



UNIVERSITY OF CALIFORNIA

Terms and Conditions for Goods and Services

ARTICLE 1 – GENERAL. The materials, supplies and/or services furnished by Supplier (together, the “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 all the terms and conditions set forth herein. As used herein, the term “Supplier” includes Supplier and its sub-suppliers at any tier. No other terms or conditions will be binding upon the parties unless accepted by them in writing. Written acceptance or shipment of all or any portion of the materials or supplies, or the performance of all or any portion of the services, covered by the Agreement, will constitute Supplier’s unqualified acceptance of all of the Agreement’s terms and conditions. The terms of any proposal referred to in the Agreement are included and made a part of the Agreement only to the extent the proposal specifies the materials, supplies, and/or services ordered, the price therefor, and the delivery thereof, and then only to the extent that such terms are consistent with the terms and conditions of the Agreement.

ARTICLE 2 – TERM AND TERMINATION.

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penalty, cost or further obligation in the event that through no action or inaction on the part of UC, the Funding is withdrawn.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

ARTICLE 3 – PAYMENT, EXTRA CHARGES, TAXES. UC will pay Supplier, upon submission of acceptable invoices, for Services rendered and accepted. All invoices must be itemized and reference the Agreement or PO number. UC will not pay cartage, shipping, packaging or boxing expenses, unless

specified in the Agreement. Invoices must be accompanied by shipping documents or photocopies of such, if transportation is payable and charged as a separate item. Any of Supplier’s expenses that UC agrees to reimburse will be reimbursed under UC’s Meal and Travel Expense Policy, which may be obtained upon request. Supplier will pay all contributions, taxes and premiums payable under federal, state and local laws measured upon the payroll of employees engaged in providing Services under the Agreement, and all applicable, excise, transportation, privilege, occupational and other taxes applicable to the Services. Where applicable, Supplier will pay all sales and use taxes imposed on the Supplier.

ARTICLE 4 – PRICE DECREASES. Supplier agrees immediately to notify UC of any price decreases from its suppliers, and to pass through to UC any price decreases.

ARTICLE 5 – INSPECTION. The Services furnished will be exactly as specified in the Agreement free from all defects in Supplier’s performance, design, workmanship and materials, and, except as otherwise provided in the Agreement, will be subject to inspection and test by UC at all times and places. If, prior to final acceptance, any Services furnished are found to be incomplete, or not as specified, UC may reject them, require Supplier to correct them without charge, or require delivery of such Services at a reduction in price that is equitable under the circumstances. If Supplier is unable or refuses to correct such items within a time UC deems reasonable, UC may terminate the Agreement in whole or in part. Supplier will bear all risks as to rejected 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 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 6 – CHANGES. UC may make changes within the general scope of the Agreement in drawings and specifications for specially manufactured supplies, 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.

ARTICLE 7 – 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.

ARTICLE 8 – 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.

ARTICLE 9 – ASSIGNED PERSONNEL; CHARACTER OF SERVICES. Supplier will provide the Services as an independent contractor and furnish all equipment, personnel and materiel sufficient to provide the Services expeditiously and efficiently, during as many hours per shift and shifts per week, and at such locations as UC may so require. Supplier will devote only its best-qualified personnel to work under the Agreement. Should UC inform Supplier that anyone providing the Services is not working to this standard, Supplier will immediately remove such personnel from providing Services and he or she will not again, without UC's written permission, be assigned to provide Services. At no time will Supplier or Supplier's employees, sub-suppliers, agents, or assigns be considered employees of UC for any purpose, including but not limited to workers' compensation provisions.

ARTICLE 10 – WARRANTIES.

In addition to the warranties set forth in Articles 15 and 16 herein, Supplier makes the following warranties. Supplier acknowledges that failure to comply with any of the warranties in the Agreement will constitute a material breach of the Agreement and UC will have the right to terminate the Agreement without damage, penalty, cost or further obligation.

A. General Warranties. Supplier agrees that the Services furnished under the Agreement will be covered by the most favorable warranties Supplier gives to any customer for the same or substantially similar services, or such other more favorable warranties as specified in the Agreement. The rights and remedies so provided are in addition to and do not limit any rights afforded to UC by any other article of the Agreement.

B. Permits and Licenses. Supplier agrees to procure all necessary permits or licenses and abide by all applicable laws, regulations and ordinances of the United States and of the state, territory and political subdivision or any other country in which the Services are provided.

C. Federal and State Water and Air Pollution Laws. Supplier warrants that it complies with the requirements in UC Business and Finance Bulletin BUS-56/Materiel Management; Purchases from Entities Violating State or Federal Water or Air Pollution Laws. Consistent with California Government Code 4477, these requirements do not permit UC to contract with entities in violation of Federal or State water or air pollution laws.

D. Accessibility Requirements. Supplier warrants that:

1. It complies with California and federal disabilities laws and regulations; and
2. The Services will comply with the accessibility requirements of WCAG 2.0AA.

Supplier agrees to promptly respond to and resolve any complaint regarding accessibility of its Services.

E. Warranty of Quiet Enjoyment. Supplier warrants that Supplier has the right to use all intellectual property that will be needed to provide the Services.

F. California Child Abuse and Neglect Reporting Act ("CANRA"). Supplier warrants that it complies with CANRA.

G. Forced, Convict and Indentured Labor. Supplier warrants that no foreign-made equipment, materials, or supplies 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.

ARTICLE 11 – INTELLECTUAL PROPERTY, COPYRIGHT AND PATENTS.

A. Services Involving Work Made for Hire.

1. If the Agreement indicates that the Services involve work made for hire, Supplier acknowledges and agrees that any deliverables provided to UC by Supplier in the performance of the Agreement, and any intellectual property rights therein, (hereinafter the "Deliverables") will be owned by UC. The Deliverables will be considered "work made for hire" under U.S. copyright law and all right, title, and interest to and in such Deliverables including, but not limited to, any and all copyrights or trademarks, will be owned by UC. In the event that it is determined that UC is not the owner of such Deliverables under the "work made for hire" doctrine of U.S. copyright law, Supplier hereby irrevocably assigns to UC all right, title, and interest to and in such Deliverables and any copyrights or trademarks thereto.

2. The Deliverables must be new and original. Supplier must not use any pre-existing copyrightable or trademarked images, writings, or other proprietary materials (hereinafter "Pre-Existing Materials") in the Deliverables without UC's prior written permission. In the event that Supplier uses any Pre-Existing Materials in the Deliverables in which Supplier has an ownership interest, UC is hereby granted, and will have, a non-exclusive, royalty-free, irrevocable, perpetual, paid-up, worldwide license (with the right to sublicense) to make, have made, copy, modify, make derivative works of, use, perform, display publicly, sell, and otherwise distribute such Pre-Existing Materials in connection with the Deliverables.

3. Whenever any invention or discovery is made or conceived by Supplier in the course of or in connection with the Agreement, Supplier will promptly furnish UC complete information with respect thereto and UC will have the sole power to determine whether and where a patent application will be filed and to determine the disposition of title to and all rights under any application or patent that may result.

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

B. Services Not Involving Work Made for Hire.

1. If the Agreement indicates that the Services do not involve work made for hire, and in the event that Supplier uses any Pre-Existing Materials in the Deliverables in which Supplier has an

ownership interest, UC is hereby granted, and will have, a non-exclusive, royalty-free, irrevocable, perpetual, paid-up, worldwide license (with the right to sublicense) to make, have made, copy, modify, make derivative works of, use, perform, display publicly, sell, and otherwise distribute such Pre-Existing Materials in connection with the Deliverables.

2. The Deliverables must be new and original. Supplier must not use any Pre-Existing Materials in the Deliverables without UC's prior written permission.

3. Whenever any invention or discovery is made or conceived by Supplier in the course of or in connection with the Agreement, Supplier will promptly furnish UC complete information with respect thereto and UC will have the sole power to determine whether and where a patent application will be filed and to determine the disposition of title to and all rights under any application or patent that may result.

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

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

ARTICLE 12 – INDEMNITY. Supplier will defend, indemnify, and hold harmless UC, its officers, employees, and agents, from and against all losses, expenses (including, without limitation, reasonable attorneys' fees and costs), damages, and liabilities of any kind resulting from or arising out of the Agreement, including the performance hereunder of Supplier, its officers, employees, agents, sub-suppliers, or anyone directly or indirectly employed by Supplier, or any person or persons under Supplier's direction and control, provided such losses, expenses, damages and liabilities are due or claimed to be due to the acts or omissions of Supplier, its officers, employees, agents, sub-suppliers, or anyone directly or indirectly employed by Supplier, or any person or persons under Supplier's direction and control. UC agrees to provide Supplier with prompt notice of any such claim or action and to permit Supplier to defend any claim or action, and that UC will cooperate fully in such defense. UC retains the right to participate in the defense

against any such claim or action, and the right to consent to any settlement, which consent will not unreasonably be withheld.

ARTICLE 13 – INSURANCE. Supplier, at its sole cost and expense, will insure its activities in connection with providing the Services and obtain, keep in force, and maintain the following insurance with the minimum limits set forth below, unless UC specifies otherwise:

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

Each Occurrence	\$ 1,000,000
Products/Completed Operations Aggregate	\$ 2,000,000
Personal and Advertising Injury	\$ 1,000,000
General Aggregate (Not applicable to the Comprehensive Form)	\$ 2,000,000

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.

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

C. If applicable, Professional Liability Insurance with a limit of two million dollars (\$2,000,000) per occurrence with an aggregate of not less than two million dollars (\$2,000,000). If this insurance is written on a claims-made form, it will continue for three years following termination of the Agreement. The insurance will have a retroactive date of placement prior to or coinciding with the effective date of the Agreement.

D. Workers' Compensation as required by applicable state law and Employer's Liability with limits of one million dollars (\$1,000,000) per occurrence.

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

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 14 – 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 15 – FEDERAL ACQUISITION REGULATIONS – COMMERCIAL GOODS AND SERVICES. Supplier who supplies commercial materials, supplies or services certifies and represents its compliance with the following clauses, as applicable. Supplier shall promptly notify UC of any change of status with regard to these certifications and representations. These certifications and representations are material statements upon which UC will rely:

- A. FAR 52.203-13, Contractor Code of Business Ethics and Conduct (Apr. 2010);
- B. FAR 52.219-8, Utilization of Small Business Concerns (Dec. 2010);
- C. FAR 52.222-04, Contract Work Hours and Safety Standards Act (July 2005);
- D. FAR 52.222-26, Equal Opportunity (Mar. 2007);
- E. FAR 52.222-35, Equal Opportunity for Veterans (Sept. 2010);
- F. FAR 52.222-36, Affirmative Action for Workers with Disabilities (Oct. 2010);
- G. FAR 52.222-40, Notification of Employee Rights Under the National Labor Relations Act (Dec. 2010);
- H. FAR 52.222-41, Service Contract Act of 1965 (Nov. 2007);
- I. FAR 52.222-50, Combating Trafficking in Persons (Feb. 2009);
- J. FAR 52.222-51, Exemption from Application of the Service Contract Act to Contracts for Maintenance, Calibration, or Repair of Certain Equipment-Requirements (Nov. 2007);
- K. FAR 52.222-53, Exemption from Application of the Service Contract Act to Contracts for Certain Services-Requirements (Feb. 2009);
- L. FAR 52.222-54, Employment Eligibility Verification (Jan. 2009);
- M. FAR 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations (Mar. 2009); and
- N. FAR 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels (Feb. 2006).

In these provisions, the term "contractor" as used therein will refer to Supplier, and the terms "Government" or "Contracting Officer" as used therein will refer to UC. Where a purchase of items is for fulfillment of a specific U.S. Government prime or subcontract, additional information and/or terms and conditions may be included in an attached supplement. By submitting an invoice to UC, Supplier is representing to UC that, at the time of submission: (1) neither Supplier nor its principals are presently debarred, suspended, or proposed for debarment by the U.S. government (see FAR 52.209-6); (2) Supplier has filed all compliance reports required by the Equal Opportunity clause (see FAR 52.222-22); and (3) any Supplier representations to UC about U.S. Small Business Administration or state and local classifications, including but not limited to size standards, ownership, and control, are accurate and complete.

ARTICLE 16 – EQUAL OPPORTUNITY AFFIRMATIVE ACTION. Supplier will abide by the requirements set forth in Executive Orders 11246 and 11375. Where applicable, Supplier will abide by 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), incorporated by reference with this statement: **“This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, 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, 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 17 – LIENS. Supplier agrees that at any time upon request of UC, Supplier will submit a sworn statement setting forth the work performed or material furnished by—sub-suppliers and material men, and the amount due and to become due to each, and that before the final payment called for under the Agreement, will upon UC’s request submit to UC a complete set of vouchers showing what payments have been made for such work performed or material furnished. Supplier will promptly notify UC in writing, of any claims, demands, causes of action, liens or suits brought to its attention that arise out of the Agreement. UC will not make final payment until Supplier, if required, delivers to UC a complete release of all liens arising out of the Agreement, or receipts in full in lieu thereof, as UC may require, and if required in either case, an affidavit that as far as it has knowledge or information, the receipts include all the labor and materials for which a lien could be filed; but Supplier may, if any sub-supplier refuses to furnish a release or receipt in full, furnish a bond satisfactory to

UC to indemnify it against any claim by lien or otherwise. If any lien or claim remains unsatisfied after all payments are made, Supplier will refund to UC all monies that UC may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorneys' fees.

ARTICLE 18 – PREMISES WHERE SERVICES ARE PROVIDED.

A. **Cleaning Up.** Supplier will at all times keep UC premises where the Services are performed and adjoining premises free from accumulations of waste material or rubbish caused by its employees or work of any of its sub-suppliers, and, at the completion of the Services; will remove all rubbish from and about the premises and all its tools, scaffolding, and surplus materials, and will leave the premises "broom clean" or its equivalent, unless more exactly specified. In case of dispute between Supplier and its sub-suppliers as to responsibility for the removal of the rubbish, or if it is not promptly removed, UC may remove the rubbish and charge the cost to Supplier.

B. **Environmental, Safety, Health and Fire Protection.** Supplier will take all reasonable precautions in providing the 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 performance of the Services; thereafter a start order for resumption of performing the Services may be issued at UC's discretion. Supplier will not be entitled to make a claim for extension of time or for compensation or damages by reason of or in connection with such stoppage. Supplier will have sole responsibility for the safety of all persons employed by Supplier and its sub-suppliers on UC premises, or any other person who enters upon UC premises for reasons relating to the Agreement. Supplier will at all times maintain good order among its employees and all other persons who come onto UC's premises at Supplier's request and will not engage any unfit or unskilled person to provide the Services. Supplier will confine its employees and all other persons who come onto UC's premises at Supplier's request or for reasons relating to the Agreement and its equipment to that portion of UC's premises where the Services are to be performed or to roads leading to and from such work sites, and to any other area which UC may permit Supplier to use. Supplier will take all reasonable measures and precautions at all times to prevent injuries to or the death of any of its employees or any other person who enters upon UC premises at Supplier's request. Such measures and precautions will include, but will not be limited to, all safeguards and warnings necessary to protect workers and others against any conditions on the premises that could be dangerous and to prevent accidents of any kind whenever the Services are being performed in proximity to any moving or operating machinery, equipment or facilities, whether such machinery, equipment or facilities are the property of or are being operated by, Supplier, its sub-suppliers, UC or other persons. To the extent compliance is required, Supplier will comply with all relevant UC safety rules and regulations when on UC premises.

C. **Tobacco-free Campus.** UC is a tobacco-free institution. Use of cigarettes, cigars, oral tobacco, electronic cigarettes and all

other tobacco products is prohibited on all UC owned or leased sites.

ARTICLE 19 – 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 20 – 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 21 – CONFLICT OF INTEREST. Supplier affirms that, to the best of Supplier's knowledge, no UC employee who has participated in UC's decision-making concerning the Agreement has an "economic interest" in the Agreement or Supplier. A UC employee's "economic interest" means (a) an investment worth \$2,000 or more in Supplier or its affiliate, (b) a position as director, officer, partner, trustee, employee or manager of Supplier or its affiliate, (c) receipt during the past 12 months of \$500 in income or \$440 in gifts from Supplier or its affiliate, or (d) a personal financial benefit from the Agreement in the amount of \$250 or more. In the event of a change in these economic interests, Supplier will provide written notice to UC within thirty (30) days after such change, noting such changes. Supplier will not be in a reporting relationship to a UC employee who is a near relative, nor will a near relative be in a decision making position with respect to Supplier.

ARTICLE 22 – AUDIT REQUIREMENTS. The Agreement is subject to the examination and audit of the Auditor General of the State of California or Comptroller General of the United States or designated Federal authority for a period of up to seven (7) years after final payment under the Agreement. UC, and if the underlying grant or cooperative agreement so provides, the other contracting party or grantor (and if that be the United States or an instrumentality thereof, then the Comptroller General of the United States) will have access to and the right to examine Supplier's pertinent books, documents, papers, and records involving transactions and work related to the Agreement until the expiration of seven (7) 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 23 – CONFIDENTIALITY. Supplier will use its best efforts to keep confidential any information provided by UC and marked "Confidential Information," or any oral information conveyed to Supplier by UC and followed by a written communication within thirty (30) days that the information is Confidential Information. This non-disclosure provision will not apply to any of the following:

- A. Information which Supplier can demonstrate by written records was known to Supplier prior to the effective date of the Agreement;
- B. Is currently in, or in the future enters, the public domain other than through a breach of the Agreement or through other acts or omissions of Supplier;
- C. Is obtained lawfully from a third party; or
- D. Is required to be disclosed under the California Public Records Act or legal process

ARTICLE 24 – 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 25 – ENVIRONMENTALLY PREFERABLE PRODUCTS. Supplier will use environmentally preferable products and services (i.e., products and services with a lesser or reduced effect on human health and the environment), to the maximum possible extent consistent with the Agreement. Information on environmentally preferable products and services is available at: <http://www.epa.gov/opptintr/epp/>.

ARTICLE 26 – FORCE MAJEURE. Neither party will be liable for delays due to causes beyond the party's control (including, but not restricted to, earthquakes, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather).

ARTICLE 27 – ASSIGNMENT AND SUBCONTRACTING. Except as to any payment due hereunder, neither party may assign or subcontract the Agreement without the other party's written approval. In case such consent is given, the assignee or subcontractor will be subject to all of the terms of the Agreement.

ARTICLE 28 – NO THIRD-PARTY RIGHTS. Nothing in this Agreement is intended to make any person or entity that is not a signer to the Agreement a third-party beneficiary of any right created by this Agreement or by operation of law.

ARTICLE 29 – 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 30 – NOTICES. A party to the Agreement must send any notice required to be given under the Agreement by overnight delivery or by certified mail with return receipt requested, to the other party's representative at the address specified by such party.

ARTICLE 31 – 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 32 – 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 33 – AMENDMENTS. The Agreement may only be amended by a writing signed by both parties' authorized representatives.

ARTICLE 34 – GOVERNING LAW AND VENUE. California law will control the Agreement and any document to which it is appended. The exclusive jurisdiction and venue for any and all actions arising out of or brought under the Agreement is in a state court of competent jurisdiction, situated in the county in the State of California in which the UC campus is located or, where the procurement covers more than one campus or the Office of the President, the exclusive venue is Alameda County, California.

ARTICLE 35 – SURVIVAL CLAUSE. Upon expiration or termination of the Agreement, the following provisions will survive: WARRANTIES; INTELLECTUAL PROPERTY, COPYRIGHT AND PATENTS; INDEMNITY; USE OF UC NAMES AND TRADEMARKS; LIABILITY FOR UC-FURNISHED PROPERTY; COOPERATION; AUDIT REQUIREMENTS; CONFIDENTIALITY; GOVERNING LAW AND VENUE; and, to the extent incorporated into the Agreement, the terms of the APPENDIX – DATA SECURITY and/or BUSINESS ASSOCIATES AGREEMENT.