



# UNIVERSITY OF CALIFORNIA

## Professional Services Agreement #C2020-157-Nelnet Business Solutions

The Agreement to furnish certain services described herein and in the documents referenced herein ("Services") is made by and between The Regents of the University of California, a California public corporation ("UC") on behalf of the University of California, San Francisco, ("UCSF"/"University"/"Institution") and the supplier, Nelnet Business Solutions, Inc. d/b/a Nelnet Campus Commerce, ("Supplier"/"Company"). This Agreement is binding only if it is negotiated and executed by an authorized representative with the proper delegation of authority.

### 1. Statement of Work and Ordering Services

Supplier agrees to perform the Services listed in the Hosted Business Services Terms and Conditions attached as Attachment A ("Statement of Work") the Hosted Business Service Order form attached as Attachment B ("Order Form"), and any other documents referenced in the Incorporated Documents section herein, at the prices set forth in the Order Form. The department that is requiring the services would be responsible for funding the project and paying all invoices. Unless otherwise provided in the Agreement, UC will not be obligated to purchase a minimum amount of Goods and/or Services from Supplier.

### 2. Term of Agreement/Termination

- a. The initial term of the Agreement will be from June 1, 2020 through **January 31, 2024** ("Initial Term") and is subject to earlier termination as provided below. UC may renew the Agreement for two (2) successive 3-year periods (each, a "Renewal Term") by providing Supplier with at least 120 calendar days' written notice before the end of the Initial Term or any Renewal Term.
- b. Following the Initial Term, UC may terminate the Agreement for convenience by giving Supplier at least 30 calendar days' written notice.
- c. UC or Supplier may terminate the Agreement for cause by giving the other party at least 15 days' notice to cure a breach of the Agreement ("Cure Period"). If the breaching party fails to cure the breach within the Cure Period, the non-breaching party may immediately terminate the Agreement.

### 3. Purchase Order

Unless otherwise provided in the Agreement, Supplier may not begin providing Goods and/or Services until UC approves a Purchase Order for the Goods and/or Services.

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

Refer to Attachment B, Hosted Business Service Order Form or Purchase Order for Pricing.

For systemwide agreements, each UC/CSU Location will specify the Invoicing Method and Payment Options that will apply, taking into account the operational capabilities of Supplier and the UC/CSU Location. See UC's Procure to Pay Standards <http://www.ucop.edu/procurement-services/files/Matrix%20for%20website.pdf> for the options that will be considered. In the case of systemwide agreements, each UC/CSU Location will specify these terms in a Statement of Work or Purchase Order, as the case may be.

For non-systemwide agreements, the Invoicing Method, and Settlement Method and Terms are addressed below.

#### Invoicing Method

Notwithstanding the provisions of Article 3 of the Terms and Conditions of Purchase, Supplier will be required to use the following Invoicing Method:

**UC San Francisco** - <https://supplychain.ucsf.edu/accounts-payable> with additional information at:  
<https://supplychain.ucsf.edu/submitting-invoices-ucsf>.

All invoices must clearly indicate the following information:

- ✓ Reference the UC Purchase Order Number;
- ✓ California sales tax as a separate line item;
- ✓ Valid invoice number and invoice date;
- ✓ Ensure that invoice matches the Purchase Order;
- ✓ Supplier contact and remittance information;
- ✓ Net cost of service or item;
- ✓ Submit invoice(s) with purchase order number to: [ucsf.invoices@submit.transcepta.com](mailto:ucsf.invoices@submit.transcepta.com);
- ✓ Any applicable discount (pay/earned/dynamic);
- ✓ UC vendor number if known;
- ✓ Credits: Reference the original purchase order number for all credit invoices issued. Clearly identify as a "CREDIT" and provide reason for credit. Reference original invoice number if a return.

**Electronic Invoicing:** We require that all our suppliers register and submit their invoices with our partner, Transcepta, if you have not done so already. Registration with Transcepta is simple and takes just a few minutes. Please follow the instructions on our website: <http://connect.transcepta.com/ucsf>. The following UCSF Supplier Webinar explains the whole process in detail <https://vimeo.com/124448508>. For additional information regarding Transcepta's e-invoicing process, see <http://www.transcepta.com/e-invoicing/>.

#### **Settlement Method and Terms**

Notwithstanding the provisions of Article 3 of the Terms and Conditions of Purchase, the Settlement Method and Terms will be as follows:

##### **UCSF payment terms:**

UC will pay invoices within thirty (30) days of completion of services/milestone schedule and receipt of correct invoice as agreed to under Supplier's Vendor profile in our system. In the event an undisputed invoice is not paid within ninety (90) days of receipt, the Supplier may, at its option, deduct overdue funds from UCSF's remittances.

## **5. Notices**

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

#### **To UC Buyer:**

University of California, San Francisco  
Supply Chain Management – Box 0910  
Attn.: Daisy Palma  
1855 Folsom Street, Suite 304  
San Francisco, CA 94143-0910  
Phone: 502-3045  
Email: [daisy.palma@ucsf.edu](mailto:daisy.palma@ucsf.edu)

#### **To Supplier:**

Name: Nelnet Business Solutions  
Attn.: DeeAnn Wenger, President  
Phone: 402-325-7241  
Email: [DeeAnn.Wenger@nelnet.net](mailto:DeeAnn.Wenger@nelnet.net)  
Address: 121 S 13<sup>th</sup> Street, Ste 201  
Lincoln, NE 68508

Copy to: Jennifer Lugini  
Phone: 402-921-3847  
e-mail: [jennifer.lugini@nelnet.net](mailto:jennifer.lugini@nelnet.net)

**With a Copy to Department:**

University of California, San Francisco  
Student Academic Affairs  
Attn.: Jerry Lopez  
Address: 500 Parnassus Ave, W202  
San Francisco, CA 94117  
Phone: 415-476-6574  
Email: [jerry.lopez@ucsf.edu](mailto:jerry.lopez@ucsf.edu)

**To UC, regarding confirmed or suspected Breaches as defined under UC Appendix – Business Associate and/or Data Security:**

UCSF Privacy Office  
ATTN: Chief Privacy Officer  
3333 California St Ste S1-10  
San Francisco CA 94115  
Fax: 415-353-9241  
Email: [privacy@ucsf.edu](mailto:privacy@ucsf.edu)

**6. Intellectual Property, Copyright and Patents**

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

**7. Patient Protection and Affordable Care Act (PPACA)**

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

**8. Prevailing Wages**

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

**9. Fair Wage / Fair Work**

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

**10. Offshoring of Services**

- a. Certify *under penalty of perjury* that the services will be performed solely with workers within the United States, including any services that Supplier would provide using a subsupplier.

**11. Federally Funded Contracts; Grants and Cooperative Agreements**

The Prime and Flow-Through sub-awards requirements will govern this agreement and override any other terms stated within.

- a. For federally-funded contracts, the Prime Contract Number is: N/A.
- b. For contracts funded by a grant or cooperative agreement, the Prime grant or cooperative agreement number is: N/A.

**12. Restriction Relating to Consulting Services or Similar Contracts – Follow-on Contracts**

Please note a Supplier that is awarded a consulting services or similar contract cannot later submit a bid or be considered for any work "required, suggested, or otherwise deemed appropriate" as the end product of the Services (see Public Contract Code Section 10515).

### 13. Insurance

Insurance amounts are located in the UC Terms and Conditions of Purchase unless otherwise amended in Section 16 below. Deliver the PDF version of the Certificate of Insurance to UC's Buyer, by email with the following text in the Subject field: CERTIFICATE OF INSURANCE – Nelnet Business Solutions.

The Supplier must, at its own expense, obtain and keep in force during the entire term of this contract or issue a blanket certificate naming "The Regents of the University of California" as additional insured to cover any Goods and/or Services performed during the duration of this agreement.

Supplier shall use the following address in the Certificate Holder location to identify the Additional Insured:  
The Regents of the University of California

University of California, San Francisco  
Risk Management and Insurance Services  
UCSF Box 1338  
San Francisco, CA 94143-1338

**The certificates of insurance must also be submitted prior to the commencement of services and should be delivered via email to: [UC@instracking.com](mailto:UC@instracking.com) and a copy to UC Buyer: [daisy.palma@ucsf.edu](mailto:daisy.palma@ucsf.edu).**

### 14. Service-Specific and/or Goods-Specific Provisions

1. **SERVICES AND SCOPE:** This Agreement sets forth general provisions under which the Company will provide services to the Institution and incorporates Terms and Conditions for selected services ordered by the Institution (Attachment A). These services represent an integrated and unique suite of business solutions that may be implemented individually but were designed to work in combination as a comprehensive business solution. The Institution may purchase and use any products offered by the Company during the term of this Agreement.
2. **ORDERING SERVICES:** Operational, transaction and other fees for services contracted as of the date of this Agreement are outlined on the hosted business service Order Form (Attachment B). At any time, a completed Order Form for a service will be sufficient to incorporate that service into this Agreement under the service's most current Terms and Conditions (to be provided along with the Order Form). An Order Form must be accepted by the Institution in writing by signing and returning the Order Form.
3. **UC/CSU LOCATIONS PIGGYBACK:** Other public or private bodies, specifically any UC and CSU campus(es) or institution(s) of higher education, or any UC and CSU related foundation and affiliated corporation(s), may wish to also participate under the same terms and conditions contained in this agreement. Supplier agrees to extend the pricing basis, terms and conditions of the Agreement to all UC and CSU locations. Supplier will make available to any UC and CSU location its improved pricing basis, terms or conditions resulting from increased usage or aggregation of activity by multiple UC/CSU locations. Piggyback purchasing participation is strictly voluntary. Each UC or CSU entity wishing to participate ("participating entity") must have prior authorization from the Company. If authorized by the Company, the resultant contract will be extended to the participating entity to purchase goods and services in accordance with Agreement terms, and its obligations will be between the participating entity and the Company. All contractual administration issues (e.g. terms and conditions, extensions, and renewals), operational issues, fiduciary responsibility, payment issues, performance issues and liabilities, and disputes involving individual UC/CSU locations will be fully and independently addressed, administered, and resolved by each UC/CSU location without direct administration from the Institution. Any delay in payment or other operational issue involving one UC/CSU location will not adversely affect any other UC/CSU location.

As a separate contractual relationship, the participating entity will place its own orders directly with the Company. The Institution will not be held responsible for any orders placed, deliveries made, or payment

for services ordered by the participating entity. Pursuant to the provisions above, a completed Order Form will be sufficient to incorporate services for participating entities under the terms and conditions of this Agreement. No modification of this Agreement or execution of a separate agreement is required to participate; however, the participating entity and the Company may elect to modify the terms and conditions of the Agreement to accommodate specific governing laws, regulations, policies, and business goals required by the participating entity. Any such modification will apply solely between the participating entity and the Company. Pricing for products and services to be contracted will be negotiated directly between the Company and the participating entity, independent of the Institution-specific pricing outlined in Attachment B of this Agreement.

4. **INSTITUTION BANKING INFORMATION:** The Institution must provide bank account information for the ACH (i.e., Automated Clearing House) deposit of its funds (and ACH withdrawal, if applicable). The Company requires a bank reference letter written on bank letterhead that includes the account holder name, the routing number, account number, and type of account (checking or savings). Additional procedures for debit block clearance may be appropriate and required for certain services.
5. **ACH AUTHORIZATION:** The Institution hereby authorizes the Company to initiate credit or debit entries to the account provided. The Institution acknowledges that the origination of ACH transactions for its account must comply with applicable U.S. laws and regulations. This authorization is to remain in full force and effect until the Company has received a written notice of termination or a change in banking from the Institution in such time and in such manner as to afford the Company a reasonable opportunity to act on it. As an Originator, the Institution is responsible for adhering to applicable rules as prescribed by the National Automated Clearing House Association (NACHA). The Institution shall establish and maintain procedures for secure online authentication (to identify End Users) and make reasonable efforts to prevent fraudulent use by End Users and unauthorized users. The Company may monitor and audit Institution and End User ACH activity, conduct risk assessments, set exposure limits, provide education, monitor return activity, make change requests, evaluate staff-initiated entries, and reject certain entries (e.g., physical check conversions). If necessary to comply with applicable laws, rules, or regulations, Company may revoke the Institution's privilege to originate ACH transactions. The Company assumes the responsibilities of a Third Party Sender under NACHA Rules. The Institution is liable for all returns, including untimely non-administrative returns.
6. **CARD PAYMENT PROCESSING:** The Company will at all times maintain compliance with the most current applicable Payment Card Industry Data Security Standards (PCI DSS). Company acknowledges responsibility for the security of cardholder data under its control as defined within the PCI DSS. Company acknowledges and agrees that cardholder data may only be used for completing the contracted services as described in the full text of this document, or as required by the PCI DSS, or as required by applicable law.
7. **INDEPENDENT SERVICE CONTRACT:** Service levels, pricing, and packaging of any and all services provided under this Agreement are independent of any student-loan or student-loan-servicing relationship Nelnet, Inc. may have or seek to have with the Institution.
8. **REVENUE-SHARING RELATIONSHIPS:** The Institution is strongly encouraged to disclose to its customers any revenue-sharing relationship it has with the Company, if applicable. If such a relationship exists and the Institution chooses not to disclose it, the Institution will provide the Company with a written explanation of its policy. As noted above, any such relationship is independent of any student-loan relationship with Nelnet.
9. **CONFIDENTIAL BUSINESS INFORMATION:** Refer to UC Terms and Conditions of Purchase, ARTICLE 20 – PROHIBITION ON UNAUTHORIZED USE OR DISCLOSURE OF INSTITUTIONAL INFORMATION and UC Appendix Data Security and the addition of the following language shall also apply:

During the term of the Agreement and for three (3) years after termination or expiration, UC agrees not to disclose Confidential Information obtained from Supplier to any person or entity. As used herein, "Confidential Information" means information that is identified (orally or in writing) as confidential or is of such a nature that a reasonable person would understand such information to be confidential.

Confidential Information shall not include information 1) generally known to the public, 2) already known, through legal means, to UC, or 3) legally obtained from a third party. In the event that UC is required to disclose confidential information about Supplier pursuant to a judicial or government order, UC will promptly notify Supplier to allow intervention in response to such order.

10. **CONFIDENTIAL CONSUMER INFORMATION:** Refer to UC Terms and Conditions of Purchase, ARTICLE 20 – PROHIBITION ON UNAUTHORIZED USE OR DISCLOSURE OF INSTITUTIONAL INFORMATION.

11. **INDEMNIFICATION:** 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.

Supplier's indemnity of UC is set forth in UC's Terms and Conditions. Additionally, UC will defend, indemnify and hold harmless Supplier, 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 this Agreement but only in proportion to and to the extent such losses, expenses, damages or liabilities are caused by or result from the negligent or intentional acts or omissions of UC, its officers, employees, or agents. Supplier agrees to provide UC with prompt notice of any such claim or action and to permit UC to defend any claim or action. Supplier agrees to cooperate fully in such defense. Supplier 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.

12. **FORCE MAJEURE:** The performance by either party of any obligations to be performed hereunder will be excused to the extent such performance is prevented by an act of God, war, terrorist attacks, epidemics and pandemics, insurrections, riots, labor disputes, including lockouts or boycotts, quarantine restrictions, fire, explosion, flood, or other unforeseeable causes beyond the control and without fault or negligence of the party so affected. The party so affected will give prompt notice to the other party of such cause and take whatever reasonable steps are necessary to relieve the effect of such cause as rapidly as possible.

13. **LIMITATION OF LIABILITY:** TO THE FULLEST EXTENT PERMITTED BY LAW, BUT IN NO WAY LIMITING (a) THE COMPANY'S OBLIGATION TO REMIT ALL FUNDS COLLECTED AND DUE TO THE INSTITUTION, (b) THE INDEMNIFICATION OBLIGATIONS IN SECTION 11 ABOVE, OR (c) THE CONFIDENTIALITY OBLIGATIONS OF SECTIONS 9 AND 10 ABOVE, THE LIABILITY OF EITHER PARTY WILL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED THE COMPANY'S NET REVENUE UNDER THIS AGREEMENT FOR THE PAST TWELVE (12) MONTHS. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER FOR LOSS OF DATA, LOST PROFITS, BUSINESS INTERRUPTION, OR OTHER SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, INDIRECT, OR

SPECULATIVE DAMAGES ARISING FROM ANY CLAIM OR ACTION HEREUNDER WHETHER BASED IN CONTRACT, TORT, OR OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

14. **WARRANTY:** THE COMPANY WARRANTS THAT SERVICES WILL BE PROVIDED IN A PROFESSIONAL MANNER IN ACCORDANCE WITH GENERALLY ACCEPTED INDUSTRY STANDARDS; OTHERWISE, ALL SOFTWARE, TOOLS, AND PROFESSIONAL SERVICES RENDERED BY THE COMPANY UNDER THIS AGREEMENT ARE PROVIDED "AS IS" WITH NO EXPRESS OR IMPLIED WARRANTY. THE COMPANY SPECIFICALLY DISCLAIMS ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
15. **COMPLIANCE WITH LAW; INDEMNIFICATION:** Each party will comply with the federal, state and local laws, rules, and regulations ("Laws"), including but not limited to laws governing consumer protection. The Institution will indemnify and hold the Company harmless from and against any and all claims, liabilities, losses, damages, costs, and expenses, including reasonable attorney's fees, asserted against or incurred by the Company under federal, state or local laws as a result of the Company complying with any instruction or directive by the Institution, but only in proportion and to the extent that such claims, liabilities, losses, damages, costs, and expenses, including reasonable attorney's fees, are caused by or result from the negligent or intentional acts or omissions of Institution.  
  
The Company will indemnify and hold the Institution harmless from and against any and all claims, liabilities, losses, damages, costs, and expenses, including reasonable attorney's fees, asserted against or incurred by the Institution under federal, state or local laws as a result of the Institution complying with any instruction or directive by the Company, but only in proportion and to the extent that such claims, liabilities, losses, damages, costs, and expenses, including reasonable attorney's fees, are caused by or result from the negligent or intentional acts or omissions of Institution.
16. **TERM, RENEWAL, AND TERMINATION:** Refer to Section 2 of this Agreement.
17. **DEFAULT:**
  - a. Payment – Refer to Section 4 of this Agreement.
  - b. Material Breach – Refer to Section 2.(c) of this Agreement.
18. **RELATIONSHIP:** Nothing contained herein is intended to create the relationship of a partnership, joint venture, or employer-employee. In performing this Agreement, the Company and its subcontractors will act as independent contractors and not as employees or representatives of the Institution. The Company will be solely responsible for and will promptly pay all federal, state, and municipal taxes, chargeable or assessed with respect to its employees and subcontractors, including but not limited to social security, unemployment, federal and state income tax withholding and other taxes and will hold the Institution harmless on account thereof.
19. **SEVERABILITY:** If any provision of this Agreement is held to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions will nevertheless remain in full force and effect. The parties agree to negotiate in good faith a valid and enforceable substitute provision.
20. **HEADINGS:** The paragraph headings of this Agreement are for reference only and are not to be construed as terms.
21. **WAIVER:** Neither party's failure to exercise its rights hereunder will constitute or be deemed a waiver or forfeiture of such rights.
22. **ENTIRE AGREEMENT:** This Agreement, together with all attachments, including but not limited to service-specific Terms and Conditions, addenda, if any, and Order Forms, represents the entire

agreement between the parties as to the matters set forth and supersedes all prior discussions or understandings between them. This Agreement may only be modified or amended in writing signed by authorized representatives of each party.

23. **BRANDING AND INTELLECTUAL PROPERTY:** Each party will retain its ownership and intellectual property rights with regard to its copyrights, trademarks, service marks, registered marks, patents, pending patents, trade secrets, and any other forms of intellectual property. Neither party will have any ownership interest in the intellectual property of the other party. In no way limiting the foregoing, Company grants Institution permission to display its logo during the term of this Agreement provided that the Institution agrees to use the most current logo supplied by the Company and to display such logo on its website in a position where users will reasonably be able to find it and use it to link to the Company's website.

## **15. Records about Individuals**

Records created pursuant to the Agreement that contain personal information about individuals (including statements made by or about individuals) may become subject to the California Information Practices Act of 1977, which includes a right of access by the subject individual. While ownership of confidential or personal information about individuals is subject to negotiated agreement between UC and Supplier, records will normally become UC's property, and subject to state law and UC policies governing privacy and access to files. When collecting the information, Supplier must inform the individual that the record is being made, and the purpose of the record. Use of recording devices in discussions with employees is permitted only as specified in the Statement of Work.

## **16. Amendments to UC Terms and Conditions of Purchase**

The UC Terms and Conditions of Purchase, are hereby amended as follows:  
"This section left intentionally blank".

## **17. Amendments to Appendix – Data Security**

The UC Appendix – Data Security is hereby amended as follows:  
"This section left intentionally blank".

## **18. Incorporated Documents**

The following documents are incorporated and made a part of the Agreement by reference as if fully set forth herein, listed in the order of precedence following the Agreement. Compliance with the most current revision of State and Federal terms will apply as found on the <https://www.ucop.edu/procurement-services/policies-forms/index.html>:

- a. UC Professional Services Agreement #C2020-157 dated June 1, 2020
- b. UC Terms and Conditions of Purchase
- c. UC Appendix – Data Security
- d. Hosted Business Services Terms and Conditions – Attachment A
- e. Hosted Business Service Order Form – Attachment B

## **19. Entire Agreement**

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

**[SIGNATURE PAGE FOLLOWS]**



The Agreement is signed below by the parties' duly authorized representatives. This Agreement can only be signed by an authorized representative with the proper delegation of authority.

THE REGENTS OF THE UNIVERSITY OF  
CALIFORNIA

Sign: *Daisy Palma*

Name: *Daisy Palma*  
(Please Print)

Title: *Buyer IV, UCSF Supply Chain Management*

Date: *December 9, 2020*

NELNET BUSINESS SOLUTIONS, INC.  
D/B/A NELNET CAMPUS COMMERCE

DocuSigned by:  
Sign: *Jacqueline Strohhahn*  
B07600B007MB4FA...

Name: Jacqueline Strohhahn  
(Please Print)

Title: President, Nelnet Campus Commerce

Date: 12/9/2020



# UNIVERSITY OF CALIFORNIA

## Terms and Conditions of Purchase

### ARTICLE 1 – GENERAL

The equipment, materials, or supplies ("Goods") and/or services ("Services") furnished by Supplier (together, the "Goods and Services") and covered by the UC Purchase Order ("PO") and/or other agreement (which, when combined with these Terms and Conditions and any other documents incorporated by reference, will constitute the "Agreement") are governed by the terms and conditions set forth herein. As used herein, the term "Supplier" includes Supplier and its sub-suppliers at any tier. As used herein, "UC" refers to The Regents of the University of California, a corporation described in California Constitution Art. IX, Sec. 9, on behalf of the UC 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. Written acceptance or shipment of all or any portion of the Goods, or the performance of all or any portion of the Services, covered by the Agreement, will constitute Supplier's unqualified acceptance of all of the Agreement's terms and conditions. The terms of any proposal referred to in the Agreement are included and made a part of the Agreement only to the extent the proposal specifies the Goods and/or Services ordered, the price therefor, and the delivery thereof, and then only to the extent that such terms are consistent with the terms and conditions of the Agreement.

### ARTICLE 2 – TERM AND TERMINATION

- A. As applicable, the term of the Agreement ("Initial Term") will be stated in the Agreement. Following the Initial Term, the Agreement may be extended by written mutual agreement.
- B. UC's obligation to proceed is conditioned upon the appropriation of state, federal and other sources of funds not controlled by UC ("Funding"). UC will have the right to terminate the Agreement without damage, penalty, cost or further obligation in the event that through no action or inaction on the part of UC, the Funding is withdrawn.
- C. Following the Initial Term stated in the Agreement, 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.
- 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 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.
- E. UC's Appendix – Data Security, Appendix – BAA, and/or Appendix – GDPR will control in the event that one or more appendices are incorporated into the Agreement and conflicts with the provisions of this Article.

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

Pricing is set forth in the Agreement or Purchase Order, 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. UC will pay Supplier, upon submission of acceptable invoices, for Goods and/or Services provided and accepted. Invoices must be itemized and reference the Agreement or Purchase Order number. UC will not pay shipping, packaging or handling expenses, unless specified in the Agreement or Purchase Order. Unless otherwise provided, freight is to be FOB destination. Any of Supplier's expenses that UC agrees to reimburse will be reimbursed under UC's Travel Policy, which may be found at <http://www.ucop.edu/central-travel-management/resources/index.html>. Where applicable, Supplier will pay all taxes imposed on Supplier 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.



# UNIVERSITY OF CALIFORNIA

## Terms and Conditions of Purchase

### 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 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 work with UC in good faith to address those concerns or to remove such personnel from providing Services. In the event any Supplier personnel are removed from providing Services, 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. 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.

- A. 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.
- B. Permits and Licenses. Supplier agrees to procure all necessary permits or licenses and abide by all applicable laws, regulations and ordinances of the United States and of the state, territory and political subdivision or any other country in which the Goods and/or Services are provided.
- C. Federal and State Water and Air Pollution Laws. Where applicable, Supplier warrants that it complies with the requirements in UC Business and Finance Bulletin BUS-56 (Materiel Management; Purchases from Entities Violating State or Federal Water or Air Pollution Laws). Consistent with California Government Code 4477, these requirements do not permit UC to contract with entities in violation of Federal or State water or air pollution laws.
- D. Web Accessibility Requirements. As applicable to the Goods and/or Services being provided under the Agreement for consumer end users, Supplier acknowledges that:



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1. It must comply with California and federal disability laws and regulations; and
2. The Goods and/or Services must conform to the accessibility requirements of WCAG 2.0 AA.
3. Supplier agrees to promptly respond to and resolve any complaint regarding accessibility of its Goods and/or Services;
- E. General Accessibility Requirements. As applicable to the Goods and/or Services being provided under the Agreement for consumer end users, Supplier acknowledges that:
  1. It must comply with California and federal disability laws and regulations;
  2. Supplier will promptly respond to remediate 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.
- F. 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.
- G. California Child Abuse and Neglect Reporting Act ("CANRA"). Where applicable, Supplier warrants that it complies with CANRA.
- H. Debarment and Suspension. Supplier warrants that it is not presently debarred, suspended, proposed for debarment, or declared ineligible for award of federal contracts or participation in federal assistance programs or activities.
- I. 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>.
- J. 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.

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

- A. Goods and/or Services Involving Work Made for Hire.
  1. Unless UC indicates that the Goods and/or Services do not involve work made for hire, Supplier acknowledges and agrees that any deliverables provided to UC by Supplier in the performance of the Agreement, and any intellectual property rights therein, (hereinafter the "Deliverables") will be owned by UC. The Deliverables will be considered "work made for hire" under U.S. copyright law and all right, title, and interest to and in such Deliverables including, but not limited to, any and all copyrights or trademarks, will be owned by UC. In the event that it is determined that UC is not the owner of such Deliverables under the "work made for hire" doctrine of U.S. copyright law, Supplier hereby irrevocably assigns to UC all right, title, and interest to and in such Deliverables and any copyrights or trademarks thereto.
  2. The Deliverables must be new and original. Supplier must not use any pre-existing copyrightable or trademarked images, writings, or other proprietary materials (hereinafter "Pre-Existing Materials") in the Deliverables without UC's prior written permission. In the event that Supplier uses any Pre-Existing Materials in the Deliverables in which Supplier has an ownership interest, UC is hereby granted, and will have, a non-exclusive, royalty-free, irrevocable, perpetual, paid-up, worldwide license (with the right to sublicense) to make, have made, copy, modify, make derivative works of, use, perform, display publicly, sell, and otherwise distribute such Pre-Existing Materials in connection with the Deliverables.
  3. Whenever any invention or discovery is made or conceived by Supplier in the course of or in connection with the Agreement, Supplier will promptly furnish UC with complete information with respect thereto and UC will have the sole power to determine whether and where a patent application will be filed and to determine the disposition of title to and all rights under any application or patent that may result.
  4. Supplier is specifically subject to an obligation to, and hereby does, assign all right, title and interest in any such intellectual property rights to UC as well as all right, title and interest in tangible research products embodying any such inventions whether the inventions are patentable or not. Supplier agrees to promptly execute any additional documents or forms that UC may require in order to effectuate such assignment.
- B. Goods and/or Services Not Involving Work Made for Hire.



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1. If the Goods and/or Services do not involve work made for hire, and in the event that Supplier uses any Pre-Existing Materials in the Deliverables in which Supplier has an ownership interest, UC is hereby granted, and will have, a non-exclusive, royalty-free, paid-up, worldwide license to use such Pre-Existing Materials in connection with the Deliverables during the term of and in accordance with the Agreement.
  2. The Deliverables must be new and original. Supplier must not use any Pre-Existing Materials in the Deliverables, excepting Supplier's proprietary materials and pre-existing intellectual property, without UC's prior written permission.
  3. Except for inventions or discoveries conceived and reduced to practice solely by the Supplier, 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. Except for inventions or discoveries conceived and reduced to practice solely by the Supplier, Supplier is specifically subject to an obligation to, and hereby does, assign all right, title and interest in any such intellectual property rights to UC, as well as all right, title and interest in tangible research products embodying any such inventions whether the inventions are patentable or not. Supplier agrees to promptly execute any additional documents or forms that UC may require in order to effectuate such assignment.
- C. General. Should the Goods and/or Services become, or in Supplier's opinion be likely to become, the subject of a claim of infringement of any patent, copyright, trademark, trade name, trade secret, or other proprietary or contractual right of any third party, Supplier will provide written notice to UC of the circumstances giving rise to such claim or likely claim. In the event that UC receives notice of a claim of infringement or is made a party to or is threatened with being made a party to any claim of infringement related to the Goods and/or Services, UC will provide Supplier with notice of such claim or threat. Following receipt of such notice, Supplier will either (at Supplier's sole election) (i) procure for UC the right to continue to use the affected portion of the Goods and/or Services, or (ii) replace or otherwise modify the affected portion of the Goods and/or Services to make them non-infringing, or obtain a reasonable substitute product for the affected portion of the Goods and/or Services, provided that any replacement, modification or substitution under this paragraph does not effect a material change in the Goods and/or Services' functionality. If none of the foregoing options is reasonably acceptable to UC, UC will have the right to terminate the Agreement without damage, penalty, cost or further obligation.
- D. 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. UC and Supplier agree Institutional Information may include Consumer Financial Information (i.e., a UC affiliated individual's bank routing/account numbers, payment cardholder account numbers collected by Supplier for delivery of Goods or Services under the Agreement); however, the individual account holder or issuing financial institution retains ownership of Consumer Financial Information.

### 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,



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or UC-owned, or a personally owned device that stores Institutional Information, is connected to UC systems, is connected to UC networks, or is used for UC business.

### ARTICLE 9 – INSURANCE

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

- A. Commercial Form General Liability Insurance (contractual liability included) with limits as follows:
  1. Each Occurrence \$ 1,000,000
  2. Products/Completed Operations Aggregate \$ 2,000,000
  3. Personal and Advertising Injury \$ 1,000,000
  4. General Aggregate \$ 2,000,000
- B. Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence. (Required only if Supplier drives on UC premises or transports UC employees, officers, invitees, or agents in the course of supplying the Goods and/or Services to UC.)
- C. If applicable, Professional Liability Insurance with a limit of two million dollars (\$2,000,000) per occurrence 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



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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.

- A. 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, Non-displacement 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.
- B. 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.
- C. For transactions involving funds on a federal grant or cooperative agreement (federal awards governed by eCFR Title 2, Subtitle A, Chapter II, Part 200) the following provisions apply, as applicable:
  1. 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



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- Made by nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements”.
2. 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).
  3. 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.
  4. 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.
- D. 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.
  4. 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 by sub-suppliers and material men, and the amount due and to become due to each, and that before the final payment called for under the Agreement, will upon UC's request submit to UC a complete set of vouchers showing what payments have been made for such work performed or material furnished. Supplier will promptly notify UC in writing, of any claims, demands, causes of action, liens or suits brought to its attention that arise out of the Agreement. UC will not make final payment until Supplier, if required, delivers to UC a complete release of all liens arising out of the Agreement, or receipts in full in lieu thereof, as UC may require, and if required in either case, an affidavit that as far as it has knowledge or information, the receipts include all the labor and materials for which a lien could be filed; but Supplier may, if any sub-supplier refuses to furnish a release or receipt in full, furnish a bond satisfactory to UC to indemnify it against any claim by lien or otherwise. If any lien or claim remains unsatisfied after all payments are made, Supplier will refund to UC all monies that UC may be compelled to pay in discharging such lien or claim, including all costs and reasonable attorneys' fees.

### ARTICLE 14 – PREMISES WHERE SERVICES ARE PROVIDED





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- A. Cleaning Up. Supplier will at all times keep UC premises where the Services are performed and adjoining premises free from accumulations of waste material or rubbish caused by its employees or work of any of its sub-suppliers, and, at the completion of the Services; will remove all rubbish from and about the premises and all its tools, scaffolding, and surplus materials, and will leave the premises "broom clean" or its equivalent, unless more exactly specified. In case of dispute between Supplier and its sub-suppliers as to responsibility for the removal of the rubbish, or if it is not promptly removed, UC may remove the rubbish and charge the cost to Supplier.
- B. Environmental, Safety, Health and Fire Protection. Supplier will take all reasonable precautions in providing the Goods and Services to protect the health and safety of UC 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.
- C. Tobacco-free Campus. UC is a tobacco-free institution. Use of cigarettes, cigars, oral tobacco, electronic cigarettes and all other tobacco products is prohibited on all UC owned or leased sites.

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

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

### ARTICLE 16 – COOPERATION

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

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

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

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



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

- E. Forced, Convict and Indentured Labor. Supplier warrants that no foreign-made Goods furnished to UC pursuant to the Agreement will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction. If UC determines that Supplier knew or should have known that it was breaching this warranty, UC may, in addition to terminating the Agreement, remove Supplier from consideration for UC contracts for a period not to exceed one year. This warranty is in addition to any applicable warranties in Articles 6 and 11.
- F. Export Control. Supplier agrees to provide UC (the contact listed on the Purchase Order) with written notification that identifies the export-controlled Goods and such Goods' export classification 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 Purchase Order) 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:

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

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

### ARTICLE 19 – AUDIT REQUIREMENTS

The Agreement, 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. Records pertaining to individual transactions processed by Supplier in the delivery of Goods and Services under this Agreement will be retained for a period of no less than five (5) years from the date of the transaction. 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

- A. 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.
- B. 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



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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.

- C. **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:
    - a. Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 *et seq.*);
    - b. The federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2));
    - c. The federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g);
    - d. The federal Fair and Accurate Credit Transactions Act (15 U.S.C. § 1601 *et seq.*);
    - e. The Fair Credit Reporting Act (15 U.S.C. § 1681 *et seq.*), and
    - f. Applicable international privacy laws, including, but not limited to the General Data Protection Regulation.
- D. **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.
- E. **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.
- F. **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.
- G. **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 UC is entitled to seek injunctive relief in UC's favor.

### ARTICLE 21 – UC WHISTLEBLOWER POLICY

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

### ARTICLE 22 – SUSTAINABLE PROCUREMENT GUIDELINES

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



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

- A. Sustainability Marketing Standards. Supplier sustainability related claims, where applicable, must meet 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.
- B. 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.
- C. Packaging Requirements. All packaging must be compliant with the Toxics in Packaging Prevention Act (AB 455) and must meet all additional standards and requirements set forth in the UC Sustainable Practices Policy. In addition, 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.
- D. 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.
- E. 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.
- F. E-Waste Recycling Requirements. All recyclers of UC electronic equipment must be e-Steward certified by the Basel Action Network (BAN).
- G. 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:

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

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



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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 apprenticeable occupations are involved in providing the Services, Supplier will be responsible for ensuring that Supplier and any sub-suppliers comply with Labor Code Section 1777.5. Supplier and sub-supplier may not provide the Services unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5 and 1771.1. Notwithstanding the foregoing provisions, Supplier will be solely responsible for tracking

and ensuring proper payment of prevailing wages regardless if Services are partially or wholly subject to prevailing wage requirements. In every instance, Supplier will pay not less than the UC Fair Wage (defined as \$13 per hour as of 10/1/15, \$14 per hour as of 10/1/16, and \$15 per hour as of 10/1/17) for Services being performed at a UC Location (defined as any location owned or leased by UC).

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

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

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

### ARTICLE 25 – FAIR WAGE/FAIR WORK

If the 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 lunch rooms) 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/fww-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->



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[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 UC Fair Wage/Fair Work work papers 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 any Good or Medical Device is 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.



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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 will be liable for delays due to causes beyond the Party's control (including, but not restricted to, war, civil disturbances, earthquakes, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather).

### ARTICLE 28 – ASSIGNMENT AND SUBCONTRACTING

Except as to any payment due hereunder, Supplier may not assign or subcontract the Agreement without UC's written 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.

### 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:

- A. A change to the scope of Goods and/or Services to be provided by Supplier, as agreed to by UC;
- B. 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;
- C. Changes in the status of the parties;
- D. Changes in flow down terms from external parties; and
- E. Changes in law or regulation applicable to this Agreement.

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



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### 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 – 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, and, to the extent incorporated into the Agreement, the terms of the APPENDIX–DATA SECURITY, APPENDIX–BAA, and/or APPENDIX–GDPR.

### ARTICLE 39 – CONTRACTING FOR COVERED SERVICES

Covered Services, for the purpose of this Agreement, are defined as work customarily performed by bargaining unit employees at the University in the categories of services described in Regents Policy 5402, and American Federation of State, County, and Municipal Employees (AFSCME) Collective Bargaining Agreement Article 5. 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; and security 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 other Articles of the Agreement. In accordance with Regents Policy 5402 and AFSCME Collective Bargaining Agreement Article 5, 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 agrees UC may conduct such compliance audits as UC reasonably requests, and determined at UC's sole discretion. Supplier agrees to post UC Contracting for Covered Services notices, in the template supplied by UC, in a prominent and accessible place (such as break rooms and lunch rooms) where it may be easily seen by workers who perform Covered Services. The term "Supplier" includes Supplier and its Sub-Suppliers at any tier. Supplier also agrees to:

- (a) upon UC's request, provide verification of an independent audit performed by Supplier's independent auditor or independent internal audit department (<http://na.theiia.org/standards-guidance/topics/Pages/Independence-and-Objectivity.aspx>) and at Supplier's expense; and
- (b) ensure that, in the case of a UC interim audit, Supplier's auditor makes available to UC its Contracting for Covered Services work papers for the most recently audited time period. Supplier agrees to provide UC requested verification, in a form acceptable to UC, no later than ninety days after receiving UC's request.



**ARTICLE 1. PURPOSE AND INTRODUCTION**

- A. 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.
- B. Any capitalized terms used here have the meaning ascribed to such terms as set forth in the Agreement or Incorporated Documents.
- C. 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.<sup>1</sup>
    - 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.

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<sup>1</sup> Examples include the latest versions of PCI DSS, NIST CSF, CIS Critical Security Controls, ISO 27002, NIST SP 800-53 and NIST SP 800-171.

- D. 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, including Consumer Financial Information, with the same level of privacy and security protections and standards as required of Institutional Information by this Appendix.
- E. 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.
- F. 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

- A. "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.
- B. "Consumer Financial Information" means: A UC affiliated individual's financial information (e.g., bank routing/account numbers, payment cardholder account numbers). Institution Information may include Consumer Financial Information; however, the individual account holder or issuing financial institution retains ownership of Consumer Financial Information, not UC.
- C. "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.
- D. "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.
- E. "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, Internet of Things (IoT), or any other device that connects to any UC network.

F. "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.

G. "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

A. 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.

B. 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.

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ARTICLE 4. SUPPLIER'S INFORMATION SECURITY PLAN AND RESPONSIBILITIES

- A. 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.
- B. Supplier must establish, maintain, comply with, and responsibly execute its information security plan.
- C. Supplier's initial information security plan is attached as Exhibit 2 and incorporated by reference.
- D. 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.
- E. 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.
- F. 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. Comply with 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

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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

A. 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.

B. 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.

C. 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, such audit to be conducted at UC's sole cost and expense.

#### ARTICLE 6. NOTIFICATION OF MAJOR CHANGES AND VULNERABILITY DISCLOSURES

A. 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<sup>2</sup> 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.

B. Supplier must use commercially acceptable efforts to remediate, within twenty (20) business days, any vulnerability rated as CVE High or Critical.

C. 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.

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<sup>2</sup>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](http://cve.mitre.org)

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ARTICLE 7. RETURN AND DISPOSAL OF INSTITUTIONAL INFORMATION

- A. Within thirty (30) calendar days of the termination, cancellation, expiration, or other conclusion of the Agreement, Supplier must return all Institutional Information to UC, except where prohibited by law, such as Consumer Financial Information, and then dispose of the Institutional Information in possession of Supplier as detailed herein. Supplier will retain applicable Institutional Information for a time period necessary to prove compliance with applicable laws, industry standards, and audit controls. Consumer Financial Information and any data Supplier is required to retain for compliance and audit purposes will remain subject to the terms of this Appendix. This provision also applies to all Institutional Information that is in the possession of sub-suppliers or agents of Supplier.
- B. 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.
- C. Supplier will certify in writing to UC that such return and/or disposal has been completed.
- D. 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

- A. Supplier agrees to notify UC promptly, both orally and in writing, but in no event more than three (3) business days 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

- A. 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

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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.
- B. Supplier will provide other information as reasonably requested by UC.
- C. 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.
- D. 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 reasonably 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.
- E. 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.
- F. 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.
- G. 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

- A. Supplier represents and warrants that the Goods and/or Services do not knowingly contain Illicit Code.
- B. 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.
- C. Supplier agrees, in order to protect UC from damages that may be intentionally or unintentionally caused by the introduction of Illicit Code, to promptly isolate or otherwise secure and then return Institutional Information and/or IT Resources.
- D. Supplier acknowledges that it does not have any right to electronically hold Institutional Information or assert any claim against UC by withholding the Goods and/or Services using Illicit Code.
- E. Should Supplier learn of the presence of Illicit Code, Supplier will promptly provide UC with written notice explaining the scope and associated risk.
- F. Supplier represents and warrants that it will take commercially reasonable steps to promptly remove Illicit Code.
- G. Supplier represents and warrants that even if Illicit Code is unintentionally installed via any method, Supplier will never utilize the Illicit Code.
- H. 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.

#### ARTICLE 11. BACKGROUND CHECKS

- A. In accordance with Supplier's established business policies and procedures, Supplier shall perform thorough and pertinent background checks on Supplier's employees, sub-suppliers, or agents. Supplier will evaluate the results of the background check. UC will not receive results of the background checks, but only individuals that have passed the background check will be assigned by Supplier to access Institutional Information and/or IT Resources classified at Protection Level 3 or Protection Level 4<sup>3</sup>. Supplier maintains responsibility for the actions of it and its employees, sub-suppliers, and agents.
- B. Supplier must retain each employee's, sub-supplier's, or agent's background



## University of California

## Appendix Data Security

check documentation for a period of three (3) years following the termination of the Agreement.

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<sup>3</sup> See Exhibit 1



## Exhibit 1 – Institutional Information

1. Protection Level Classification<sup>1</sup>:

- ☐ Protection Level 1
- ☐ Protection Level 2
- ☐ Protection Level 3
- ☒ Protection Level 4

**Explanation:** [Optional, add detail if needed, may be covered in SOW]

The Protection Level determines the applicable cyber security insurance requirement in the Terms and Conditions.

2. Institutional Information data element descriptors:

Select all data types that apply:

- A. ☐ Animal Research Data.
- B. ☐ Controlled Technical Information (CTI).
- C. ☐ Controlled Unclassified Information (CUI) – 800-171/NARA.
- D. ☐ Defense Department: Covered Defense Information (CDI).
- E. ☐ Federal Acquisition Regulations (FARS/DFAR) other than CUI.
- F. ☐ GDPR personal data.
- G. ☐ GDPR special data.
- H. ☐ Health data – other identifiable medical data not covered by HIPAA. (Including but not limited to: occupational health, special accommodation, or services qualification, etc.)
- I. ☐ Health Records subject to HIPAA Privacy or Security Rule (PHI).
- J. ☐ Human Subject Research Data.
  - 1. ☐ Identified.
  - 2. ☐ Anonymized.
- K. ☐ Intellectual property (IP), such as patents, copyright, or trade secrets.
- L. ☐ ITAR/EAR-controlled data.
- M. ☐ Payment card data (PCI, PCI DSS).
- N. ☒ Personally identifiable information – PII.
- O. ☒ Student data, whether or not subject to FERPA.

<sup>1</sup>For reference see: <https://security.ucop.edu/policies/institutional-information-and-it-resource-classification.html>

## University of California

Appendix  
Data Security

- P. ☐ Other: \_\_\_\_\_
- Q. ☐ Other: \_\_\_\_\_
- R. ☐ Other: \_\_\_\_\_
- S. ☐ Other: \_\_\_\_\_

3. Institutional Information Regulation or Contract Requirements:  
Select all regulations or external obligations that apply to inform UC and the Supplier of obligations related to this Appendix:

**Privacy (\* indicates data security requirements are also present)**

- A. ☐ California Confidentiality of Medical Information Act (CMIA) \*.
- B. ☐ California Consumer Privacy Act (CCPA).
- C. ☐ California Information Practices Act (IPA).
- D. ☐ European Union General Data Protection Regulation (GDPR)\*.
- E. ☒ Family Educational Rights and Privacy Act (FERPA) \*.
- F. ☐ Federal Policy for the Protection of Human Subjects ("Common Rule").
- G. ☐ Genetic Information Nondiscrimination Act (GINA).
- H. ☐ Gramm-Leach-Bliley Act (GLBA) (Student Financial Aid) \*.
- I. ☐ Health Insurance Portability and Accountability Act/Health Information Technology for Economic and Clinical Health Act (HIPAA/HITECH) \*.
- J. ☐ Substance Abuse and Mental Health Services Administration SAMHSA (CFR 42 Part 2).
- K. ☐ The Fair and Accurate Credit Transaction Act (FACTA).
- L. ☐ The Fair Credit Reporting Act (FCRA).

## Data Security

- M. ☐ Chemical Facility Anti-Terrorism Standards (CFATS).
- N. ☐ Defense Federal Acquisition Regulations (DFARS).
- O. ☐ Export Administration Regulations (EAR).
- P. ☐ Federal Acquisition Regulations (FARS).
- Q. ☐ Federal Information Security Modernization Act (FISMA).
- R. ☐ International Traffic in Arms Regulations (ITAR).
- S. ☐ Payment card data (PCI, PCI DSS).
- T. ☐ Toxic Substances Control Act (TSCA).
- U. ☐ Other: \_\_\_\_\_
- V. ☐ Other: \_\_\_\_\_
- W. ☐ Other: \_\_\_\_\_
- X. ☐ Other: \_\_\_\_\_

## Exhibit 2

# Supplier's Initial Information Security Plan

Nelnet's Security Program strategy revolves around people, processes, and technology. Nelnet believes an integrated approach to security leads the way in the industry, and provides additional value to assist clients in mitigating their risk across the supply chain. Nelnet implements a defense-in-depth strategy, which combines physical control measures with logical control measures, and uses a layered security model to provide end-to-end security of client and customer information.

Our Corporate Security Policy documents and communicates organizationally-consistent requirements for minimum, mandatory security practices to protect associates, facilities, and data to ensure the confidentiality, integrity, and availability of Nelnet information and information systems. The policy is confidential, proprietary and the property of Nelnet, Inc. and its affiliated companies (Nelnet), and is intended for internal use only.

The below section provides the sections within the Information Security Policy:

- Risk Assessment and Treatment
- Information Security Policies
  - Management Direction for Information Security
- Organization of Information Security
  - Internal Organization
  - Mobile Devices and Teleworking
- Human Resource Security
  - Prior to Employment
  - During Employment
  - Termination and Change of Employment
- Asset Control
  - Business Requirements of Access Control
  - User Access Management
  - User Responsibilities
  - System and Application Access Control
- Cryptography
  - Cryptographic Controls
- Physical and Environmental Security
  - Secure Areas
  - Equipment
- Operations Security
  - Operational Procedures and Responsibilities
  - Protection from Malware
  - Backup

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- Logging and Monitoring
    - Control of Operational Software
    - Technical Vulnerability Management
    - Information Systems Audit Considerations
  - Communications Security
    - Network Security Management
    - Information Transfer
  - System Acquisition, Development and Maintenance
    - Security Requirements of Information Systems
    - Security in Development and Support Processes
    - Test Data
  - Supplier Relationships
    - Information Security in Supplier Relationships
    - Supplier Services Delivery Management
  - Information Security Incident Management
    - Management of Information Security Incidents and Improvements
  - Information Security Aspects of Business Continuity Management
    - Information Security Continuity
    - Redundancies
  - Compliance
    - Compliance with Legal and Contractual Requirements
    - Information Security Reviews

## ATTACHMENT A

HOSTED BUSINESS SERVICES  
TERMS AND CONDITIONS1. **DEFINITIONS:**

- a. **"Agreement"** means the Professional Services Agreement executed between the Institution and the Company (collectively, **"the Parties"**) which incorporates applicable Order Forms and Terms and Conditions.
- b. **"Cashiering"** means a secure, integrated solution for processing student and non-student payments (e.g., departmental deposits, donations, tickets) in real time. The Company's cashiering application validates general ledger accounts, provides audit controls and robust receipting, integrates easily with an institution's ERP, and has a flexible front end to allow the institution to configure multiple transaction types.
- c. **"Change Requests"** are requests by the Institution to modify existing system features or their output. To meet Change Requests, Company provides Professional Services at an hourly rate as quoted on the Change Request form.
- d. **"Commencement Date"** means the date of the first transaction processed by the Company on behalf of the Institution for a given service.
- e. **"Confidential Information"** has the same meaning as set forth in the Agreement as well as all trade secrets, business and financial information, computer software, machine and operator instructions, business methods, procedures, know-how, and other information that relates to the business or technology of either party and is marked or identified as confidential, or disclosed in circumstances that would lead a reasonable person to believe such information is confidential. The Company's hosted system, applications, and all Documentation will be considered the Company's Confidential Information, notwithstanding any failure to mark or identify it as such.
- f. **"Documentation"** means user's manuals and other documentation made available to the Institution by the Company with respect to the system, but excludes any marketing or promotional materials.
- g. **"e-Bill"** means an attempt to make available a billing statement in electronic form to a potential payer.
- h. **"End User"** means each Institution employee, student, or an authorized third party who is permitted to access and/or use the Company's system and applications under the terms of this Agreement.
- i. **"Enterprise"** means the Company's proprietary system, based on the .NET platform, through which it delivers Company's Enterprise-specific campus commerce software.
- j. **"e-Pay"** means an attempt to process an electronic payment through the System software.
- k. **"ERP"** means an Institution's Student Information System (Enterprise Resource Planning software).
- l. **"eStore"** means a self-service web store which allows an institution to sell physical goods, process event registrations, and solicit donations. Consumers can add multiple items to a shopping cart and pay for these items using a credit or debit card or eCheck in a single transaction. Institutions can set up multiple stores, create and manage products, view orders, track inventory, and record order fulfillment.
- m. **"Integration Connector"** means a series of instructions to post information to and/or from the Company's system and the ERP system.
- n. **"Intellectual Property Rights"** means any and all existing or future worldwide copyrights, trademarks, service marks, trade secrets, patents, patent applications, know-how, moral rights, contract rights, and other proprietary rights, and all registrations, applications, renewals, extensions, and combinations of the foregoing.
- o. **"Institution Content"** means any data or content that is submitted by the Institution and collected and stored by the Company's system.
- p. **"Merchant Acquirer"** means an organization affiliated with a bank licensed by card associations to enroll merchants and arrange for the necessary authorization and settlement of credit and debit card transactions.
- q. **"New Feature"** means a major enhancement or service with significant new functionality, as determined by Company in its sole discretion and as listed on an Order Form. New Features may be "turned on" for an additional charge as agreed to by executing an additional Order Form.
- r. **"Order Form"** means that list of hosted business services and pricing, completed and executed by the Institution, which accompanies these Terms and Conditions and is incorporated into the Agreement between the Parties.
- s. **"Point-to-Point Encryption (P2PE)"** means a certified solution that allows the Institution to swipe or key-enter payment card data into a P2PE device that encrypts the data from the point of entry, through transmission, and to the payment gateway.
- t. **"Professional Services"** means services provided to the Institution by the Company which include, but are not limited to, analysis; Setup Services; software modifications; coding, implementation, installation, project management, system testing, acceptance testing support, or Institution training; and any other hourly services requested by the Institution.
- u. **"Refunds"** means a service for students and authorized third-parties (parents/guardians) to sign up online to have primarily financial aid refunds electronically deposited directly into students' or authorized third parties' checking or savings accounts, or loaded to an existing re-loadable prepaid debit card or disbursed via paper check.
- v. **"Returned Item"** means any payment remitted to Institution that is returned by the payer's bank or financial institution or any reversal of credit/debit payments.
- w. **"Setup Services"** means the standard initial services provided by the Company to set up and configure the system as specified in each fully executed Order Form in accordance with the Company's policies and procedures.
- x. **"Staff"** means those Institutional employees designated by the Institution to work with the Company in deploying and managing the system and hosted services.
- y. **"System"** means collectively the Company's campus commerce software and system, whether delivered via the J2EE, .NET, or other applicable platform, and such hosting, support, maintenance, installation, and Setup Services requested by the Institution pursuant to an executed Order Form and provided by the Company pursuant to the Agreement between the Parties and these Terms and Conditions. The System includes, without limitation, 1) any materials of the Company's licensors or contractors, 2) any modified, Upgraded, or enhanced versions of all code, and 3) all modifications and Upgrades that may become part of the System pursuant to this Agreement.
- z. **"System Site"** means the website provided by the Company to the Institution, accessed through the Institution's website, where End Users may access and use the System.
- aa. **"Upgrade"** means a modified version of the system that contains patches, bug fixes, error corrections, enhancements, New Features, and other maintenance items. New Features may be "turned on" for an additional charge as agreed to by executing an additional Order Form.

2. **SERVICES:**

- a. **Provision of Services by Company:** Subject to the terms and conditions of the Agreement and these Terms and Conditions, Company will use commercially reasonable efforts to provide the system to the Institution. In addition, Company will use commercially reasonable efforts to ensure that the system is accessible through the System Site over normal network connections, with the exception of downtime due to necessary maintenance and troubleshooting.
  - b. **Support and Maintenance:** Subject to the Institution's timely payment of all applicable fees, Company will make Upgrades available for the system when and if made available for general release in Company's sole discretion. Company will provide telephone support services to Institution Staff for system related questions during Company's regular business hours (866.315.1263; 8:00 a.m. to 5:00 p.m. Central, Monday through Friday, excluding Company-designated holidays). If Institution desires additional services, including, without limitation, training or customization services, Company may provide such services pursuant to its standard rates and terms for Professional Services. Provision of support and maintenance does NOT include major enhancements with significant new functionality or additional services, as determined by Company in its sole discretion ("New Features"). New Features must be purchased through a validly executed Order Form.
3. **TITLE IV COMPLIANCE:** The Company will comply with all statutory provisions of or applicable to Title IV of the Higher Education Act (HEA), all regulatory provisions prescribed under that statutory authority, and all special arrangements, agreements, limitations, suspensions, and terminations entered into under the authority of statutes applicable to Title IV of the HEA.
  - a. **Notification:** The Company will notify the U.S. Department of Education ("the Department") of its status as a third-party servicer on behalf of the Institution, as it relates to Title IV program funds, within ten (10) calendar days of a fully executed agreement or Order Form for said service. The Institution will be responsible for notifying the Department of its decision to contract the Company as a third-party servicer within the timeframe necessary to ensure the Institution's compliance with Title IV statutes.
  - b. **Use of Funds:** The Company will use any funds that the Company administers under any Title IV program solely for the purposes specified and in accordance with that program.
  - c. **Report of Misconduct:** The Company will refer any information to the Office of Inspector General of the Department of Education for investigation if there is reasonable cause to believe that the Institution might have engaged in fraud or other criminal misconduct in connection with the Institution's administration of any Title IV program.
  - d. **Liability:** Notwithstanding any indemnification provisions of this Agreement, both parties are jointly and severally liable to the U.S. Secretary of Education for any violation by the Company of any statutory provision of or applicable to Title IV of the HEA.
  - e. **Audit:** The Company will undergo and submit an annual Title IV compliance audit.
  - f. **Return of Records, Funds:** The Company will return to the Institution all records and Title IV funds in the Company's possession pertaining to the Institution's participation in the program(s) if the Company or Institution terminates the contract, if the Company stops providing services for the administration of a Title IV program, or the Company files a petition under the Bankruptcy code (34 C.F.R. § 668.25(c)(5)).
4. **SUBSCRIPTION AND RESTRICTIONS:**
  - a. **Subscription:** Subject to the terms and conditions of this Agreement (including, without limitation, the Institution's obligation to pay all applicable fees) and during the term of this Agreement, Company will provide to the Institution a non-exclusive, non-transferable subscription that enables End Users to access and use the system as made available to the Institution and such End Users through the System Site solely for the Institution's internal business purposes and solely in accordance with the Documentation.
  - b. **Restrictions:** Institution will not, and will not permit any End User or third party to: (i) modify, adapt, alter, translate, or create derivative works from the system or the Documentation; (ii) merge the system with other software; (iii) allow any third party access to or use of the system; (iv) reverse engineer, decompile, disassemble, or otherwise attempt to alter or derive the source code for the system; (v) knowingly infringe on any of the Company's Intellectual Property Rights; or (vi) otherwise use or copy the system or the Documentation except as expressly permitted under this Section 4 and including mutually agreed upon data integration efforts.
  - c. **Information Access:** The Institution will have access to the system. The Institution agrees not to disclose User IDs and Passwords to unauthorized personnel, and it will notify the Company immediately if an unauthorized person obtains access to them. The Institution will also notify the Company if a User ID and Password is no longer needed by a representative of the Institution.
  - d. **Appropriate Use:** Institution acknowledges that End Users must abide by the terms of the System Site, and Company reserves the right to deny access to the system to any End User who does not abide by such terms. End Users may use the system only for the purposes of viewing bills, submitting payments, and performing commerce-related activities for the sole benefit of the Institution. Use will be subject to any and all posted terms that are not inconsistent with terms herein. The Institution will ensure that the Institution, Staff, and End Users who use the system comply with all applicable laws and regulations and any written or electronic instructions for use.
  - e. **Scans:** If Institution deems it necessary to perform security scans or other similar tests, the Institution must comply with the following mandatory requirements: (i) provide one week's notice of intent to test; (ii) coordinate testing with Company staff; (iii) perform testing only during non-peak non-daytime hours; and (iv) compensate Company the greater of \$2,500 or the Company's then-current Professional Services rate per staff hour for Company staff participation required, if any.
5. **PAYMENT TERMS:**
  - a. **Operational Fees:** Operational fees (which may include hosting, maintenance, and transactional charges) for the system will be invoiced on a monthly basis. The first applicable billing date for Operational Fees for a given service will be the Commencement Date.
  - b. **Setup Services:** Fifty percent (50%) of the Setup Services fee for the initial deployment or subsequent enhancements (if applicable) will be invoiced and presented with each Order Form. If an Institution delays deployment of any feature, it is responsible for the fixed flat pricing stated on the Order Form for all features, if applicable. The Institution must pay the Setup invoice in order to engage a system Project Manager. All other invoices are due within thirty (30) days of receipt.
  - c. **Professional Services:** Professional Services will be provided to the Institution only pursuant to the terms of an executed Order Form or Change Request form. Professional Services will be provided by the Company's at its then-current hourly rate.
  - d. **Taxes:** The Institution is responsible for all taxes associated with the services described herein, excluding taxes for the Company's income.

- c. **Third-Party Changes:** The Company may adjust its fees or procedures as a result of changes in pricing or procedures by any third-party provider or regulator of a product or service used by the Institution. Such new prices or procedures will be applicable to the Institution as of the effective date established by the third-party provider or regulator, or as of any later date specified in the Company's notice to the Institution. (*Example:* The merchant discount fee or convenience fee is subject to change by the Company upon thirty (30) days' advance notice if the Company's bank merchant rate increases due to changes made by Visa, MasterCard, Discover, or American Express.) The Company reserves the right to increase fees at any time in an amount necessary to offset the cost of rising postal rates associated with the refunds process, if applicable. Notwithstanding the foregoing, the Company reserves the right to periodically adjust its prices to address changing market conditions and other business realities. These increases will be infrequent, well-communicated, and cause for immediate termination by the Institution if deemed unreasonable by the Institution in its sole discretion.
- f. **Company Pricing Changes:** Operational, transaction and other fees are stated in an Order Form and will remain fixed for the Initial Term. Thereafter, they may be adjusted annually, on July 1, upon mutual written agreement between the parties. Fee increases, if any, will only apply to Institution-purchased products/services that have been implemented ("live", "in production") a minimum of twelve (12) months as of July 1 of any given year.
- g. **Early Termination:** If the Institution terminates this Agreement during the Initial Term, the Institution will be liable for payments for products provided or services performed through the effective date of such termination. Compensation for such work will be based on the contracted price(s), with certain fees (i.e., setup, monthly, or hourly) prorated accordingly based on the date of termination and/or full or partial progress toward completion. These fees will be charged to the Institution as a lump sum payable in thirty (30) days from the effective date of termination.

## 6. **INSTITUTION RESPONSIBILITIES:**

- a. **Staff Participation:** Timely Staff participation is required for requirements gathering, system configuration, deployment, testing and training in accordance with the scheduled timeline for delivery.
- b. **Marketing:** The Institution will communicate the availability of the system, without limitation, through the Institution's website to the Institution's End Users.
- c. **Commencement:** The Institution will make the system available to End Users through the Institution's website beginning on the Commencement Date.
- d. **Acceptance Testing:** The Institution will, with the Company's assistance, have the right to verify the operation of the system in accordance with Company documentation. The Acceptance Testing Period will be a time period not to exceed ten (10) business days from the date of delivery to determine whether the system materially conforms to the Company documentation. Notwithstanding the foregoing, if the system materially conforms to the Company documentation, based upon the reasonable judgment of pass or fail, or if no notification is given to the Company during the ten (10) business day Acceptance Testing Period or subsequent Acceptance Testing Periods, the system will be deemed accepted. The Acceptance Date will be the date that the Institution determines that the system satisfactorily complies with the Documentation, or the date acceptance occurs, whichever comes first. If the system fails to materially conform to Company documentation, the Institution will notify the Company of such failure in writing within the ten (10) business day Acceptance Testing Period. The Company will have twenty (20) business days after receipt of such notice to use its reasonable commercial efforts to correct, modify, or improve the system to conform to the Company documentation. Thereafter, the Institution will have a subsequent Acceptance Testing Period of five (5) business days from the date of redelivery in which to re-conduct its Acceptance Testing. This process will be repeated as necessary until the system is deemed to be accepted hereunder.
- e. **Technical Support:** The Institution will provide adequate technical support to the Company, its licensors, and contractors for the deployment of the system into the Institution website and assist the Company, its licensors, and contractors in the identification and resolution of service problems. In some circumstances, the Institution may have to program its ERP to work properly with the Company's Integration Connectors.
- f. **Dependencies:** The Institution will provide all necessary information and assistance to the Company to provide the system and Professional Services. The Institution understands and acknowledges that the Company's ability to provide the system and Professional Services will depend on various assumptions, dependencies, and prerequisites, as well as the completion of certain tasks or schedules by the Institution, the Institution's agents, or third parties that are outside of the Company's control; therefore, the Company's inability to perform, due to such matters, will not be deemed a breach of this Agreement by the Company and its duties hereunder will be mitigated to such extent.
- g. **Backups:** The Institution agrees that it will be the Institution's responsibility to maintain duplicate copies of all original data and information and agrees that the Company will not be responsible or liable for any loss or destruction thereof during the course of rendering system services, unless loss or destruction of any such data is caused by the intentional misconduct of the Company. The Company may archive data (or cause its agents or contractors to archive data), if and to the extent that the Company, in its sole discretion, deems appropriate in connection with this Agreement.
- h. **Termination and Integration Connectors:** The Institution will maintain as Confidential Information any system integration technology developed and deployed pursuant to this Agreement.

- 7. **OWNERSHIP:** All rights, title, and interest in and to the system (and its related software, tools, integration connectors, Institution modifications through Professional Services, and other technology, or portions thereof) and the copyright, patent, trademark, trade secret, and all other proprietary rights therein, and any derivative works created from them, will inure to the sole and exclusive benefit of the Company, its licensors, and contractors (as designated by the Company) from the date of conception, creation or fixation of any of the foregoing in a tangible medium of expression. The Institution expressly acknowledges that it will acquire no rights or interest therein. The Institution hereby assigns, and will assign, to the Company, its licensors, and contractors (as designated by the Company) all rights, title, and interest of the Institution, if any, in and to all of the foregoing. All rights not expressly granted under this Agreement are reserved by the Company. The Institution acknowledges that it may develop and disclose to the Company certain ideas, know-how, and forms of expression concerning or related to the system provided hereunder including derivative works (collectively "Developments"). To the extent that the Institution has any ownership interest in such Developments, the Institution hereby grants to the Company a perpetual, nonexclusive, royalty-free license to use such Developments in connection with the system and generally in connection with the operation of the Company's business.



8. **CONTENT WARRANTY:** Institution will be solely responsible for providing all Institution Content. Institution will be solely responsible for ensuring the appropriateness of any data provided by End Users at the request of the Institution (for example, on a form created by the Institution, if applicable). Institution grants to Company all necessary proprietary rights and licenses in and to Institution Content solely as necessary for Company to provide the Services for Institution. Institution will not provide content that: (a) infringes or violates any intellectual property rights, publicity/privacy rights, law or regulation; (b) contains any viruses or programming routines intended to damage, surreptitiously intercept or expropriate any system, data or personal information; or (c) is materially false, misleading or inaccurate. Institution will not request data from End Users: (a) the storage of which would violate applicable laws and regulations; (b) that exposes the Company to risk of breach and/or breach notification; or (c) that Institution would not readily store unencrypted on its own servers. Company may take remedial action if content violates this Section 8; however, Company is under no obligation to review content or data for accuracy or potential liability. Institution will defend, indemnify and hold harmless Company from any and all losses, costs, damages, liabilities or expenses (including without limitation reasonable attorneys' fees) incurred or arising from any claim by a third party arising out of the Institution Content.
9. **RISK:** The Institution understands that the system will not be uninterrupted or error free. The Institution agrees that it will be responsible for notifying its End Users of the need for End Users to maintain the confidentiality of user identifications and passwords, if applicable, as well as the risks inherent in using the Internet as a medium for the transport of information, including personal or confidential information. The Institution will utilize procedures to minimize any consequences of the failure of or errors resulting from the use of the system, including without limitation, maintaining a current backup of all related file data that has been delivered to the Institution.
10. **DISCLAIMER:** THE INSTITUTION ACKNOWLEDGES THAT PERIODIC UNAVAILABILITY OF THE SYSTEM DUE TO MAINTENANCE, BACKUP, AND UNAVAILABILITY OF HOSTING FACILITIES, TELECOMMUNICATIONS FAILURES OR OTHER CAUSES BEYOND ITS CONTROL WILL NOT CONSTITUTE A BREACH OF THIS AGREEMENT.
11. **COMPLIANCE REVIEW:** The Institution shall, from time to time during regular business hours and upon reasonable prior written notice, permit Company representatives to review Institution's applicable policies and procedures or other records necessary to ensure Institution's and its subcontractors' compliance with the terms and conditions of this Agreement, as well as applicable law or additional requirements imposed by the Department related to the services provided under the Agreement. Institution agrees to reasonably cooperate with Company's review. In the event Institution fails to cooperate with Company, such failure will be deemed a material breach of the Agreement. Institution understands and agrees that the results of any such review will be shared only with the Institution, authorized Company associates, and governmental entities charged with enforcing applicable laws, including the Department.
12. **ACH PROCESSING:** The Company will automatically deposit the Institution's funds into the Institution's bank account according to the schedule selected by the Institution; however, in no event will Company remit funds less than four (4) banking days after such funds were collected. The Institution must designate a demand deposit account ("Account") at a bank located in the United States ("Bank") that participates in the ACH network. The Institution must also provide the Company the required information about the Account and the Bank, and must notify the Bank that the Company may have access to the Account to reimburse itself for returned transactions. See the Refund Process below, if applicable, for additional information about debit blocks and ACH processing. Please be aware that ACH may not be an appropriate payment method for the sale of goods and services requiring immediate fulfillment. The ACH network lacks real-time authorization and transaction returns can take up to two (2) business days; this creates risk of loss if goods have already been shipped.
13. **CREDIT AND DEBIT CARD PROCESSING:**
  - a. **Merchant Services:** The Company may introduce to the Institution a preferred Merchant Acquirer for processing credit and debit card transactions. There will be additional contractual terms and conditions between the Institution and Merchant Acquirer and its affiliated merchant bank. The Company does not warrant Institution-selected merchant card services and is not liable for any interruptions of service or other breach arising from agreement between the Institution and other Merchant Acquirers. The Institution is responsible for adhering to all applicable card association rules and regulations with any Merchant Acquirer.
  - b. **Company Obligations:** The Company agrees to:
    - i. Obtain authorization for all credit and debit card transactions;
    - ii. Warrant that all credit and debit card transactions transmitted to Merchant Acquirers are secure;
    - iii. Remain in compliance with the most current and appropriate representations, warranties, and covenants contained in the Operating Manual, the Operating Regulations, and applicable laws, rules of the preferred Merchant Acquirer, and the applicable card associations;
    - iv. Comply with Payment Card Industry (PCI) Data Security Standard (PCI-DSS) and undergo Level 1 PCI audits as necessary;
    - v. Keep data confidential and not copy, publish, sell, exchange, disclose or provide to others or use any information, documents or data, provided or disclosed to the Company or any account information related to credit and debit cards or cardholders for any purpose other than performing the Company's obligations under the Agreement, as required by the PCI DSS, or as required by applicable law; and
    - vi. Ensure that all system interfaces are compatible with the requirements of the processing systems and networks established and used by a Merchant Acquirer.
14. **MERCHANT PCI DSS VALIDATION:** The Institution assumes the various obligations of a Merchant under credit card association rules. As the Merchant, the Institution has obligations under PCI DSS. On an annual basis, the Institution may be required to complete a PCI DSS Self-Assessment Questionnaire (SAQ) and Attestation of Compliance (AOC) to validate compliance with PCI DSS, even if such validation is simply to confirm that all cardholder data functions have been fully outsourced to the Company. Failure to complete an SAQ/AOC when required may result in penalties assessed to the Institution.
15. **SERVICE FEE PROGRAM ("SFP") (if applicable):**

- a. **Description:** The decision to charge service fees is entirely the decision of the Institution. The Institution assumes all liability for conducting business in compliance with federal, state and local laws, rules, and regulations ("Laws"), including but not limited to laws governing consumer protection. The Institution will indemnify and hold the Company harmless from and against any and all claims, liabilities, losses, damages, costs, and expenses, including reasonable attorney's fees, asserted against or incurred by the Company under federal, state or local laws as a result of the Company complying with any instruction or directive by the Institution. The Institution designates the Company to act as its third-party service provider to accept credit and debit cards and process transactions under the SFP. The Company will accept credit and debit card payments if the End User agrees to pay a Service Fee. The Institution will receive a deposit for 100% of the amount paid for tuition and related educational fees. The Service Fee is computed by applying a flat percentage rate to the tuition or related educational fee amount and may be adjusted with a thirty (30) day written notice to compensate for a change in cost as published by various card associations.
- b. **Separate Transactions:** Two (2) separate transactions will appear on the payer's personal card statement: one (1) for the tuition or related educational fee and one (1) for the Service Fee.
- c. **Merchant Acquirer for SFP:** The Company uses a preferred Merchant Acquirer for its Service Fee Program to process these credit and debit card transactions. There are contractual terms and conditions between the Institution and this Merchant Acquirer, its affiliated merchant bank, and potentially with other desired card associations. The Institution is responsible for adhering to all applicable card association rules and regulations with any Merchant Acquirer. The Institution and the Company will set up a merchant account with this Merchant Acquirer and any other desired card association to receive funds. No merchant discount fees will be deducted from the amount due to the Institution under the SFP. However, if an Institution permits a refund or accepts a chargeback, the amount will be debited to the Institution's account.
- d. **Company Obligations:** The Company agrees to: (i) obtain authorization for all credit and debit card transactions; (ii) warrant that all credit and debit card transactions transmitted to Merchant Acquirers are secure; (iii) remain in compliance with the most current and appropriate representations, warranties, and covenants contained in the Operating Manual, the Operating Regulations, and applicable laws, rules of the preferred Merchant Acquirer, and the applicable card associations; (iv) comply with PCI DSS and undergo Level 1 PCI audits as necessary; (v) keep data confidential and not copy, publish, sell, exchange, disclose or provide to others or use any information, documents or data, provided or disclosed to the Company or any account information related to credit or debit cards or cardholders for any purpose other than performing the Company's obligations under the Agreement, as required by the PCI DSS, or as required by applicable law; (vi) maintain the security and confidentiality of card transactions processed through the system (while the information is stored within the system); and (vii) ensure that all system interfaces are compatible with the requirements of the processing systems and networks established and used by a Merchant Acquirer.

16. **REFUND PROCESS (if applicable):** The Institution can select from three refund options, individually or in any combination:

- ACH Direct Deposit
- Paper Check
- ACH Direct Deposit to a Re-loadable Prepaid Debit Card

The Institution may elect to have existing payee disbursement candidate ("Candidate") ACH payment profiles moved from Institution's current refunds management solution to the Company's system, if applicable. Institution's existing Candidate ACH payment profiles may only be uploaded to Company's system once. The Company will assess the Institution a fee for this service, as stated in an Order Form, if applicable.

The Institution and the Company agree to comply with all applicable regulations, including Title IV program requirements, as well as the procedures below. The Institution acknowledges that the Company has no control over the actual availability of funds, which is determined by the payee's bank or prepaid debit card provider:

- a. **Institution Obligations:** The Institution will:
  - i. Establish and manage a process whereby Candidates can opt out of the transfer of their ACH payment profile to the Company's system, if applicable;
  - ii. Collect and maintain appropriate documentation of the opt-out process for seven (7) years, making the information readily available in the event of an audit review request, if applicable;
  - iii. Ensure the accuracy of Candidate ACH payment profile information, if applicable;
  - iv. Format Candidate ACH payment profile data and the file for transmission according to Company specifications, if applicable;
  - v. Establish the capacity to encrypt and transmit Candidate ACH payment profiles via Secure FTP (SFTP) or other supported secure transport protocol, if applicable;
  - vi. Forward a single file of Candidate ACH payment profiles to the Company for upload to the System, if applicable;
  - vii. Ensure Candidates will receive credit balance monies ("Refund") by an alternate method if not enrolled to receive a refund through the contracted product;
  - viii. Establish and follow procedures for (1) identifying and determining a credit balance on a student account; (2) verifying eligibility prior to disbursement; (3) drawing down Title IV funds; and (4) notating the disbursement on student ledger accounts;
  - ix. Ensure the accuracy of all refund data provided to the Company, including but not limited to ensuring the accuracy of any refunds file and preventing any duplicate refund data from being submitted to the Company (including duplicate files);
  - x. Forward Candidate files to the Company with sufficient lead time so as to meet Title IV deadlines, where applicable; the Institution is solely responsible for timely delivery of Candidate files:
    1. For ACH direct deposit refund disbursements, Candidate files must be uploaded to the Company system no later than ten (10) business days following credit balance determination;
    2. For paper check refund disbursements, Candidate files must be uploaded to the Company system no later than eight (8) business days following credit balance determination;
  - xi. Create messaging content for enrollment and disbursement notifications to Candidates;
  - xii. Ensure an alternate system is in place to provide the refund disbursement if undeliverable via the primary method of choice (i.e., invalid account message from the National Automated Clearing House Association [NACHA]);

- xiii. Educate students regarding the various refunds method(s) offered by the Institution;
  - xiv. Make available sufficient funds to process the refunds by debit-block-free ACH transaction to Institution's bank account;
    - 1. If an ACH debit transaction is rejected by Institution's bank for any reason, the Institution agrees to wire said funds to the Company by noon Central time on the date notified by the Company; if the Institution fails to wire the necessary funds by noon Central time, the Company may recall the original refund transaction file(s).
    - 2. In no way limiting the above, if an ACH debit transaction fails due to a debit block, hourly fees at the then-current Professional Services rate will apply as the Company makes adjustments and reconciles funds due to such failure.
    - 3. If the Institution fails to remove the debit block within 48 hours, in addition to recalling the original refund transaction file(s), the Company may suspend all further refund activity until the debit block is removed.
  - xv. Establish the capacity to encrypt and transmit disbursement candidate files via Secure FTP (SFTP) or other supported secure transport protocol;
  - xvi. Develop appropriate and applicable customer service scripts (e.g., FAQs) to deliver customer service as necessary based on program offerings;
  - xvii. Provide Staff as required to develop desired integration functionality;
  - xviii. For paper checks, cooperate with Company to promptly process aged outstanding checks;
  - xix. Establish and follow procedures to return undeliverable and non-negotiated Title IV funds to the Department and prevent escheatment to the state;
  - xx. Issue any stop payments on refund checks and agree not to re-submit any refund request for the affected payee disbursement candidate until the day following the stop payment request (to ensure the stop payment has time to become effective and avoid having two "live" checks in process);
  - xxi. Indemnify and hold the Company harmless for any and all liabilities, damages, expenses, or losses incurred by the Company because of any act or omission of the Institution, its officers, employees, or End Users in connection with or relating to: (1) a provision of inaccurate payee information, (2) a violation of any applicable laws, rules, or regulations, and (3) any fraudulent refund activities; and
  - xxii. Submit to annual Company review of Title IV policies and procedures, per Department directive. Institution will be required to complete the review process prior to going live with Company's refunds management services.
- b. **Company Obligations:** The Company will:
- i. Perform Department-required review of Institution's Title IV policies and procedures based on the Institution's Commencement Date for the Company refunds product (See xxii. above);
  - ii. Submit review report to Institution, and if required, the Department;
  - iii. Maintain payee authorization to perform electronic funds transfer (EFT);
  - iv. Obtain payee refunds disbursement preference based on option(s) selected by Institution;
  - v. Upload Institution-provided Candidate ACH payment profiles to the System, if applicable;
  - vi. Securely process the credit balance file uploaded by the Institution once funds have been received by the Company;
  - vii. Notify payee that a refund has processed;
  - viii. Deposit funds to payee-nominated domestic checking or savings account or existing re-loadable prepaid debit card within three (3) business days of receipt of disbursement candidate file;
  - ix. For paper checks, mail checks within six (6) business days of receipt of disbursement candidate file;
  - x. Within three (3) business days of being notified by bank, notify Institution of any transactions known to have rejected;
  - xi. Return rejected EFT transaction funds to Institution for disbursement, unless contract allows for an alternate method of disbursement;
  - xii. Return disbursement information to the Institution via SFTP or other supported secure transport protocol;
  - xiii. Provide applicable support to deliver customer service, as necessary, based on program offerings;
  - xiv. Adhere to all applicable laws, rules, or regulations;
  - xv. Maintain Professional Liability and Employee Dishonesty insurance at sufficient levels to reasonably offset the risk of loss;
  - xvi. Return non-negotiated funds back to Institution after the applicable period (currently 90 days); and
  - xvii. Undergo and submit an annual Title IV compliance audit.

## 17. **CASHIERING (if applicable):**

- a. **Institution Obligations:** The Institution will:
- i. Continue to safeguard payee information in accordance with FERPA, GLBA, and other confidential requirements;
  - ii. Comply with any applicable rules and regulations as prescribed by NACHA, Check for the 21<sup>st</sup> Century Act (Check 21), and abide by any applicable Payment Card Industry standards as outlined by the PCI Security Standards Council;
  - iii. Hold the Company harmless for any and all liabilities, damages, expenses, or losses incurred by the Company because of any act or omission of the Institution, its officers, employees, or End Users in connection with or relating to inaccurate payee information, third party theft, and detection of fraudulent activities;
  - iv. Purchase only Company-certified cashiering equipment. Institution is responsible for hardware maintenance and support;
  - v. Make Staff available for cashiering and administrative systems training;
  - vi. Permit access to the ERP system and support to properly install and maintain cashiering operations.
- b. **Company Obligations:** The Company will:
- i. Continue to safeguard payee information in accordance with FERPA, GLBA, and other confidential requirements;
  - ii. Comply with any applicable rules and regulations as prescribed by NACHA, Check 21, and abide by any applicable Payment Card Industry data security standards as outlined by the PCI Security Standards Council, as applicable;
  - iii. Provide a hosted cashiering and departmental deposit solution;
  - iv. Work with Institution Staff to integrate to the Institution's ERP system;
  - v. Provide in-person payment processing for cash, check, credit card, and/or debit card transactions;
  - vi. Provide configuration and operations expertise as well as critical connection support;
  - vii. Provide limited offline cash receipting capabilities when Company host system is unavailable; and
  - viii. Offer on-site assistance as necessary with proper notice and cost.

**18. ESTORE (if applicable):**

- a. **Institution Obligations:** The Institution will:
  - i. Continue to safeguard payee information in accordance with FERPA, GLBA, and other confidential requirements;
  - ii. Comply with any applicable rules and regulations as prescribed by NACHA and abide by any applicable Payment Card Industry standards as outlined by the PCI Security Standards Council;
  - iii. Hold the Company harmless for any and all liabilities, damages, expenses, or losses incurred by the Company because of any act or omission of the Institution, its officers, employees, or End Users in connection with or relating to inaccurate payee information, third party theft, and detection of fraudulent activities;
  - iv. Make Staff available for product and administrative systems training; and
  - v. Permit access to the general ledger system and support to properly install and maintain product operations, if applicable.
- b. **Company Obligations:** The Company will:
  - i. Continue to safeguard payee information in accordance with FERPA, GLBA, and other confidential requirements per the Agreement;
  - ii. Comply with any applicable rules and regulations as prescribed by NACHA and abide by any applicable Payment Card Industry data security standards as outlined by the PCI Security Standards Council, as applicable;
  - iii. Work with Institution Staff to integrate the Institution's general ledger system, if applicable;
  - iv. Encrypt data to the highest industry standards to ensure the security of payment data on campus processed by Company;
  - v. Provide configuration and operations expertise as well as critical connection support; and
  - vi. Offer on-site assistance as necessary with proper notice and cost.

**19. POINT-TO-POINT ENCRYPTION ("P2PE") (if applicable):**

- a. The Company is authorized by Bluefin Payment Systems LLC ("Bluefin") to offer Bluefin's DecrypTX<sup>®</sup> service (the "P2PE Service") to its customers on the Company's various platforms. The P2PE Service contains one or more of the following features:
  - i. Credit/debit card track data decryption and response service;
  - ii. Credit/debit card Primary Account Number decryption and response service;
  - iii. Device key injection at Bluefin's designated PCI-approved key injection facility;
  - iv. Provision of real-time chain of custody and monitoring of each device through the Bluefin P2PE POI Manager web application; and
  - v. Personalized guidance and support with the P2PE POI Manager reports necessary to attest compliance on the PCI SAQ P2PE-HW.
- b. Institution wishes to utilize the P2PE Service and shall pay the fees for the P2PE Service set forth on an Order Form, no later than thirty (30) days after the receipt of an invoice from Company.
- c. In order to utilize the P2PE Service, Institution will obtain point-to-point encryption devices ("P2PE Devices") issued by Bluefin. Company will order from Bluefin, on behalf of the Institution, the number of devices indicated by Institution on an Order Form. The P2PE Device purchase will be subject to pricing and payment terms set by CDE Services, Bluefin's PCI P2PE Key Injection Facility ("KIF"). Bluefin will submit the device order to the KIF; the KIF will invoice the Institution directly for the device costs, and Institution will pay such device costs directly to the KIF to initiate shipment.
- d. Unless otherwise stated, the terms of the Agreement shall govern the P2PE Order Form. If the terms of the P2PE Order Form and the Agreement conflict, the terms of the P2PE Order Form shall control as it pertains to the P2PE Service and P2PE Devices.

**Corporate Headquarters:**

Nelnet Business Solutions, Inc.  
 121 South 13<sup>th</sup> Street, Suite 201  
 Lincoln, NE 68508  
 866.315.1263

DeeAnn K. Wenger, President  
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 402.325.7241



## ATTACHMENT B

ORDER FORM  
Hosted Business Service

University of California- San Francisco

**To be implemented:**

Product/Service <sup>1</sup>	Setup Fee <sup>2</sup>	Monthly Fee <sup>3</sup>	Transaction Fee <sup>4</sup>	Consumer Fee <sup>5</sup>
<b>Student Choice Refunds</b> (✓ box(es) to elect refund option(s).)	Waived	\$250		
<input checked="" type="checkbox"/> Import existing ACH profiles	Waived			
<input checked="" type="checkbox"/> ACH Direct Deposit			\$0.30	
<del><input checked="" type="checkbox"/> ACH Direct Deposit to Debit Card <sup>6</sup></del>			<del>\$0.30</del>	
<input checked="" type="checkbox"/> Check			\$3.00	
ACH Return			\$5.00	
<b>Refunds Fees <sup>7</sup></b>				
Void Check			\$5.00	
Stop Payment			\$25.00	
Copy of Cashed Check			\$15.00	

\* DS  
12/21/2020

**Institution Information:**Please direct the **Merchant Application** and other merchant paperwork, if any, to the following Institution contact:Name: Jerry LopezTitle: Director, Student Financial ServicesEmail: jerry.lopez@ucsf.eduPhone: 415-476-6574Please direct **Accounts Payable** and billing/invoicing information to the following Institution contact:Name: Jerry LopezTitle: Director, Student Financial ServicesEmail: jerry.lopez@ucsf.eduPhone: 415-476-6574

\* Changed 12/21/20 per school request (SW)  
 [12/17/20 implementation kick off call  
 12/17/20 email from Jennifer Lugini]

[Order Form continued on following page.]

<sup>1</sup> Each hosted service is configured to Institution specifications without source code customization. Any post-deployment change requests will be billed at the then-current Professional Services rate.

<sup>2</sup> Setup Fees waived in consideration of migration from Tuition Management Systems.

<sup>3</sup> Monthly Fee includes hosting, maintenance, technical support, and release upgrade services.

<sup>4</sup> Per transaction fees assessed to Institution for any Company-initiated/processed transaction.

<sup>5</sup> Assessed to Payer/Responsible Party.

<sup>6</sup> Existing reloadable prepaid debit card.

<sup>7</sup> Requests for these activities will be initiated by the Institution. Fees will be assessed to the school; these fees are separate from Student Choice Refunds transaction fees listed above and any additional banking costs associated with these activities. Additional fees will apply for special requests, if any (e.g., paper check overnight fee).



**ATTACHMENT B** *(continued)*

**ORDER FORM**  
**Hosted Business Service**

**University of California- San Francisco**

The parties agree to the following:

- › This Order Form reflects the Institution's product/service elections and associated pricing as of the Effective Date of Agreement. This Order Form and the services outlined herein are subject to the terms and conditions of the Agreement, including all amendments and addenda, if any.
- › Any mutually agreeable modification or addition of Service(s) must be on a written and executed Order Form. Any subsequently executed Order Form will be subject to the terms and conditions of the Agreement, and any conflict between Order Forms will be controlled by the later executed Order Form.
- › Pricing outlined in this Order Form is applicable to the product(s)/service(s) and/or feature(s) indicated as of their respective Commencement Date(s).
- › For the avoidance of doubt, nothing in this Order Form will relieve the Institution's obligation to pay for payment processing (i.e., merchant fees, credit card assessments, or ACH fees) or installation, maintenance, and transaction fees for any other Company-delivered products/services or features the Institution:
  - 1) is currently contracting to use, as outlined in a prior existing agreement (TMS Procurement Services Systemwide Price Schedule Agreement Number 088/OP/242 Student Financial Support Services), until such time as those products/services are terminated (post migration/upon implementation of new services); or
  - 2) may elect to implement in the future.

Company will continue to assess fees and invoice Institution for currently delivered services, through the effective termination date for each respective service, according to the Pricing Schedule outlined in the prior existing agreement.