

The Agreement to furnish certain cloud computing services described herein and in the documents referenced herein (“Services”), is effective **[Buyer: add agreement effective date here in the format [Month] [Date], [Year]]** (“Effective Date”), and is made by and between The Regents of the University of California, a California public corporation (“UC”) on behalf of the University of California, Davis Health and **[Buyer: add name of supplier]** (“Supplier”). This Agreement is binding only if it is negotiated and executed by an authorized representative with the proper delegation of authority.

1. **Statement of Work**

Supplier agrees to provide the Services described in the statement of work attached as Attachment A (“Statement of Work”) and any other documents referenced in the Incorporated Documents section herein. Unless otherwise provided in the Agreement, UC will not be obligated to purchase a minimum amount of Services from Supplier.

1. **Scope of Agreement**
	1. If Supplier eliminates any functionality of any of the Services provided under this Agreement and subsequently offers that functionality in other or new products (whether directly or indirectly through agreement with a third party), then the portion of those other or new products that contain the functionality in question, or the entire product if the functionality cannot be separated out, will be provided to UC at no additional charge and under the terms of this Agreement, including technical support. If Supplier incorporates the functionality of the Services provided under this Agreement into a newer product and continues to offer both products, UC may, in its sole discretion, exercise the option to upgrade to the newer product at no additional cost. Regardless of whether the functionality of the Services is impacted, Supplier will notify UC of any name changes in any Services within the earlier of thirty (30) calendar days of such change or thirty (30) calendar daysof when UC asks whether Supplier has made any name changes in the Services.
	2. UC and the users authorized by UC will have the right to access and use the Services at any location.
	3. Supplier agrees to extend the pricing basis, terms and conditions of the Agreement to all UC Locations. Supplier will make available to any UC Location its improved pricing basis, terms or conditions resulting from increased usage or aggregation of activity by multiple UC Locations. All contractual administration issues (e.g. terms and conditions, extensions, and renewals), operational issues, fiduciary responsibility, payment issues, performance issues and liabilities, and disputes involving individual UC Locations will be addressed, administered, and resolved by each UC Location. Any delay in payment or other operational issue involving one UC Location will not adversely affect any other UC Location.
	4. Supplier agrees to extend pricing and Services to the California State University institutions (CSU) and the California Community Colleges (CCC) under the following conditions:
		1. Supplier agrees to extend the same product pricing and Services to the CSU and CCC campuses under the terms of this Agreement, but under separate agreements with CSU and CCC.
		2. All contractual administration issues regarding this Agreement (e.g. terms and conditions, extensions, renewals, etc.) will remain UC’s responsibility. Operational issues, fiduciary responsibility, payment issues, performance issues and liabilities, and disputes involving individual CSU or CCC campuses will be addressed, administered, and resolved by Supplier and the appropriate CSU or CCC campus. UC, CSU and CCC are separate and distinct governmental entities. As such, CSU’s and CCC’s administrative units and campuses are financially separate from UC and will be responsible for their respective individual commitments, financial and otherwise.
2. **Rights and License In and To UC Data**
	1. UC retains the right to use the Services to access and retrieve non-public Information stored on Supplier’s Services infrastructure at any time at UC’s sole discretion. If UC requests the Non-public Information from Supplier, Supplier will provide UC with copies within forty-eight (48) hours after receipt of a request from UC, and will cooperate with UC’s reasonable requests in connection with its response.
	2. UC will own all rights, title and interest in any and all intellectual property created in the performance of this Agreement as a “work made for hire” under U.S. copyright law, and will have full ownership and beneficial use thereof, free and clear of claims of any nature by any third party including, without limitation, copyright or patent infringement claims. In the event that it is determined that the “work made for hire” doctrine does not apply to such intellectual property, Supplier agrees to assign and hereby assigns to UC all rights, title, and interest in any and all intellectual property created in the performance of this Agreement, and will execute any future assignments or other documents needed for UC to document, register, or otherwise perfect such rights.
	3. All pre-existing intellectual property of each party will remain the exclusive property of that party and, except as specifically provided in this Agreement, no party will acquire any rights or interests in the other party's pre-existing intellectual property, except as needed to access and furnish the Services under this Agreement.
	4. For the purposes of Appendix – Data Security, Supplier will return all non-public Information to UC in a commonly used, non-proprietary, and mutually agreed upon format.
3. **Service Levels**
	1. Supplier represents and warrants that the Services will be performed in a professional manner consistent with industry standards reasonably applicable to such Services.
	2. Supplier represents and warrants that the Services will be operational at least 99.99% of the time in any given month during the term of this Agreement, meaning that the outage or downtime percentage will be not more than .01%.
	3. If the Services’ availability falls below 99.99% in any month, Supplier will provide UC with a credit of that month’s bill for Services according to the table below.

|  |  |
| --- | --- |
| AVAILABILITY PERCENTAGE | PERCENTAGE OF CREDIT |
| 99.60% to 99.98% | 10% |
| 99.50% to 99.59% | 20% |
| 99.01% to 99.49% | 30% |
| 97.00% to 99.00% | 50% |
| 95.00% to 96.99% | 75% |
| Below 95.00% | 100% |

* 1. Supplier represents and warrants that ninety-five percent (95%) of all transactions will process within no more than one (1) second, and no single transaction will take longer than five (5) seconds to process.
	2. If UC has concerns regarding Supplier’s service levels, UC may escalate these concerns to the following resource: **[Buyer, insert the name of Supplier’s escalation contact, along with contact information.]**
	3. If Supplier’s system response times fall below the warranted level for two (2) or more consecutive weeks, Supplier will provide UC with a credit in the amount of twenty percent (20%) of the Services fees for that month. If Supplier’s system response times fall below the warranted level for six (6) out of eight (8) consecutive weeks, Supplier will be considered to be in default, and UC may terminate the Agreement without penalty.
	4. Supplier will provide UC with a refund for all unachieved service levels no later than the tenth (10th) business day of the month following the month in which the service levels was not achieved.
	5. Supplier will provide UC with monthly reports documenting its compliance with the service levels detailed herein. Reports will include, but not be limited to, providing the following information:
		1. Monthly Services availability by percent time, dates and minutes that Services were not available, and identification of months in which agreed upon service levels were not achieved;
		2. Average transaction processing time per week, the fastest and slowest individual transaction processing time per week, the percent of transactions processed that meet the service levels stated herein, and identification of weeks in which agreed upon service levels are not met.
	6. UC retains the right to retain a third party to validate Supplier’s performance in meeting agreed upon service levels.
1. **Technical Support**
	1. During the term of this Agreement Supplier will provide UC with ongoing technical support for the Services at no less than the levels and in the manner(s) specified herein.
	2. Supplier may not withdraw technical support for any Service without twelve (12) months advance written notice to UC, and then only if Supplier is withdrawing technical support from all of its customers.
	3. UC acquires the right to access and use technical support acquired under this Agreement at any location.
	4. UC will receive at its option the general help desk technical support offered by Supplier to its other customers. Irrespective of Supplier’s general technical support offerings, Supplier will provide UC at UC’s option with the following technical support:
		1. Supplier will provide technical support to UC for the purpose of answering questions relating to the Services, including (a) clarification of functions and features of the Services; (b) clarification of the Documentation; (c) guidance in the operation of the Services; and (d) error verification, analysis, and correction, including the failure to produce results in accordance with the Documentation.

* + 1. Such assistance will be provided by Supplier twenty-four (24) hours a day, seven (7) days a week via a toll-free telephone number and live, online chat staffed by help desk technicians sufficiently trained and experienced to identify and resolve most support issues and who will respond to all UC requests for support within fifteen (15) minutes after receiving a request for assistance.
		2. Supplier will provide a current list of persons and telephone numbers for UC to contact to enable UC to escalate its support requests for issues that cannot be resolved by a help desk technician or for circumstances where a help desk technician does not respond within the time specified herein.
		3. Supplier provided telephone technical support will be compliant with Section 508 of the Rehabilitation Act.
	1. The following provisions will be applicable to the correction of Services errors:
		1. If UC detects what it considers to be an error in the Services which causes it not to conform to, or produce results in accordance with, the Documentation, then UC will by telephone or e-mail notify Supplier of the error.
		2. Supplier will respond within two (2) hours to UC’s initial request for assistance in correcting or creating a workaround for a Services error. Supplier’s response will include assigning fully-qualified technicians to work with UC to diagnose and correct or create a workaround for the Services error and notifying UC’s representative making the initial request for assistance of Supplier’s efforts, plans for resolution of the error, and estimated time required to resolve the error.
		3. Within twenty-four (24) hours after UC first reports the error, Supplier will provide a correction or workaround acceptable to UC.
	2. The following provisions will set forth Supplier’s obligations to provide Enhancements:
		1. Supplier will generally enhance and improve the Services for as long as UC elects to receive and pays for the Services.
		2. Supplier will provide to UC during the Agreement term, (a) any and all Enhancements which it develops with respect to the Services; (b) any and all Enhancements required by federal or state governmental, or professional regulatory mandates related to UC’s use of the Services; and (c) the Documentation associated with any Enhancements.
		3. Supplier will provide Enhancements to UC upon their general release and no later than the time when the first five percent (5%)of Supplier's customers receive those Enhancements.
		4. Except as otherwise provided in a signed addendum to this Agreement, nothing herein will obligate Supplier to enhance the Services in any particular respect or on any particular date. The decision as to whether and/or when, to enhance the Services will be within Supplier’s discretion.
	3. Supplier will provide UC with ninety (90) calendar days advance written notice of proposed product changes as well as product road maps relating to the Services provided to UC under this Agreement.
1. **Term of Agreement/Termination**
	* 1. The initial term of this Agreement will be from **Date** and through **Date** (Initial Term) and is subject to earlier termination as provided below.
		2. UC may renew the Agreement for successive one (1)-year periods (each, a Renewal Term) by providing Supplier with at least30calendar days’ written notice before the end of the Initial Term or any Renewal Term.
		3. UC may terminate this Agreement for convenience by giving Supplier at least 30 calendar days' written notice.
		4. UC or Supplier may terminate this Agreement for cause by giving the other party at least 15 calendar days' notice to cure a breach of the Agreement (Cure Period). If the breaching party fails to cure the breach within the Cure Period, the non-breaching party may immediately terminate the Agreement.
2. **Purchase Order**
	1. Unless otherwise provided in this Agreement, Supplier may not begin providing Services until UC approves a Purchase Order for the Services.

1. **Pricing, Invoicing Method, Settlement Method and Terms**

The Invoicing Method, and Settlement Method and Terms are addressed below. Pricing is addressed in the Statement of Work.

**Price**

**The price is firm for ---years.**

* + 1. If UC opts to renew term licenses or Support and Maintenance, the associated fee in the renewal period will be the lowest of the following, provided that the associated fee will, at all times, be equal to or less than the lowest rate Supplier charges its other licensees for similar term licenses or Support and Maintenance: i) Supplier’s then-current list price for the term licenses or Support and Maintenance as of the renewal date; ii) the immediately preceding year’s fee plus the amount of the annual increase in the Consumer Price Index-All Index; and iii) the immediately preceding year’s fee plus three percent (3%).

1. Invoicing Method

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

1. All invoices must clearly indicate the following information:

 California sales tax (if applicable) as a separate line item;

 UC Purchase Order or Release Number;

 Description, quantity, catalog number and manufacturer number of the item ordered;

 Net cost of each item;

 Any pay/earned/dynamic discount;

 Reference to original order number for all credit memos issued;

1. Supplier will submit invoices following the designated invoice method directly to UC Accounts Payable Departments at each UC Location, unless UC notifies the Supplier otherwise by amendment to the Agreement.
2. Settlement Method and Terms

Notwithstanding the provisions of Article 3 of the Terms and Conditions of Purchase, the Settlement Method and Terms will be as follows: Net 30

1. If UC disputes an invoiced amount, then Supplier and UC will work to resolve the dispute. UC may suspend the payment of all disputed amounts while the dispute is pending, during which time all of Supplier’s obligations will continue unabated.
2. **Notices**

As provided in the UC Terms and Conditions of Purchase, notices may be given by overnight delivery or by certified mail with return receipt requested, at the addresses specified below. Additionally, notices by Email will be considered legal notice if such communications include the following text in the Subject field: FORMAL LEGAL NOTICE – [insert, as the case may be, Supplier name or University of California].

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

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| --- | --- |
| **Name** | UCDH Compliance Department |
| **Phone** | 916-734-8808 |
| **Email** | hs-privacyprogram@ucdavis.edu |
| **Address** | North Addition, 2335 Stockton Blvd, Sacramento, CA 95817 |
|  |  |

To UC, regarding contract issues not addressed above:

|  |  |
| --- | --- |
| **Name** | Benjamin Joseph |
| **Phone** | 916-734-4364 |
| **Email** | bmjoseph@ucdavis.edu |
| **Address** | Purchasing, 10850 White Rock Rd, Rancho Cordova, CA 95670 |
|  |  |

To Supplier:

|  |  |
| --- | --- |
| **Name** |  |
| **Phone** |  |
| **Email** |  |
| **Address** |  |
|  |  |

1. **Insurance**

Supplier must deliver the Certificate of Insurance to UC’s Buyer by mail or overnight delivery. Additionally, this requirement will be considered satisfied if a PDF version of the Certificate of Insurance is sent by Email and includes the following text in the Subject field: CERTIFICATE OF INSURANCE – **[Buyer: insert Supplier name]**.

1. **Service-Specific Provisions**
	1. Additional Warranties:
2. Services Warranty. Supplier represents and warrants that the Services provided to UC under this Agreement will conform to, be performed, function, and produce results substantially in accordance with the Documentation. Supplier will offer UC warranty coverage equal to or greater than that offered by Supplier to any of its customers.
3. Illicit Code Warranty. Supplier represents and warrants that the Services (1) contain no hidden files, (2) do not replicate, transmit, or activate the Services without control of a person operating computing equipment on which it resides, (3) do not alter, damage, or erase any data or computer programs without control of a person operating the computing equipment on which it resides, (4) contain no key, node lock, time-out, "back door,” “trap door," "booby trap," "drop dead device," "data scrambling device" or other function, whether implemented by electronic, mechanical or other means, which is intended to restrict use or access to any Services under this Agreement (hereinafter "Illicit Code"). Provided and to the extent any Services have any of the foregoing attributes that were intentionally written into the Services, and notwithstanding anything elsewhere in this Agreement to the contrary, Supplier will be in default of this Agreement, and no cure period will apply. Supplier agrees, in order to protect UC from damages which may be intentionally or unintentionally caused by the introduction of Illicit Code to UC’s data or Information Resources, no software will be installed, executed, or copied on UC data or Information Resources without the express approval of UC. Supplier also acknowledges that it does not have any right to electronically repossess the Services. This provision does not relate to viruses. Supplier represents and warrants that if Illicit Code is installed on UC data or Information Resources, Supplier will immediately provide UC with written notice of the installation of such Illicit Code. Supplier represents and warrants that even if Illicit Code is installed, SUPPLIER WILL NEVER UTILIZE THE ILLICIT CODE. If Illicit Code is enacted and UC is damaged, Supplier will be responsible for all damages (including but not limited to consequential, incidental and indirect damages) sustained by UC up to the amount of five times the amount of the fees paid by UC to the Supplier pursuant to this Agreement.
4. Third Party Warranties and Indemnities. Supplier will assign to UC all third party warranties and indemnities that Supplier receives in connection with any Services provided to UC. To the extent that Supplier is not permitted to assign any warranties or indemnities through to UC, Supplier agrees to specifically identify and enforce those warranties and indemnities on behalf of UC to the extent Supplier is permitted to do so under the terms of the applicable Third Party agreements.
5. Date/Time Change Warranty. Supplier represents and warrants to UC that the Services provided will accurately process date and time-based calculations under circumstances of change including, but not limited to: century changes, daylight saving time changes, leap year changes and leap second changes. Supplier must repair any date/time change defects at Supplier’s sole expense.
6. **Intellectual Property, Copyright and Patents**

/\_/ The Goods and/or Services involve Work Made for Hire

/\_X\_/ The Goods and/or Services **do not** involve Work Made for Hire

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

/\_\_\_/    Because the Services involve temporary or supplementary staffing, they are subject to the PPACA warranties in the T&Cs.

/\_x\_/    The Services do not involve temporary or supplementary staffing, and they are not subject to the PPACA warranties in the T&Cs.

1. **Prevailing Wages**

/\_x\_/    Supplier is not required to pay prevailing wages when providing the Services.

1. **Fair Wage/Fair Work**

/\_x\_\_/    Supplier is required to pay the UC Fair Wage (defined as $13 per hour as of 10/1/15, $14 per hour as of 10/1/16, and $15 per hour as of 10/1/17) when providing the Services.

1. **Restriction Relating to Consulting Services or Similar Contracts –**

 **Follow-on Contracts**

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

1. **Exclusions**

Vendor certifies that neither Vendor, 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. Vendor shall notify Hospital immediately in the event that (1) Vendor 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) Vendor is excluded from participation in any federal health care program, including Medicare and Medicaid Termination. Hospital may terminate this Agreement immediately in the event that (1) Vendor 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) Vendor is excluded from participation in any federal health care program, including Medicare and Medicaid. Medicare Books, Documents and Records: To the extent required by applicable law, Seller shall make available, upon written request from University, the Secretary of Health and Human Services, the Comptroller General of the United States, or any other duly authorized agent or representative, this Agreement and Seller’s books, documents and records

1. **Incorporated Documents**

The following documents are incorporated and made a part of this Agreement by reference as if fully set forth herein, listed in the order of precedence following the Agreement:

1. Master Purchasing Agreement # XXXXX
2. UC Terms and Conditions of Purchase version 12-14-21
3. UC Appendix – Data Security version 08-20-21
4. Statement of Work
5. Price Proposal
6. **Entire Agreement**

The Agreement and its Incorporated Documents contain the entire Agreement between the parties and supersede all prior written or oral agreements with respect to the subject matter herein. No click-through, or other end user terms and conditions or agreements (“Additional Terms”) provided with any Services or products hereunder will be binding on UC, even if use of such Services or products requires an affirmative “acceptance” of those Additional Terms before access is permitted. All such Additional Terms will be of no force and effect and will be deemed rejected by UC in their entirety.

The Agreement is signed below by the parties’ duly authorized representatives.

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

**THE REGENTS OF THE [SUPPLIER NAME]**

**UNIVERSITY OF CALIFORNIA**

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(Signature) (Signature)

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(Printed Name, Title) (Printed Name, Title)

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(Date) (Date)