inquiries are currently pending or threatened by any federal or state agency as a result of which Supplier or its employees or agents could be excluded, sanctioned, debarred or otherwise made ineligible from participation in any government sponsored program or sanctioned for any violation of any rule or regulation of such programs (excluding denial of reimbursement or payment of any specific claim or claims). Supplier will immediately provide written notice to UC of any such pending or threatened investigation or inquiry upon becoming aware of such investigation or inquiry. Any breach of this Section shall give UC the right to terminate the Agreement immediately for cause.
2. Compliance with Laws. Supplier represents and warrants that it is currently, and shall remain throughout the term of the Agreement, in material compliance with applicable laws, rules and regulations, including, but not limited to, those relating to participation in the Medicare and Medi-Cal programs, the False Claims Act, the Civil Monetary Penalties Law, the Federal anti-kickback statute, and corresponding state laws; the Health Insurance Portability and Accountability Act of 1996, as amended, and its implementing regulations (“HIPAA”), the California Confidentiality of Medical Information Act (“CMIA”), and all other applicable, state, local and federal requirements. The Parties acknowledge that this Agreement, together with other contracts between Supplier and UC, will be included on the master list of physician contracts maintained by UC, as applicable.
3. Access to Books and Records.
	1. 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.
	2. 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.
	3. If Supplier carries out any of the duties of the Agreement through a subcontract with a value of $10,000.00 or more over a twelve (12) month period with a related individual or organization (as that term is defined in 42 C.F.R. § 420.300), Supplier agrees to include this requirement in any such subcontract.
	4. This Section is included pursuant to and is governed by the requirements of 42 U.S.C. § 1395x(v)(1) and the regulations thereto. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by UC or Supplier by virtue of the Agreement.
4. No Requirement to Refer; Fair Market Value The Parties expressly acknowledge and agree that it is their intent to comply fully with all federal, state, and local laws, rules, and regulations. Supplier and UC each declare their intent that none of the terms of the Agreement are in exchange for any direct or indirect patient referrals or any arranged for, recommended, or promised referrals of patients. It is not the purpose nor is it a requirement of the Agreement to offer or receive any remuneration or benefit of any nature or to solicit, require, induce, or encourage the referral of any patient, 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 and Customer, as applicable, the existence of any financial relationship Supplier currently has or enters in to during the term of the Agreement with a physician (or entity composed of or employing a physician) who Supplier has reason to believe is a member of the medical staff of any UC facility, as applicable. The Agreement is not intended to influence a medical professional’s judgment in choosing the medical facility appropriate for the proper care and treatment of her or his patients.
5. Disclosure of Discounts. UC acknowledges that discounts, rebates, credit, free goods and services, coupons, or other things of value which it may receive from Supplier under the Agreement constitute a discount or reduction in price for purposes of 42 U.S.C. paragraph 1320a-7(b)(3)(A). UC agrees to file all appropriate reports and to properly disclose and reflect all such discounts, rebates, credit, free goods and services, coupons or other things of value or any price reductions in any report filed in connection with state or federal cost reimbursement programs.
6. Protected Health Information or Medical Information.

**/\_\_/ It is NOT anticipated that Supplier will require access to “Protected Health Information,”** as defined by the privacy and security standards of HIPAA, the regulations promulgated thereunder by the U.S. Department of Health and Human Services, or “Medical Information” (collectively with Protected Health Information, “PHI”), as defined by the California Confidentiality of Medical Information Act, California Civil Code §§ 56-56.16 or California Health and Safety Code §1280.15 and California Civil Code §§ 1798.82 and 1798.29 in order to perform its obligations under the Agreement. However, in the event that Supplier has unintentionally received PHI, Supplier will notify UC immediately and Supplier shall use commercially reasonable efforts to return the PHI to UC, as applicable, and to maintain the confidentiality of the PHI. Additionally, in the event the nature of the Good and/or Services change such as to require Supplier to have access to PHI, Supplier will notify UC, as applicable, and Supplier will execute and deliver the UC HIPAA Business Associate Agreement or modify the terms of this Agreement.

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

In the event Supplier will have access to PHI, UC Affiliates may require Supplier to execute and deliver a HIPAA business associate agreement with respect to performance of Goods and/or Services for such UC Affiliate.

1. New Technology.
	* + 1. UC and Supplier believe an essential element of advancing the core objectives and mission of UC is to encourage the development of health care technology that significantly improves the quality, process and/or outcome of care. In support of this belief, the Parties acknowledge that certain products and implants which incorporate breakthrough technologies have the potential to significantly improve non-clinical operational efficiency or improved clinical outcomes when compared to the level of safety, operational efficiency, process of care and/or outcomes delivered through use of the products covered under this Agreement (hereafter, "New Technology Products").
			2. New Technology Products shall be disclosed to UC promptly upon such products’ commercial availability.
			3. New Technology Products will not be provided to UC without prior review and approval by UC. Should such New Technology Products become available, UC will conduct an evaluation to determine if the product meets facility criteria and clinical needs. Supplier shall cooperate with UC’s efforts to evaluate such New Technology Products, including, but not limited to, providing UC with information and/or training pertaining to the products. If UC agrees to accept a New Technology Product following evaluation, UC and Supplier shall negotiate final pricing and product conversion (if required) based on the contract pricing of the nearest comparable product(s) available to UC for purchase under the Agreement for which pricing has been mutually agreed upon at the time of release. Following the negotiation of pricing terms for such approved New Technology Products, the parties shall amend in writing any of the Incorporated Documents as necessary to identify the New Technology Products available to UC and Customers under this Agreement, and the pricing agreed upon. Invoices that contain New Technology Products that are not listed as approved products under any of the Incorporated Documents, as amended, will be free of charge to UC and the applicable Customer and will not be paid for.
			4. During the contract period, Supplier may release new versions of existing technology (“Updated Technology”). If it is determined that a new version of existing technology causes an existing product available to UC and Customers under the Agreement to become obsolete, Supplier will provide the updated technology at the existing contract price.
2. Auditing**.** Supplier shall allow UC to audit Supplier for UC’s requirements covered by this Agreement, as applicable, at least quarterly. If upon audit by UC, non-compliance in regards to UC policies, and/or this Agreement, are identified, UC may give notice to cure the deficiency, and if such deficiency is not cured to UC’S reasonable satisfaction, UC may terminate this Agreement.
3. No Exclusivity**.** It is understood by Supplier that this Agreement is not exclusive. UC and each Customer has, and will continue to have, or may have, other relationships with other suppliers for the provision of Goods and/or Services similar to the Goods and/or Services provided herein, with no minimum guarantee of the utilization of Supplier’s Goods and/or Services.

**ARTICLE 39 – CONTRACTING FOR COVERED SERVICES**

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.

Unless UC notifies Supplier that the Services are not Covered Services, Supplier warrants that it is in compliance with applicable federal, state, and local working conditions requirements, including but not limited to those set forth in in other Articles of the Agreement. In accordance with Regents Policy 5402 and Article 5 of the AFSCME EX and SX Collective Bargaining Agreements, Supplier also warrants that it pays its employees performing the Covered Services at UC locations the equivalent value of the wages and benefits – as determined in the Wage and Benefit Parity Appendix – received by UC employees providing similar services at the same, or nearest UC location.

Supplier shall be prepared to report to UC the total hours worked by each employee or contract worker (collectively the “Worker”) who performed services on behalf of Supplier pursuant to this Agreement. Upon request Supplier shall report each worker’s name and hours worked providing covered services to UC. Failure to comply with the wages or reporting requirements of this clause will be considered a breach of this Agreement.

Supplier fully acknowledges that should any Worker work (i) 1,000 hours in a rolling twelve (12) month period; or (ii) 35% time over a rolling thirty-six (36) month period on behalf of Supplier pursuant to this Agreement, that Worker will be deemed a “qualified individual” (“QI”) and will be eligible for UC employment. Supplier acknowledges and agrees that should UC make an offer of employment to any QI, and/or if the Worker accepts employment with UC, UC will not be in breach of this Agreement or in violation of any other legal obligation it has to Supplier.

Upon UC’s request, 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 days after receiving request.

**ARTICLE 40 – SURVIVAL CLAUSE**

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

UC Data Security - 8/20/21

Appendix

Data Security

# ARTICLE 1. PURPOSE AND INTRODUCTION

1. In the course of providing the Goods and/or Services contemplated by the Agreement, Supplier may gain access to the University of California’s (UC) Institutional Information and/or IT Resources (both defined below). In such an event, UC, and Supplier desire to appropriately protect Institutional Information and IT Resources. The purpose of this Appendix-Data Security is to specify Supplier’s cybersecurity and risk management responsibilities when Supplier has access to Institutional Information and/or IT Resources.
2. Any capitalized terms used here have the meaning ascribed to such terms as set forth in the Agreement or Incorporated Documents.
3. Supplier must provide commercially acceptable cybersecurity and cyber risk management to protect Institutional Information and/or IT Resources. This must include, but is not limited to the Supplier:
	1. Developing and documenting a plan that protects Institutional Information and IT Resources.
		* Supplier must responsibly execute this plan.
		* Supplier’s approach must conform to a recognized cybersecurity framework designed for that purpose.[1](#_bookmark0)
		* Supplier’s information security plan must be supported by a third-party review or certification. Supplier may only use an alternative to a third- party review if approved by the responsible UC Information Security Officer.
	2. Conducting an accurate and thorough assessment of the potential risks to and vulnerabilities of the security of the Institutional Information and/or IT Resources. Supplier must mitigate anticipated risks effectively. This includes implementing commercially acceptable security policies, procedures, and practices that protect Institutional Information and/or IT Resources.
	3. Updating its plan to effectively address new cybersecurity risks.
	4. Complying with pertinent contractual and regulatory responsibilities.
	5. Providing UC with evidence of compliance with Supplier’s information security plan.
	6. Keeping UC informed with timely updates on risks, vulnerabilities, Security Incidents, and Breaches.
	7. Keeping UC informed of any measures UC must perform to ensure the security of Institutional Information and IT Resources.

1 Examples include the latest versions of PCI DSS, NIST CSF, CIS Critical Security Controls, IS0 27000 series, NIST SP 800-53 and NIST SP 800-171.

1. If, in the course of providing the Goods and/or Services under the Agreement, Supplier engages in transactions with UC affiliated individuals (including but not limited to: students, staff, faculty, customers, patients, guests, volunteers, visitors, research subjects, etc.), as a benefit and result of the Agreement, Supplier must treat any data about UC affiliated individuals that Supplier creates, receives, and/or collects in the course of those transactions with the same level of privacy and security protections and standards as required of Institutional Information by this Appendix.
2. Supplier agrees to be bound by the obligations set forth in this Appendix. To the extent applicable, Supplier also agrees to impose, by written contract, the same terms and conditions contained in this Appendix on any sub-supplier retained by Supplier to provide or assist in providing the Goods and/or Services to UC.
3. To the extent that a requirement of this Appendix conflicts with those of any other UC Agreement or Incorporated Document, the most stringent requirement (including but not limited to: least risk to UC, shortest time, best practice, etc.) will apply.

# ARTICLE 2. DEFINED TERMS

1. “Breach” means: (1) Any disclosure of Institutional Information to an unauthorized party or in an unlawful manner; (2) Unauthorized or unlawful acquisition of information that compromises the security, confidentiality, or integrity of Institutional Information and/or IT Resources; or (3) The acquisition, access, use, or disclosure of protected health information (PHI) or medical information in a manner not permitted under the Health Insurance Portability and Accountability Act (HIPAA) or California law.
2. “Illicit Code” means: (1) Any code UC would not reasonably expect to be present or operating; (2) Hidden software or functionality with adverse or undesired actions or consequences; (3) Code that replicates or transmits Institutional Information or activates operating systems or other similar services without the express knowledge and approval of UC; (4) Code that alters, damages, or erases any Institutional Information or software without the express knowledge and approval of UC; or (5) Code or apparatus that functions in any way as a: key lock, node lock, time-out, “back door,” “trap door,” “booby trap,” “dead drop device,” “data scrambling device,” or other function, regardless of how it is implemented, which is intended to alter or restrict the use of or access to any Institutional Information and/or IT Resources.
3. “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.
4. “IT Resource” 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. IT Resources include, but are not limited to: personal and mobile computing systems and devices,

mobile phones, printers, network devices, industrial control systems (including but not limited to: SCADA, PLCs, DPC, Operational Technology, etc.), access control systems, digital video monitoring systems, data storage systems, data processing systems, backup systems, electronic and physical media, biometric and access tokens, or Internet of Things (IoT).

1. “Major Change” means: The implementation of a change that could have an effect on the security of an IT Resource or Institutional Information. The scope includes changes to architectures, processes, tools, metrics, and documentation, as well as changes to IT services and other configuration items. These include changes related to:
	1. Technology upgrades or migrations.
	2. Responses to Security Incidents.
	3. Modifications of scope (data elements, features, location of Institutional Information, etc.).
	4. Regulatory guidance.
	5. Law and legal regulations.
	6. Responses to risk assessments.
	7. Addressing vulnerabilities.
	8. Material updates or shifts in technologies used by Supplier.
2. “Security Incident” means: (1) A material compromise of the confidentiality, integrity, or availability of Institutional Information; (2) A single event or a series of unwanted or unexpected events that has a significant probability of compromising UC business operations or threatening Institutional Information and/or IT Resources; (3) Any event involving a cyber intrusion; or (4) A material failure of Supplier’s administrative, technical, or physical controls that resulted or could have resulted in an adverse impact to the confidentiality, integrity, or availability of Institutional Information or IT Resources.

# ARTICLE 3. ACCESS TO INSTITUTIONAL INFORMATION AND IT RESOURCES

1. Supplier must limit its access to, use of, and disclosure of Institutional Information and IT Resources to the least invasive degree necessary required to provide the Goods and/or Services.
	1. Supplier may not access or use Institutional Information and IT Resources for any purpose except to provide the Goods and/or Services.
	2. For the avoidance of doubt, Supplier may not access, use, or disclose Institutional Information and IT Resources outside the scope of the Agreement for purposes of, including but not limited to: marketing, advertising, research, sale, or licensing unless expressly approved in writing by UC.
2. In the event that Goods and/or Services include the review of a specific Security Incident or a threat to or anomaly in Institutional Information or IT Resources, Supplier must limit inspection to the least invasive degree necessary required to perform the investigation.

# ARTICLE 4. SUPPLIER’S INFORMATION SECURITY PLAN AND RESPONSIBILITIES

1. Supplier acknowledges that UC must comply with information security standards as required by law, regulation, and regulatory guidance, as well as by UC’s internal security program that protects Institutional Information and IT Resources.
2. Supplier must establish, maintain, comply with, and responsibly execute its information security plan.
3. Supplier’s initial information security plan is attached as Exhibit 2 and incorporated by reference.
4. Updates to Exhibit 2 will occur as follows:
	1. On an annual basis, Supplier will review its information security plan, update it as needed, and submit it upon written request by UC.
	2. In the event of a Major Change, Supplier will review its information security plan, update it as needed, and submit it to UC as detailed herein.
5. If Supplier makes any material modifications to its information security plan that will affect the security of Institutional Information and IT Resources, Supplier must notify UC within seventy-two (72) calendar hours and identify the changes.
6. Supplier’s Information Security Plan must:
	1. Ensure the security (including but not limited to: confidentiality, integrity, and availability) of Institutional Information and IT Resources through the use and maintenance of appropriate administrative, technical, and physical controls;
	2. Protect against any reasonably anticipated threats or hazards to Institutional Information and IT Resources;
	3. Address the risks associated with Supplier having access to Institutional Information and IT Resources;
	4. Address applicable regulations and/or external obligations listed in Exhibit 1;
	5. Comply with all applicable legal and regulatory requirements for data protection, security, and privacy;
	6. Clearly document the cybersecurity responsibilities of each party;
	7. Follow UC records retention requirements outlined in the Statement of Work (SOW) or in UC’s Terms and Conditions;
	8. Prevent the sharing of passwords or authentication secrets that provide access to Institutional Information and/or IT Resources;
	9. Prevent the use of passphrases (passwords) or other authentication secrets that are common across customers or multiple unrelated UC sites or units;
	10. Prevent unauthorized access to Institutional Information and IT Resources;
	11. Prevent unauthorized changes to IT Resources;
	12. Prevent the reduction, removal, or turning off of any security control without express written approval from UC;
	13. Prevent the creation of new Supplier accounts to access Institutional Information and IT Resources without express written approval from UC;
	14. Prevent the storing, harvesting, or passing through of UC credentials (username, password, authentication secret, or other factor); and
	15. Prevent the use or copying of Institutional Information for any purpose not authorized under the Agreement or any associated Statement of Work (SOW).

# ARTICLE 5. REQUESTS FROM UC AND EVIDENCE OF COMPLIANCE

1. Supplier must provide UC with evidence that demonstrates to UC’s reasonable satisfaction Supplier’s adherence to its information security plan (including but not limited to: third-party report, attestation signed by an authorized individual, attestation of compliance by a qualified assessor, or a mutually agreed upon equivalent) upon execution of the Agreement, upon reasonable request (including but not limited to: annually, after Major Changes, and/or as a result of a Security Incident), or as required by any applicable regulatory or governmental authority.
2. Supplier must respond to UC’s reasonable questions related to cybersecurity controls, Security Incidents, or Major Changes, newly published vulnerabilities, and/or risk assessments within ten (10) business days.
3. UC may request and perform a security audit using a qualified third party or a mutually agreed upon alternative annually or as a result of a Breach.

# ARTICLE 6. NOTIFICATION OF MAJOR CHANGES AND VULNERABILITY DISCLOSURES

1. Within twenty (20) business days, Supplier must notify UC regarding changes in Supplier’s security posture or IT infrastructure. Such notices must occur:
	1. When Major Changes happen.
	2. When Supplier becomes aware of a vulnerability that warrants a CVE[2](#_bookmark1) rating of “High” or “Critical,” based on the latest CVE version, for which a patch is not yet available or for which Supplier will delay application of an available patch.
2. Supplier must use commercially acceptable efforts to remediate, within twenty

(20) business days, any vulnerability rated as CVE High or Critical.

1. In response to Major Changes, Supplier must update its information security plan no later than fifteen (15) days into the next calendar quarter and must provide updated evidence of compliance with the information security plan.

2 Common Vulnerabilities and Exposures (CVE) is a dictionary-type list of standardized names for vulnerabilities and other information related to security exposures maintained by The MITRE Corporation. CVE aims to standardize the names for all publicly known vulnerabilities and security exposures. The goal of CVE is to make it easier to share data across separate vulnerability databases and security tools. The CVE list can be found at: [cve.mitre.org](https://cve.mitre.org/)

# ARTICLE 7. RETURN AND DISPOSAL OF INSTITUTIONAL INFORMATION

1. Within thirty (30) calendar days of the termination, cancellation, expiration, or other conclusion of the Agreement, Supplier must return all Institutional Information to UC and then dispose of the Institutional Information in possession of Supplier as detailed herein. This provision also applies to all Institutional Information that is in the possession of sub-suppliers or agents of Supplier.
2. Such disposal will be accomplished using the methods described in UC’s Institutional Information Disposal Standard (<https://security.ucop.edu/policies/institutional-information-disposal.html>) or an alternative approved by UC.
3. Supplier will certify in writing to UC that such return and/or disposal has been completed.
4. If Supplier believes that return and/or disposal of Institutional Information is technically impossible or impractical, Supplier must provide UC with a written statement explaining the reason for this conclusion. If UC determines that return and/or disposal is technically impossible or impractical, Supplier will continue to protect the Institutional Information in accordance with the terms of this Appendix for as long as the Institutional Information is in Supplier’s possession.

# ARTICLE 8. NOTIFICATION OF CORRESPONDENCE CONCERNING INSTITUTIONAL  INFORMATION

1. Supplier agrees to notify UC promptly, both orally and in writing, but in no event more than seventy-two (72) calendar hours after Supplier receives correspondence or a complaint that relates to a regulation, contractual obligation, Breach, or material risk concerning Institutional Information. For purposes of this Article 8.A, a correspondence or complaint may include, but is not limited to, any communication that originates from law enforcement, regulatory or governmental agencies, government investigators, corporations, or an individual, but excludes normal customer service correspondence or inquiries.

# ARTICLE 9. COORDINATING, REPORTING, AND RESPONDING TO BREACHES AND SECURITY INCIDENTS

1. Reporting of Breach or Security Incident: If Supplier reasonably suspects or confirms a Breach and/or a Security Incident impacting Institutional Information and/or IT Resources, Supplier must promptly notify UC both orally and in writing using the contacts in the Agreement. Supplier must provide such notifications no later than (1) seventy-two (72) calendar hours after the initial suspicion of a Security Incident and/or Breach and (2) seventy-two (72) calendar hours after the initial confirmation of a Security Incident and/or Breach, if Supplier is able to make such a confirmation. Supplier’s notification must identify:
	1. Contacts for both technical and management coordination;
	2. Escalation and identifying information, such as ticket numbers, system identifiers, etc.;
	3. The nature of the Breach and/or Security Incident;
	4. The Institutional Information and/or IT Resources affected;
	5. What Supplier has done or will do to mitigate any deleterious effect; and
	6. What corrective action Supplier has taken or will take to prevent future Security Incidents.
2. Supplier will provide other information as reasonably requested by UC.
3. In the event of a suspected Breach and/or Security Incident, Supplier will keep UC informed regularly of the progress of its investigation until the incident is resolved.
4. Coordination of Breach Response or Security Incident Activities: Supplier will fully cooperate with UC’s investigation of any Breach and/or Security Incident involving Supplier and/or Goods and/or Services. Supplier’s full cooperation will include, but not be limited to, Supplier:
	1. Promptly preserving any potential forensic evidence relating to the Breach and/or Security Incident;
	2. Remedying the Breach and/or Security Incident as quickly as circumstances permit;
	3. Promptly, but no more than seventy-two (72) calendar hours after the discovery of Breach and/or Security Incident, designating a contact person to whom UC will direct inquiries and who will communicate Supplier responses to UC inquiries;
	4. As rapidly as circumstances permit, assigning/using appropriate resources to remedy, investigate, and document the Breach and/or Security Incident, to restore UC service(s) as directed by UC, and undertake appropriate response activities;
	5. Providing status reports to UC regarding Breach and Security Incident response activities, either on a daily basis or a frequency approved by UC;
	6. Coordinating all media, law enforcement, or other Breach and/or Security Incident notifications with UC in advance of such notification(s), unless expressly prohibited by law;
	7. Ensuring that knowledgeable Supplier employees are available on short notice, if needed, to participate in UC and Supplier initiated meetings and/or conference calls regarding the Breach and/or Security Incident; and
	8. Ensuring that knowledgeable Supplier employees and agents participate in after-action analysis, including root cause analysis and preventive action planning.
5. Breaches and Security Incidents – Corrective and Preventive Action: As a result of a Breach and/or Security Incident impacting Institutional Information and/or IT Resources, and upon UC’s request, Supplier must prepare a report detailing corrective and preventive actions. The report must include:
	1. A mutually agreed upon timeline for the corrective and preventive actions based on the nature of the Breach and/or Security Incident;
	2. Identification and description of the root causes; and
	3. Precise steps Supplier will take to address the failures in the underlying administrative, technical, and/or physical controls to mitigate damages and future cyber risk.
6. Costs: Supplier must reimburse UC for reasonable costs related to responding to Breaches impacting Institutional Information and IT Resources caused by Supplier. This includes all costs associated with notice and/or remediation of the Breach.
7. Grounds for Termination: Any Breach may be grounds for termination of the Agreement by UC. Agreement obligations to secure, dispose, and report continue through the resolution of the Breach and/or Security Incident.

# ARTICLE 10. ILLICIT CODE WARRANTY[3](#_bookmark2)

1. Supplier represents and warrants that the Goods and/or Services do not contain Illicit Code.
2. To the extent that any Goods and/or Services have Illicit Code written into them, Supplier will be in breach of this Agreement, and no cure period will apply.
3. Should Supplier learn of the presence of Illicit Code, Supplier will promptly provide UC with written notice explaining the scope and associated risk.
4. Supplier represents and warrants that it will take commercially reasonable steps to promptly remove Illicit Code.

# ARTICLE 11. BACKGROUND CHECKS

1. Before Supplier’s employee, sub-supplier, or agent may access Institutional Information and/or IT Resources classified at Protection Level 3 or Protection Level 4[4](#_bookmark3), Supplier must conduct a thorough and pertinent background check. Supplier must evaluate the results prior to granting access in order to assure that there is no indication that the employee, sub-supplier, or agent presents a risk to Institutional Information and IT Resources.
2. Supplier must retain each employee’s, sub-supplier’s, or agent’s background check documentation for a period of three (3) years following the termination of the Agreement.

3 This provision does not relate to malware or viruses that attack the running IT Resource. These are covered under ARTICLE 9 - COORDINATING, REPORTING, AND RESPONDING TO BREACHES AND SECURITY INCIDENTS.

4 See Exhibit 1.