



## UCDAVIS HEALTH SYSTEM

### After Hours Triage Answering Services (AHTAS) RFP 15-573757-MW

**Date Issued:** July 30, 2015

**\*QUESTION DUE DATE:** August 4, 2015

**Buyer Contact:** Michael Wegmann

**\*SUBMITTAL DUE DATE:** August 13, 2015

**Tel #** (916) 734-4364

**\*By:** 3:00 P.M., Pacific Time

**Fax #** (916) 734-7791

**E-mail:** [mwegmann@ucdavis.edu](mailto:mwegmann@ucdavis.edu)

#### **Return Response to:**

##### ***Via email***

Subject line (AHTAS RFP 15-573757-MW)

Michael Wegmann

Email: [mwegmann@ucdavis.edu](mailto:mwegmann@ucdavis.edu)

Purchasing Department  
University of California, Davis, Health System  
4800 2<sup>nd</sup> Avenue, Suite 3010  
Sacramento, CA 95817

The University of California Davis, Medical Center Web address for downloading this  
Document and any updates until the submittal due date is:  
<http://www.ucdmc.ucdavis.edu/matmgt/>

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**Deviations from specifications:** Any deviation from the specifications shall be identified and fully described. The right is reserved to accept or reject quotations on each item separately, or as a whole, and to waive any irregularities in the quotation; irregularities may, however, render the quotation non-responsive.

**Public disclosure: Responses to Become Public Records:**

All materials submitted in response to this solicitation become a matter of public record and shall be regarded as public record.

**Designation of Confidential Information:**

The Regents will recognize as confidential only those elements in each response, which are trade secrets as that term is defined in the law of California and which are clearly marked as ‘TRADE SECRET,’ ‘CONFIDENTIAL,’ or ‘PROPRIETARY.’ Vague designations and blanket statements regarding entire pages or documents are insufficient and shall not bind The Regents to protect the designated matter from disclosure.

The California Public Records Act limits The Regents’ ability to withhold prequalification and bid data to trade secrets or records, the disclosure of which is exempt or prohibited pursuant to federal or state law. If a submittal contains any trade secrets that a Contractor does not want disclosed to the public or used by The Regents for any purpose other than evaluation of the Contractor’s eligibility, each sheet of such information must be marked with the designation “Confidential.” The Regents will notify the submitter of data so classified of any request to inspect such data so that the submitter will have an opportunity to establish that such information is exempt from inspection in any proceeding to compel inspection.

**The Regents Not Liable for Required Disclosure:**

The Regents shall not in any way be liable or responsible for the disclosure of any records if they are not plainly marked ‘TRADE SECRET,’ ‘CONFIDENTIAL,’ or ‘PROPRIETARY,’ or if disclosure is required by law or by an order of the court.

## **I. INTRODUCTION**

UCDHS is seeking after hours triage services for 120 Primary Care Physicians from 12 clinic sites, which includes the following Specialties: Family Medicine, Internal Medicine, and Pediatrics.

## **II. OVERVIEW/PROJECT GOALS**

### Overview

UCDHS is seeking after hours triage services for 120 Primary Care Physicians from 12 clinic sites, which includes the following Specialties: Family Medicine, Internal Medicine, and Pediatrics. Hours will be 5 p.m. to 8 a.m. Monday through Friday, and 24 hours Saturdays, Sundays, and University Holidays. The goal is to alleviate the PCP daily workload by offering on-call coverage. The telephone triage protocols for both pediatrics and adult should be Schmitt and Thompson. As per the Joint Commission criteria, we are required for nurses and/or physicians to have California Licenses. The expected monthly average calls may range between 2500 to 4000 calls from 12 clinic sites. UCDHS is anticipating a three-part rollout with approximately 2 weeks in between each phase and tentative start date of 10/01/15. It is preferred that documentation is done in our EMR and telephone encounters are routed to PCP, however, it is not required. For reporting purposes, UCDHS would like the ability to track call volume per clinic and average speed to answer.

### **Required Services to include:**

1. Able to provide After Hours Triage for Family Medicine, Internal Medicine, and Pediatrics
2. RN or Physician Teams and proof of California Licenses
3. Use of Schmitt/Thompson Protocols for both Adult and Pediatrics
4. Average Speed to Answer
5. Call volume reported by Clinic

### **Preferred Services:**

6. Able to document in UCDHS EMR (Preferred)
7. Reporting Capabilities (Preferred)
8. Billing itemized by Clinic in one billing

## **III. SCHEDULE OF EVENTS**

Release of Request for Proposals	July 30, 2015
Deadline for submission of E-mailed questions or request for clarification	August 4, 2015
Response back to vendor with answers for clarification	August 7, 2015
<b>Deadline for receipt of Bidders' Proposals by 3 PM, PST</b>	<b>August 13, 2015</b>
*Completion of proposal evaluation, award of contract	September, 2015
*Expected execution of contract	September 2015
*Awardee commencement of project	October 1, 2015

\* Approximate date only.

#### **IV. QUESTION AND ANSWER PERIOD**

Questions or requests for clarification regarding the RFP must be submitted to UC Davis Health System, Michael Wegmann, via email no later than August 4, 2015 by 3:00 pm. Individual questions will not be answered directly to submitter. All questions submitted shall be responded to as an addendum to the **RFP**. The addendum will be provided to each qualified responder of record and posted on the UCDMC Purchasing web site at: <http://www.ucdmc.ucdavis.edu/matmgt/>. The identity of the submitter of any particular question will not be disclosed. Inquiries and questions regarding this **RFP** will not be entertained after August 4, 2015. Answers will be posted by August 7, 2015.

#### **V. ADDENDUM OR SUPPLEMENT TO REQUEST FOR PROPOSAL**

UCDHS may modify the RFP prior to the RFP due date by issuance of amendments sent by email, facsimile, overnight courier or mail to all vendors who receive a copy of this RFP from UCDHS. Amendments will be clearly marked as such. Each amendment will be numbered consecutively and will become part of this RFP. Any vendor who fails to receive such amendments shall not be relieved of any obligation under this quotation as submitted. SPECIFICATIONS OR RFP REQUIREMENTS MAY BE REVISED ONLY THROUGH WRITTEN NOTICE OF ADDENDUM ISSUED BY MICHAEL WEGMANN, UNIVERSITY OF CALIFORNIA, DAVIS, HEALTH SYSTEM, PURCHASING DEPARTMENT. CHANGES BY ANY OTHER INDIVIDUAL ARE NOT AUTHORIZED.

#### **VI. BASIS OF AWARD**

Proposals will be evaluated using a two-tier evaluation. Responses shall initially be evaluated for factors listed in **Tier 1 Qualification Statement, Attachment 1**. To be eligible to advance to **Tier 2 Technical Proposal, Attachment 2** a Bidder must meet the minimum requirements and receive at least seventy (70%) of the available Tier 1 quality points. Those Bidders receiving less than (seventy) 70% of the total quality points in the Tier 1 evaluation shall be eliminated from further consideration. Qualified Bidders must also receive at least 70% of available points in the Tier 2 evaluation to be considered for award.

To determine the lowest cost per quality point, each Bidder's quoted fee, as specified in the **Cost Proposal, Attachment 3**, will be divided by the total quality points awarded to that particular Bidder's response for **Tier 2 Technical Proposal and, if necessary, vendor presentations**. More than one person may evaluate responses. If evaluated by two or more individuals, an average of all the quality points awarded per category will be used.

The Bidder with the lowest cost per quality point shall be given the opportunity to enter into negotiations with UCDHS if the cost is within the project funding allotment and Bidder's proposal is in compliance with all terms and conditions expressed within the RFP document. If UCDHS and Bidder are unable to come to satisfactory terms, UCDHS reserves its right to pursue other alternatives, including, but not limited to, awarding the opportunity to negotiate with the next lowest cost per quality point Bidder.

**Responses that are incomplete in that there has been failure to respond in all of the requested areas may be disqualified. UCDHS reserves the right to set the criteria for and make this determination independently in each case.**

UCDHS reserves the right to accept, reject or waive any irregularities in any proposal. UCDHS reserves the right to reject all responses received in response to this request.

The University of California Davis Health System (UCDHS) grants other University of California (UC) entities the right to acquire the properties and/or services from a resulting contract based on this competitively bid

Request for Proposal (RFP). By submitting an RFP that results in a contract, the Contractor agrees to make the same bid terms and price, exclusive of freight and transportation fees, available to other University of California entities. UCDHS will not be responsible for any problems, which may arise between UC entities and the Contractor as a result of any sales and/or purchases made.

Termination due to Non-Funding. Bidder understands that the obligation of University to proceed is conditioned upon the appropriation of state, federal and other sources of funds not controlled by University ("Funding"), that in the event that through no action or inaction on the part of University, the Funding is withdrawn, University shall have the right to withdraw the RFP without damage, penalty, cost or further obligation.

An agreement shall be entered into only after it has been determined that prices are reasonable. The University reserves the right to have the Bidder provide supporting documentation justifying Bidder's pricing and Bidder's ability to meet proposed University agreement obligations prior to issuance of an award or agreement. Any proposal that appears to have unrealistically low prices or other implausible terms may be rejected, in the University's sole discretion.

## **VII. REQUIRED SUBMITTALS**

### **Copies of Proposals**

Bidder is required to submit one (1) one signed copy via email to [mwegmann@ucdavis.edu](mailto:mwegmann@ucdavis.edu). Responses must be received by **August 13, 2015 by 3:00 P.M. Pacific Time**. Responses must be submitted by E-mail. Request for Proposal E-mail responses should be submitted with the words **AHTAS RFP 15-573757-MW**, clearly marked in the subject line and body of the E-mail.

Submit by E-mail responses to:

[mwegmann@ucdavis.edu](mailto:mwegmann@ucdavis.edu) – reference **AHTAS RFP 15-573757-MW**

It is a requirement that vendors provide a complete narrative with answers to all statements listed in Attachment 1 and Attachment 2 and cost proposal in Attachment 3. The narrative response must reference each corresponding section and item number in the order provided on the attachment.

## **VIII. PROPOSAL CONDITIONS**

1. Notwithstanding any other provision of the RFP, Bidders are hereby advised that this RFP is a solicitation of proposals only and is not to be construed as an offer to enter into any contract or agreement. Thus, UCDHS reserves the unqualified right to reject any or all proposals for any reason.
2. UCDHS shall have the unconditional and unqualified right to withdraw, cancel, or amend this RFP at any time. Bidders shall bear all costs associated with the preparation and furnishing of responses to this RFP. UCDHS, in its sole discretion, reserves the right to determine whether any Bidder meets the minimum qualification standards, to determine whether a proposal is responsive, and to select a proposal which best serves its programmatic objectives. UCDHS reserves the right to negotiate a contract with the selected Bidder.
3. All proposals shall be firm for a period of 180 days following the proposal submission due date.
4. Responses to this RFP should be made according to the instructions contained herein. Failure to adhere to RFP instructions may be cause for rejection of the proposal. A proposal, which contains conditions or limitations set up by the Bidder, may be deemed irregular and subsequently rejected by UCDHS.

5. False, incomplete, or unresponsive statements in the proposal response may be cause for its rejection. The evaluation and determination of the fulfillment of the RFP requirements will be UCDHS's responsibility and its judgment shall be final.
6. UCDHS reserves the right to interpret or change any provision of this RFP at any time prior to the proposal submission date. Such interpretation or change shall be in the form of a written addendum to this RFP. Such addendum will become part of this RFP and any resultant contract. Such addendum shall be made available to each company that has received an RFP. Should such addendum require additional information not previously requested, a Bidder's failure to address the requirements of such addendum in the proposal response might result in the proposal not being considered.

UCDHS has, at its sole discretion, the unconditional and unqualified right to determine that a time extension is required for submission of proposals, in which case, a written RFP addendum issued by UCDHS shall indicate the new submission date for proposals.

Prior to the final submission date, any Bidder may retrieve their proposal to make additions or alterations. Such retrieval, however, shall not extend the final submission date.

Bidders wishing to submit proposals in response to this request do so entirely at their own expense, and submission of a proposal indicates acceptance of the conditions contained in the RFP unless clearly and specifically noted otherwise.

7. **PUBLIC INFORMATION AND TRADE SECRETS**--The California Public Records Act limits UCDHS's ability to withhold pre-qualification and bid data to trade secrets or records, the disclosure of which is exempt or prohibited pursuant to federal or state law. If a submittal contains any trade secrets that Bidder does not want disclosed to the public or used by UCDHS for any purpose other than evaluation of the Bidder's eligibility, each sheet of such information must be marked with the designation "Confidential." UCDHS will notify the Bidder any request, by another party, to inspect such confidential information. Bidder will have an opportunity to establish that such information is exempt from inspection in any proceeding to compel inspection.
8. All computer programs and data made available by UCDHS to Bidders hereunder shall remain the property of the UCDHS and shall be maintained, used, and disseminated in accordance with the California Information Practices Act of 1911, Civil code Sections 1798 through 1798.76, and the California Public Records Act, Government Code Section 6250 through 6260. All listings and all copies of listings that reveal names or identification numbers of individuals (i.e., employees, patients, etc.) shall be destroyed or returned to UCDHS.
9. Bidders may not distribute any announcement or news release regarding this RFP project without written approval by the University of California Davis Health System. Any materials to be provided to regulatory agencies, other entities, or to the public shall be submitted to the UCDHS for review and distribution unless otherwise directed by a UCDHS representative.
10. All agreements resulting from this RFP shall be construed and enforced in accordance with the laws of the State of California.
11. **Piggyback:** The University of California Davis Health System (UCDHS) grants other University of California (UC) entities the right to acquire the properties and/or services from a resulting contract based on this competitively bid Request for Proposal (RFP). By submitting an RFP that results in a contract, the Contractor agrees to make the same bid terms and price, exclusive of freight and transportation fees, available to other University of California entities. UCDHS will not be responsible for any problems, which may arise between UC entities and the Contractor as a result of any sales and/or purchases made.

## **IX. TERMS AND CONDITIONS**

University of California, Davis Health System, Staffing Agreement, as attached, shall be the resulting agreement upon award.

A HIPAA Business Associate Amendment will be required for this engagement.

Standard University Terms and Conditions for Goods and Services will be in effect for this engagement.

A non-disclosure agreement will be required.

To facilitate timely award of this order, insurance requirements as outlined in the attached UCDHS Independent Consultant Agreement must accompany your quote or be in force and on file as a result of a previous contract. All of the required policies shall name the Regents of the University of California as an additional insured, shall be in a form as issued by an insurer approved by the UCDHS, and shall contain an endorsement requiring not less than thirty (30) days written notice to UCDHS prior to any cancellation or modification thereof. Thereafter, a certificate evidencing the renewal of each such policy shall be furnished to UCDHS at least ten (10) days prior to the expiration of the term of such policy. Failure to comply with this requirement may result in cancellation of any order resulting from this request for quotation.

Any order resulting from this Request for Proposal shall be subject to the examination and audit by the California State Auditor for a period of three years after final payment under this order. The examination and audit shall be confined to those matters connected with the performance of the contract, including, but not limited to, the cost of administering the contract.

**X. GENERAL INFORMATION / CERTIFICATION**

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

Please complete the vendor contact information requested below:

Company Name \_\_\_\_\_  
Federal Employer Identification # \_\_\_\_\_  
Contact Person/Title- \_\_\_\_\_  
Address \_\_\_\_\_  
\_\_\_\_\_  
Telephone Number \_\_\_\_\_ Fax - \_\_\_\_\_

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

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

\_\_\_\_\_  
Date



**ATTACHMENT 1**  
**TIER 1**  
**QUALIFICATION STATEMENT**

**YOUR PROPOSAL MUST INCLUDE A RESPONSE TO EVERY QUESTION AND SECTION THAT REQUESTS INFORMATION, REFER TO THE SECTION AND CORRESPONDING ITEM NUMBER.**

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

The Qualification Statement must contain a description of the Bidder's corporate qualifications, area of expertise, and prior experience with providing services similar to those described in this RFP, including, but not limited to the following:

**1. Company Ownership and Management**

- a. Company name:  
Address:  
Phone:  
Fax:  
E-mail:  
Internet address:
- b. Provide names and titles of company principals.
- c. When was your company founded?
- d. Who owns the company? If a subsidiary of another company, please provide name and location of headquarters.
- e. Provide the name and title of the individual, telephone number, and e-mail address with whom to communicate if further information about your proposal is desired.

**2. Please answer the following:**

1. Do you currently handle Primary Care after-hours triage calls? If so, how many current customers do you have? Or, what is the percentage of primary care clients compared to other services provided?
2. What is your average monthly primary care call volume?
3. What is your current staffing ratio? RNs, Physicians, Specialists, Non-licensed?
4. What is your ASA – average speed to answer?
5. What are your current reporting capabilities?
6. How often are calls escalated from nurses to the physician groups on-call?
7. Do you document your call documentation in any of your current customers' EMR? If so, what is your workflow?

8. Can you provide examples of protocols that you can share set by your current customers, in addition to Schmitt/Thompson telephone triage protocols? (If applicable)
9. What is your usual rollout schedule for taking on new customers, including set-up meetings to training?
10. Do you record your calls? If so, can customers access calls to audit patient experience and expertise?

### **3. Company Organization and Staff**

Identify by name all firm staff to be involved in the project as well as engaged in management/oversight. Provide profiles or resumes for all of these individuals. Please include a description of experience, qualification, and expertise that your company will provide.

The successful Bidder will perform all work. Subcontracting by the Bidder will not be allowed.

### **4. Company Experience**

- a. Describe your firm's area of expertise and prior experience with similar projects as specified in the RFP.

### **5. References**

Provide organization names and specific individual contacts for at least three similar projects you have conducted for other clients in the past two years that may furnish a reference. The references may be from current or prior clients and at least two should correspond to the two case histories that will be documented in Tier 2. The references will be used as a basis for inquiry concerning the Bidder's quality of service. Furnishing incorrect and/or incomplete reference information may lead to bidder's elimination from consideration for award. The decision to eliminate Bidder from consideration for award for poor reference checks or for incorrect and/or incomplete reference information shall be at the sole discretion of UCDHS and shall not be subject to appeal.

### **6. Conflict of Interest**

Identify by name and University position any University officer, faculty member, or other employee who holds a position of director, officer, partner, trustee, manager, or employee in the Bidder's organization, as well as the name of any near relatives who are employed by the University.

Provide a statement of the total dollar amount of work performed for the University of California in the past twelve (12) months and listing of the campus(es) served.

The contract will not be awarded to any person, company, or corporation that has failed to perform in a satisfactory or faithful manner on any previous contract or purchase order with the University of California.

### **7. University Terms and Conditions**

Please indicate your compliance with the University terms and conditions specified in the RFP, including the University of California Independent Consultant Agreement and the HIPAA Business Associate Agreement (attached.)

### **8. Health Care Criminal Offense Exclusion**

The Bidder certifies that neither the Bidder, nor its shareholders, members, directors, officers, agents, employees or members of its workforce have been excluded or served a notice of exclusion or have been served with a notice of proposed exclusion, or have committed any acts which are cause for exclusion, from participation in, or had any sanctions, or civil or criminal penalties imposed under, any federal or state

healthcare program, including but not limited to Medicare or Medicaid, or have been convicted, under federal or state law (including without limitation a plea of nolo contendere or participation in a first offender deterred adjudication or other arrangement whereby a judgment of conviction has been withheld), of a criminal offense related to (a) the neglect or abuse of a patient, (b) the delivery of an item or service, including the performance of management or administrative services related to the delivery of an item or service, under a federal or state healthcare program, (c) fraud, theft, embezzlement, breach of fiduciary responsibility, or other financial misconduct in connection with the delivery of a healthcare item or service or with respect to any act or omission in any program operated by or financed in whole or in part by an federal , state or local government agency, (d) the unlawful, manufacture, distribution, prescription or dispensing of a controlled substance or (e) interference with or obstruction of any investigation into any criminal offense described in (a) through (d) above. Each Party further agrees to notify the other Party immediately after the Party becomes aware that any of the foregoing representation and warranties may be inaccurate or may become incorrect.

**Notification Requirements.** Bidder shall notify Hospital immediately in the event that (1) Bidder is convicted of a criminal offense related to health care and/or related to the provision of services paid for by Medicare, Medicaid, or another federal health care program; or (2) Bidder is excluded from participation in any federal health care program, including Medicare and Medicaid.

**Termination.** Hospital may terminate any resulting Agreement immediately in the event that (1) Bidder is convicted of a criminal offense related to health care and/or related to the provision of services paid for by Medicare, Medicaid or another federal health care program; or (2) Bidder is excluded from participation in any federal health care program, including Medicare and Medicaid.

## **9. Service**

- a. Provide a corporate profile, service portfolio, and description of the Bidder's service philosophy and approach. Do you have a written service guarantee? If so, please submit with the proposal. What separates and distinguishes this Bidder from other applicants?

## **10. Company Financials:**

- a. Provide a report of the Bidder's financial status, including the most recently audited financial statements and profit and loss statements or equivalent evidence of financial stability and include auditor's opinion.

**ATTACHMENT 2**  
**TIER 2**  
**TECHNICAL PROPOSAL**

Failure to provide the information necessary to fully evaluate the bid response and/or providing a response that is not customized to address the requested information may result in disqualification of the bid.

**1. Project Summary**

Provide a narrative summary of your understanding of the project, described in Section II, Overview/Project Goals.

**2. Scope of Services**

Provide the scope of services provided

**3. Other Information**

Describe any other company experience you believe would be relevant or useful if you were to be awarded the project.

### **ATTACHMENT 3**

### **COST PROPOSAL**

The Bidder must include definitive information regarding the payment schedule, to include the following:

1. A detailed cost proposal outlining total cost for the services described in this RFP:
  - All-inclusive Price per Call; can include length variation, tier pricing, incoming and outgoing calls, etc...
2. A description of additional charges if any for any extra services.

**If a Bidder's fee proposal is not clear to the evaluation committee, fails to address any of the points (1 -2) above or does not distinguish Phase 1 and 2 total costs, the proposal will be considered non-responsive and the proposal will be disqualified from further consideration.**

## HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement ("BA AGREEMENT") supplements and is made a part of any and all agreements entered into by and between The Regents of the University of California, a California corporation ("UNIVERSITY"), on behalf of its University of California Davis Health System and **Vendor** Health Care Solutions ("BUSINESS ASSOCIATE") **Date**, 2015("Effective Date"). UNIVERSITY has designated all of its HIPAA health care components as a single component of its hybrid entity and therefore this agreement is binding on all other health care components of the UNIVERSITY.

### RECITALS

- A. UNIVERSITY and BUSINESS ASSOCIATE desire to protect the privacy and provide for the security of Protected Health Information (as that term is defined herein) used by or disclosed to BUSINESS ASSOCIATE in compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the regulations promulgated thereunder by the U.S. Department of Health and Human Services (45 CFR Parts 160, 162 and 164, the "HIPAA Regulations"), the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act"), California Health and Safety Code §1280.15, California Civil Code §§1798.82 and 1798.29, and other applicable laws and regulations. The purpose of this BA AGREEMENT is to satisfy certain standards and requirements of HIPAA, the HIPAA Regulations, including 45 CFR § 164.504(e), and the HITECH Act, including Subtitle D, part 1, as they may be amended from time to time.
- B. BUSINESS ASSOCIATE provides services to UNIVERSITY, or performs or assists in the performance of UNIVERSITY activities or functions, involving the use or disclosure of Protected Health Information in the course of such service or assistance.
- C. UNIVERSITY wishes to disclose to BUSINESS ASSOCIATE certain information, some of which may constitute Protected Health Information or Medical Information (herein collectively referred to as "PHI").

Therefore, intending to be legally bound hereby, the parties agree as follows:

- 1. **EFFECT OF AGREEMENT.** This BA AGREEMENT amends, supplements and is made a part of any and all agreements between UNIVERSITY and BUSINESS ASSOCIATE, regardless of whether the agreement(s) shall have been entered into before or after the Effective Date of this BA AGREEMENT. To the extent that the terms of the agreement(s) are inconsistent with the terms of this BA AGREEMENT, the terms of this BA AGREEMENT shall control.
- 2. **DEFINITIONS.**

2.1 "Breach" means the unauthorized acquisition, access, use, or disclosure of PHI that compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information, and shall have the meaning given to such term under HIPAA and the HIPAA regulations, including 45 CFR §164.402, as well as California Civil Code §§ 1798.29 and 1798.82.

2.2 "Electronic Health Record" means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff, and shall have the meaning given to such term under the HITECH Act, including Section 13400(5).

2.3 "Electronic PHI" means PHI that is transmitted by or maintained in electronic media and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including 45 CFR § 160.103. For the purposes of this BA AGREEMENT, Electronic PHI includes all computerized data, as defined in California Civil Code §§ 1798.29 and 1798.82.

2.4 "Information System" means an interconnected set of information resources under the same direct management control that shares common functionality. A system normally includes hardware, software, information, data, applications, communications, and people, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including 45 CFR § 164.304.

2.5 "Medical Information" means any individually identifiable information, in electronic or physical form, in possession of or derived from a provider of health care, health care service plan, pharmaceutical company, or contractor regarding a patient's medical history, mental or physical condition, or treatment and shall have the meaning given to such term under California Civil Code § 56.05.

2.6 "Protected Health Information" ("PHI") means any information, including Electronic PHI, whether oral or recorded in any form or medium: (i) that relates to the past, present, or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including, but not limited to 45 CFR § 160.103. For the purposes of this BA AGREEMENT, PHI includes all medical information and health insurance information as defined in California Civil Code §§ 56.05 and 1798.82.

2.7 "Secretary" means the Secretary, Department of Health and Human Services, or his or her designee.

2.8 "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an Information System, and shall have the meaning given to such term

under HIPAA and the HIPAA Regulations, including 45 CFR § 164.304.

2.9 “Unsecured PHI” means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of an Encryption or Destruction technology or methodology specified by the Secretary in guidance issued under Section 13402(h)(2) of the HITECH Act on the Health and Human Services Web site, as such guidance may be revised from time to time, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including 45 CFR § 164.402.

2.9.1 “Encryption” means a technology or methodology that utilizes an algorithmic process to transform data into a form in which there is a low probability of assigning meaning without use of a confidential process or key, and such confidential process or key that might enable decryption has not been breached, and shall have the meaning given to such term under HIPAA and HIPAA Regulations, including 45 CFR § 164.304.

2.9.2 “Destruction” means the use of a technology or methodology by which the media on which the PHI is stored or recorded has been shredded, destroyed, cleared, or purged, as appropriate, such that the PHI cannot be read, retrieved, or otherwise reconstructed. Redaction is inadequate for the purposes of destruction.

### 3. RESPONSIBILITIES OF BUSINESS ASSOCIATE.

3.1 Permitted Uses and Disclosures of PHI. BUSINESS ASSOCIATE may use, access, and/or disclose PHI received by BUSINESS ASSOCIATE solely for the purpose of performing a function or activity for or on behalf of the University. To the extent the BUSINESS ASSOCIATE carries out one or more of UNIVERSITY’s obligation(s) under Subpart E of 45 CFR Part 164, BUSINESS ASSOCIATE must comply with the requirements of Subpart E that apply to the UNIVERSITY in the performance of such obligation(s).

3.1.1 Minimum Necessary. With respect to the use, access, or disclosure of PHI by BUSINESS ASSOCIATE as permitted under section 3.1, BUSINESS ASSOCIATE shall limit such use access, or disclosure, to the extent practicable, to the minimum necessary to accomplish the intended purpose of such use, access, or disclosure. BUSINESS ASSOCIATE shall determine what constitutes the minimum necessary to accomplish the intended purpose in accordance with HIPAA, HIPAA Regulations and any applicable guidance issued by the Secretary.

3.1.2 Documentation of Disclosures. With respect to any disclosures of PHI by BUSINESS ASSOCIATE as permitted under section 3.1, BUSINESS ASSOCIATE shall document such disclosures including, but not limited to, the date of the disclosure, the name and, if known, the address of the recipient of the disclosure, a brief description of the PHI disclosed, and the purpose of the disclosure.

3.1.3 Modification of PHI. Except as permitted under section 3.10.2 below,



BUSINESS ASSOCIATE shall not modify any existing data to which it is granted access other than to correct errors, or derive new data from such existing data. BUSINESS ASSOCIATE shall record any modification of data and retain such record for a period of seven (7) years.

3.1.4 Electronic Transaction Standards. Where applicable, BUSINESS ASSOCIATE shall adhere to the transaction standards as specified in 45 CFR §§ Parts 160 and 162.

3.2 Other Permitted Uses and Disclosures of PHI. BUSINESS ASSOCIATE may, if necessary and only to the extent necessary, use PHI (i) for the proper management and administration of BUSINESS ASSOCIATE's business, (ii) to provide data aggregation services relating to the health care operations of UNIVERSITY, or (iii) to carry out BUSINESS ASSOCIATE's legal responsibilities, subject to the limitation in section 3.3, below. BUSINESS ASSOCIATE shall obtain reasonable assurances from the person to whom the PHI is being disclosed that, as required under this BA AGREEMENT, the PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed. BUSINESS ASSOCIATE shall require that any Breaches or Security Incidents be immediately reported to BUSINESS ASSOCIATE. BUSINESS ASSOCIATE shall then report the Breach or Security Incident to UNIVERSITY in accordance with section 3.7.

3.3 Nondisclosure of PHI. BUSINESS ASSOCIATE is not authorized and shall not use or further disclose UNIVERSITY's PHI other than as permitted or required under any agreement it has with University, including this BA AGREEMENT, or as required by law or regulation.

3.3.1 Disclosures Required by Law. In the event BUSINESS ASSOCIATE is required by law to disclose PHI, BUSINESS ASSOCIATE shall promptly notify UNIVERSITY of such requirement. BUSINESS ASSOCIATE shall give UNIVERSITY sufficient opportunity to oppose such disclosure or take other appropriate action before BUSINESS ASSOCIATE discloses the PHI.

3.3.2 Legal Process. In the event BUSINESS ASSOCIATE is served with legal process or a request from a governmental agency that may potentially require the disclosure of PHI, BUSINESS ASSOCIATE shall promptly, and in any case within two (2) business days of its receipt of such legal process or request, notify UNIVERSITY. BUSINESS ASSOCIATE shall not disclose the PHI without UNIVERSITY'S consent unless pursuant to a valid and specific court order or to comply with a requirement for review of documents by a governmental regulatory agency under its statutory or regulatory authority to regulate the activities of either party.

3.4 Prohibition on Sale of PHI for Remuneration. Subject to the limitations set forth in Section 13405(d)(2) of the HITECH Act, BUSINESS ASSOCIATE shall not directly or indirectly receive remuneration in exchange for any of UNIVERSITY'S PHI unless BUSINESS ASSOCIATE first obtains authorization from UNIVERSITY. UNIVERSITY shall not grant such authorization unless the subject of the PHI has

granted UNIVERSITY a valid authorization that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving the individual's PHI.

3.5 Security Standards. BUSINESS ASSOCIATE shall take appropriate security measures (i) to protect the confidentiality, integrity and availability of UNIVERSITY's Electronic PHI information that it creates receives, maintains, or transmits on behalf of the UNIVERSITY and (ii) to prevent any use or disclosure of UNIVERSITY's PHI other than as provided by the Agreement and this BA AGREEMENT. Appropriate security measures include the implementation of the administrative, physical and technical safeguards specified in the HIPAA Security Rule (the Standards for Security of Electronic Protected Health Information at 45 CFR Parts 160, 162, and 164).

3.6 Security Documentation. BUSINESS ASSOCIATE shall maintain the policies and procedures implemented to comply with section 3.5 in written form (paper or electronic). If an action, activity or assessment is required to be documented, BUSINESS ASSOCIATE shall maintain a written record (paper or electronic) of the action, activity, or assessment, shall retain the documentation for six (6) years from the date of its creation or the date when it last was in effect, whichever is later, make documentation available to those persons responsible for implementing the procedures to which the documentation pertains, and review documentation periodically, and update as needed, in response to environmental or operational changes affecting the security of the PHI.

3.7 Notification of Breaches and Security Incidents. BUSINESS ASSOCIATE shall notify UNIVERSITY in writing as soon as possible, but in no event more than two (2) business days, after BUSINESS ASSOCIATE becomes aware of any Breach of or Security Incident involving UNIVERSITY's PHI. BUSINESS ASSOCIATE shall be deemed to be aware of any Breach or Security Incident as of the first day on which such Breach or Security Incident is known or reasonably should have been known to its officers, employees, agents or subcontractors. BUSINESS ASSOCIATE shall identify as soon as practicable each individual whose unsecured PHI has been, or is reasonably believed by BUSINESS ASSOCIATE to have been, accessed, acquired, or disclosed during such Breach or Security Incident. BUSINESS ASSOCIATE shall cooperate in good faith with UNIVERSITY in the investigation of any Breach or Security Incident.

3.8 Prompt Corrective Actions. In addition to the notification requirements in section 3.7 above, and with prior notice to the UNIVERSITY, BUSINESS ASSOCIATE shall take (i) prompt corrective action to remedy any Breach or Security Incident, (ii) mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by BUSINESS ASSOCIATE, and (iii) take any other action required by applicable federal and state laws and regulations pertaining to such Breach or Security Incident.

3.8.1 Notification of Corrective Action and Provision of Policies. BUSINESS ASSOCIATE will provide written notice to UNIVERSITY as soon as possible but no later than twenty (20) calendar days after discovery of the Breach or Security Incident of (i) the actions taken by BUSINESS ASSOCIATE to mitigate any harmful

effect of such Breach or Security Incident and (ii) the corrective action BUSINESS ASSOCIATE has taken or shall take to prevent future similar Breaches or Security Incidents. Upon UNIVERSITY's request, BUSINESS ASSOCIATE will also provide to UNIVERSITY a copy of BUSINESS ASSOCIATE's policies and procedures that pertain to the Breach or Security Incident involving UNIVERSITY's PHI, including procedures for curing any material breach of this BA AGREEMENT.

3.8.2 Lost or Indecipherable Transmissions. BUSINESS ASSOCIATE agrees to make reasonable efforts to trace lost or translate indecipherable transmissions. BUSINESS ASSOCIATE shall bear all costs associated with the recreation of incomplete, lost or indecipherable transmissions if such loss is the result of an act or omission of BUSINESS ASSOCIATE.

### 3.9 RIGHTS and RESPONSIBILITIES of UNIVERSITY.

3.9.1 Right of UNIVERSITY to Accounting or Audit. Within fifteen (15) calendar days of UNIVERSITY's request, BUSINESS ASSOCIATE shall provide, at BUSINESS ASSOCIATE's expense, an audit or written accounting of the uses and disclosures of UNIVERSITY's PHI made by BUSINESS ASSOCIATE and its Agents, if: (i) UNIVERSITY receives credible information that there has been a Breach or Security Incident involving UNIVERSITY's PHI, or (ii) if UNIVERSITY determines that the written notice provided in section 3.8.1 does not provide sufficient assurances that the Breach or Security Incident involving UNIVERSITY's PHI has been remedied.

3.9.2 UNIVERSITY's Right to Terminate. If BUSINESS ASSOCIATE fails to provide the accounting or audit in a timely manner, or if UNIVERSITY is not satisfied that the corrective action is sufficient to reasonably prevent similar Breaches or Security Incidents in the future, UNIVERSITY may terminate its applicable agreements with BA in accordance with section 5, below.

3.9.3 Costs Related to Inappropriate Use, Access or Disclosure of PHI. If BUSINESS ASSOCIATE fails to adhere to any of the privacy, confidentiality, and/or data security provisions set forth in this BA AGREEMENT or any other agreement it has with UNIVERSITY or if there is a Security Incident or Breach of PHI in BUSINESS ASSOCIATE's possession and, as a result, PHI or any other confidential information is unlawfully accessed, used or disclosed, BUSINESS ASSOCIATE agrees to pay and reimburse UNIVERSITY for any and all costs, direct or indirect, incurred by UNIVERSITY associated with any Security Incident or Breach notification obligations. BUSINESS ASSOCIATE also agrees to pay for any and all fines and/or administrative penalties imposed for such unauthorized access, use or disclosure of confidential information or for delayed reporting if it fails to notify the UNIVERSITY of the Breach or Security Incident as required by this BA AGREEMENT.

3.9.4 Regulatory Compliance. BUSINESS ASSOCIATE shall make its internal practices, books and records relating to the use, disclosure or security of PHI received from UNIVERSITY (or created or received by BUSINESS ASSOCIATE on behalf of UNIVERSITY) available to any state or federal agency, including the U.S.

Department of Health and Human Services, for purposes of determining UNIVERSITY's and/or BUSINESS ASSOCIATE's compliance with federal/state privacy and security laws and regulations.

3.9.5 Inspection of Records. Within thirty (30) calendar days after UNIVERSITY's written request, BUSINESS ASSOCIATE shall make available to UNIVERSITY and its authorized agents, during normal business hours, all facilities, systems, procedures, records, books, agreements, policies and procedures relating to the use and/or disclosure of UNIVERSITY's PHI for purposes of enabling UNIVERSITY to determine BUSINESS ASSOCIATE's compliance with federal/state privacy and security laws and regulations.

### 3.10 Rights of Individuals.

3.10.1 Individual's Right to Request Restrictions of PHI. BUSINESS ASSOCIATE shall notify UNIVERSITY in writing within five (5) business days after receipt of any request by individuals or their representatives to restrict the use and disclosure of the PHI BUSINESS ASSOCIATE maintains for or on behalf of UNIVERSITY. Upon written notice from UNIVERSITY that it agrees to comply with the requested restrictions, BUSINESS ASSOCIATE agrees to comply with any instructions to modify, delete or otherwise restrict the use and disclosure of PHI it maintains for or on behalf of UNIVERSITY.

3.10.2 Individual's Request for Amendment of PHI. BUSINESS ASSOCIATE shall inform UNIVERSITY within five (5) business days after receipt of any request by or on behalf of the subject of the PHI to amend the PHI that BUSINESS ASSOCIATE maintains for or on behalf of UNIVERSITY. BUSINESS ASSOCIATE shall, within twenty (20) calendar days after receipt of a written request, make the subject's PHI available to UNIVERSITY as may be required to fulfill UNIVERSITY's obligations to amend PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR § 164.526. BUSINESS ASSOCIATE shall, as directed by UNIVERSITY, incorporate any amendments to UNIVERSITY's PHI into copies of such PHI maintained by BUSINESS ASSOCIATE.

3.10.3 Individual's Request for an Accounting of Disclosures of PHI. BUSINESS ASSOCIATE shall document all disclosures of PHI and, within twenty (20) calendar days after receipt of a written request, make available to UNIVERSITY, and, if authorized in writing by UNIVERSITY, to the subject of the PHI, such information maintained by BUSINESS ASSOCIATE or its agents as may be required to fulfill UNIVERSITY's obligations to provide an accounting for disclosures of UNIVERSITY's PHI pursuant to HIPAA, the HIPAA Regulations, including, but not limited to, 45 CFR § 164.528, and the HITECH Act, including, but not limited to Section 13405(c).

3.10.4 Electronic Health Records. If BUSINESS ASSOCIATE, on behalf of UNIVERSITY, uses or maintains Electronic Health Records with respect to PHI, UNIVERSITY may provide an individual, upon the individual's request, with the name and contact information of BUSINESS ASSOCIATE so that the individual may make a

direct request to BUSINESS ASSOCIATE for an accounting of disclosures made by BUSINESS ASSOCIATE during the three (3) years prior to the date on which the accounting is requested or as otherwise provided under the HITECH Act Section 13405(c)(4)(A) or Section 13405(c)(4)(B).

3.10.5 Access to PHI by the Individual. If UNIVERSITY determines that an individual's PHI is held solely by BUSINESS ASSOCIATE or if BUSINESS ASSOCIATE is acting on behalf of UNIVERSITY to provide access to or a copy of an individual's PHI, BUSINESS ASSOCIATE shall, within five (5) calendar days after receipt of a written request, make available to UNIVERSITY, and, if authorized in writing by UNIVERSITY, to the subject of the PHI, such information as may be required to fulfill UNIVERSITY's obligations to provide access to or provide a copy of the PHI pursuant to HIPAA and the HIPAA Regulations, including, but not limited to, 45 CFR § 164.524.

3.10.6 Access to Certain Information in Electronic Format. If BUSINESS ASSOCIATE uses or maintains Electronic Health Records with respect to PHI on behalf of UNIVERSITY, BUSINESS ASSOCIATE shall, upon request of UNIVERSITY, provide UNIVERSITY with the requested Electronic Health Record in an electronic format.

3.11 Compliance with Law. In connection with all matters related to this BA AGREEMENT, BUSINESS ASSOCIATE shall comply with all applicable federal and state laws and regulations, including, but not limited to, HIPAA, the HIPAA Regulations, 45 CFR §§ Parts 160, 162 and 164, and the HITECH Act, Subtitle D, part 1, California Civil Code §1798.29 and California Health and Safety Code §1280.15, as they may be amended from time to time.

4. BUSINESS ASSOCIATE'S AGENTS. Other than as expressly authorized herein, BUSINESS ASSOCIATE will provide UNIVERSITY's PHI only to persons or entities, including subcontractors, that have an agency relationship to BUSINESS ASSOCIATE and that have been approved in advance by UNIVERSITY ("Agents"). BUSINESS ASSOCIATE will provide PHI to Agents solely for the purposes of carrying out the Agreement.

4.1 BUSINESS ASSOCIATE shall require such Agents to agree to the same restrictions and conditions that are imposed on BUSINESS ASSOCIATE by this BA AGREEMENT, and to provide written assurance of such agreement, including, but not limited to, sections 3.5 ("Security Standards"), 3.6 ("Security Documentation") and 3.7 ("Notification of Breaches and Security Incidents").

5. TERMINATION AND OTHER REMEDIES.

5.1 Material Breach. A breach by either party of any material provision of this BA AGREEMENT shall constitute a material breach of the agreement(s) between UNIVERSITY and BUSINESS ASSOCIATE. Either party, upon written notice to the other party describing the breach, may take any of the following actions:

5.1.1 Terminate all applicable agreements, including this BA

AGREEMENT, immediately if the other party has breached a material term of this BA AGREEMENT.

5.1.2 Terminate the applicable agreement(s), including this BA AGREEMENT, unless the other party, within five (5) business days, provides a plan to cure the breach and, within fifteen (15) business days, cures the breach;

5.1.3 In the case of a material breach of the BA AGREEMENT, if termination is not feasible, upon the non-breaching party's request, the breaching party shall:

(a) at its expense, provide a third-party review of the outcome of any plan implemented under section 5.1.2. to cure the breach;

(b) at its expense, submit to a plan of monitoring and reporting to demonstrate compliance with the BA AGREEMENT.

5.2 Effect of Termination - Return or Destruction of PHI held by BUSINESS ASSOCIATE or BUSINESS ASSOCIATE's Agents. Upon termination, expiration or other conclusion of the BA AGREEMENT for any reason, BUSINESS ASSOCIATE shall return or, at the option of UNIVERSITY, provide for the Destruction of all PHI received from UNIVERSITY, or created and received by BUSINESS ASSOCIATE on behalf of UNIVERSITY in connection with the BA AGREEMENT, that BUSINESS ASSOCIATE or its Agents still maintains in any form, and shall retain no copies of such PHI. Within thirty (30) calendar days after the termination of this BA AGREEMENT, BUSINESS ASSOCIATE shall both complete such return or Destruction and certify in writing to UNIVERSITY that such return or Destruction has been completed.

5.3 Return or Destruction Not Feasible. If BUSINESS ASSOCIATE represents to UNIVERSITY that return or Destruction of UNIVERSITY's PHI is not feasible, BUSINESS ASSOCIATE must provide UNIVERSITY with a written statement of the reason that return or Destruction by BUSINESS ASSOCIATE or its Agents is not feasible. If UNIVERSITY determines that return or Destruction is not feasible, this BA AGREEMENT shall remain in full force and effect and shall be applicable to any and all of UNIVERSITY's PHI held by BUSINESS ASSOCIATE or its Agents.

5.4 Other Remedies. Notwithstanding the foregoing rights to terminate the Agreement, UNIVERSITY shall have such other remedies as are reasonably available at law or equity, including injunctive relief.

5.5 Civil and Criminal Penalties. BUSINESS ASSOCIATE understands and agrees that it is subject to civil or criminal penalties applicable to BUSINESS ASSOCIATE for unauthorized use, access or disclosure of PHI in accordance with the HIPAA Regulations and the HITECH Act.

## 6. CHANGES TO THIS BA AGREEMENT.

6.1 Compliance with Law. The parties acknowledge that state and federal laws and regulations relating to electronic data security and privacy are rapidly evolving and that additional obligations and responsibilities may be imposed on BUSINESS ASSOCIATE to ensure compliance with the new laws and regulations. The parties specifically agree to comply with all applicable laws and regulations and take such action as may be necessary to implement the standards and requirements of HIPAA, the HIPAA Regulations, the HITECH Act, and other applicable state and federal laws and regulations relating to the security or confidentiality of PHI, without need to amend or modify this BA AGREEMENT.

## 7. INSURANCE AND INDEMNIFICATION.

7.1 Insurance. In addition to any general and/or professional liability insurance coverage required of BUSINESS ASSOCIATE under the Agreement, BUSINESS ASSOCIATE agrees to obtain and maintain, at its sole expense, liability insurance on an occurrence basis, covering any and all claims, liabilities, demands, damages, losses, costs and expenses arising from a breach of the security, privacy, or confidentiality obligations of BUSINESS ASSOCIATE, its officers, employees, agents and subcontractors, under this BA AGREEMENT. Such insurance coverage shall be maintained for the term of the Agreement, and a copy of such policy or a certificate evidencing the policy shall be provided to UNIVERSITY at UNIVERSITY's request.

7.2 Indemnification by BUSINESS ASSOCIATE. BUSINESS ASSOCIATE agrees to defend, indemnify, and hold harmless UNIVERSITY, its officers, employees and agents from and against any and all claims, liabilities, demands, damages, losses, costs and expenses (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such claims, liabilities, demands, damages, losses, costs and expenses (including costs and reasonable attorneys' fees), or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of BUSINESS ASSOCIATE, its officers, employees or agents.

7.3 Indemnification by UNIVERSITY. UNIVERSITY agrees to defend indemnify, and hold harmless BUSINESS ASSOCIATE, its officers, agents and employees from and against any and all claims, liabilities, demands, damages, losses, costs and expenses (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement, but only in proportion to and to the extent such claims, liabilities, demands, damages, losses, costs and expenses (including reasonable attorneys' fees), or claims for injury or damages are caused by or result from the negligent or intentional acts or omissions of UNIVERSITY, its officers, employees or agents.

## 8. MISCELLANEOUS PROVISIONS.

8.1 Assistance in Litigation or Administrative Proceedings. BUSINESS ASSOCIATE shall make itself, and any employees or agents assisting BUSINESS ASSOCIATE in the performance of its obligations under this BA AGREEMENT,

available to UNIVERSITY at no cost to UNIVERSITY to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings against UNIVERSITY, its directors, officers, agents or employees based upon claimed violation of HIPAA, the HIPAA Regulations or other laws relating to security and privacy.

8.2 Independent Contractor. BUSINESS ASSOCIATE is an independent contractor and nothing in this BA AGREEMENT is intended to create or imply an agency or employment relationship between UNIVERSITY and BUSINESS ASSOCIATE.

8.3 No Third-Party Beneficiaries. Nothing express or implied in this BA AGREEMENT is intended to confer, nor shall anything herein confer, any rights, remedies, obligations or liabilities whatsoever upon any person or entity other than UNIVERSITY, BUSINESS ASSOCIATE and its respective agents, successors or assigns.

8.4 Number. Where the context admits, words in the plural include the singular, and the singular includes the plural.

8.5 Survival. The obligations of BUSINESS ASSOCIATE under Sections 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 5.2, 5.3, 5.5, 7.2, 7.3, and 8.1 of this BA AGREEMENT shall survive the termination of any agreement between UNIVERSITY and BUSINESS ASSOCIATE.

8.6 Notices. Any notices to be given to either party shall be made via U.S. Mail or express courier to the address given below and/or via facsimile to the facsimile telephone numbers listed below.

If to BUSINESS ASSOCIATE, to:

With a copy (which shall not constitute notice)

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

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

Attention: \_\_\_\_\_

Attention: \_\_\_\_\_

Fax: \_\_\_\_\_

Fax: \_\_\_\_\_

If to UNIVERSITY, to:

With a copy (which shall not constitute notice)

UCDHS \_\_\_\_\_  
4800 2<sup>nd</sup> Ave. Suite 3010 \_\_\_\_\_  
Sacramento, CA 95817 \_\_\_\_\_

wrcorbett@ucdavis.edu  
\_\_\_\_\_  
\_\_\_\_\_

Attention: William Corbett

Attention: \_\_\_\_\_



Fax: (916) 734-5951

Fax: \_\_\_\_\_

Each party may change its address and that of its representative for notice by giving notice in the manner provided above.

IN WITNESS WHEREOF, the parties hereto have duly executed this BA AGREEMENT.

The Regents of the University of California  
on behalf of its University of California  
Davis Health System

**Vendor**

\_\_\_\_\_  
Signature  
William Corbett

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name  
Buyer V

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

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## Attachment 5



# UNIVERSITY OF CALIFORNIA

## Terms and Conditions for Goods and Services

**ARTICLE 1 – GENERAL.** The materials, supplies and/or services furnished by Supplier (together, the “Services”) and covered by the UC Purchase Order (“PO”) and/or other agreement (which, when combined with these Terms and Conditions and any other documents incorporated by reference, will constitute the “Agreement”) are governed by all the terms and conditions set forth herein. As used herein, the term "Supplier" includes Supplier and its sub-suppliers at any tier. No other terms or conditions will be binding upon the parties unless accepted by them in writing. Written acceptance or shipment of all or any portion of the materials or supplies, or the performance of all or any portion of the services, covered by the Agreement, will constitute Supplier's unqualified acceptance of all of the Agreement's terms and conditions. The terms of any proposal referred to in the Agreement are included and made a part of the Agreement only to the extent the proposal specifies the materials, supplies, and/or services ordered, the price therefor, and the delivery thereof, and then only to the extent that such terms are consistent with the terms and conditions of the Agreement.

### **ARTICLE 2 – TERM AND TERMINATION.**

A. The term of the Agreement (“Initial Term”) will be stated in the Agreement. Following the Initial Term, the Agreement may be extended by written mutual agreement.

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

C. UC may, by written notice stating the extent and effective date thereof, terminate the Agreement for convenience in whole or in part, at any time with not less than the number of days' notice stated elsewhere in the Agreement. As specified in the termination notice, UC will pay Supplier as full compensation the pro rata Agreement price for performance through the date UC provided Supplier with notice of termination or through the date that Services will terminate.

D. UC may by written notice terminate the Agreement for Supplier's breach of the Agreement, in whole or in part, at any time, if Supplier refuses or fails to comply with the provisions of the Agreement, or so fails to make progress as to endanger performance and does not cure such failure within a reasonable period of time, or fails to supply the Services within the time specified or any written extension thereof. In such event, UC may purchase or otherwise secure Services and, except as otherwise provided herein, Supplier will be liable to UC for any excess costs UC incurs thereby.

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

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

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

**ARTICLE 5 – INSPECTION.** The Services furnished will be exactly as specified in the Agreement free from all defects in Supplier's performance, design, workmanship and materials, and, except as otherwise provided in the Agreement, will be subject to inspection and test by UC at all times and places. If, prior to final acceptance, any Services furnished are found to be incomplete, or not as specified, UC may reject them, require Supplier to correct them without charge, or require delivery of such Services at a reduction in price that is equitable under the circumstances. If Supplier is unable or refuses to correct such items within a time UC deems reasonable, UC may terminate the Agreement in whole or in part. Supplier will bear all risks as to rejected Services and, in addition to any costs for which Supplier may become liable to UC under other provisions of the Agreement, will reimburse UC for all transportation costs, other related costs incurred, or payments to Supplier in accordance with the terms of the Agreement for unaccepted Services and materials and supplies incidental thereto. Notwithstanding final acceptance and payment, Supplier will be liable for latent defects, fraud or such gross mistakes as amount to fraud.

**ARTICLE 6 – CHANGES.** UC may make changes within the general scope of the Agreement in drawings and specifications for specially manufactured supplies, place of delivery, method of shipment or packing of the Agreement by giving notice to Supplier and subsequently confirming such changes in writing. If such changes affect the cost of or the time required for performance of the Agreement, UC and Supplier will agree upon an equitable adjustment in the price and/or delivery terms. Supplier may not make changes without UC's written approval. Any claim of Supplier for an adjustment under the Agreement must be made in writing within thirty (30) days from the date Supplier receives notice of such change unless UC waives this condition in writing. Nothing in the Agreement will excuse Supplier from proceeding with performance of the Agreement as changed hereunder. Supplier may not alter or misbrand, within the meaning of the applicable Federal and State laws, the Goods furnished.

ARTICLE 7 – DECLARED VALUATION OF SHIPMENTS. Except as otherwise provided in the Agreement, all shipments by Supplier under the Agreement for UC's account will be made at the maximum declared value applicable to the lowest transportation rate or classification and the bill of lading will so note.

ARTICLE 8 – TITLE. Title to the Goods purchased under the Agreement will pass directly from Supplier to UC at the f.o.b. point shown, or as otherwise specified in the Agreement, subject to UC's right to reject upon inspection.

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

#### ARTICLE 10 – WARRANTIES.

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

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

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

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

D. Accessibility Requirements. Supplier warrants that:

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

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

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

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

G. Forced, Convict and Indentured Labor. Supplier warrants that no foreign-made equipment, materials, or supplies furnished to UC pursuant to the Agreement will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction. If UC determines that Supplier knew or should have known that it was breaching this warranty, UC may, in addition to terminating the Agreement, remove Supplier from consideration for UC contracts for a period not to exceed one year.

#### ARTICLE 11 – INTELLECTUAL PROPERTY, COPYRIGHT AND PATENTS.

##### A. Services Involving Work Made for Hire.

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

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

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

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

##### B. Services Not Involving Work Made for Hire.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The coverages referred to under A and B of this Article must include UC as an additional insured. It is understood that the coverage and limits referred to under A, B and C of this Article will not in any way limit Supplier's liability. Supplier will furnish UC with certificates of insurance (and the relevant

endorsement pages) evidencing compliance with all requirements prior to commencing work under the Agreement. Such certificates will:

1. Indicate that The Regents of the University of California has been endorsed as an additional insured for the coverage referred to under A and B of this Article. This provision will only apply in proportion to and to the extent of the negligent acts or omissions of Supplier, its officers, agents, or employees.
2. Include a provision that the coverage will be primary and will not participate with or be excess over any valid and collectible insurance or program of self-insurance carried or maintained by UC.

ARTICLE 14 – USE OF UC NAME AND TRADEMARKS. Supplier will not use the UC name, abbreviation of the UC name, trade names and/or trademarks (i.e., logos and seals) or any derivation thereof, in any form or manner in advertisements, reports, or other information released to the public, or place the UC name, abbreviations, trade names and/or trademarks or any derivation thereof on any consumer goods, products, or services for sale or distribution to the public, without UC's prior written approval. Supplier agrees to comply at all times with California Education Code Section 92000.

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

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

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

ARTICLE 16 – EQUAL OPPORTUNITY AFFIRMATIVE ACTION. Supplier will abide by the requirements set forth in Executive Orders 11246 and 11375. Where applicable, Supplier will abide by 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a), incorporated by reference with this statement: **"This contractor and subcontractor shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability."** With respect to activities occurring in the State of California, Supplier agrees to adhere to the California Fair Employment and Housing Act. Supplier will provide UC on request a breakdown of its labor force by groups as specified by UC, and will discuss with UC its policies and practices relating to its affirmative action programs. Supplier will not maintain or provide facilities for employees at any establishment under its control that are segregated on a basis prohibited by federal law. Separate or single-user restrooms and necessary dressing or sleeping areas must be provided, however, to ensure privacy.

ARTICLE 17 – LIENS. Supplier agrees that at any time upon request of UC, Supplier will submit a sworn statement setting forth the work performed or material furnished by—sub-suppliers and material men, and the amount due and to become due to each, and that before the final payment called for under the Agreement, will upon UC's request submit to UC a complete set of vouchers showing what payments have been made for such work performed or material furnished. Supplier will promptly notify UC in writing, of any claims, demands, causes of action, liens or suits brought to its attention that arise out of the Agreement. UC will not make final payment until Supplier, if required, delivers to UC a complete release of all liens arising out of the Agreement, or receipts in full in lieu thereof, as UC may require, and if required in either case, an affidavit that as far as it has knowledge or information, the receipts include all the labor and materials for which a lien could be filed; but Supplier may, if any sub-supplier refuses to furnish a release or receipt in full, furnish a bond satisfactory to

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

**ARTICLE 18 – PREMISES WHERE SERVICES ARE PROVIDED.**

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

B. Environmental, Safety, Health and Fire Protection. Supplier will take all reasonable precautions in providing the Services to protect the health and safety of UC employees and members of the public and to minimize danger from all hazards to life and property, and will comply with all applicable environmental protection, health, safety, and fire protection regulations and requirements (including reporting requirements). In the event that Supplier fails to comply with such regulations and requirements, UC may, without prejudice to any other legal or contractual rights of UC, issue an order stopping all or any part of the performance of the Services; thereafter a start order for resumption of performing the Services may be issued at UC's discretion. Supplier will not be entitled to make a claim for extension of time or for compensation or damages by reason of or in connection with such stoppage. Supplier will have sole responsibility for the safety of all persons employed by Supplier and its sub-suppliers on UC premises, or any other person who enters upon UC premises for reasons relating to the Agreement. Supplier will at all times maintain good order among its employees and all other persons who come onto UC's premises at Supplier's request and will not engage any unfit or unskilled person to provide the Services. Supplier will confine its employees and all other persons who come onto UC's premises at Supplier's request or for reasons relating to the Agreement and its equipment to that portion of UC's premises where the Services are to be performed or to roads leading to and from such work sites, and to any other area which UC may permit Supplier to use. Supplier will take all reasonable measures and precautions at all times to prevent injuries to or the death of any of its employees or any other person who enters upon UC premises at Supplier's request. Such measures and precautions will include, but will not be limited to, all safeguards and warnings necessary to protect workers and others against any conditions on the premises that could be dangerous and to prevent accidents of any kind whenever the Services are being performed in proximity to any moving or operating machinery, equipment or facilities, whether such machinery, equipment or facilities are the property of or are being operated by, Supplier, its sub-suppliers, UC or other persons. To the extent compliance is required, Supplier will comply with all relevant UC safety rules and regulations when on UC premises.

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

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

**ARTICLE 19 – LIABILITY FOR UC - FURNISHED PROPERTY.**

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

**ARTICLE 20 – COOPERATION.** Supplier and its sub-suppliers, if any, will cooperate with UC and other suppliers and will so provide the Services that other cooperating suppliers will not be hindered, delayed or interfered with in the progress of their work, and so that all of such work will be a finished and complete job of its kind.

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

**ARTICLE 22 – AUDIT REQUIREMENTS.** The Agreement is subject to the examination and audit of the Auditor General of the State of California or Comptroller General of the United States or designated Federal authority for a period of up to seven (7) years after final payment under the Agreement. UC, and if the underlying grant or cooperative agreement so provides, the other contracting party or grantor (and if that be the United States or an instrumentality thereof, then the Comptroller General of the United States) will have access to and the right to examine Supplier's pertinent books, documents, papers, and records involving transactions and work related to the Agreement until the expiration of seven (7) years after final payment under the Agreement. The examination and audit will be confined to those matters connected with the performance of the Agreement, including the costs of administering the Agreement.

**ARTICLE 23 – CONFIDENTIALITY.** Supplier will use its best efforts to keep confidential any information provided by UC and marked "Confidential Information," or any oral information conveyed to Supplier by UC and followed by a written communication within thirty (30) days that the information is Confidential Information. This non-disclosure provision will not apply to any of the following:



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

ARTICLE 24 – UC WHISTLEBLOWER POLICY. UC is committed to conducting its affairs in compliance with the law, and has established a process for reporting and investigating suspected improper governmental activities. Please visit [http://www.ucop.edu/uc-whistleblower/for more information](http://www.ucop.edu/uc-whistleblower/for-more-information).

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

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

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

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

ARTICLE 29 – OTHER APPLICABLE LAWS. Any provision required to be included in a contract of this type by any applicable and valid federal, state or local law, ordinance, rule or regulations will be deemed to be incorporated herein.

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

ARTICLE 31 – SEVERABILITY. If a provision of the Agreement becomes, or is determined to be, illegal, invalid, or unenforceable, that will not affect the legality, validity or enforceability of any other provision of the Agreement or of any portion of the invalidated provision that remains legal, valid, or enforceable.

ARTICLE 32 – WAIVER. Waiver or non-enforcement by either party of a provision of the Agreement will not constitute a

waiver or non-enforcement of any other provision or of any subsequent breach of the same or similar provision.

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

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

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

## ATTACHMENT 6

UCD Agreement No. \_\_\_\_\_

### RECIPROCAL NONDISCLOSURE AGREEMENT

THIS AGREEMENT, effective Date, 2015 is between **Vendor** and The Regents of the University of California, on behalf of the University of California, Davis Health System ("University").

The parties agree as follows:

1. In connection with ongoing discussions between the parties concerning the registry reporting("Project"), either party may find it beneficial to disclose to the other party certain confidential or proprietary information in written, oral or other tangible or intangible forms which may include, but is not limited to, data for hospital or professional services, patient information systems and development, patient statistics, patient outcome information, policy and procedures, business contacts, financial information, information regarding services, discoveries, ideas, concepts, know-how, techniques, designs, diagrams, data, computer programs, service development, accounting information and policies, telephone line usage, business plans, marketing and advertising information or other documents prepared by either party or their representatives containing or based in whole or in part on any information furnished to them by the other party or its representative ("Confidential Information"). Such Confidential Information if in written form will be marked to indicate its confidential nature, and if oral, the disclosing party shall indicate orally its confidential nature and summarize it in writing and send it to the receiving party within 30 (thirty) days.
2. Each party understands that, except as otherwise agreed in writing, the Confidential Information which it may receive concerning the other party's future plans with respect to the Project is tentative and is not intended to represent firm decisions by the other party concerning the implementation of such plans. Confidential Information provided hereunder, by one party to the other, does not represent or imply any commitment beyond the express terms of this Agreement.
3. Unless otherwise required by law, one party and its representatives will use best efforts to not, without the prior written consent of the other parties, disclose to any person (other than those actively and directly participating in the Project) any Confidential Information.

**Vendor** understands that University is a public institution and that any Confidential Information received by University from **Vendor** will be subject to the California Public Records Act (California Government Code Sections 6250 et.seq.).

4. With respect to Confidential Information received from the disclosing party under this Agreement, the other party shall:
  - a. hold such Confidential Information in confidence with the same degree of care with which it protects its own respective confidential and proprietary information;
  - b. restrict disclosure of the Confidential Information solely to its respective (i) employees, agents and contractors with a need to know such Confidential Information and advise those persons of their obligations hereunder with respect to such Confidential Information; or (ii) to the extent such disclosure is required (but redacted to the greatest extent possible) to comply with applicable law or legal process provided that the disclosing party shall seek confidential treatment of such Confidential Information;
  - c. use the Confidential Information only as needed for the purposes of the Project;
  - d. except for the purposes of the Project, not copy or otherwise duplicate such Confidential Information or knowingly allow anyone else to copy or otherwise duplicate such Confidential Information, and any and all copies shall bear the same notices or legends, if any, as the originals; and
  - e. on request, promptly return to the disclosing party all Confidential Information in a tangible form or certify to the disclosing party that it has destroyed such Confidential Information.
5. Neither of the parties shall have an obligation to preserve the confidential or proprietary nature of any Confidential Information which:
  - a. was already known to the party free of any obligation to keep it confidential at the time of its disclosure by the disclosing party as evidenced by written records prepared prior to such disclosure; or



- b. is or becomes publicly known through no wrongful act of the party to which the Confidential Information was disclosed; or
  - c. is rightfully received from a third person having no direct or indirect secrecy or confidentiality obligation with respect to such Confidential Information; or
  - d. is independently developed by an employee, agent or contractor of the party, not associated with the Project and who did not have any direct or indirect access to the Information; or
  - e. is approved for release by written authorization of the disclosing party.
6. This Reciprocal Nondisclosure shall apply to all Confidential Information relating to the Project disclosed by one party to the other party under this Agreement, the term of which shall be 4 (Four) years from the effective date hereof unless extended by the parties. At the completion of the term of this Agreement, all information in tangible form shall be returned to the disclosing party. The duty to keep the Confidential Information confidential shall continue beyond the term of this Agreement for a period of 1 (one) year.
7. Nothing contained in this Reciprocal Nondisclosure shall be construed as granting or conferring any rights by license or otherwise in any Confidential Information.
8. This Reciprocal Nondisclosure shall benefit and be binding upon the parties hereto and their respective subsidiaries, affiliates, successors and assigns.
9. This Agreement shall be governed by and construed in accordance with the laws of the State of California, irrespective of its choice of laws principles.
10. Any notice required to be given hereunder shall be mailed to the parties as follows:

**For Vendor**

For University:

Michael Wegmann  
UC Davis Purchasing Department  
4800 2<sup>nd</sup> Ave  
Sacramento, CA 95817

11. If any party to this Agreement shall take any action to enforce this Agreement or bring any action or commence any arbitration for any relief against any other party, declaratory or otherwise, arising out of this Agreement, the losing party shall pay to the prevailing party a reasonable sum for attorneys' and experts' fees and costs incurred in bringing such suit or arbitration and/or enforcing any judgment granted therein, all of which shall be deemed to have accrued upon the commencement of such action or arbitration and shall be paid whether or not such action or arbitration is prosecuted to judgment. Any judgment or order entered in such action or arbitration shall contain a specific provision providing for the recovery of attorneys' and experts' fees and costs incurred in enforcing such judgment. For purposes of this Section, attorneys' and experts' fees and costs shall include, without limitation, fees and costs incurred in the following: (a) post-judgment motions; (b) contempt proceedings; (c) garnishment, levy, and debtor and third party examinations; (d) discovery; and (e) bankruptcy litigation.
12. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations, and understandings. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by all the parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
13. This Agreement may be executed in counterparts, each of which shall be deemed an original (including copies sent to a party by telecopy or facsimile transmission) and which together shall constitute one and the same agreement.

Vendor:

REGENTS OF THE UNIVERSITY  
OF CALIFORNIA ON BEHALF OF  
UNIVERSITY OF CALIFORNIA DAVIS  
HEALTH SYSTEM

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: