



**UNIVERSITY
OF
CALIFORNIA**

Purchasing Agreement # 2021002889

As a result of Request for Proposal for General Lab Supplies, RFP# 2101-July 2020, the Agreement to furnish certain goods and services described herein and in the documents referenced herein ("Goods and/or Services") is made by and between The Regents of the University of California, a California public cooperation ("UC") on behalf of the University of California and the supplier named below ("Supplier"). This Agreement is binding only if it is negotiated and executed by an authorized representative with the proper delegation of authority.

Fisher Scientific Company L.L.C.
300 Industry Drive
Pittsburgh PA 15275
[\(800\) 556-2323](tel:8005562323)

1. Statement of Work

Supplier agrees to perform the Services listed in the statement of work attached as Attachment A ("Statement of Work") and any other documents referenced in the Incorporated Documents section herein, at the prices set forth in the Statement of Work and any other documents referenced in the Incorporated Documents section herein. 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) Unless terminated per section 20, Termination of Agreement, this Agreement shall be effective for a period of four (4) years, from June 15, 2021 ("Effective Date") through June 30, 2025. Thereafter, the parties may by mutual agreement renew or extend the Agreement for additional two (2)-year periods, up to eight (8) years maximum agreement duration, at the same terms and conditions upon mutual agreement of the parties.
- b) Either party may terminate this Agreement for cause, at any time, upon sixty (60) days prior written notice of termination and to the extent thereof without penalty. A party shall have sixty (60) days from the date it receives notice in which to cure any material breach of the Agreement and termination shall be effective at the end of such period only if a party fails to cure the breach.
- c) If any termination of this Agreement takes place, Supplier shall extend to UC, upon UC's request, an additional ninety (90) day period to properly implement a smooth transition. Fees for the services performed during the additional ninety (90) days will be negotiated in good faith between UC and Seller.

3. Purchase Order; Advance Payments

Supplier may not begin providing Goods and/or Services until UC approved Purchase Order for the Goods and/or Services is submitted to the Supplier.

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

Refer to Statement of Work Section 5.d.

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, Supplier name or University of California]. If a physical format notice is required, it must be sent by overnight delivery or by certified mail with return receipt requested, at the addresses specified below.

To UC, regarding contract issues not addressed above:



**UNIVERSITY
OF
CALIFORNIA**

Purchasing Agreement # 2021002889_____

Name	Valerie Vergara
Phone	510-987-0267
Email	Valerie_Vergara@ucop.edu
Address	1111 Franklin Avenue, Procurement Services Oakland, CA 94607

To Supplier:

Name	Eric Van Denburg
Phone	949-842-9685
Email	Eric.vandenburg@thermofisher.com
Address	300 Industry Drive, Pittsburgh, PA 15275 With a copy to VP and General Counsel, RSD at same address.

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)

Not Applicable

8. Prevailing Wages

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

9. Fair Wage/Fair Work

Not Applicable

10. Federally Funded Contracts, Grants, and Cooperative Agreements

Not Applicable

11. 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).

12. Insurance

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 –

XXXXXXXXXXXX



UNIVERSITY OF CALIFORNIA

Purchasing Agreement # 2021002889

13. Service-Specific and/or Goods-Specific Provisions

Not Applicable

14. 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.

15. Incorporated Documents and Order of Precedence

This Agreement and its Incorporated Documents contain the entire agreement between the Parties, in order of the below precedent, concerning its subject matter and shall supersede all prior or other agreements, oral and written declarations of intent and other legal arrangements (whether binding or non-binding) made by the Parties in respect thereof.

- 1. This Agreement #2021002889 – "University of California Strategic Sourcing Agreement"
2. Non-Disclosure Agreement for Participating Public Agencies
3. Letter of Intent for Participating Public Agencies
4. Fisher's response to RFP#2101-July2020
5. RFP#2101-July2020 General Lab Supplies and Distribution Services

16. 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.

This Agreement can only be signed by an authorized representative with the proper delegation of authority.

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA

FISHER SCIENTIFIC COMPANY L.L.C.

DocuSigned by: [Signature] (Signature)

[Signature] (Signature)

(William Cooper, Vice President & CPO) 6/10/2021 (Date)

[Signature] (Lisa V. Witte, President, North America and Emerging Markets) Wednesday, June 9, 2021 (Date)

UNIVERSITY OF CALIFORNIA STRATEGIC SOURCING AGREEMENT

AGREEMENT # 2021002889

Attachment A: Statement of Work

As a result of Request for Proposal # 002101-July2020 General Lab Supply & Distribution Services, the Agreement to furnish certain goods and services described herein and in the documents referenced herein (“Goods and/or Services”) is made by and between The Regents of the University of California, a California public cooperation (“UC”), on behalf of the University of California, and Fisher Scientific Company L.L.C. (“Supplier”) with its principal place of business at:

Fisher Scientific Company L.L.C.
300 Industry Drive
Pittsburgh PA 15275
(800) 556-2323

The parties agree as follows:

1. DEFINITIONS

As used in this Agreement and its attachments and exhibits all of which are a part of the Agreement, the following terms have the following meanings:

- a. "Affiliates" means those institutions which UC has an affiliation with and which participate in this Agreement (as further described in clause 2.a below).
- b. “Market Basket” means those Products which were included within the scope of UC’s General Lab Supply RFP 2101-July 2020, dated August 18th, 2020. Items comprising the Market Basket may change as outlined in Attachment E.
- c. "eCommerce" means the electronic procurement system currently utilized by the UC locations or any electronic procurement system that UC may adopt in the future.
- d. "Business Day" means Monday through Friday, between 8:00 AM - 5:00 PM Pacific Time, excluding UC and Seller observed holidays.
- e. "Franchise Products" – Seller currently has three Product Types. Franchise Products shall mean those products from suppliers with whom Seller has an established and/or contractual distribution relationship. Franchise Products are

currently designated within Seller's system as Product Type 03 or Product Type 04. Specific product type designations may be subject to change.

- f. "Current Published List Price" - the Seller's list price for Franchise Products as of the most recent January price book.
- g. "Delivery" means delivery by Seller directly to the designated UC delivery points.
- h. "Equipment" – shall be defined as instrumentation or equipment sold to the University.
- i. "Equipment Maintenance Services" – shall mean those services offered by Seller for the purposes of repair and maintenance of the Equipment, regardless of OEM. This includes any associated service-level commitments implied or expressed for the purposes of maintaining performance as set forth by the Original Equipment Manufacturer (OEM) standard specifications.
- j. "Force Majeure" means fires; strikes; riots; pandemic or epidemic; embargoes; explosions; earthquakes; floods; wars; acts of terrorism; the elements; labor disputes; shortages of or inability to secure materials or transportation facilities; regulatory acts of government; or other causes or events beyond a party's control.
- k. "Gross Minimum Margin" means the sales price required to retain a specified selling margin based on Seller's product cost.
- l. "Healthcare Professional" (or "HCP") is any person or entity (a) authorized or licensed in the United States to provide health care services or items to patients or (b) who is involved in the decision to purchase, prescribe, order, or recommend a Medical Technology in the United States. This term includes individual clinicians (for example, physicians, nurses, and pharmacists, among others), provider entities (for example, hospitals and ambulatory surgical centers), and administrative personnel at provider entities (for example, hospital purchasing agents).
- m. "Healthcare Practitioners" are Healthcare Professionals who prescribe prescription drugs and are licensed to provide health care in the United States (including partnerships or corporations comprised of such Healthcare Practitioners or officers, employees, agents or contractors of such Healthcare Practitioners acting in the course and scope of their employment, agency or contract related to or in support of the provision of health care to individuals). Healthcare Practitioners would include advanced practice nurses, certified

nurse-midwives, nurse practitioners, psychiatric nurse mental health clinical specialists, dentists, optometrists, physicians, physician assistants, and podiatrists among other practitioners.

- n. "Last Mile" means the delivery of the goods within the individual UC campus locations from a central receiving and distribution location, at which time, UC delivers the product to its final destination.
- o. "National Program"- program as prescribed by OMNIA Partners to market the UC- General Lab Supply contract within the US to public agencies nationally, including state and local governmental entities, public and private primary, secondary and higher education entities, non-profit entities, and agencies for the public benefit ("Public Agencies")
- p. "Outreach" means those Events and Activities that UC will actively support to enable the Seller to promote its Products to researchers, faculty, and staff.
- q. "OMNIA Partners"- UC's Lead Agency Marketing Partner, in partnership with the UC and the awardee, will syndicate the contract to governmental and public sector entities for adoption.
- r. "Products" means all products sold by Seller, whether or not manufactured by Seller or bearing a Seller trademark, including but not limited to Franchise Products and Third Party Products.
- s. "Seller" or "Fisher Scientific" shall mean the Research and Safety Market Division of Fisher Scientific Company L.L.C..
- t. "Stockroom Volume Discounts" — shall mean Seller's bulk order volume discounts for stockroom programs mutually agreed upon by Customer and Seller.
- u. "Third Party Products" means products that may be offered by Seller from suppliers with whom Seller does not have a distribution agreement and/or which are sourced as an accommodation to customer. Third Party Products are listed as Product Type 07 in Seller's system.
- v. "University and UC" are used interchangeably to mean each and all of the Regents of the University of California, and all current and future UC campuses and Affiliates (as further described in Section 2.a below).

2. SCOPE AND DESCRIPTION OF PROGRAM

Purchase and Sale of Products. During the term of this Agreement, and any extension(s) to such term, Seller shall sell to UC the Products subject to the terms and conditions set forth in this Agreement.

- a. UC Affiliates. The parties acknowledge that the benefits of this Agreement may be extended to affiliates of UC who may be located outside of the UC system, but who are conducting research activities directed and funded by UC, where such parties shall be agreed on by Seller and subject to the terms and conditions hereof.
- b. California State University System and California Community College System
An Agreement of Understanding exists between The Regents of the University of California, The Trustees of the California State University (CSU), and The California Community Colleges Chancellor's Office establishing the California Higher Education Consortium (CHEC). Through a collaborative relationship, the Consortium seeks to combine procurement and contracting activities, plus efforts to obtain best value goods and services while reducing total acquisition costs.
- c. All additional signees to the Agreement (e.g. the CCHEC, CSU, and similar signees which are not part of the UC System) must be mutually agreed to by Seller.
- d. National Program Requirements. UC has partnered with OMNIA Partners to make the Master Agreement available to other public agencies nationally, including state and local governmental entities, public and private primary, secondary and higher education entities, non-profit entities, and agencies for the public benefit (Participating Public Agencies). Therefore, Supplier agrees to extend Goods and/or Services Participating Public Agencies under the terms of this agreement. Use of the Master Agreement by any Participating Public Agency is preceded by their registration with OMNIA Partners, which is identified as Participating Public Agency. The Participating Public Agency may require further negotiations as per their local jurisdiction. In addition to registration with OMNIA Partners, access to confidential sections of this Agreement shall be predicated on the Participating Public Agency executing a Non-Disclosure Agreement and Letter of Intent with Seller.
- e. All contractual administration regarding this Agreement (e.g. terms and conditions, extensions, renewals, etc.) shall remain the responsibility of the University of California.

- f. Operational responsibilities, including but not limited to fiduciary responsibility, payment, performance, liabilities, disputes or issues involving individual CSU, Community College campuses, or any Participating Public Agency shall be addressed, administered and resolved directly with the individual entity. The University of California, the California State University, the California Community Colleges, and any Participating Public Agency brought forth through the Omnia Partner’s membership, are separate and distinct government entities. As such, each administrative unit, campus, or public entity therein financially separate and shall be responsible for their individual financial commitments.
- g. No fiduciary responsibility for performance liability, unless otherwise expressed, exists between the University of California and the California State University or between the University of California and the California Community Colleges or between the UC and any other public entities. Each location will be subject to Seller's standard credit checks and policies, independent of the UC’s fiduciary standing.
- h. Each Participating Public Agency shall be assigned a tier based on their most recent annual spend, in accordance with the below table:

Tiers			
	Academic	K-14	Government
Tier 1	>\$60M	N/A	>\$1M
Tier 2	\$5M - \$60M	N/A	\$500k - \$1M
Tier 3	\$1M - \$5M	N/A	<500k
Tier 4	<\$1M	N/A	N/A

Pricing for each tier shall be as outlined in the below table:

Tiers				
		Academic	K-14	Government
Tier 1	Prime	Predefined RFP Market Basket Tier 1 Category Discounts	(Applies to ALL K-14 Tiers)	Government Sku market basket Government custom skus Tier 1 Category Discounts
	Preferred	N/A		Selected Sku market basket Selected custom skus Tier 1 Category Discounts
Tier 2	Prime	Select sku market basket Select custom skus Tier 2 Category Discounts		Select sku market basket Select custom skus Tier 2 Category Discounts
	Preferred	Subset of Select sku market basket Subset of Select custom skus Tier 2 Category Discounts		Subset of Select sku market basket Subset of Select custom skus Tier 2 Category Discounts
Tier 3/4	Prime	Limited sku market basket Limited custom skus Tier 3/4 Category Discounts		Limited sku market basket Limited custom skus Tier 3 Category Discounts
	Preferred	Base Level sku market basket Base Level custom skus Tier 3/4 Category Discounts		Base Level sku market basket Base Level custom skus Tier 3 Category Discounts

In the event that a Participating Public Agency becomes eligible for a change in tier, the parties shall convene to notify such Participating Public Agency in writing to modify any applicable contract documents to account for such change.

3. E-COMMERCE SYSTEMS

E-Commerce Catalog. Subject to Attachment D of this Agreement, Seller's e-Commerce catalogs shall contain items as agreed upon by the UC Contract Administrator and the Seller.

- a. UC campuses have enabled e-commerce as befits their situation and existing financial infrastructure. The Parties must comply with the requirements in UC Ecommerce-Appendix, Attachment D. Campus-specific requirements for eCommerce programs shall be mutually reviewed between Seller and UC.
- b. For Participating Public Agencies, e-commerce provisions shall be negotiated directly and independently with such agency.

4. SUSTAINABILITY

Seller will create commodity-specific sustainability program to assist UC in furthering its own Sustainability

- a. Seller agrees that it shall collaborate and work in good faith with University in furthering the University's sustainability goals including, without limitation, identifying suitable opportunities for the reduction of carbon emissions and waste relating to the supplies made under this Agreement.
- b. UC expects Seller to begin the CSR Assessment with EcoVadis, within 180 days of Contract signing for purpose of establishing a baseline and/or creating plan for targeted improvements (if below avg. score). UC shall use the EcoVadis assessment as part of the Seller's evaluation and may be part of an ongoing Sustainability Business Review. Up-to-date information regarding the UC Sustainable Procurement Policy can be found on the link below.

<https://www.ucop.edu/procurement-services/for-ucstaff/sustainable-procurement/sustainable-procurement-policy-guidelines>.

5. UC PROCURE-TO-PAY PROCESS (P2P) REQUIREMENTS

- a. Ecommerce Procedures. UC orders placed with Seller shall be binding on Seller upon receipt and acceptance of a purchase order. The Seller will honor all

pricing as outlined in Attachments E and F. Any exceptions shall be managed on an individual basis, should exceptions persist. UC and the Seller shall work in good faith to resolve the exceptions. Where mutually agreed, Seller shall accept preferred payment method as defined by each UC campus. Seller cannot accept any form of purchase cards (P-Cards), credit or debit cards (“Ghost Cards”) and credit cards in the UC Campus ecommerce setting.

- b. Non-Ecommerce Procedures. Orders under this Agreement may be submitted from any of Customer’s locations in North America by telephone, facsimile, mail, or electronic means, including Seller’s website. Customer may determine the status of its orders by calling Seller’s toll-free customer service number or using Seller’s website. Orders for Franchise Products may be cancelled by UC up until the time of shipment to UC by Seller or by Seller’s supplier. Cancellation of orders for Third Party Products may require the consent of the supplier, and Customer shall reimburse Seller for any cancellation charge imposed by the Seller’s supplier. Seller shall only accept purchase cards (P-Cards), ghost cards, credit cards or similar payment methods at the point of sale.

All purchases, through the eCommerce system or non-eCommerce system with the Seller, are subject to the terms and conditions of the Order of Precedence as outlined in this Agreement. For purchases where the terms may be different than the agreed upon terms, the terms shall have no weight to the Terms and Conditions set for in this agreement, unless agreed to by the parties in a separate signed writing.

- c. Order Packaging and Labeling. Seller will individually package and label every UC order with the following information:

- Purchase order number.
- Product description, quantity and catalog number of the Product ordered.
- Other information, as may be reasonably requested by ordering UC Department subject to Seller’s consent (which shall not be unreasonably be withheld).
- Seller will attach a packing slip to the outside of the package that will be easily inspected by UC.

- d. Invoicing. The method for invoicing is through electronic format as defined per each campus location. UC expects the Seller to be consistent in their submission of invoices. All invoices must clearly indicate the following information

State and local sales taxes as separate line item
Purchase Order number
Description, quantity, catalog number
Price of every Product or service

- e. Receiving Locations. Seller shall provide delivery to all of UC's current and future authorized Designated Delivery points via a common carrier desktop delivery model. Seller will continue to offer mutually beneficial transportation and product delivery programs to the UC campuses, where such programs currently exist between Seller and UC. The parties shall work together in good faith to identify opportunities and mutually agree to off-setting costs.
- f. Freight Terms. All Products (including Franchise Products and Third Party Products) shall be delivered FOB (Freight on Board) Destination with standard freight and handling charges absorbed by Seller. Rush delivery charges shall apply as described in Clause 5.i. UC and Participating Public Agencies shall be responsible for all white glove delivery costs. For UC, LSG Third Party freight costs shall be as negotiated by UC and LSG and transacted through Seller. LSG Third Party freight for UC shall not be absorbed by Seller. All Third Party freight costs to be absorbed by Seller for Participating Public Agencies. Non-Standard delivery costs for any items over \$100,000 (i.e. any delivery costs outside of carrier charges for transport) shall be borne by UC or Participating Public Agency. Minimum order charges will not apply for any Products provided where a supplier of any Third Party Product has a minimum order charge that Seller is not reasonably able to negotiate away, then Seller shall communicate this to UC prior to order placement for that Product.
- g. Standard Delivery Requirements. Seller shall endeavor to supply supplier-stocked Products on a next Business Day basis in respect of (i) electronic orders placed before 2pm PST, and (ii) telephone orders placed before 4pm PST. Where delivery of any product requires a longer lead time for delivery or applicable installation, Seller will quote the relevant lead time to UC at time of order confirmation.
- h. Last Mile Delivery. Where reasonable, Seller will deliver Products to a centralized, campus-specified, receiving location where, subsequently, UC will deliver Products to the end user. Products may be delivered individually or as mixed pallet(s), as determined by each campus location. Regardless of delivery to the centralized receiving location, each box within Seller's direct control shall be labeled appropriately for delivery to end-customer (could be bulk-volume-quantity or one-off purchase). Any new Last Mile Delivery Programs must be by mutual agreement in writing of the parties.

- i. Rush Delivery Requirements. Seller agrees to use all commercially available resources to deliver UC emergency orders, for Seller's standard offering, within twenty-four (24) hours after receipt of order at no additional charge to UC other than actual express shipping charges from carrier.
- j. Out-of-Stock Procedures. Seller will notify UC if any ordered item(s) are out of stock. If UC approves, the out-of-stock item will be added to the backorder file and will be delivered to UC when the item is in stock without a further order being submitted. Seller will endeavor to hold pricing on backordered products wherever possible. In the event of a manufacturer's price change during the backorder period, Seller will provide written notice of such increase to UC. Upon written notice, UC and Seller shall review products and establish mutually agreed upon new pricing. UC shall be permitted to terminate a backorder, without penalty, if such a price increase occurs.
- k. Returns. Seller offers a thirty (30)-day "no hassles" return policy. UC may return a Franchise Product within thirty (30) days of receipt by obtaining a return goods authorization ("RGA") number from Seller and referencing the RGA number on return shipping documents. Returns made without an RGA number may be returned to the UC, freight collect. Returned 3rd-Party Products are subject to reasonable restocking fees charged by the manufacturer. Seller's return policy does not apply to (i) Products which have been discontinued, (ii) Products which are personalized or customized, (iii) Products not purchased from Seller, (iv) Refrigerated or temperature-controlled Products, (v) Products which are outdated, shelf-worn, used or defaced and, therefore, unsuitable for return to stock and resale as new, (vi) reagents, diagnostics, or chemicals, which have been opened, or (vii) Products that UC has caused to be shipped outside of the United States (or country of delivery), or (viii) any medical devices.

6. TIME

Seller's performance of its work under this Agreement vitally affects the operation of UC and its facilities, therefore, delivery performance will be measured against agreed to delivery schedules. In the event of any delay Seller shall notify UC as soon as reasonably practicable. In the event that Seller is unable to accommodate a specific delivery request, UC may, at its own cost, procure the goods elsewhere.

7. PRICING AND APPLICABLE TAXES

- a. Pricing for UC shall be as described in Attachment E and Attachment F.
- b. Pricing for Participating Public Agencies shall be as described in Attachment L and Attachment M.

8. PRICE CONSISTENCY

Seller's internal pricing system is set-up to offer the agreed contract price to all UC locations, and Seller shall use best efforts to ensure price consistency across all UC locations. Notwithstanding the foregoing, deviations from the contract price (lower than contract price) may be offered to specific UC customers to reflect special situations such as new lab start-ups, bulk purchase discounts, or one-off competitive situations. To ensure traceability and visibility of such pricing, Seller shall provide, where reasonable, UC with a savings report identifying any such contract price deviations to UC as part of the UCOP Quarterly Business reviews. Where Seller wishes to offer promotional pricing, the parties shall work together to allow for short-term promotional pricing to be offered on a UC system-wide basis. This will require specific start and end dates as well as timely loading of catalogs to capture price changes.

9. DEPARTMENT STOREROOMS: PURCHASE AND SALE OF PRODUCTS

Contract pricing for UC department storerooms shall be consistent; every UC department storeroom shall receive equivalent pricing as per the contract price terms described herein, provided that price deviations per storeroom may apply in respect of Stockroom Volume Discounts and manufacturer supported price rebates for specific opportunities. Seller agrees to sell Products to the UC department storerooms subject to the terms and conditions set forth in this Agreement. To ensure traceability and visibility of such pricing, Seller shall provide UC with a report identifying any such additional discounts to UC as part of the UCOP Quarterly Business reviews.

10. CATALOG UPDATES

- a. For UC, pricing for Franchise and Third Party products are subject to changes as stated in Attachment E herein, and catalog updates shall be governed by E-Commerce Attachment D. For Participating Public Agencies, catalog updates are as described in Attachment K.
- b. Other Catalog Updates. Seller may provide other updates to the UC catalog quarterly or as mutually agreed. These updates may include (without limitation) changes to content, the addition of new products, removal of discontinued items, updates to unit of measure, products subject to Gross Minimum Margin, updates to Third Party Products and special promotional offer price decreases. Seller shall provide UC with notice of manufacturer price decreases in a timely manner. Seller shall pass on to UC the benefit of such price decreases, provided that the parties shall review and mutually agree the schedule for the implementation of such changes into the UC catalog.

- c. **Discontinued Products.** To the extent that Seller has knowledge of a discontinuation prior to 60 days of a Product being discontinued, Seller shall notify UC sixty (60) days in advance of any Product being discontinued and will, where agreed, hold limited stocks of the Product for UC to purchase for up to a maximum of 60 days after the date of discontinuance.
- d. **Unit of Measurement Alignment.** Seller will work closely with UC in respect of unit of measure inconsistencies and to determine best possible match to units requested.
- e. **Material Portfolio Adds.** In the event of material addition of new suppliers to Seller's portfolio, the parties shall discuss and agree, in good faith, the basis on which such products shall transact.

11. FEES AND INCENTIVES

- a. Outlined in Attachment G: Fees & Campus Engagement Funding for UC and Attachment H for Public Participating Agencies

12. ADDITIONAL PROGRAMS AND PARTNERSHIPS

- a. **Campus Partnership:** Where mutually beneficial and agreed upon, Seller will support Campus Partnership programs and initiatives at each UC location.
- b. **Dedicated Resources:** Seller will provide a dedicated Industry Director, financial analyst and marketing resource to support the UC / OMNIA National agreement.
- c. **Value Added Services:** Seller will provide additional incentives, campus partnerships, and programs to the UC as mutually agreed upon during the Agreement term.
- d. **Thermo Umbrella Program:** Seller will work together with UC in good faith to develop a common set of terms and conditions as a common platform for the purchase and sale of products and services across multiple divisions of Thermo Fisher Scientific. Seller will, where applicable, work together in good faith with UC to add addenda containing mutually agreed upon terms and conditions to the Agreement in order to facilitate the purchase and sale of products and services by UC from applicable divisions of Thermo Fisher Scientific.

13. SERVICE STANDARDS

- a. Service Standards. Seller shall provide the following minimum service standards:
- Normal Delivery (stock) - for Market Basket Products: 98% within 2 Business Days
 - After Receipt of Order (ARO) and for non-Market Basket Products: 98% within 3 Business Days ARO. Seller shall endeavor to supply Supplier stocked Products on a next Business Day basis in respect of (i) electronic orders placed before 2PM PST, and (ii) telephone orders placed before 4PM PST. Where delivery of any product requires a longer lead time for delivery or applicable installation, Seller will quote the relevant lead time to UC at the time of order confirmation.
 - Rush Delivery - 98% within 1 Business Day ARO. Seller agrees to use all commercially available resources to deliver UC emergency orders, for Seller's standard offering, within twenty-four (24) hours after receipt of order at no additional charge to UC other than actual express shipping charges from carrier.
 - Returns- Seller offers a thirty (30) day "no hassles" return policy. UC may return a Franchise Product within thirty (30) days of receipt by obtaining a return goods authorization ("RGA") number from Seller and referencing the RGA number on return shipping documents. Returns made without an RGA number may be returned to the UC, freight collect. If a 3rd-party product, returned Products are subject to restocking fees charged by the manufacturer. UC does not pay Seller or manufacturer's restocking fees for Franchise Products. Seller's return policy does not apply to (i) Products which have been discontinued, (ii) Products which are personalized or customized, (iii) Products not purchased from Seller, (iv) Refrigerated or temperature-controlled Products, (v) Products which are outdated, shelf-worn, used or defaced and, therefore, unsuitable for return to stock and resale as new, (vi) reagents, diagnostics, or chemicals, which have been opened, or (vii) Products that UC has caused to be shipped outside of the United States (or country of delivery), or (viii) any medical devices.
 - Pick up returns - 98% within 3 Business Days, where possible given carrier and RGA procedures.
 - Credits -98% within 10 Business Days
 - Request for report - within 10 Business Days for reasonable request for commercially available information.

- Line Item fill rate - 98% for Market Basket items, 95% for non-Market Basket items, unless impacted by a force majeure event
 - Delivery accuracy - 98% (correct place, correct size and quantity, correct items)
 - Delivery, on-time - 98% (against agreed delivery date confirmed by Seller), unless impacted by a force majeure event
 - Invoice/billing accuracy - 98% (applicable to initial invoice submission)
 - Customer service satisfaction - 95%
 - Quote turnaround - as soon as reasonably practicable, depending on manufacturer response
- b. Should, however, the service levels fall below the minimum standards and Seller does not take corrective actions within 14 days following the date of UC written notification to Seller, UC shall escalate the matter to Seller's senior management for development of a mutually agreed upon corrective action plan to resolve the concern. In the event that, despite such actions, Seller fails to improve performance and continues to materially fail the relevant standards, UC reserves the right to terminate this Agreement.
- c. Where a failure to perform under this Agreement is caused by a Force Majeure event, Seller shall have the right to either: (i) terminate, by written notice to UC, all or part of the Order without liability or (ii) extend the date of delivery or performance for a period equal to the duration of the delay.

14. SUBSTITUTIONS

No substitutions of Products ordered including brand or size will be permitted except with the express prior written approval from authorized UC personnel.

15. MINIMUM ORDER

There shall be no minimum order requirement for Franchise Products during the term of this Agreement and any extension(s) of such term.

16. REPORTING

UC Reports. Seller will provide each UC campus quarterly summary sales, usage, differentiated storeroom pricing, and UC specific incentive, and service level reports at no additional cost to UC, in electronic format, i.e. Excel or CSV.

Participating Public Agency Reports, if requested, shall be as agreed upon between Seller and agency.

17. GENERAL TERMS AND CONDITIONS

University of California Terms and Conditions. University of California Terms and Conditions, Attachment B, dated April, 22, 2021. To the extent of any inconsistency

between such terms and the main body of this Agreement, the main body of this Agreement shall take precedence.

18. PRODUCT CERTIFICATION

- a. Seller hereby certifies and warrants that all Products sold to UC under this Agreement.
- b. Shall be new and genuine. UC may permit the sale of refurbished or used product, provided it is clearly designated as such prior to purchase and approved by UC.
- c. Shall be provided in the manufacturer's original packaging unless offered by Seller in an alternative unit of measure.
- d. Shall be manufactured and sold by, or distributed to, the Seller for sales in the United States.
- e. Shall be sold to the Seller from legal and reputable channels, which are understood to be the manufacturer or authorized representatives of the manufacturer of the Products.
- f. Shall not be altered or misbranded within the meaning of the federal and state laws applicable to such Products.
- g. Shall not be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction.
- h. Seller agrees that the Products furnished under this Agreement shall be covered by the standard manufacturer warranties, and that the rights and remedies so provided are in addition to and do not limit any rights afforded to UC by any other article in this Agreement and any subsequent Agreement. Such warranties will be effective notwithstanding prior inspection and/or acceptance of the Products by UC, and in all cases shall commence upon shipment of the Products to UC.

19. AGREEMENT TERM

Unless terminated per section 20, Termination of Agreement, this Agreement shall be effective for a period of four (4) years, from June 15, 2021 ("Effective Date") through June 30, 2025. Thereafter, the parties may by mutual agreement renew or extend the Agreement for additional two (2)-year periods, up to ten (8) years maximum agreement duration, at the same terms and conditions upon mutual agreement of the parties.

20. TERMINATION OF AGREEMENT

- a. Either Party may terminate this Agreement for cause at any time, in accordance with the terms of Article 2 of University of California Terms and Conditions, subject to the terms of this Clause 20.b.
- b. Either party may terminate this Agreement for cause, at any time, upon sixty (60) days prior written notice of termination and to the extent thereof without penalty. A party shall have sixty (60) days from the date it receives notice in which to cure any material breach of the Agreement and termination shall be effective at the end of such period only if a party fails to cure the breach.
- c. If any termination of this Agreement takes place, Seller shall extend to UC, upon UC's request, an additional ninety (90) day period to properly implement a smooth transition. Fees for the services performed during the additional ninety (90) days will be negotiated in good faith between UC and Seller.

21. PROMOTIONS

Seller may offer promotions supportive of its efforts to sell Products under this Agreement. Seller shall not give promotional awards to UC and end users, including by way of example: clothing, personal electronic equipment, retail gift certificates or similar items. Seller may, however, make available free Product(s), credit(s) on Product purchases or other business-related award(s). UC affirms that it will not allow its Covered Recipients (as defined in the Sunshine Act and relevant state statutes) to request or accept any promotional products or other pecuniary incentives that are not compliant with the Sunshine Act. UC shall also identify and disclose to Seller any procurement activity or personnel acting for the benefit of or at the direction of any Covered Recipients.

22. MARKETING REFERENCES

In accordance with California law and University policy and without prior express written consent of UC, Seller shall not use the name of the University of California, or any abbreviation thereof, or any name of which "University of California" is a part, or any trademarks of the UC, in any commercial context

- a. In addition to the above, if the reference only concerns a specific campus, then the prior express written consent of a duly authorized officer of that campus is required.

- b. **Headings and Captions.** The headings and captions contained in this Agreement are inserted for convenience, or referenced only, and are not to be deemed part of or to be used in construing this Agreement.

23. PRICE AUDITS

UC shall be entitled, upon reasonable prior notice to Seller, to perform an annual price accuracy audit in respect of the prices charged by Seller over the prior year. Seller shall provide UC with reasonable assistance in respect of such audits, including the provision of reasonable history of sales information. In respect of Third Party Products, the parties agree that such audit may include a sampling of Third Party pricing (not to exceed ten (10%) percent of Third Party Products purchased). The UC shall have the right to identify which Third Party Products purchased it wishes to audit within the sample. Seller shall provide the auditor relevant details in determining the selling cost (MSRP plus 4%) to the UC, including the Seller's invoice for a given item. Requests for specific documentation in support of pricing may not be available in all cases. In the event there are discrepancies found, the Seller will allow the UC to Audit up to 100% of Third Party Products purchased. Disclosure of price information to any third party consultant appointed by UC shall be subject to the consultant entering into reasonable commitments of confidentiality with Seller in respect of the information disclosed. UC will conduct such audits at its sole cost and expense, and all findings shall be deemed to be Seller's confidential information. UC will share the results of such audits with Seller and allow Seller a reasonable time period to respond to such findings. In calculating any underpayment or overpayment, UC shall be required to offset any undercharges against overcharges. In the event that UC wishes to engage a third party auditor to perform any audits under this agreement or related to the RFP, such third party auditor must execute a confidentiality agreement with Seller in a form acceptable to Seller. Seller reserves the right to reject any third party auditor that Seller reasonably believes will use its confidential and proprietary pricing and methods in any manner for the benefit of the third party auditor, such as benchmarking, and/or the benefit of Seller's competitors.

24. ENTIRE AGREEMENT

This Agreement, together with the above-named instruments, constitute the entire agreement between UC and Seller with respect to the subject matter and supersedes all previous negotiations, proposals, commitments, writings, advertisements, publications, and understandings.

25. Order of Precedence.

Should any conflict arise between the terms of this Agreement and any other negotiated documents, the inconsistency shall be resolved by giving precedence in the following order:

1. This Agreement #2021002889 – “University of California Strategic Sourcing Agreement”

2. Non-Disclosure Agreement for Participating Public Agencies
3. Letter of Intent for Participating Public Agencies
4. Fisher's Response to RFP#2101-July2020
5. RFP #2101-July2020 General Lab Suppliers and Distribution Services

26. LIMIT OF LIABILITY FOR PARTICIPATING PUBLIC AGENCIES.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, SELLER'S LIABILITY (WHETHER BY REASON OF BREACH OF CONTRACT, TORT, INDEMNIFICATION, OR OTHERWISE, BUT EXCLUDING LIABILITY OF SELLER FOR BREACH OF WARRANTY (THE SOLE REMEDY FOR WHICH SHALL BE AS PROVIDED UNDER SELLER'S STANDARD WARRANTY PROVISIONS)) SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LESSER OF (A) THE TOTAL PURCHASE PRICE PAID BY PARTICIPATING PUBLIC AGENCY TO SELLER FOR THE PRODUCT(S) OR SERVICES GIVING RISE TO SUCH LIABILITY OR (B) ONE MILLION DOLLARS (\$1,000,000). NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER SELLER (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. OR (b) IS NEGLIGENT. HOWEVER, IN NO CASE SHALL THIS LIMIT OF LIABILITY APPLY TO SELLER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THE FOREGOING INDEMNIFICATION PROVISION STATES A PARTY'S ENTIRE LIABILITY TO THE OTHER FOR THE CLAIMS DESCRIBED HEREIN.

Attachment B: UC Terms and Conditions of Purchase, dated April 22, 2021

SEE ATTACHMENT B.

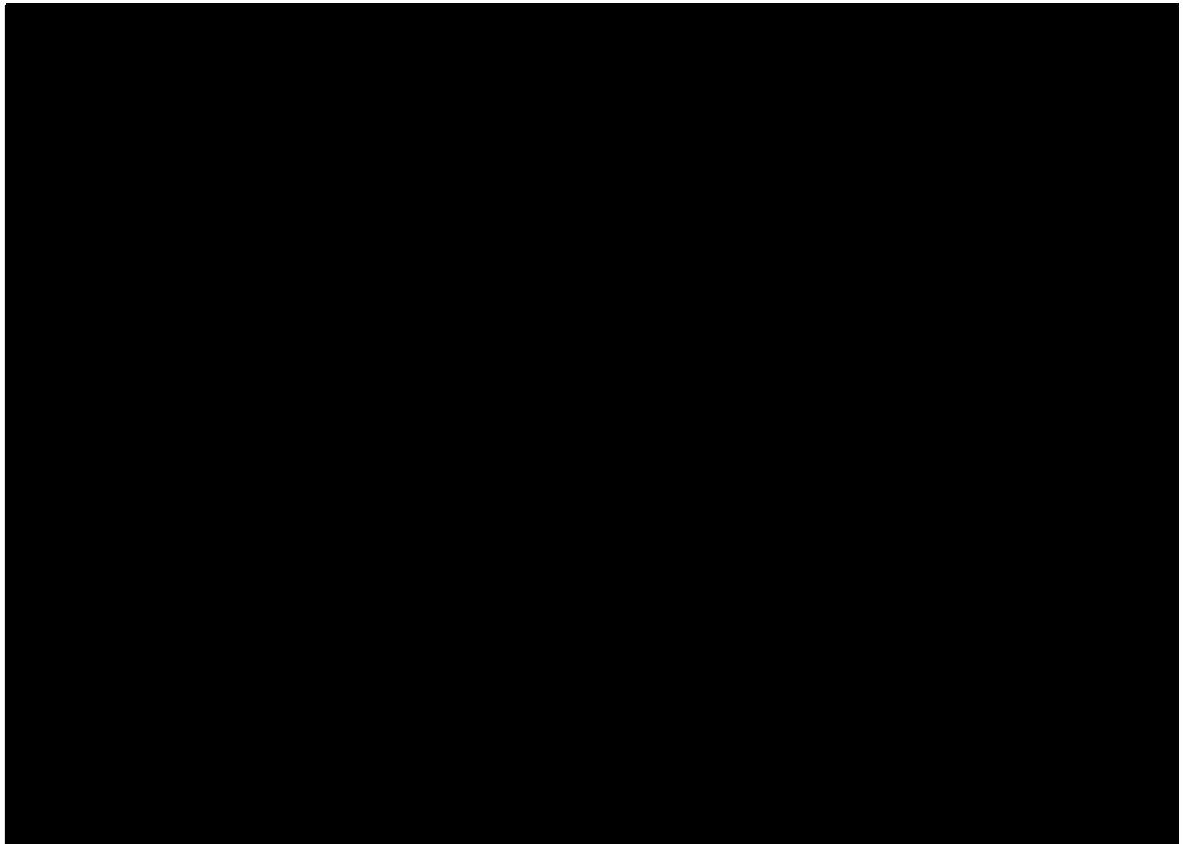
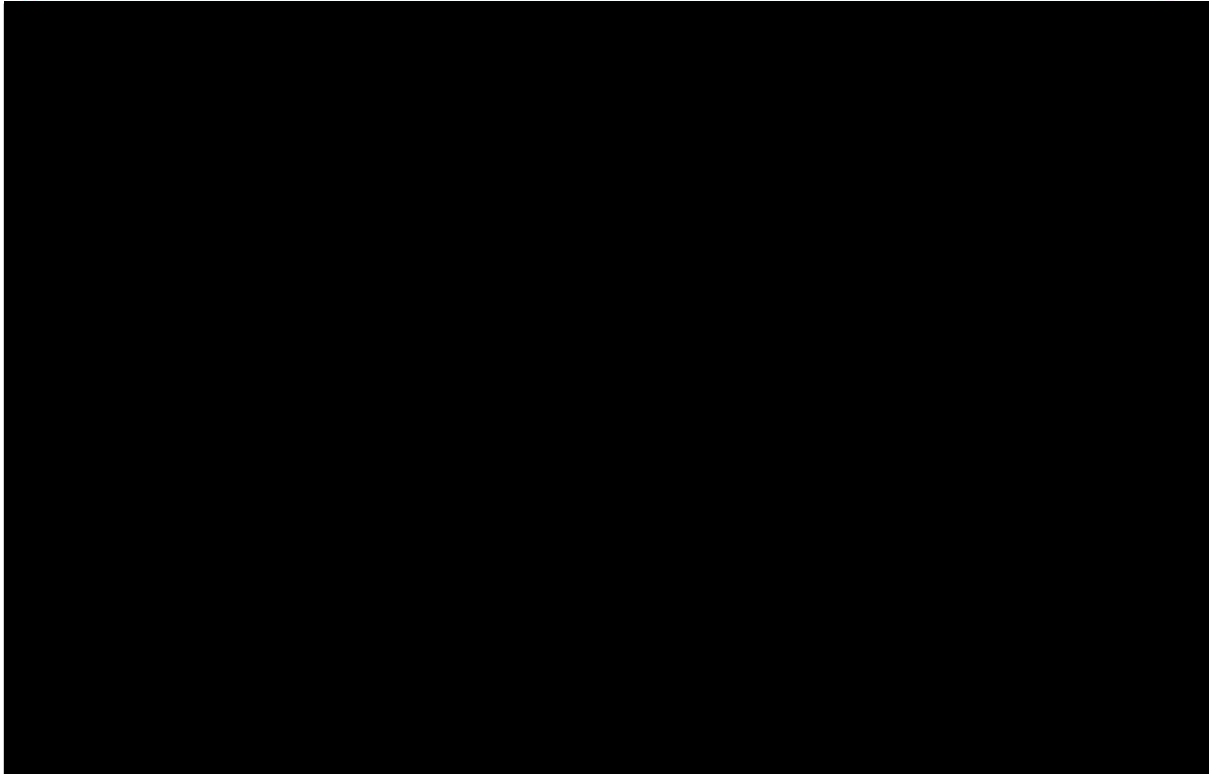
Attachment C: FEMA Addendum

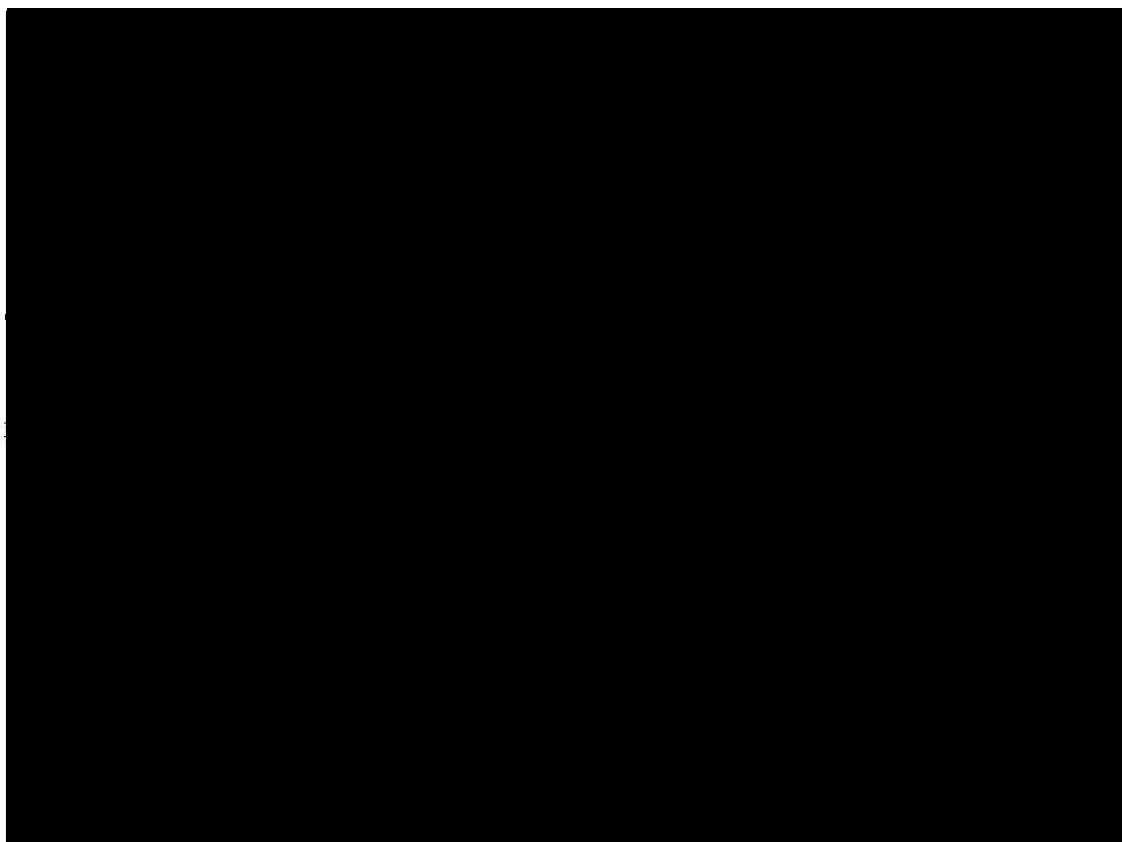
SEE ATTACHMENT C.

Attachment D: UC e-Commerce Attachment

SEE ATTACHMENT D.

Attachment E: UC Pricing



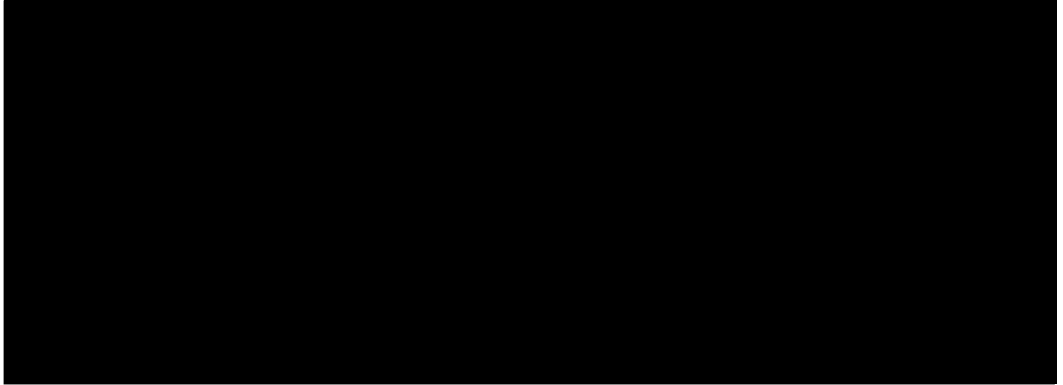


Attachment F: UC Market Basket and UC Catalog Discounts

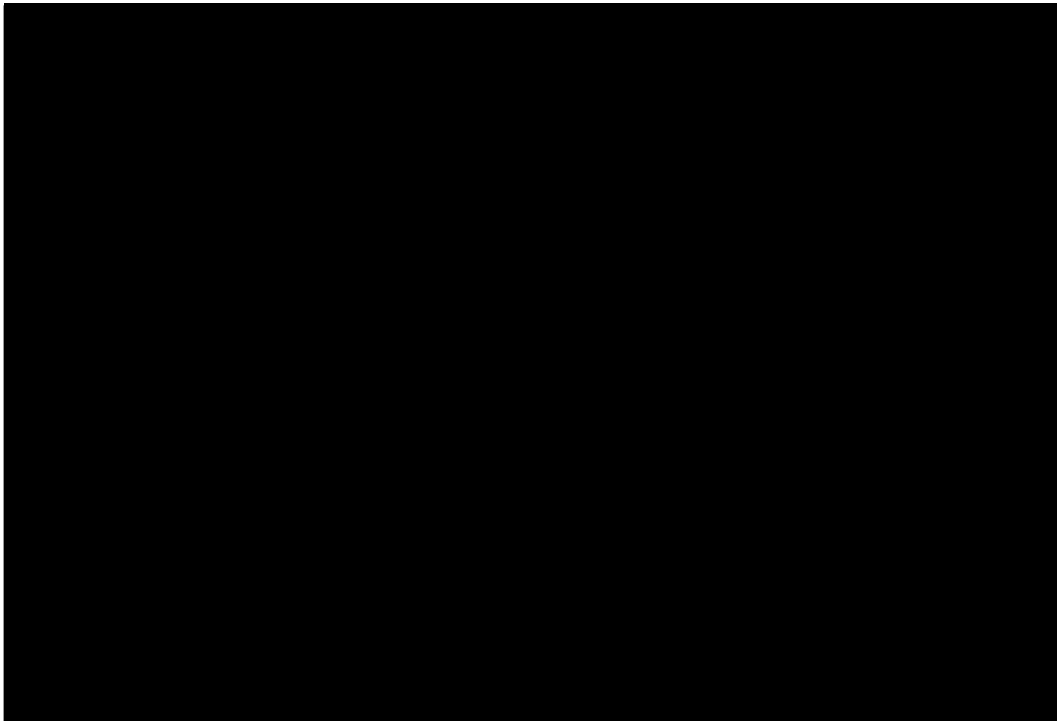
SEE ATTACHMENT F.

Attachment G: UC Incentives

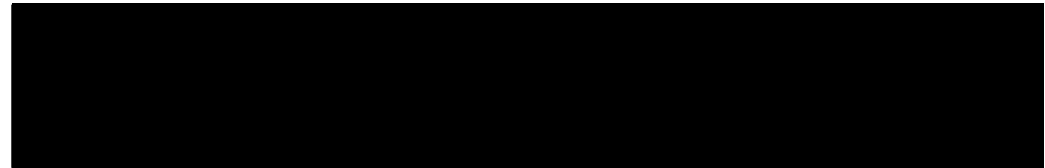
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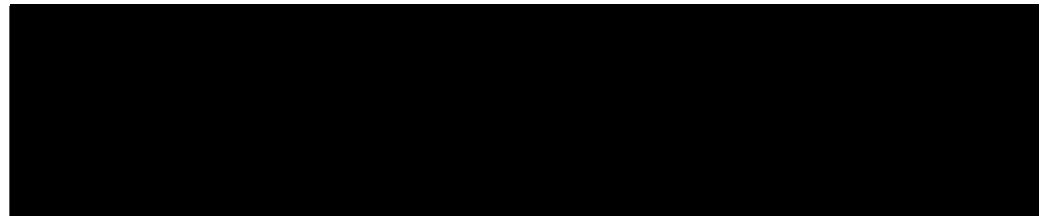
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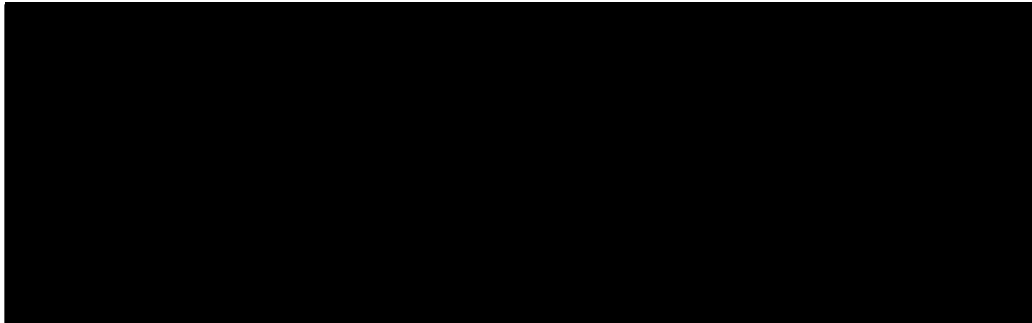


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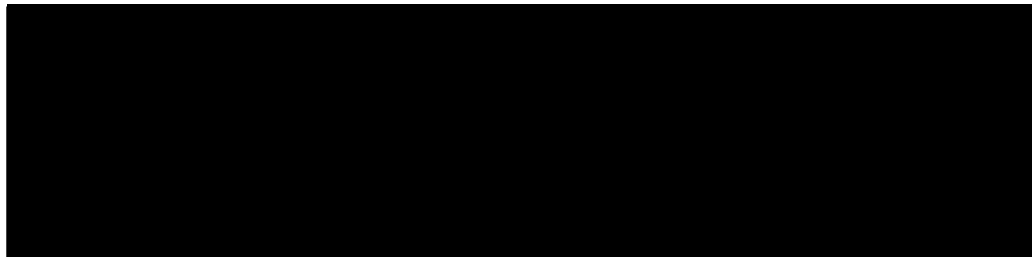


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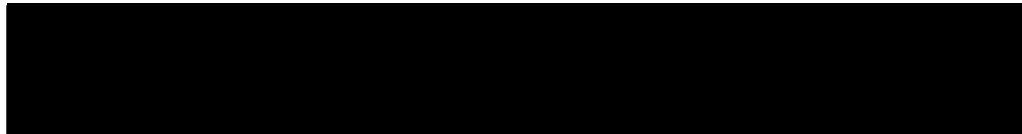




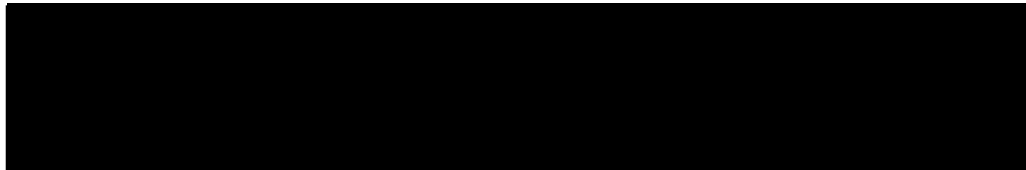
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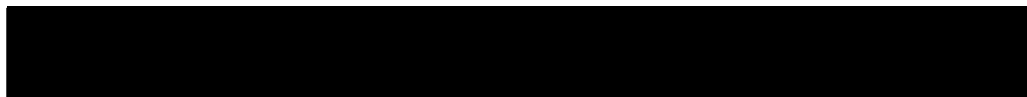
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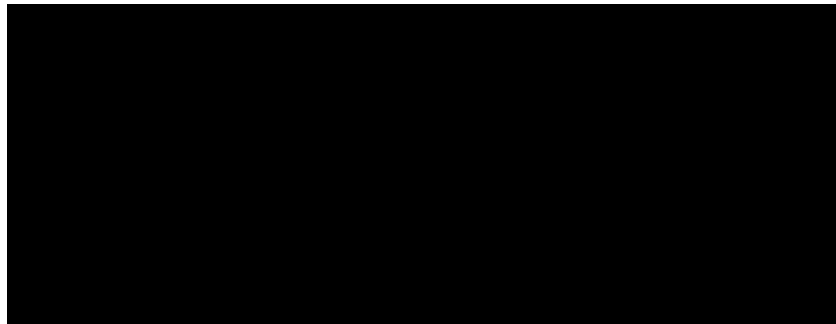
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h.

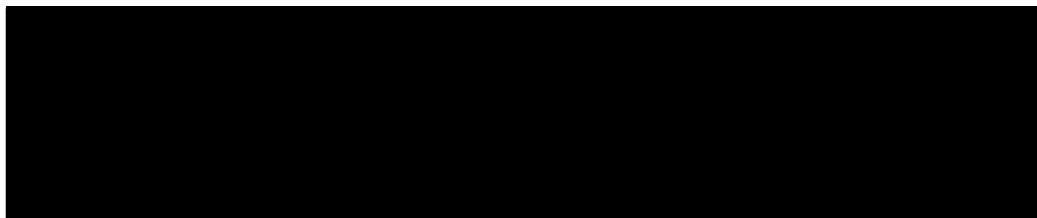


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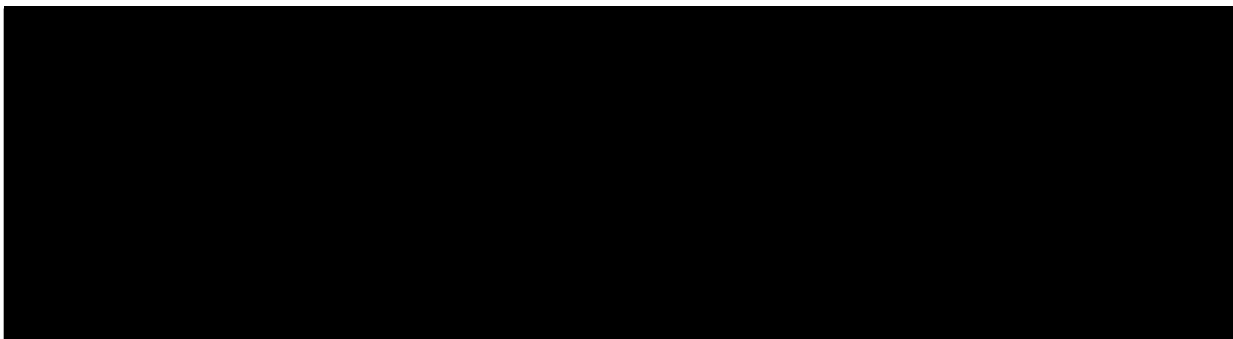
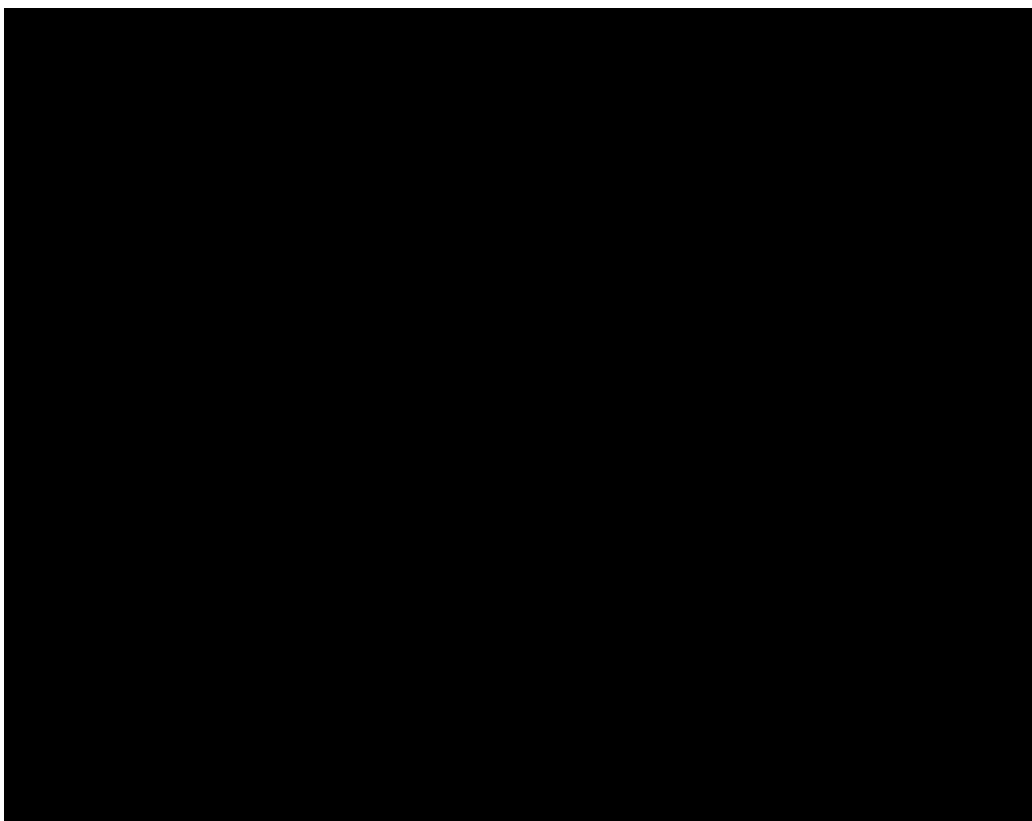
ii.

i.



j.

k.



Attachment H: Participating Public Agency Incentives

- a. Patronage Incentive. Seller has agreed to offer Participating Public Agencies a patronage incentive based on annual contract year Net Purchases [defined as net purchases (excluding any returns, freight and handling charges of any kind) of Franchise Products (specifically excluding any Non-Franchise Products or Third Party Products)]. For each contract year of the term of this Agreement, Seller will pay to Participating Public Agency a patronage incentive calculated by multiplying the Net Purchases (back to dollar one) by the percentage in the below table:

Net Purchases	Market Segment	Incentive %
\$0-500k	Academic	2.0%
\$500k - \$1M	Academic	2.0%
\$1M - \$5M	Academic	1.0%
Sales exceeding \$5M	Academic	TBD based on value of the agreement

Seller will calculate this incentive payment on an annual basis and will make payment of any earned incentive within forty-five (45) days of the end of each contract year.

Government or K-14 market segments are not eligible for patronage fees.

- b. Sustainability Incentive. Each eligible Participating Public Agency will be able to receive up to \$5,000 USD annually for sustainability programs. Sustainability program participation is subject to Participating Public Agency maintaining Supplier's "Prime Supplier Designation" as agreed between the parties in the Master Agreement. Sustainability incentives shall be based on the following schedule:

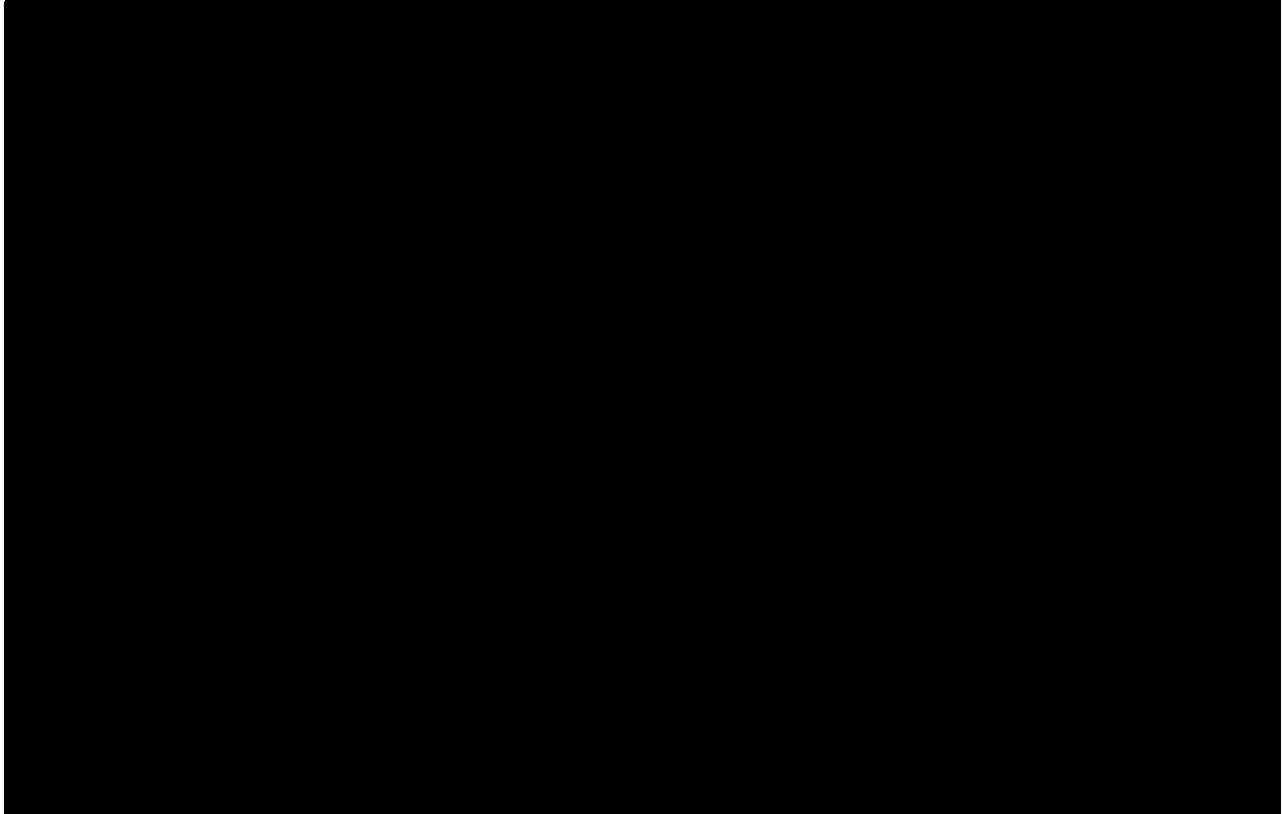
Annual Spend	Sustainability Incentive
\$1M - \$3M	\$1,000
\$3M - \$5M	\$3,000
>\$5M	\$5,000

Seller will make payment of any sustainability incentive within forty-five (45) days of the end of each contract year.

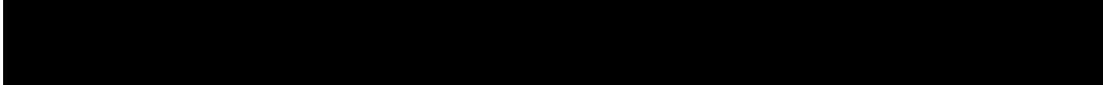
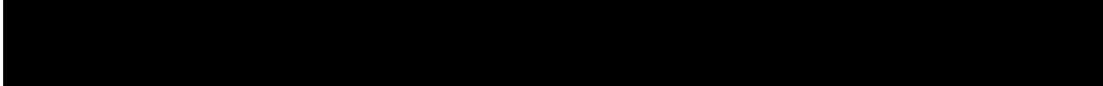
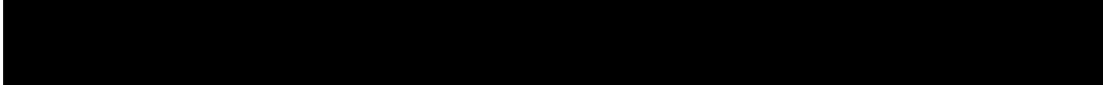
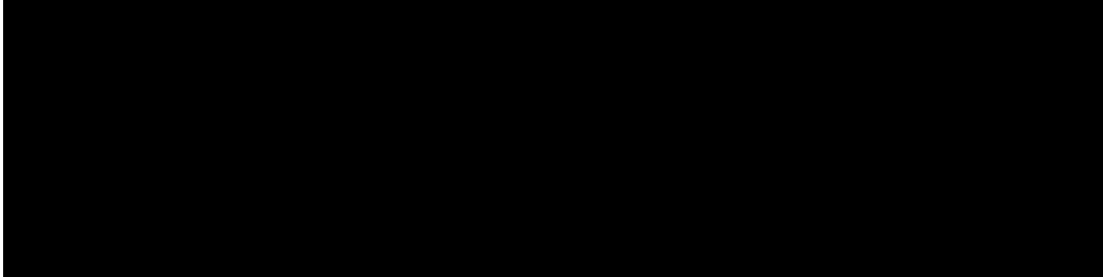
- c. STEM Incentive: Supplier will work with Omnia Partners to identify and support at least three (3) STEM programs annually, in underserved communities. Supplier will coordinate with Omnia Partners to deliver Stem Credible, Innovation Nation, or similar mutually agreed upon programs that provide hands-on and team-based activities.

- d. In the event that Participating Public Agency is not in compliance with the payment terms of this Agreement, or any other material contractual provision, Seller may modify payment terms, require from Participating Public Agency full or partial payment in advance, or other security that is satisfactory to Seller, and/or withhold payment of any and all incentives or rebates otherwise earned by Participating Public Agency, without notice and without incurring penalty or paying interest, until such time as Participating Public Agency remits payment for such overdue invoices to bring its accounts receivable balance into compliance or bring the Prime or Preferred Supplier terms in to compliance.

Attachment I: Principal Purchasing Agency (University of California) Requirements



Communication and Access

- I. 
- II. 
- III. 
- IV. 

V.



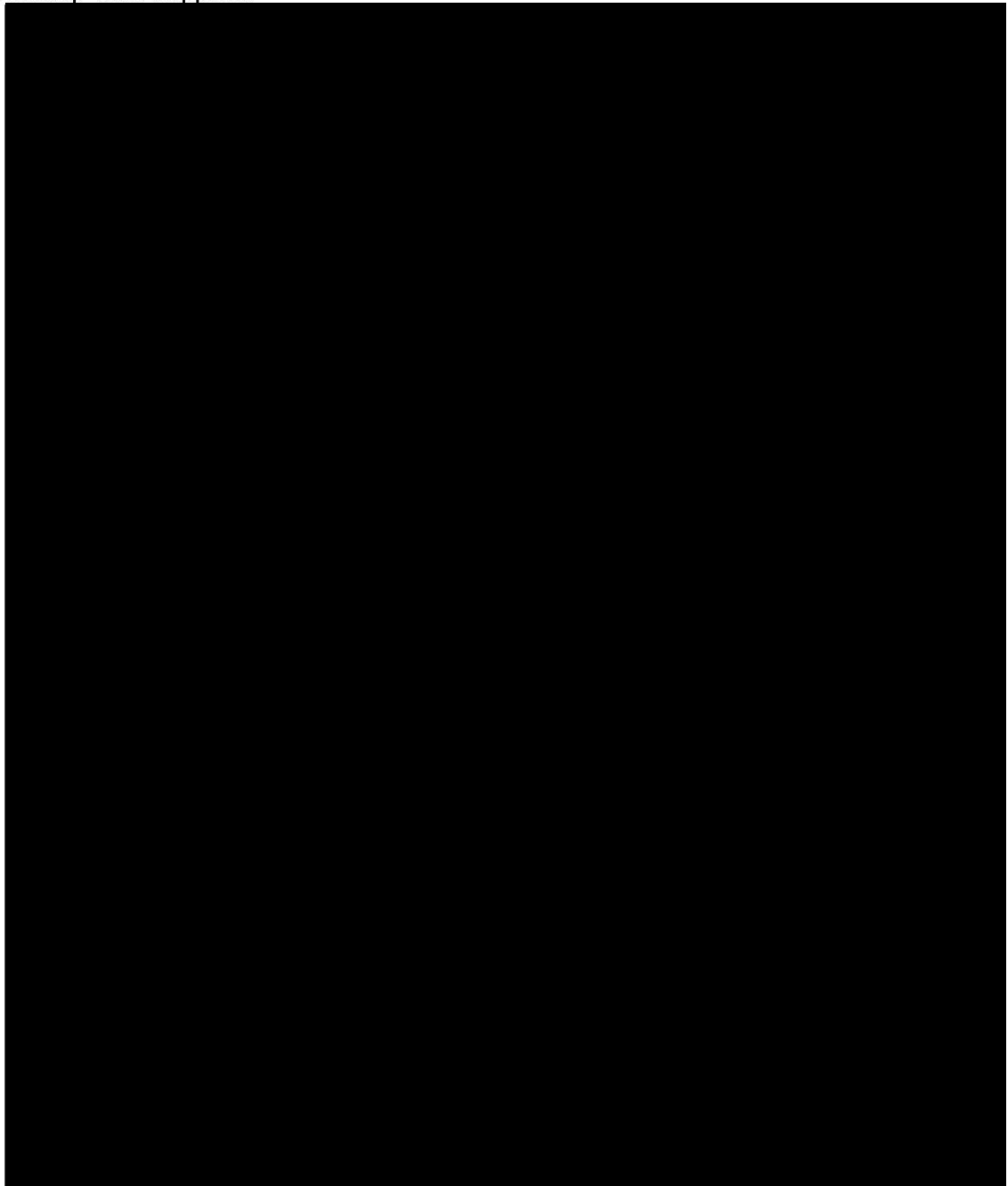
Ecommerce and Conversion Activities

Refer to Attachment D: UC Ecommerce – Appendix or UC e-Commerce Attachment

Relationship with Suppliers

I.

II.



Attachment J: Prime and Preferred Supplier (Tiers 1-4) (Excluding University of California)

Eligibility for “Prime” and “Preferred” Supplier designation, as outlined in Section 2.h of the Agreement, shall be subject to the below requirements:

Eligibility and Requirements	
Preferred	Prime
Registered OMNIA Partners Participating Public Agency	Registered OMNIA Partners Participating Agency
Signed Letter of Intent by Participating Public Agency (Seller and Agency)	Signed Letter of Intent by Participating Agency (Seller and Agency)
Signed Non-disclosure Agreement for Contract Terms, Conditions and Pricing	Signed Non-disclosure Agreement for Contract Terms, Conditions and Pricing
Signed Master Pricing Agreement	Signed Master Pricing Agreement
Communication and designation of Preferred Agreement award to user community and manufacturer community. Promotion of benefits of this Agreement to end users and procurement teams along with reasonable support to monitor implementation and compliance	Communication and designation of Prime Agreement award to user community and manufacturer community. Promotion of benefits of this Agreement to end users and procurement teams along with reasonable support to monitor implementation and compliance
Unless mutually agreed upon, Participating Public Agency will refrain from issuing an RFP for all or part of its laboratory product supply business during the term unless Fisher materially fails to meet its obligations under this Agreement	Unless mutually agreed upon, Participating Public Agency department will refrain from issuing an RFP for all or part of its laboratory product supply business during the term unless Seller materially fails to meet its obligations under this Agreement
Seller designated as Preferred Supplier on eCommerce platforms. Full breadth of Seller's catalog made available for ordering and enabled on Preferred Public Agency's eCommerce platform, less items regulated by state or local laws. Seller channel, where enabled, shall remain open in eCommerce environment.	Seller designated as Primary Supplier on eCommerce platforms. Full breadth of Seller's catalog made available for ordering and enabled on customers eCommerce platform, less items regulated by state or local laws. Seller, where enabled, shall remain open in eCommerce environment.
Seller will be designated as a distributor/supplier for all manufacturer supported pricing programs.	Seller will be exclusive distributor/supplier for all manufacturer supported pricing programs.
Full on-campus access to Seller	Full on-campus access to Seller; Limited access to competitors
Participating Public Agency and Seller shall regularly review aggregate laboratory supply product spend with a goal of identifying opportunities for competitive spend conversion to Seller.	Participating Public Agency participation in semi-annual business reviews with Seller in support of enhanced supplier management efforts and Seller's designation as primary supplier. These discussions will include the sharing and review of competitive data, including, but not limited to, promotional activity, ecommerce content (hosted and punch-out) and spend data. Participating Public Agency shall cooperate to implement plans to convert spend with alternative channels to Seller.

Eligibility and Requirements	
Preferred	Prime
	Projected volume where Seller represents 80% of available spend (market share reports to be shared with Seller quarterly)
	Competitors are to only have hosted catalogs on purchasing platform listing exclusives and their corporate brands only. No level II punch-out. Blocking to be completed within 90 days of mutually executed agreement.
	Participating Public Agency will use its best efforts in conducting joint marketing campaigns to highlight Seller's position as prime lab supplier, including (without limitation), the procurement or purchasing internal website.
	Manufacturers available through Seller will not have duplicate presences on eCommerce platforms
	Ensure weighting of attributes supporting Seller as priority supplier
	Storeroom or on-site consignment programs will be offered/supported by Seller services and or products.
Risk of being removed from Prime or Preferred Program if requirements are not met	

Academic Table	Preferred	Primary
Contract Value-Add to Participating Agency	+	+
Cost Savings		
Fisher Scientific product Discount Schedules	+	+
Market Basket for Top Items Purchased in the Academic Segment	+	++
Customer Specific Hot Lists	+	++
Manufacturer Rebated Pricing	+	+
Patronage Fee	+	+
Exclusive Promotions	+	++
New Lab Start Up Program	+	+
Switch and Save Program		+
Shipping Cost Avoidance	+	+
Social Responsibility		
Sustainability Incentive		+
Diverse Supplier Program		+
STEM Programs		+

Service and Programs		
Pipette Calibration	+	+
Instrument Certification	+	+
Laboratory Casework Installation	+	+
Finance and Leasing Programs	+	+
Global Export	+	+
Inventory Management Services	+	+
Custom Oligos, Antibodies and Peptides	+	+
e-Integration	+	+
Encompass Procurement Services	+	+
Unity Lab Services	+	+
Global Export	+	+
Dedicated Single Point of Contact for OMNIA Partners	+	+
Team of Sales Management and Representatives	+	+
Safety, Life Science, and Chemical Specialists	+	+
Dedicated Customer Service	+	+
Consolidated Master Contract	+	+
<i>Number of "+" indicates differentiated value of commitment</i>		

Government Table	Preferred	Primary
Contract Value-Add to Participating Agency	+	+
Cost Savings		
Fisher Scientific product Discount Schedules	+	+
Market Basket for Top Items Purchased in the Government Segment	+	++
Customer Specific Hot Lists	+	++
Manufacturer Rebated Pricing	+	+
Exclusive Promotions	+	++
New Lab Start Up Program	+	+
Switch and Save Program		+
Shipping Cost Avoidance	+	+
Social Responsibility		
Sustainability Incentive		+
Diverse Supplier Program		+
STEM Programs		+
Service and Programs		
Pipette Calibration	+	+
Instrument Certification	+	+

Laboratory Casework Installation	+	+
Finance and Leasing Programs	+	+
Global Export	+	+
Inventory Management Services	+	+
Custom Oligos, Antibodies and Peptides	+	+
e-Integration	+	+
Encompass Procurement Services	+	+
Unity Lab Services	+	+
Global Export	+	+
Dedicated Single Point of Contact for OMNIA Partners	+	+
Team of Sales Management and Representatives	+	+
Safety, Life Science, and Chemical Specialists	+	+
Dedicated Customer Service	+	+
Consolidated Master Contract	+	+
<i>Number of "+" indicates differentiated value of commitment</i>		

Attachment J Continues on Next Page

K-12 and 2 Year Community College Table	Participating Public Agency
Contract Value-Add to Participating Agency	+
Cost Savings	
Fisher Scientific product Discount Schedules	+
Market Basket for Top Items Purchased in the Government Segment	+
Customer Specific Hot Lists	+
Manufacturer Rebated Pricing	+
Exclusive Promotions	+
New Lab Start Up Program	+
Shipping Cost Avoidance	+
Service and Programs	
Pipette Calibration	+
Instrument Certification	+
Laboratory Casework Installation	+
Finance and Leasing Programs	+
Global Export	+
Inventory Management Services	+
Custom Oligos, Antibodies and Peptides	+
e-Integration	+
Encompass Procurement Services	+
Unity Lab Services	+
Global Export	+
Dedicated Single Point of Contact for OMNIA Partners	+
Team of Sales Management and Representatives	+
Safety, Life Science, and Chemical Specialists	+
Dedicated Customer Service	+
Consolidated Master Contract	+

Attachment K: Participating Public Agency Pricing

Pricing. All Franchise Product Pricing for Participating Public Agencies, specifically excluding manufacturer direct price agreement and or special manufacturer agreements, will be held for 12 months not to exceed March 31st of 2022, unless the Gross Minimum Margin (GMM) for a product is less than 15%, which may be adjusted at any time. Actual pricing for the Category Discounts is derived as List Less discounts from the January 2022 Seller published list price. After March 31st, 2022, the Market Basket and Category discounts will be derived from the Seller's January published List price each calendar year. All subsequent updates or price adjustments, whether increase or decrease in the prices, shall be subject to the terms as outlined in sections a through f below.

- a. The Market Basket list for each Tier shall be as outlined in Attachment L and shall be first updated on March 31, 2022. The Market Basket shall remain firm for the term of the Agreement. Customized SKU pricing (as shown in the table below) will be established for Franchise Products less than \$1000, upon mutual execution of the NDA and LOI, and accompany the document as an amendment between the two (2) parties. These items will be refreshed where mutually agreed, as needed. Seller shall be entitled to implement revised pricing from the first business day in the new calendar year.

Tiers				
		Academic	K-14	Government
Tier 1	Prime	Predefined RFP Market Basket Tier 1 Category Discounts	150 sku market basket 300 custom skus K-14 Category Discounts	300 Sku market basket 500 custom skus Tier 1 Category Discounts
	Preferred	N/A	(Applies to ALL K-14 Tiers)	150 Sku market basket 200 custom skus Tier 1 Category Discounts
Tier 2	Prime	5,000 sku market basket 500 custom skus Tier 2 Category Discounts		300 sku market basket 500 custom skus Tier 2 Category Discounts
	Preferred	2,500 sku market basket 400 of Select custom skus Tier 2 Category Discounts		150 sku market basket 200 custom skus Tier 2 Category Discounts
Tier 3/4	Prime	2,500 sku market basket 400 custom skus Tier 3/4 Category Discounts		300 sku market basket 500 custom skus Tier 3 Category Discounts
	Preferred	1,200 sku market basket 300 custom skus Tier 3/4 Category Discounts		150 sku market basket 200 custom skus Tier 3 Category Discounts

- b. Category Discount Schedule. Attachment M is a schedule of discounts for those Franchise Products which are not included in the Market Basket. For the avoidance of doubt, Products where Participating Public Agency has agreed pricing direct with the manufacturer (with Seller acting as distributor) then such products shall be priced on the basis of the rebated pricing or agreement between Participating Public Agency and the manufacturer. Where manufacturer rebate pricing exists, it shall be governed by the terms set by the manufacturer. Should this pricing expire without renewal by the manufacturer, pricing to Participating Public Agency shall be determined from the Category Discount Schedule.
- c. Prices for Third Party Products shall be calculated as supplier's current list price + 31%, inclusive of standard freight.
- d. Payment terms for Participating Public Agencies are Net 30 from date of invoice.

Notwithstanding any of the preceding language, in no event shall any Product be sold below cost. In the event that a Product is priced below cost, Seller shall be permitted to immediately raise the price for 1) Franchise Products, to the Gross Minimum Margin, and for 2) Third Party Products, to actual cost (inclusive of freight).

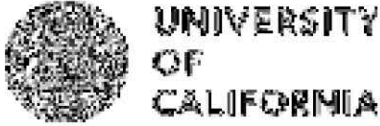
Attachment L
Participating Public Agency Market Basket(s) (by Tier)

SEE ATTACHMENT L.

Attachment M
Participating Public Agency Catalog Discounts (by Tier)

SEE ATTACHMENT M.

Attachment B:
Terms and Conditions of Purchase
Fisher Scientific, Agreement **2021002889**



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. 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. Intentionally Deleted.
- 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, at the time of the 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 set forth in these terms or the Agreement. UC will pay Supplier, upon submission of invoices, for Goods and/or Services provided. 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.

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ARTICLE 4 – INSPECTION.

The Goods and/or Services furnished will be exactly as specified in the manufacturer's specifications, 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. 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 immediately remove such personnel from providing Services and he or she will not again, without UC's written permission, be assigned to provide Services. At no time will Supplier or Supplier's employees, sub-suppliers, agents, or assigns be considered employees of UC for any purpose, including but not limited to workers' compensation provisions. 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 Supplies and/or Services being provided under the Agreement, Supplier warrants that:

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1. It complies with California and federal disability laws and regulations; and
 2. Intentionally Deleted.
 3. Supplier agrees to promptly respond to and resolve any complaint regarding accessibility of its Goods and/or Services;
- E. General Accessibility Requirements. Supplier warrants that:
1. It will comply with California and federal disability laws and regulations;
 2. Intentionally Deleted; 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.
- K. General Product Warranty. Supplier warrants that the Products will operate or perform substantially in conformance with Supplier's published specifications and be free from defects in material and workmanship, when subjected to normal, proper and intended usage by properly trained personnel, for the period of time set forth in the product documentation, published specifications or package inserts. If a period of time is not specified in Supplier's product documentation, published specifications or package inserts, the warranty period shall be one (1) year from the date of shipment to UC for equipment and ninety (90) days for all other products (the "Warranty Period"). Supplier agrees during the Warranty Period, to repair or replace, at Supplier's option, defective Products so as to cause the same to operate in substantial conformance with said published specifications; provided that UC shall (a) notify Supplier upon the discovery of any defect, which notice shall include the product model and serial number (if applicable) and details of the warranty claim; and (b) after Supplier's review within 2 business days, Supplier will provide UC with service data and/or a Return Material Authorization ("RMA"). Should the return procedure include biohazard decontamination procedures and other product-specific handling instructions, then Supplier shall reimburse the UC of those costs. If applicable, Supplier may request UC to return the defective Products to Supplier at no cost to the UC. If UC determines that a product repair is acceptable, all replacement parts shall be new and shall be free to the UC. All replaced parts may become the property of Supplier and the Supplier is responsible for the removal of the part. Shipment to UC of repaired or replacement Products shall be made in accordance with the Delivery provisions of the Supplier's Terms and Conditions of Sale. Consumables are expressly excluded from this warranty. If Supplier elects to repair defective medical device instruments, Supplier may, in its sole discretion, provide a replacement loaner instrument to UC as necessary for use while the instruments are being repaired. In no event shall Supplier have any obligation to make repairs, replacements or corrections required, in whole or in part, as the result of (i) normal wear and tear, (ii) accident, disaster or event of force majeure, (iii) misuse, fault or negligence of or by UC, (iv) use of the Products in a manner for which they were not designed, (v) causes external to the Products such as, but not limited to, power failure or electrical power surges, (vi) improper storage and handling of the Products or (vii) use of the Products in combination with equipment or software not supplied by Supplier. If Supplier determines that Products for which UC has requested warranty services are not covered by the warranty hereunder, UC shall pay or reimburse Supplier for all costs of investigating and responding to such request at Supplier's then prevailing time and materials rates. If Supplier provides repair services or replacement parts that are not covered by this warranty, UC shall pay Supplier therefor at Supplier's then prevailing time and materials rates. ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN SUPPLIER WITHOUT SUPPLIER'S PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED BY SUPPLIER, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS. THE OBLIGATIONS CREATED BY THIS WARRANTY STATEMENT TO REPAIR

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OR REPLACE A DEFECTIVE PRODUCT SHALL BE THE SOLE REMEDY OF UC IN THE EVENT OF A DEFECTIVE PRODUCT. EXCEPT AS EXPRESSLY PROVIDED IN THIS WARRANTY STATEMENT, SUPPLIER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE. SUPPLIER DOES NOT WARRANT THAT THE PRODUCTS ARE ERROR-FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.

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

A. Intentionally Deleted

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 negligence or willful 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. Any such indemnity shall be offset by UC's contributory negligence or misconduct, to the extent permissible under California law. UC agrees to provide Supplier with prompt notice of any such claim or action and to permit Supplier to defend any claim or action, and that UC will cooperate fully in such defense. UC retains the right to participate in the defense against any such claim or action, and the right to consent to any settlement, which consent will not unreasonably be withheld.

In the event Appendix DS applies to this Agreement, Supplier shall reimburse or otherwise be responsible for any costs, fines or penalties imposed against UC as a result of Supplier's Breach of Institutional Information and/or failure to cooperate with UC's response to such Breach. As used herein, "Breach" means: (1) any disclosure of Institutional Information to an unauthorized party or in an unlawful manner; (2) unauthorized or unlawful acquisition of information that compromises the security, confidentiality or integrity of Institutional Information and/or IT Resources; and (3) the acquisition, access, use, or disclosure of Protected Health Information or medical information in a manner not permitted under the Health Insurance Portability and Accountability Act (HIPAA) or California law. "IT Resources" means IT infrastructure, cloud services, software, and/or hardware with computing and/or networking capability that is Supplier owned/managed, or UC-owned, or a personally owned device that stores Institutional Information, is connected to UC systems, is connected to UC networks, or is used for UC business.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, SUPPLIER'S LIABILITY (WHETHER BY REASON OF BREACH OF CONTRACT, TORT, INDEMNIFICATION, OR OTHERWISE, BUT EXCLUDING LIABILITY OF SUPPLIER FOR BREACH OF WARRANTY (THE SOLE REMEDY FOR WHICH SHALL BE AS PROVIDED UNDER SUPPLIER'S STANDARD WARRANTY PROVISIONS)) SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LESSER OF (A) THE TOTAL PURCHASE PRICE PAID BY UC TO SUPPLIER FOR THE PRODUCT(S) OR SERVICES GIVING RISE TO SUCH LIABILITY OR (B) ONE MILLION DOLLARS (\$1,000,000). NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER SUPPLIER HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES. OR (b) IS NEGLIGENT. HOWEVER, IN NO CASE SHALL THIS LIMIT OF LIABILITY APPLY TO SUPPLIER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. THE FOREGOING INDEMNIFICATION PROVISION STATES A PARTY'S ENTIRE LIABILITY TO THE OTHER FOR THE CLAIMS DESCRIBED HEREIN.

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.)

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- C. Intentionally Deleted
- D. Workers' Compensation as required by applicable state law and Employer's Liability with limits of one million dollars (\$1,000,000) per occurrence. Workers' Compensation as required by applicable state law and Employer's Liability with limits of one million dollars (\$1,000,000) per occurrence.
- E. Intentionally Deleted.
 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>
- F. Intentionally Deleted.
- I. The coverages referred to under A and B of this Article must include UC as an additional insured. It is understood that the coverage and limits referred to under A, B and C of this Article will not in any way limit Supplier's liability. Supplier will furnish UC with certificates of insurance (and the relevant endorsement pages) evidencing compliance with all requirements prior to commencing work under the Agreement. Such certificates will:
1. Indicate that The Regents of the University of California has been endorsed as an additional insured for the coverage referred to under A and B of this Article. This provision will only apply in proportion to and to the extent of the negligent acts or omissions of Supplier, its officers, agents, or employees.
 2. Include a provision that the coverage will be primary and will not participate with or be excess over any valid and collectible insurance or program of self-insurance carried or maintained by UC.

ARTICLE 10 – USE OF UC NAME AND TRADEMARKS

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

ARTICLE 11 – FEDERAL FUNDS

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

- 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

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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 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 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,

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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

- 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

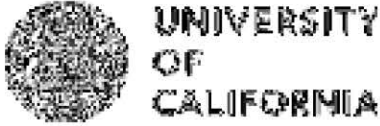
Supplier and its sub-suppliers, if any, will cooperate with UC and other suppliers and will so provide the Services that other cooperating suppliers will not be hindered, delayed or interfered with in the progress of their work, and so that all of such work will be a finished and complete job of its 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. Price decreases shall be provided as part of the regular catalog updates.
- 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 Goods.
- 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.

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- 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 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

See section 23 of UC Statement of Work.

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 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.

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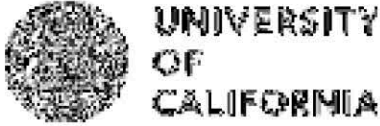
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- C. **Confidential Institutional Information.** Supplier agrees to hold UC's Confidential Institutional Information, and any information derived therefrom, in strict confidence. Confidential Institutional Information shall be defined as any Institutional 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 to the granting of injunctive relief in UC's favor without proof of actual damages.

ARTICLE 21 – UC WHISTLEBLOWER POLICY

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

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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>).

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. Intentionally Deleted;
 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. Upon reasonable request, Supplier can provide a data file of product attributes to assist in creating customized icons for clear identification of UC-recognized certifications.

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.

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- 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 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 apprenticeship 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:

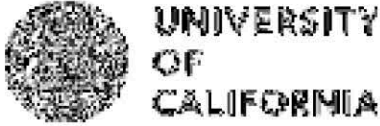
- A. Notice of the general prevailing per diem wage rates, and
- B. Any other notices required by DIR rule or regulation.

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

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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-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/fww-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/fww-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.

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

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

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

ARTICLE 27 – FORCE MAJEURE

Where a failure to perform under this Agreement is caused by a Force Majeure event, Supplier shall have the right to either: (i) terminate, by written notice to UC, all or part of the Order without liability or (ii) extend the date of delivery or performance for a period equal to the duration of the delay. "Force Majeure" means fires; strikes; riots; pandemic or epidemic; embargoes; explosions; earthquakes; floods; wars; acts of terrorism; the elements; labor disputes; shortages of or inability to secure materials or transportation facilities; regulatory acts of government; or other causes or events beyond a party's control. 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

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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.

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:

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- (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.

FEMA CONTRACT ADDENDUM¹

This Agreement and/or Purchase Order is in response to the COVID-19 pandemic, and is eligible for FEMA reimbursement under section 501 (b) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121-5207 (the "Stafford Act"). Accordingly, the following additional terms apply to this Agreement and/or Purchase Order. To the extent of any conflict between the terms set forth in this Addendum and other terms set forth in the Agreement and/or Purchase Order, the terms of this Addendum shall control.

1. Remedies. 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.
2. Termination for Cause or Convenience. 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.
1. Clean Air Act and Federal Water Pollution 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).
2. Suspension and Debarment.
 - a. This contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Supplier is required to verify that none of the Supplier's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
 - b. The Supplier must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
 - c. This certification is a material representation of fact relied upon by (insert name of recipient/subrecipient/applicant). If it is later determined that the Supplier did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to UC, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
 - d. The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any

¹ This template applies in the event UC seeks federal reimbursement from FEMA for procurements. It assumes that none of the terms described in this Alert are incorporated in the underlying Agreement. Refer to the body of the Alert for guidance on inclusion of each term.

contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

3. Byrd Anti-Lobbying Amendment. Suppliers who apply or bid for an award of \$100,000 or more shall file the required certification set forth in Appendix A to 44 C.F.R. Part 18. Each tier certifies to the tier above 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. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.
4. Procurement of Recovered Materials. (i) In the performance of this contract, Supplier shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired competitively within a timeframe providing for compliance with the contract performance schedule; meeting contract performance requirements; or at a reasonable price. (ii) Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>. (iii) Supplier also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.
5. Access to Records. The Agreement, and any pertinent records involving transactions which are directly pertinent to the provision of FEMA funds under 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 (5) years after final payment under the Agreement. UC, and if the underlying grant, cooperative agreement or federal contract so provides, the other contracting Party or grantor (and if that be the United States or an instrumentality thereof, then the Comptroller General of the United States) will have access to and the right to examine Supplier's pertinent books, documents, papers, and records involving transactions and work related to the Agreement until the expiration of five (5) years after final payment under the Agreement. The examination and audit will be confined to those matters connected with the performance of the Agreement, including the costs of administering the Agreement. In the event that UC wishes to engage a third party auditor to perform any audits under this agreement or related to the RFP, such third party auditor must execute a confidentiality agreement with Supplier in a form acceptable to Supplier and shall be the responsibility of the Supplier to obtain such documentation directly with the third party.
6. Changes. The Parties may make changes in the Goods and/or Services or otherwise amend the Agreement as mutually agreed to, 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 in writing within a reasonable period, upon the occurrence of a Material Change.

- 7. DHS Seal, Logo, and Flags. The Supplier shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
- 8. Compliance with Federal Law, Regulations, and Executive Orders. Supplier acknowledges that FEMA financial assistance will be used to fund all or a portion of the contract. Supplier will comply with all applicable Federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- 9. No Obligation by Federal Government. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to UC, Supplier, or any other party pertaining to any matter resulting from the contract.
- 10. Program Fraud and False or Fraudulent Statements or Related Acts. The Supplier acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Supplier's actions pertaining to this contract.



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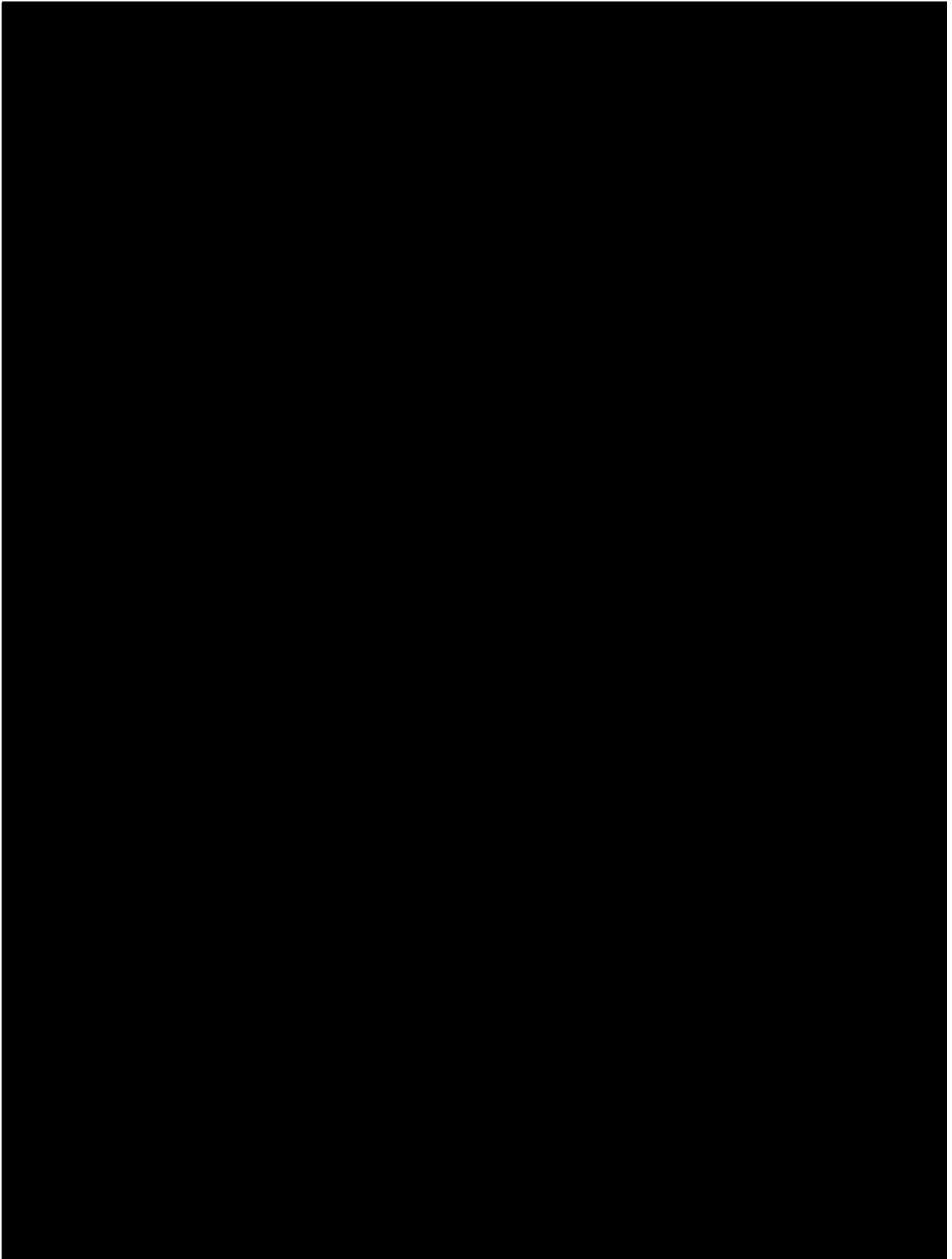
Attachment D - Electronic Commerce

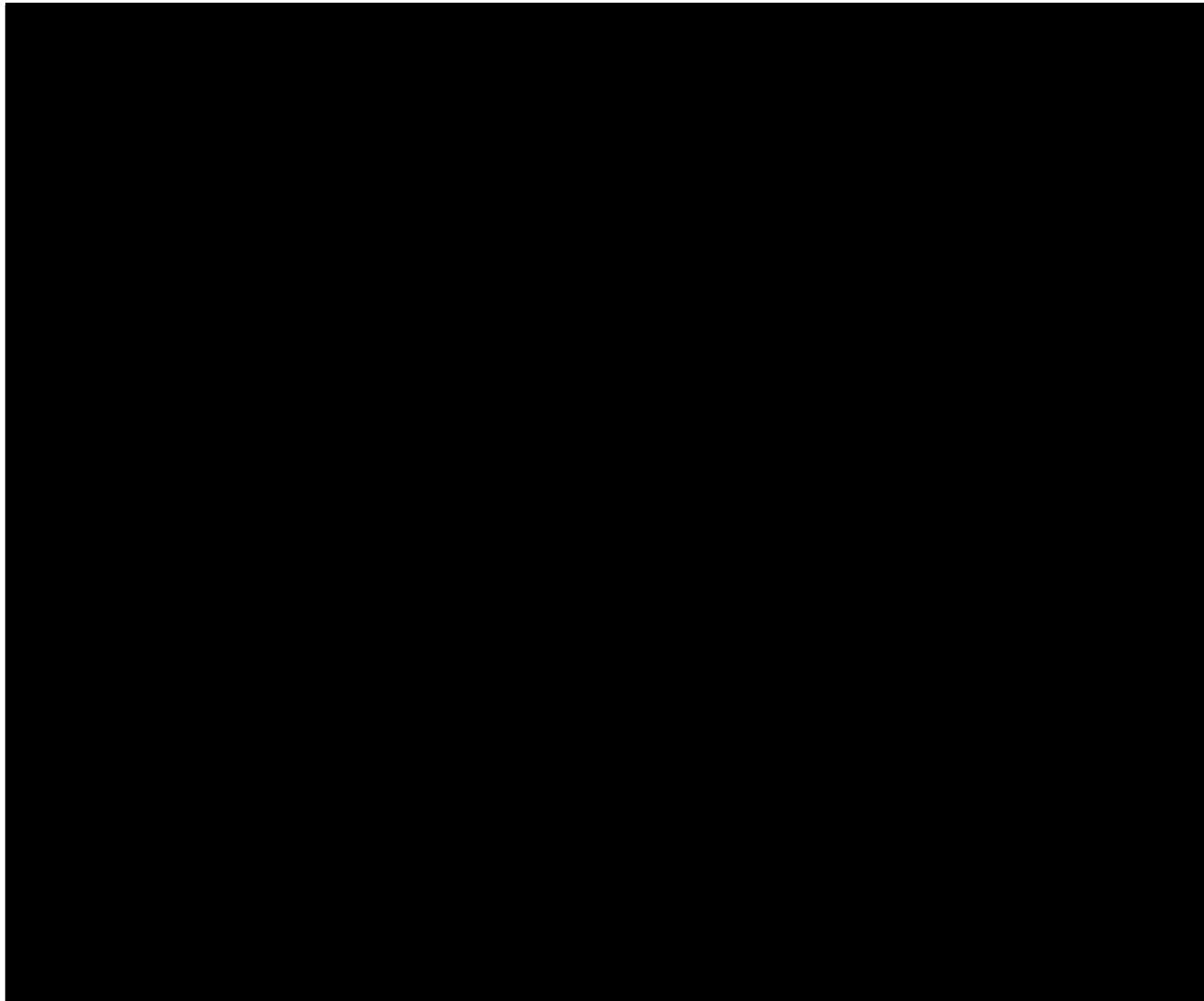
SECTION 1 - GENERAL TERMS

SECTION 2 - DEFINITIONS

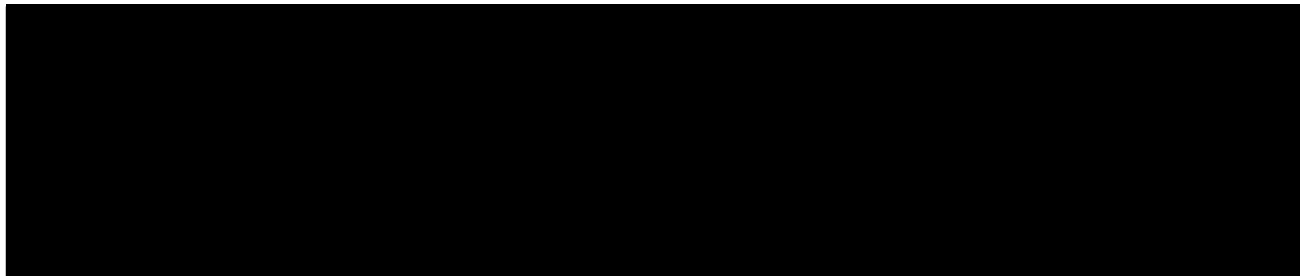
SECTION 3 - RIGHT TO USE

SECTION 4 – e-PROCUREMENT SYSTEM RESPONSIBILITIES; MAINTENANCE OF CATALOG(S); LICENSE

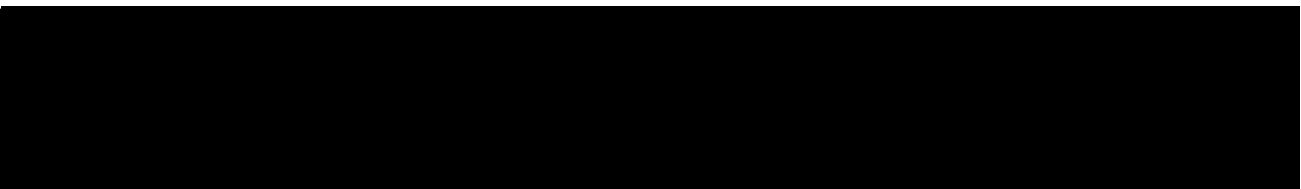




SECTION 5 – USER SUPPORT

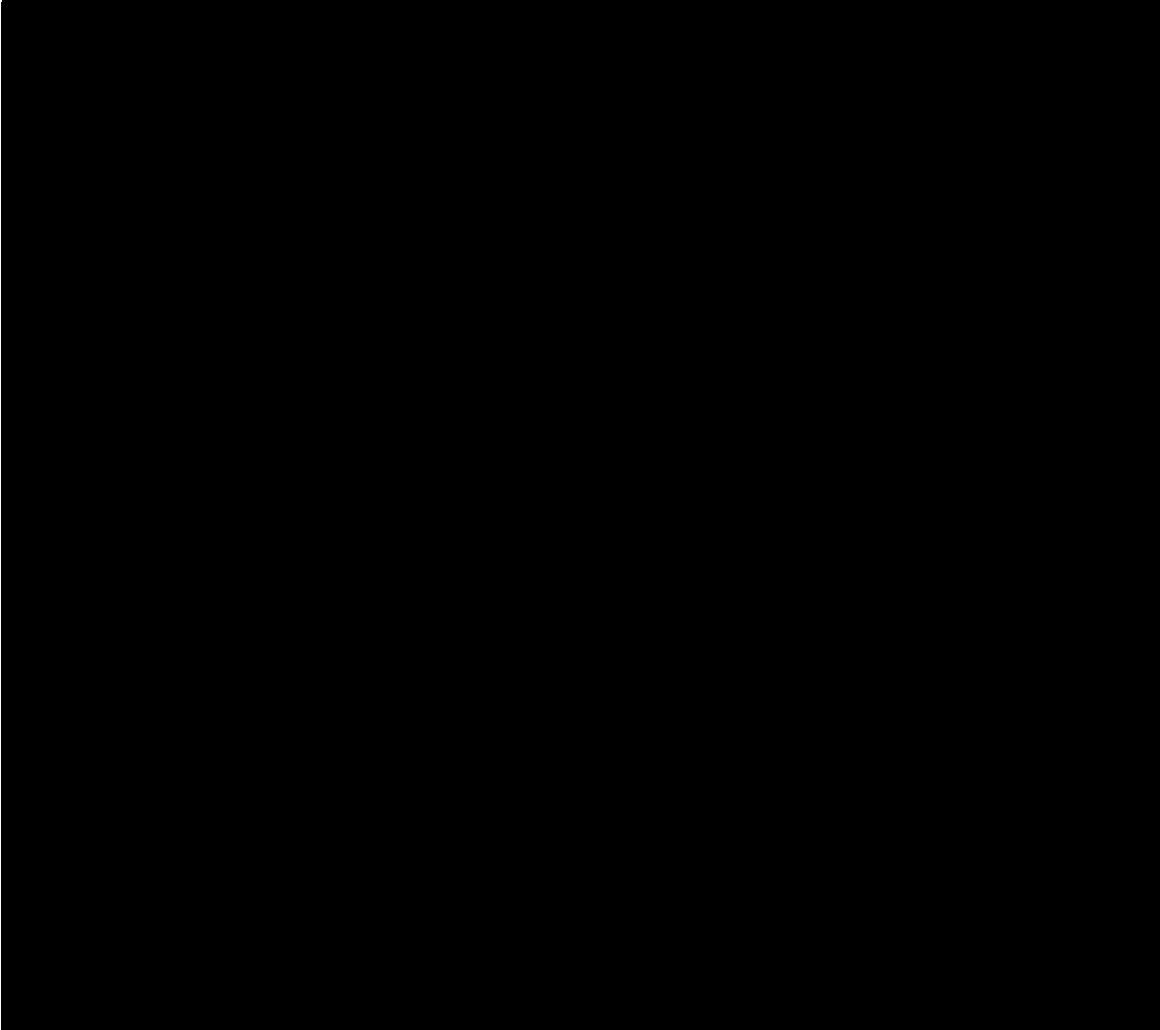


SECTION 6 – PROPRIETARY RIGHTS



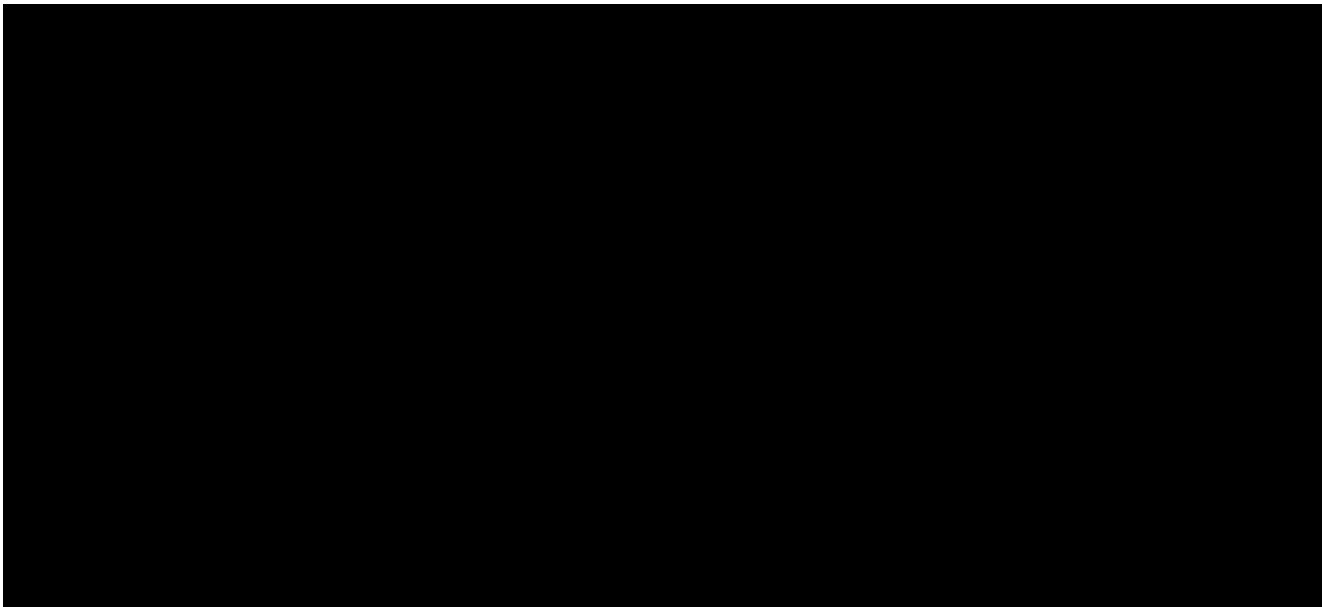


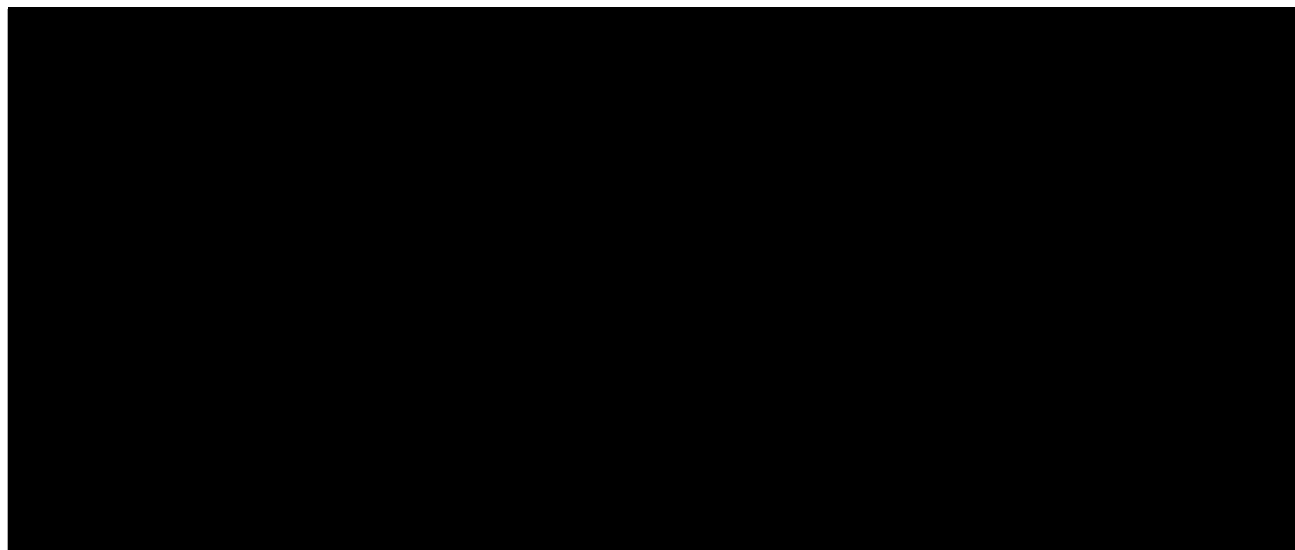
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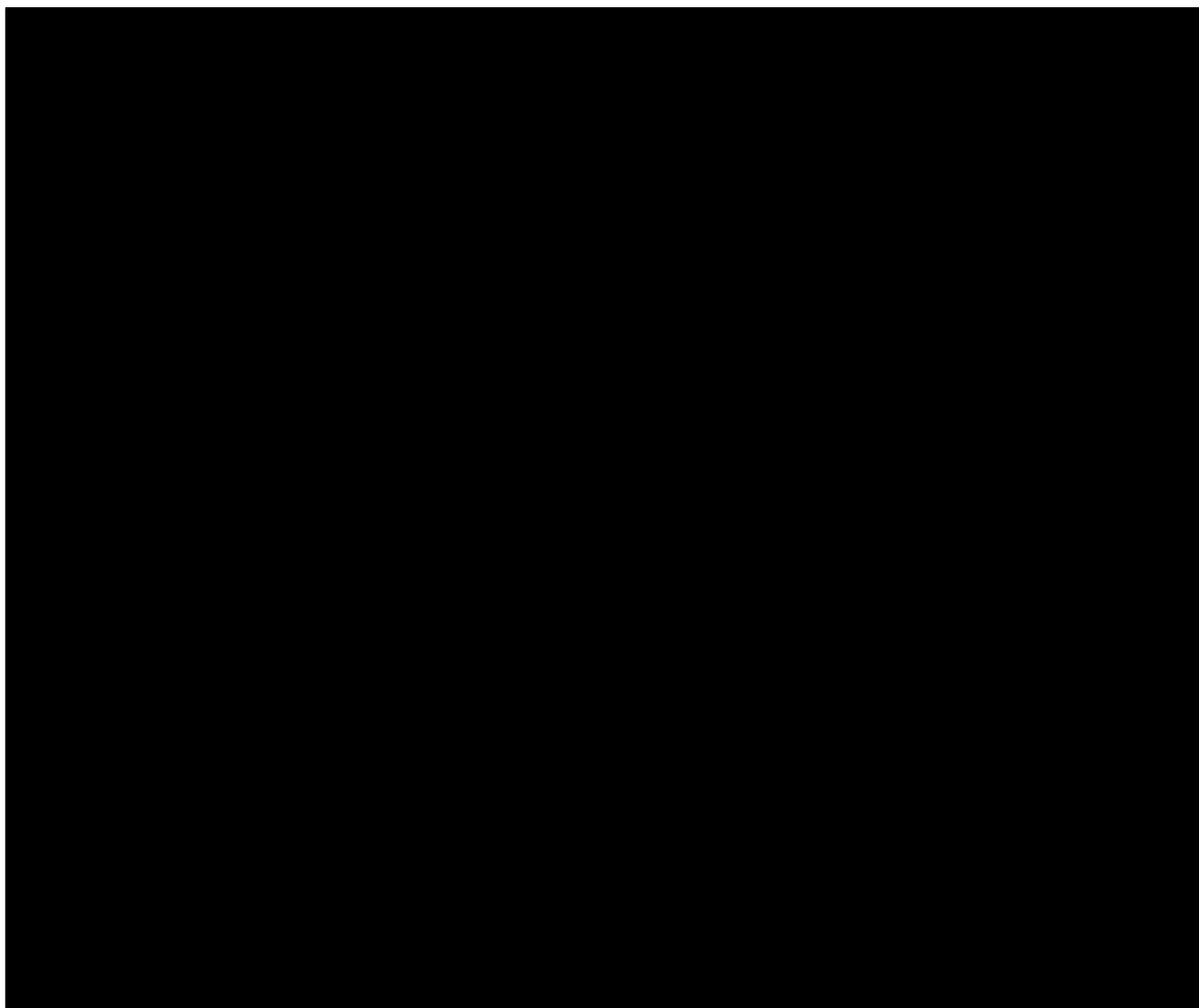
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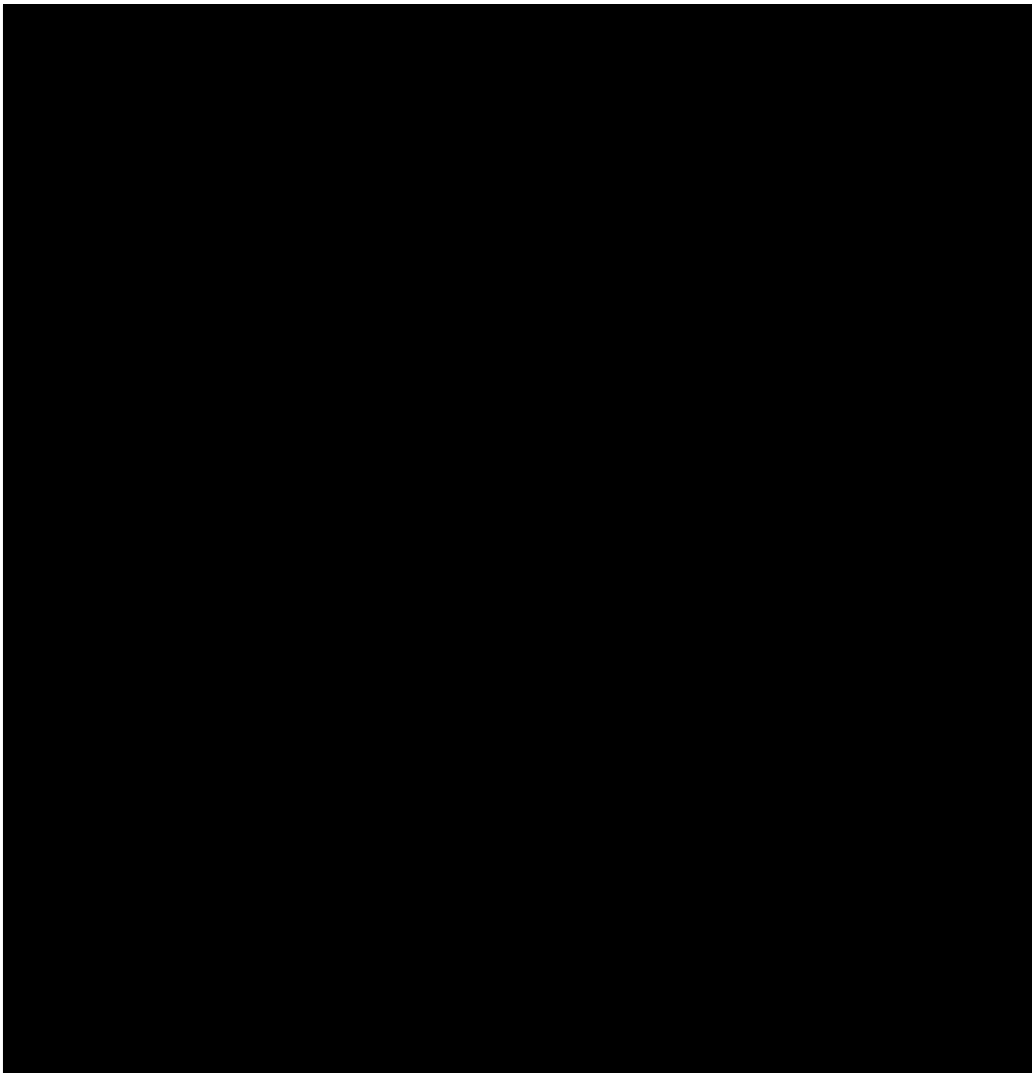
Education Code.





SECTION 7 – MULTIPLE SUPPLIERS



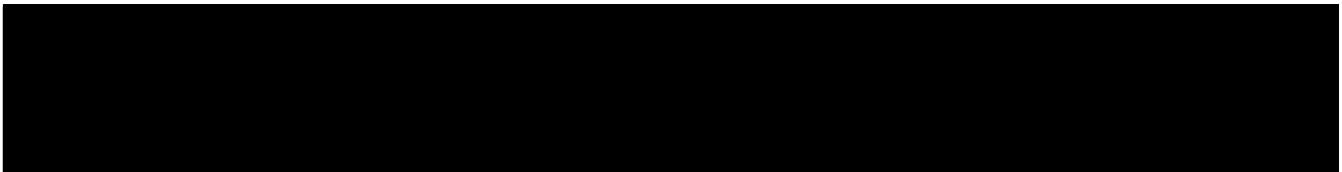


VI.
VII.

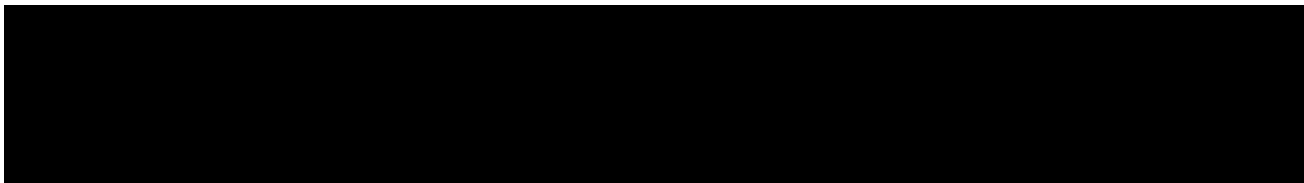
SECTION 8 – WARRANTY DISCLAIMER



SECTION 9 – DISPUTES AND CHANGES IN THE SERVICES



SECTION 10 – ADDITIONAL CONTRACTUAL TERMS





Buyer:

