

**University of California, Office of the President (UC)**

**Contract # 2019.001896**

*for*

UC Office Furniture and Related Services

*with*

**Kimball Office, Inc.**

Effective: May 20, 2020

The following documents comprise the executed contract between the University of California, Office of the President and Kimball Office, Inc. effective May 20, 2020:

- I. Vendor Contract and Signature Form
- II. Supplier's Response to the RFP, incorporated by reference



# UNIVERSITY OF CALIFORNIA

## Office Furniture Purchasing Agreement #2019.001896 Kimball Office, Inc., Dated May 20, 2020

As a result of Request for Proposal # (RFP ## 001218 - RFP - OFFICE FURNITURE - UC SYSTEMWIDE – JULY182019), the Agreement to furnish certain goods and services described herein and in the documents referenced herein, is a Master Agreement for the purchase of office furniture and related services (“Goods and/or Services”) 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, and Kimball Office, Inc. (“Supplier”); such contract to be made available as a Cooperative Purchasing Contract through OMNIA Partners Public Sector. 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

As a manufacturer of Office Furniture, Supplier agrees to provide Furniture Products the Required Services, either directly or through a network of primary dealers; all as listed in the statement of work attached as **Attachment A (“Statement of Work”)** and any other documents referenced in the Incorporated Documents section herein, per the terms and the prices set forth in the Statement of Work and any other documents referenced in the Incorporated Documents section herein. Unless otherwise provided in the Agreement, UC will not be obligated to purchase a minimum amount of Goods and/or Services from Supplier. Goods and Services shall be provided to UC and OMNIA Partner’s Participating Agencies, as detailed below:

- a) The University of California, as the Principal Procurement Agency, defined in the National Requirements Document at time of RFP (see OMNIA Partners Exhibit A within CalUSource RFP), has partnered with OMNIA Partners to make the resultant contract (also known as the “Master Agreement” in materials distributed by OMNIA Partners) from this solicitation available to other public agencies nationally, including state and local governmental entities, public and private primary, secondary and higher education entities, non-profit entities, and agencies for the public benefit (“Public Agencies”), through OMNIA Partners’ cooperative purchasing program. The University of California is acting as the contracting agency for any other Public Agency that elects to utilize the resulting Master Agreement. Use of the Master Agreement by any Public Agency is preceded by their registration with OMNIA Partners (a “Participating Public Agency”). The National Requirements Documents (Exhibits A-H under RFP Guidelines) contains additional information about OMNIA Partners and the cooperative purchasing agreement.
- b) University of California locations, as defined in Section 3 of Attachment A - Statement of Work

### 2. Term of Agreement/Termination

- a) The initial term of the Agreement will be from May 20, 2020 and through April 30, 2024 (Initial Term) and is subject to earlier termination as provided below. UC may renew the Agreement for five (5) successive years (Renewal Term), exercised individually, in combinations, and/or as a single block of 5 years; to be determined by the UC at the time the option years are considered. Supplier will be provided with at least sixty (60) calendar days’ written notice before the end of the Initial Term or any Renewal Term. NOTE: This contract will be signed and available for national use and purchases, prior to its implementation and availability for purchases by the UC, which will begin November 1, 2020. This does not inhibit the Supplier from engaging with UC customers when requested by UC department for the purposes of preparatory discussions/design work on lengthy/large projects which will not be procured until after November 1, 2020. Additionally, it is expected, Suppliers will promote their company and services during campus roll-outs (September 28<sup>th</sup> through October 31<sup>st</sup>).
- b) UC may terminate the Agreement for cause or convenience by giving the other party at least 180 calendar days' written notice. Note, this is a UC System-wide Agreement, extended nationally through OMNIA Partners. Termination by a campus (or department), will not constitute termination of the Agreement for the UC system itself, nor the Agreement as a whole.
- c) UC or Supplier may terminate the Agreement for cause by giving the other party at least 180 days' notice of failure to cure a material breach of the Agreement within the Cure Period allowed (30 days from written notice of a breach, per this Agreement). For sake of clarity, either Party may provide written Notice of Breach to the Administrators listed in this Agreement. This action shall trigger a thirty (30) day Cure Period. If breach is not resolved, originating party/notifying party, may provide a Notice to Terminate as a result of uncured breach, allowing 180 days of continuing service for new orders



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and/or completion of existing orders; all of which must be complete within that 180 day period and/or mutually acceptable arrangements made for completion after termination.

### 3. UC Program

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. Cooperative Purchasing

Supplier agrees to extend Goods and/or Services to public agencies (public and private schools, colleges and universities, cities, counties, non-profits, and all governmental entities) registered with OMNIA Partners, Public Sector under the terms of this agreement, as specified for a National Program. All contractual administration (e.g. terms, conditions, extensions, and renewals) will remain the UC's responsibility except as outline in the above referenced RFP (RFP ## 001218). Operational issues, fiduciary responsibility, payment issues and liabilities, and disputes involving individual participating agencies will be addressed, administered, and resolved by each participating agency.

### 5. Purchase Order; Advance Payments

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

University's standard payment terms are Net 30 days of receipt of product to UC or to Dealer's warehouse. Invoices must be paid with a minimum of 90% payment, withholding a maximum of 10% for outstanding line item charges for missing or damaged product specifically relating to the original purchase order and any additional items, only if 'Date promised by' aligns with original shipment. Where mutually acceptable, large projects may employ the use of phased payment, for the purpose of covering costs for services already rendered or product already procured; specific details and process to be negotiated between the Supplier and the University campuses based on each site's requirements. A Purchase Order must precede the work or purchase.

## 6. Pricing Structure, Invoicing Method, and Settlement Method Terms

#### a) Pricing

1. All Goods available through this Agreement, include delivery and are priced as a 'Discount off List'. These discounts are based against a contracted Manufacturer's National Price List. List price/MSRP is defined as the product sales price list published in some form by the manufacturer or publisher of a product and available to and recognized by, the trade. 'Discount off List' may vary according to delivery or services included. Refer to Attachment A –Statement of Work. For Pricing, discounts, and pricing terms.

#### b) Invoicing and Settlement

1. Each Location will specify the Invoicing Method and Payment Options that will apply, taking into account the operational capabilities of Supplier and the UC and/or Participating Agency Location. For UC campuses/locations, please see UC's Procure to Pay Standards for the options that will be considered <https://www.ucop.edu/procurement-services/files/Matrix%20for%20website.pdf> Each UC Location will specify these terms in a Statement of Work or Purchase Order, as the case may be. The University at its discretion, may remit payment to the Dealer through P-Card (credit card/similar methods) with a processing fee, as well as checks, or other electronic forms of payment. Supplier reserves the right to elect ACH or Check payment on any projects exceeding \$400,000 (High Volume/Negotiable Tier), for the purpose of avoiding additional merchant fees associated with credit card (or similar) payment methods. UC campuses/locations may accept, reject, or negotiate this supplier policy, during planning phase of a large project. Supplier is obligated to notify location of this policy, prior to any engagement of services or ordering of product

2. All payments for UNIVERSITY purchases under this Agreement are Net 30 days of product shipping, unless stated otherwise within this Agreement and shall not be subject to late charges or interest charges. Exceptions for phased payment, are noted above within



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Section 5. Subject to exception B.1 above, the University, at its discretion, may remit payment to the Supplier through P-Card (credit card or similar, with fees up to 3%), checks, or other electronic forms of payment. Note the UC (only) is entitled to 30 days free storage (Section 9 of Attachment A) from Dealer, if prearranged or mutually agreed. The 30 days shall begin when product arrives to Dealer's facility/dock. Any period after that point, may be charged at rates quoted within this Agreement. This arrangement does not extend requirements for payment to Supplier, if product is available for inspection/verification. As previously stated, invoices must be paid with a minimum of 90% payment, withholding a maximum of 10% for outstanding line item charges.

3. Notwithstanding the provisions of Article 3 of the Terms and Conditions of Purchase, UC will not pay freight/shipping or basic delivery costs for Manufacturer's goods. Installation and other services may be charged separately, when not included as part of a 'Service Package' (service and product, priced as a reduced percentage off list); all such charges and services listed in Attachment A – Statement of work. All separate Service charges shall include detail (e.g. 2 men, 8hrs. @ \$65.00 hourly or 3 hrs. Design Services @ XX).

4. Supplier's Authorized Representatives will submit invoices, following the designated invoice method, directly to UC Accounts Payable Departments at each UC Location, unless the UC Location and the Supplier reach an alternate, mutually acceptable procedure for submitting invoices (i.e., directly from Supplier to UC Location). All invoices must clearly indicate the following information:

- a. California sales tax as a separate line item, based on the California 10 digit Zip Code;
- b. UC System Wide Agreement Number;
- c. Freight or Shipping/Delivery as separate line items, only when applicable (e.g. non-Kimball product)
- d. Service and Installation costs (with service and labor detail);
- e. Purchase Order or Release Number;
- f. Description, quantity, catalog number and manufacturer number of the item ordered; UC Net cost of each item;
- g. List Price, appropriate % discount applied, and Net Cost;
- h. Reference to original order number for all credit memos issued (if applicable);
- i. UC Purchase Order or Release Number;

## 7. Notices

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

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

<b>Name</b>	David Rusting. Chief Information. Security Officer.
<b>Phone</b>	(510)987-0086
<b>Email</b>	David.Rusting@ucop.edu
<b>Address</b>	Address: 1111 Franklin St., 7th Flr, Office: 7104 Oakland Ca. 94607

To UC, regarding contract issues not addressed above:

<b>Name</b>	Yvonne Macon
<b>Phone</b>	530-752-5684
<b>Email</b>	Yvonne.Macon@ucop.edu
<b>Address</b>	260 Cousteau Place, Ste. 150 Davis, Ca. 95618

To Supplier:

<b>Name</b>	Stacy Huelsman
<b>Phone</b>	812-482-8108
<b>Email</b>	Stacy.huelsman@kimball.com



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<b>Address</b>	1600 Royal St.
	Jasper, IN 47546

## 8. Intellectual Property, Copyright and Patents

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

## 9. Patient Protection and Affordable Care Act (PPACA)

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

## 10. Prevailing Wages

Supplier acknowledges Prevailing Wage requirements, apply to this contract.

a) Supplier understands and acknowledges that prevailing wages are frequently applicable for installation services provided under this program. Supplier (as defined herein), to include its Dealers or their subcontractors performing services) is required to pay prevailing wages, when applicable to the work and as required within the state and county where installation is taking place and at the rate specified for those counties, per the Department of industrial Relations. A Supplier should note, Prevailing Wages are to be paid for labor performed for any UC installation where assembly or attachments is required, except for labor related to the following activities:

- Delivery of materials that will not be installed by the delivering vendor or subcontractor; and
- Assembly of unattached, freestanding furniture, not requiring special tools and/or joining of furniture pieces (e.g. desk return added to desk); and
- Delivery and assembly of furniture that is attached only for security purposes (to prevent its theft) or otherwise attached by restraints that are not subject to any regulation pursuant to the California Building Code.

b) Prevailing wages shall also be paid for all labor associated with the special fabrication of any non-standard, non-catalog furniture components that are manufactured specially and exclusively for installation at the project/delivery site.

c) Rates vary depending on the county in which the work is being performed. In Installations where Prevailing Wages are applicable, the UNIVERSITY acknowledges that added delivery installation charges may be applied, as a differential, to reflect the current updated Prevailing Wage schedules.

## 11. Fair Wage/Fair Work (UC Specific)

For all work performed as Standard Labor (work not requiring the payment of Prevailing Wage rates), Supplier is required to pay a minimum of the UC Fair Wage (defined as \$15 per hour as of 10/1/17) to its staff when providing services at UC Locations. This is also assumed/required for any labor quotes stated as a flat hourly amount, inclusive of Supplier overhead costs (Basic Installation Hourly Rates).

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

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

## 13. Insurance

Deliver the PDF version of the Certificate of Insurance to UC’s Buyer, by email with the following text in the Subject field: CERTIFICATE



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OF INSURANCE – Agreement #2019.001896\_Office furniture. 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 – Agreement #2019.001896\_Office Furniture

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

Supplier is providing all categories of its Office Furniture and related Product Lines nationally to Participating Agencies, when extended through OMNIA Partners and to UC (with noted restrictions). Quotes, delivery and/or any installation will be performed by Supplier's Authorized Representatives-Subcontractors (i.e. dealer network), although Quotes may, in some cases, be provided by Supplier as manufacturer of the goods, rather than its authorized representatives for convenience, efficiency, or accuracy reasons. Purchase order processing (acknowledgement-confirmation) and invoicing may be performed by Supplier.

## 15. Records about Individuals

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

**16. Amendments to UC Terms and Conditions of Purchase** - There are no amendments to UC Terms and Conditions of Purchase, dated 5-9-19.

**17. Amendments to Appendix – Data Security** - There are no amendments to The UC Appendix – Data Security, dated 4-12-19.

**18. Amendments to Appendix – Business Associate** - The UC Appendix – Business Associate, does not apply to this contract.

**19. Appendix Ecommerce** – Appendix Ecommerce, dated 9-19-17 applies to UC ecommerce business and is not amended.

## 20. Incorporated Documents

The following documents are incorporated and made part of this Agreement, as if fully set herein, listed in the order of preference following this Agreement.

Attachment A - Statement of Work, including Exhibits

Attachment B - UC Terms and Conditions of Purchase dated 5-9-19

Attachment C - UC Appendix – Data Security dated 4-12-19

Attachment D - UC Appendix Ecommerce, dated 9-19-17

Attachment E - Definitions

Attachment F - RFP Document (RFP-OFFICE FURNITURE - UC SYSTEMWIDE – JULY182019) and any subsequent Addenda

Attachment G - Supplier's Response to RFP - OFFICE FURNITURE - UC SYSTEMWIDE – JULY182019, dated 8-21-19

## 20. 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.



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

**THE REGENTS OF THE  
UNIVERSITY OF CALIFORNIA**

*William M. Cooper*  
\_\_\_\_\_  
1E90FA0700254CF...  
(Signature)

William Cooper AVP & Chief Procurement Officer

\_\_\_\_\_  
(Printed Name, Title)

5/21/2020

\_\_\_\_\_  
(Date)

**Kimball Office, Inc.**

*Phyllis Goetz*  
\_\_\_\_\_  
(Signature)

Phyllis Goetz, President

\_\_\_\_\_  
(Printed Name, Title)

05/20/2020

\_\_\_\_\_  
(Date)





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**ATTACHMENT A – STATEMENT OF WORK**

**(Placeholder for inserted pages)**



## **ATTACHMENT B – UC TERMS AND CONDITIONS OF PURCHASE (DATED 5-9-19)**

### **ARTICLE 1 – GENERAL**

The equipment, materials, or supplies (“Goods”) and/or services (“Services”) furnished by Supplier (together, the “Goods and Services”) and covered by the UC Purchase Order (“PO”) and/or other agreement (which, when combined with these Terms and Conditions and any other documents incorporated by reference, will constitute the “Agreement”) are governed by the terms and conditions set forth herein. As used herein, the term “Supplier” includes Supplier and its sub-suppliers at any tier. As used herein, “UC” refers to The Regents of the University of California, a corporation described in California Constitution Art. IX, Sec. 9, on behalf of the UC Locations identified in the Agreement and/or the PO. UC and Supplier individually will be referred to as “Party” and collectively as “Parties.” Any defined terms not defined in these Terms and Conditions of Purchase will have the meaning ascribed to such term in any of the other documents incorporated in and constituting the Agreement. No other terms or conditions will be binding upon the Parties unless accepted by them in writing. Written acceptance or shipment of all or any portion of the Goods, or the performance of all or any portion of the Services, covered by the Agreement, will constitute Supplier’s unqualified acceptance of all of the Agreement’s terms and conditions. The terms of any proposal referred to in the Agreement are included and made a part of the Agreement only to the extent the proposal specifies the Goods and/or Services ordered, the price therefor, and the delivery thereof, and then only to the extent that such terms are consistent with the terms and conditions of the Agreement.

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

- A. As applicable, the term of the Agreement (“Initial Term”) will be stated in the Agreement. Following the Initial Term, the Agreement may be extended by written mutual agreement.
- B. UC’s obligation to proceed is conditioned upon the appropriation of state, federal and other sources of funds not controlled by UC (“Funding”). UC will have the right to terminate the Agreement without damage, penalty, cost or further obligation in the event that through no action or inaction on the part of UC, the Funding is withdrawn.
- C. UC may, by written notice stating the extent and effective date thereof, terminate the Agreement for convenience in whole or in part, at any time 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 later of the date that (i) UC provided Supplier with notice of termination or (ii) Supplier’s provision of Goods and/or Services will terminate.
- D. UC may by written notice terminate the Agreement for Supplier’s breach of the Agreement, in whole or in part, at any time, if Supplier refuses or fails to comply with the provisions of the Agreement, or so fails to make progress as to endanger performance and does not cure such failure within five (5) business days, or fails to supply the Goods and/or Services within the time specified or any written extension thereof. In such event, UC may purchase or otherwise secure Goods and/or Services and, except as otherwise provided herein, Supplier will be liable to UC for any excess costs UC incurs thereby.

**ARTICLE 3 – PRICING, INVOICING METHOD, AND SETTLEMENT METHOD AND TERMS.** Pricing is set forth in the Agreement or Purchase Order Number, and the amount UC is charged and responsible for shall not exceed the amount specified in the Agreement unless UC has given prior written approval. Unless otherwise agreed in writing by UC, Supplier will use the invoicing method and payment settlement method (and will extend the terms applicable to such settlement method) set forth in UC’s Supplier Invoicing, Terms & Settlement Matrix. UC will pay Supplier, upon submission of acceptable invoices, for Goods and/or Services provided and accepted. Invoices must be itemized and reference the Agreement or Purchase Order number. UC will not pay shipping, packaging or handling expenses, unless specified in the Agreement or Purchase Order. Unless otherwise provided, freight is to be FOB destination. Any of Supplier’s expenses that UC agrees to reimburse will be reimbursed under UC’s Travel Policy, which may be found at <https://policy.ucop.edu/doc/3420365>. Where applicable, Supplier will pay all taxes imposed on Supplier in connection with its performance under the Agreement, including any federal, state and local income, sales, use, excise and other taxes or assessments. Notwithstanding any other provision to the contrary, UC will not be responsible for any fees, interest or surcharges Supplier wishes to impose.

**ARTICLE 4 – INSPECTION.** The Goods and/or Services furnished will be exactly as specified in the Agreement, free from all defects in Supplier’s performance, design, 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 Goods and/or Services furnished are found to be incomplete, or not as specified, UC may reject them, require Supplier to correct them at the sole cost of Supplier, or require provision of such Goods and/or Services at a reduction in price that is equitable under the circumstances. If Supplier is unable or refuses to correct such deficiencies within a time UC deems reasonable, UC may terminate the Agreement in whole or in part. Supplier will bear all risks as rejected Goods and/or Services and, in addition to any costs for which Supplier may become liable to UC under other provisions of the Agreement, will reimburse UC for all transportation costs, other related costs incurred, or payments to Supplier in accordance with the terms of the Agreement for unaccepted Goods and/or Services and materials and supplies incidental thereto. Notwithstanding final acceptance and payment, Supplier will be liable for latent defects, fraud or such gross mistakes as amount to fraud.

### **ARTICLE 5 – ASSIGNED PERSONNEL; CHARACTER OF SERVICES**

Supplier will provide the Services as an independent contractor and furnish all equipment, personnel and materiel sufficient to provide the Services expeditiously and efficiently, during as many hours per shift and shifts per week, and at such locations as UC may so require. Supplier will devote only its best-qualified personnel to work under the Agreement. Should UC inform Supplier that anyone providing the Services is not working to this standard, Supplier will immediately remove such personnel from providing Services and he or she will not again, without UC’s written permission, be assigned to provide Services. At no time will Supplier or Supplier’s employees, sub-suppliers, agents, or assigns be considered employees of UC for any purpose, including but not limited to workers’ compensation provisions. Supplier shall not have the power nor right to bind or obligate UC, and Supplier shall not hold itself out as having such authority. Supplier shall be responsible to UC for all Services performed by Supplier’s



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employees, agents and subcontractors, including being responsible for ensuring payment of all unemployment, social security, payroll, contributions and other taxes with respect to such employees, agents and subcontractors.

## ARTICLE 6 – WARRANTIES

In addition to the warranties set forth in Articles 11, 12, 17, 23, 24, 25 and 26 herein, Supplier makes the following warranties. Supplier acknowledges that failure to comply with any of the warranties in the Agreement will constitute a material breach of the Agreement and UC will have the right to terminate the Agreement without damage, penalty, cost or further obligation.

A. General Warranties. Supplier represents, warrants and covenants that: (i) Supplier is free to enter into this Agreement and that Supplier is not, and will not become, during the Term, subject to any restrictions that might restrict or prohibit Supplier from performing the Services or providing the Goods ordered hereunder; (ii) Supplier will comply with all applicable laws, rules and regulations in performing Supplier's obligations hereunder; (iii) the Goods and/or Services shall be rendered with promptness and diligence and shall be executed in a workmanlike manner by competent personnel, in accordance with the prevailing industry standards; and if UC Appendix Data Security is NOT included: (iv) Supplier has developed a business interruption and disaster recovery program and is executing such program to assess and reduce the extent to which Supplier's hardware, software and embedded systems may be susceptible to errors or failures in various crisis (or force majeure) situations; (v) if Supplier uses electronic systems for creating, modifying, maintaining, archiving, retrieving or transmitting any records, including test results that are required by, or subject to inspection by an applicable regulatory authority, then Supplier represents and warrants that Supplier's systems for electronic records are in compliance; and (vi) Supplier agrees that the Goods and/or Services furnished under the Agreement will be covered by the most favorable warranties Supplier gives to any customer for the same or substantially similar goods or services, or such other more favorable warranties as specified in the Agreement. The rights and remedies so provided are in addition to and do not limit any rights afforded to UC by any other article of the Agreement.

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

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

D. Web Accessibility Requirements. As applicable to the Supplies and/or Services being provided under the Agreement, Supplier warrants that:

1. It complies with California and federal disabilities laws and regulations; The Goods and/or Services will conform to the accessibility requirements of WCAG 2.0AA.
2. Supplier agrees to promptly respond to and resolve any complaint regarding accessibility of its Goods and/or Services;
3. Within six (6) months of the signing of this Agreement, Supplier will complete the testing of the Goods and Services for level AA conformance with Web Content Accessibility Guidelines (WCAG) 2.0 and report those findings to the University. Provide the source to whom the conformance should be submitted. In the event that testing results in findings of non-compliance, Supplier will provide a remediation plan to the University within two (2) months of completion of testing, and will use reasonable efforts to adhere to any remediation timelines provided to the University; and
4. The University and its Authorized User may abridge, modify, translate or create any derivative work based on the Goods and Services when necessary to allow Authorized Users with disabilities to access the Goods and Services.

E. General Accessibility Requirements. Supplier warrants that:

1. It will comply with California and federal disability laws and regulations;
2. Supplier will promptly respond to remediate to any identified accessibility defects in the Goods and Services to conform to WCAG 2.0 AA; and
3. Supplier agrees to promptly respond to and use reasonable efforts to resolve and remediate any complaint regarding accessibility of its Goods and/or Services.

F. Warranty of Quiet Enjoyment. Supplier warrants that Supplier has the right of Quiet Enjoyment in, and conveys the right of Quiet Enjoyment to UC for UC's use of, any and all intellectual property that will be needed for Supplier's provision, and UC's use of, the Goods and/or Services provided by Supplier under the Agreement.

G. California Child Abuse and Neglect Reporting Act ("CANRA"). Where applicable, Supplier warrants that it complies with CANRA.

H. Debarment and Suspension. Supplier warrants that it is not presently debarred, suspended, proposed for debarment, or declared ineligible for award of federal contracts or participation in federal assistance programs or activities.

I. UC Trademark Licensing Code of Conduct. If the Goods will bear UC's name (including UC campus names, abbreviations of these names, UC logos, UC mascots, or UC seals) or other trademarks owned by UC, Supplier warrants that it holds a valid license from UC and complies with the Trademark Licensing Code of Conduct policy, available at <http://policy.ucop.edu/doc/3000130/TrademarkLicensing>.

J. Outsourcing (Public Contract Code section 12147) Compliance. Supplier warrants that if the Agreement will displace UC employees, no funds paid under the Agreement will be used to train workers who are located outside of the United States, or plan to relocate outside the United States as part of the Agreement. Additionally, Supplier warrants that no work will be performed under the Agreement with workers outside the United States, except as described in Supplier's bid. If Supplier or its sub supplier performs the Agreement with workers outside the United States during the life of the Agreement and Supplier did not describe such work in its bid, Supplier acknowledges and agrees that a) UC may terminate the Agreement without further obligation for noncompliance, and b) Supplier will forfeit to UC the amount UC paid for the percentage of work that was performed with workers outside the United States and not described in Supplier's bid.

## ARTICLE 7 – INTELLECTUAL PROPERTY, COPYRIGHT AND PATENTS

A. Goods and/or Services Involving Work Made for Hire.

1. Unless UC indicates that the Goods and/or Services do not involve work made for hire, Supplier acknowledges and agrees that any deliverables provided to UC by Supplier in the performance of the Agreement, and any intellectual property rights therein, (hereinafter the "Deliverables") will



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be owned by UC. The Deliverables will be considered "work made for hire" under U.S. copyright law and all right, title, and interest to and in such Deliverables including, but not limited to, any and all copyrights or trademarks, will be owned by UC. In the event that it is determined that UC is not the owner of such Deliverables under the "work made for hire" doctrine of U.S. copyright law, Supplier hereby irrevocably assigns to UC all right, title, and interest to and in such Deliverables and any copyrights or trademarks thereto.

2. The Deliverables must be new and original. Supplier must not use any pre-existing copyrightable or trademarked images, writings, or other proprietary materials (hereinafter "Pre-Existing Materials") in the Deliverables without UC's prior written permission. In the event that Supplier uses any Pre-Existing Materials in the Deliverables in which Supplier has an ownership interest, UC is hereby granted, and will have, a non-exclusive, royalty-free, irrevocable, perpetual, paid-up, worldwide license (with the right to sublicense) to make, have made, copy, modify, make derivative works of, use, perform, display publicly, sell, and otherwise distribute such Pre-Existing Materials in connection with the Deliverables.
3. Whenever any invention or discovery is made or conceived by Supplier in the course of or in connection with the Agreement, Supplier will promptly furnish UC with complete information with respect thereto and UC will have the sole power to determine whether and where a patent application will be filed and to determine the disposition of title to and all rights under any application or patent that may result.
4. Supplier is specifically subject to an obligation to, and hereby does, assign all right, title and interest in any such intellectual property rights to UC as well as all right, title and interest in tangible research products embodying any such inventions whether the inventions are patentable or not. Supplier agrees to promptly execute any additional documents or forms that UC may require in order to effectuate such assignment.

## B. Goods and/or Services Not Involving Work Made for Hire.

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

## ARTICLE 8 – INDEMNITY

To the fullest extent permitted by law, Supplier will defend, indemnify, and hold harmless UC, its officers, employees, and agents, from and against all losses, expenses (including, without limitation, reasonable attorneys' fees and costs), damages, and liabilities of any kind resulting from or arising out of the Agreement, including the performance hereunder of Supplier, its officers, employees, agents, sub-suppliers, or anyone directly or indirectly employed by Supplier, or any person or persons under Supplier's direction and control, provided such losses, expenses, damages and liabilities are due or claimed to be due to the acts or omissions of Supplier, its officers, employees, agents, sub-suppliers, or anyone directly or indirectly employed by Supplier, or any person or persons under Supplier's direction and control. UC agrees to provide Supplier with prompt notice of any such claim or action and to permit Supplier to defend any claim or action, and that UC will cooperate fully in such defense. UC retains the right to participate in the defense against any such claim or action, and the right to consent to any settlement, which consent will not unreasonably be withheld.

## ARTICLE 9 – INSURANCE

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

- A. Commercial Form General Liability Insurance (contractual liability included) with limits as follows:
1. Each Occurrence \$ 1,000,000
  2. Products/Completed Operations Aggregate \$ 2,000,000
  3. Personal and Advertising Injury \$ 1,000,000
  4. General Aggregate \$ 2,000,000



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- B. Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles with a combined single limit of not less than one million dollars (\$1,000,000) per occurrence. (Required only if Supplier drives on UC premises or transports UC employees, officers, invitees, or agents in the course of supplying the Goods and/or Services to UC.)
- C. If applicable, Professional Liability Insurance with a limit of two million dollars (\$2,000,000) per occurrence or claim with an aggregate of not less than two million dollars (\$2,000,000). If this insurance is written on a claims-made form, it will continue for three years following termination of the Agreement. The insurance will have a retroactive date of placement prior to or coinciding with the effective date of the Agreement.
- D. Workers' Compensation as required by applicable state law and Employer's Liability with limits of one million dollars (\$1,000,000) per occurrence. Workers' Compensation as required by applicable state law and Employer's Liability with limits of one million dollars (\$1,000,000) per occurrence.
- E. If applicable, Supplier Fidelity Bond or Crime coverage for the dishonest acts of its employees in a minimum amount of one million dollars (\$1,000,000). Supplier will endorse such policy to include a "Regents of the University of California Coverage" or "Joint Payee Coverage" endorsement. UC and, if so requested, UC's officers, employees, agents and sub-suppliers will be named as "Loss Payee, as Their Interest May Appear" in such Fidelity Bond.
- F. 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.
- G. The coverages referred to under A and B of this Article must include UC as an additional insured. It is understood that the coverage and limits referred to under A, B and C of this Article will not in any way limit Supplier's liability. Supplier will furnish UC with certificates of insurance (and the relevant endorsement pages) evidencing compliance with all requirements prior to commencing work under the Agreement. Such certificates will:
1. Indicate that The Regents of the University of California has been endorsed as an additional insured for the coverage referred to under A and B of this Article. This provision will only apply in proportion to and to the extent of the negligent acts or omissions of Supplier, its officers, agents, or employees.
  2. Include a provision that the coverage will be primary and will not participate with or be excess over any valid and collectible insurance or program of self-insurance carried or maintained by UC.

## **ARTICLE 10 – USE OF UC NAME AND TRADEMARKS**

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

## **ARTICLE 11 – FEDERAL FUNDS**

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

- A. For commercial transactions involving funds on a federal contract (federal awards governed by the FAR), the following provisions apply, as applicable:
- i. FAR 52.203-13, Contractor Code of Business Ethics and Conduct;
  - ii. FAR 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights;
  - iii. FAR 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements;
  - iv. FAR 52.219-8, Utilization of Small Business Concerns;
  - xv. FAR 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services - Requirements;
  - xi. FAR 52.222-40, Notification of Employee Rights Under the National Labor Relations Act;
  - xii. FAR 52.222-41, Service Contract Labor Standards;
  - xiii. FAR 52.222-50, Combating Trafficking in Persons;
  - xiv. FAR 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment - Requirements;
  - v. FAR 52.222-17, Non-displacement of Qualified Workers;
  - vi. FAR 52.222-21, Prohibition of Segregated Facilities;
  - vii. FAR 52.222-26, Equal Opportunity;
  - viii. FAR 52.222-35, Equal Opportunity for Veterans;
  - ix. FAR 52.222-36, Equal Opportunity for Workers with Disabilities;
  - x. FAR 52.222-37, Employment Reports on Veterans;
  - xvi. FAR 52.222-54, Employment Eligibility Verification;
  - xvii. FAR 52.222-55, Minimum Wages Under Executive Order 13658;
  - xviii. FAR 52.222-62, Paid Sick Leave under Executive Order 13706;
  - xix. FAR 52.224-3, Privacy Training;
  - xx. FAR 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations; and
  - xxi. FAR 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels.



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B. For non-commercial transactions involving funds on a federal contract, the UC Appendix titled '*Federal Government Contracts Special terms and Conditions (Non-Commercial Items or Services)*' and located at [www.ucop.edu/procurement-services/policies-forms/index.html](http://www.ucop.edu/procurement-services/policies-forms/index.html) is hereby incorporated herein by this reference.

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

- i. Rights to Inventions. If Supplier is a small business firm or nonprofit organization, and is providing experimental, development, or research work under this transaction, Supplier must comply with the requirements of 3 CFR Part 401, "Rights to Inventions Made by nonprofit Organizations and Small Business Firms under Government Grants, Contracts, and Cooperative Agreements".
- ii. Clean Air Act. Supplier agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- iii. Byrd Anti-Lobbying. Supplier certifies that it will not, and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.
- iv. Procurement of Recovered Materials. If Supplier is a state agency or agency of a political subdivision of a state, then Supplier must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.

D. In these provisions, the term "contractor" as used therein will refer to Supplier, and the terms "Government" or "Contracting Officer" as used therein will refer to UC. Where a purchase of items is for fulfillment of a specific U.S. Government prime or subcontract, additional information and/or terms and conditions may be included in an attached supplement. By submitting an invoice to UC, Supplier is representing to UC that, at the time of submission:

- i. Neither Supplier nor its principals are presently debarred, suspended, or proposed for debarment by the U.S. government (see FAR 52.209-6);
- ii. Supplier has filed all compliance reports required by the Equal Opportunity clause (see FAR 52.222-22); and
- iii. 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.
- iv. Byrd Anti-Lobbying. Supplier certifies that it will not, and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.

#### **ARTICLE 12 – EQUAL OPPORTUNITY AFFIRMATIVE ACTION**

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

#### **ARTICLE 13 – LIENS**

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

#### **ARTICLE 14 – PREMISES WHERE SERVICES ARE PROVIDED**

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

B. Environmental, Safety, Health and Fire Protection. Supplier will take all reasonable precautions in providing the Goods and Services to protect the health and safety of UC employees and members of the public and to minimize danger from all hazards to life and property, and will comply with all applicable environmental protection, health, safety, and fire protection regulations and requirements (including reporting requirements). In the event that Supplier fails to comply with such regulations and requirements, UC may, without prejudice to any other legal or contractual rights of UC, issue an order stopping all or any part of the provision of the Goods and/or Services; thereafter a start order for resumption of providing the



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

C. Tobacco-free Campus. UC is a tobacco-free institution. Use of cigarettes, cigars, oral tobacco, electronic cigarettes and all other tobacco products is prohibited on all UC owned or leased sites.

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

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

## **ARTICLE 16 – COOPERATION**

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

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

The terms in this Article have special application to the furnishing of Goods: A. Price Decreases. Supplier agrees immediately to notify UC of any price decreases from its suppliers, and to pass through to UC any price decreases. B. Declared Valuation of Shipments. Except as otherwise provided in the Agreement, all shipments by Supplier under the Agreement for UC's account will be made at the maximum declared value applicable to the lowest transportation rate or classification and the bill of lading will so note. C. Title. Title to the Goods purchased under the Agreement will pass directly from Supplier to UC at the f.o.b. point shown, or as otherwise specified in the Agreement, subject to UC's right to reject upon inspection. D. Changes. Notwithstanding the terms in Article 34, Amendments, UC may make changes within the general scope of the Agreement in drawings and specifications for specially manufactured Goods, place of delivery, method of shipment or packing of the Agreement by giving notice to Supplier and subsequently confirming such changes in writing. If such changes affect the cost of or the time required for performance of the Agreement, UC and Supplier will agree upon an equitable adjustment in the price and/or delivery terms. Supplier may not make changes without UC's written approval. Any claim of Supplier for an adjustment under the Agreement must be made in writing within thirty (30) days from the date Supplier receives notice of such change unless UC waives this condition in writing. Nothing in the Agreement will excuse Supplier from proceeding with performance of the Agreement as changed hereunder. Supplier may not alter or misbrand, within the meaning of the applicable Federal and State laws, the Goods furnished. E. Forced, Convict and Indentured Labor. Supplier warrants that no foreign-made Goods furnished to UC pursuant to the Agreement will be produced in whole or in part by forced labor, convict labor, or indentured labor under penal sanction. If UC determines that Supplier knew or should have known that it was breaching this warranty, UC may, in addition to terminating the Agreement, remove Supplier from consideration for UC contracts for a period not to exceed one year. This warranty is in addition to any applicable warranties in Articles 6 and 11. F. Export Control. If any of the Goods is export-controlled under the International Traffic in Arms Regulations (22 CFR §§ 120-130), the United States Munitions List (22 CFR § 121.1), or Export Administration Regulations (15 CFR §§ 730-774) 500 or 600 series, or controlled on a military strategic goods list, Supplier agrees to provide UC (the contact listed on the Purchase Order) with written notification that identifies the export-controlled Goods and such Goods' export classification.

## **ARTICLE 18 – CONFLICT OF INTEREST**

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

**ARTICLE 19 – AUDIT REQUIREMENTS** The Agreement, and any pertinent records involving transactions relating to this Agreement, is subject to the examination and audit of the Auditor General of the State of California or Comptroller General of the United States or designated Federal authority for a period of up to five (5) years after final payment under the Agreement. UC, and if the underlying grant, cooperative agreement or federal contract so provides, the other contracting Party or grantor (and if that be the United States or an instrumentality thereof, then the Comptroller General of the United States) will have access to and the right to examine Supplier's pertinent books, documents, papers, and records involving transactions and work related to the Agreement until the expiration of five (5) years after final payment under the Agreement. The examination and audit will be confined to those matters connected with the performance of the Agreement, including the costs of administering the Agreement.



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**ARTICLE 20 – PROHIBITION ON UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION** Supplier agrees to hold UC’s Confidential Information, and any information derived therefrom, in strict confidence. Confidential Information shall be defined as any information disclosed by UC to Supplier for the purposes of providing the Good and/or Services which is (i) marked as “Confidential” at the time of disclosure; (ii) disclosed orally, identified at the time of such oral disclosure as confidential, and reduced to writing as “Confidential” within thirty (30) days of such oral disclosure; and (iii) if not marked as “Confidential,” information that would be considered by a reasonable person in the relevant field to be confidential given its content and the circumstances of its disclosure. Confidential Information will not include information that: (i) Supplier can demonstrate by written records was known to Supplier prior to the effective date of the Agreement; (ii) is currently in, or in the future enters, the public domain other than through a breach of the Agreement or through other acts or omissions of Supplier; (iii) is obtained lawfully from a third party; or (iv) is disclosed under the California Public Records Act or legal process. Supplier will not access, use or disclose Confidential Information other than to carry out the purposes for which UC disclosed the Confidential Information to Supplier, except as permitted or required by applicable law, or as otherwise authorized in writing by UC prior to the disclosure. Supplier shall have the limited right to disclose UC’s Confidential Information to Supplier’s employees provided that: (i) Supplier shall disclose only such UC’s Confidential Information as is necessary for the Supplier to perform its obligations under this Agreement; (ii) such employees have been informed of the confidential nature of such information; and (iii) such employees have agreed in writing to be bound by confidentiality obligations at least as stringent as those set forth in this Agreement. Supplier shall be liable for any breach of this Agreement by its employees. For avoidance of doubt, this provision prohibits Supplier from using for its own benefit Confidential Information and any information derived therefrom. If Supplier is required by a court of competent jurisdiction or an administrative body to disclose Confidential Information, Supplier will notify UC in writing immediately upon receiving notice of such requirement and prior to any such disclosure (unless Supplier is prohibited by law from doing so), to give UC an opportunity to oppose or otherwise respond to such disclosure. To the extent Supplier is still required to make such a disclosure, Supplier will give UC prompt written notice of such event and will furnish only that portion that is legally required and will exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be afforded to the Confidential Information. Supplier’s transmission, transportation or storage of Confidential Information outside the United States, or access of Confidential Information from outside the United States, is prohibited except with prior written authorization by UC. UC’s Appendix – Data Security, Appendix – HIPAA Business Associate, and/or Appendix – General Data Protection Regulation will control in the event that one or both appendices is incorporated into the Agreement and conflicts with the provisions of this Article. Supplier acknowledges that remedies at law would be inadequate to protect UC against any actual or threatened breach of this Section by Supplier, and, without prejudice to any other rights and remedies otherwise available to UC, Supplier agrees to the granting of injunctive relief in UC’s favor without proof of actual damages.

**ARTICLE 21 – UC WHISTLEBLOWER POLICY** -UC is committed to conducting its affairs in compliance with the law, and has established a process for reporting and investigating suspected improper governmental activities. Please visit <http://www.ucop.edu/uc-whistleblower/> for more information.

**ARTICLE 22 – SUSTAINABLE PROCUREMENT GUIDELINES** Supplier will conduct business using environmentally, socially, and economically sustainable products and services (defined as products and services with a lesser or reduced effect on human health and the environment, and which generate benefits to the University as well as to society and the economy, while remaining within the carrying capacity of the environment), to the maximum possible extent consistent with the Agreement, and with the University of California Sustainable Practices Policy (<https://policy.ucop.edu/doc/3100155>) and the University of California Sustainable Procurement Guidelines: ([https://www.ucop.edu/procurement-services/\\_files/sustainableprocurementguidelines.pdf](https://www.ucop.edu/procurement-services/_files/sustainableprocurementguidelines.pdf)). In accordance with the University of California Sustainable Practices Policy, Supplier will adhere to the following requirements and standards, as applicable. Supplier acknowledges that failure to comply with any of the sustainability standards and requirements in the Agreement will constitute a material breach of the Agreement and UC will have the right to terminate the Agreement without damage, penalty, cost or further obligation. A. Sustainability Marketing Standards. Supplier sustainability related claims, where applicable, must meet University of California recognized certifications and standards set forth in the UC Sustainable Procurement Guidelines and/or meet the standards of Federal Trade Commission’s (FTC) Green Guides. B. Electronic Transfer of Supplier Information. Suppliers, when interacting with the University, shall be prohibited from providing hard copies of presentations, marketing material, or other informational materials. Suppliers will be required to present all information in electronic format that is easily transferable to University staff. Materials may be provided in hard copy or physical format if specifically required or requested by a UC representative. C. Packaging Requirements. All packaging must be compliant with the Toxics in Packaging Prevention Act (AB 455) and must meet all additional standards and requirements set forth in the UC Sustainable Practices Policy. In addition, the University requires that all packaging meet at least one of the criteria listed below: a. Uses bulk packaging; b. Uses reusable packaging (e.g. totes reused by delivery service for next delivery); c. Uses innovative packaging that reduces the weight of packaging, reduces packaging waste, or utilizes packaging that is a component of the product; d. Maximizes recycled content and/or meets or exceeds the minimum post-consumer content level for packaging in the U.S. Environmental Protection Agency Comprehensive Procurement Guidelines; e. Uses locally recyclable or certified compostable material. D. Expanded Polystyrene (EPS) Ban. No EPS shall be used in foodservice facilities for takeaway containers. By 2020, the University will be prohibited from procuring Goods containing, or that are provided in packaging containing, Expanded Polystyrene (EPS) other than that utilized for laboratory supply or medical packaging and products where no functional alternatives exist. E. E-Waste Recycling Requirements. All recyclers of University of California electronic equipment must be e-Steward certified by the Basel Action Network (BAN) or R2 Standard certified. Hosted and Punch-out Catalog Requirements. Suppliers enabled with eProcurement hosted catalog functionality must clearly identify products with UC-recognized Certifications, as defined by the UC Sustainable Procurement Guidelines, in both hosted and punchout catalog e-procurement environments.

**ARTICLE 23 – PATIENT PROTECTION AND AFFORDABLE CARE ACT (PPACA) EMPLOYER SHARED RESPONSIBILITY**

If the Services involve Supplier furnishing UC with temporary or supplementary staffing, Supplier warrants that:

A. If Supplier is an Applicable Large Employer (as defined under Treasury Regulation Section 54.4980H-1(a)(4)):

1. Supplier offers health coverage to its full-time employees who are performing Services for UC;
2. Supplier’s cost of enrolling such employees in Supplier’s health plan is factored into the fees for the Services; and
3. The fees for the Services are higher than what the Services would cost if Supplier did not offer health coverage to such full-time employees.





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B. If Supplier is not an Applicable Large Employer (as defined above):

1. Supplier offers group health coverage to its full-time employees who are performing Services for UC and such coverage is considered Minimum Essential Coverage (as defined under Treasury Regulation Section 1-5000A-2) and is Affordable (as defined under Treasury Regulation Section 54.4980H-5(e)); or
2. Supplier's full-time employees who are performing services for UC have individual coverage and such coverage satisfies the PPACA requirements for mandated individual coverage.

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

## **ARTICLE 24 - PREVAILING WAGES**

Unless UC notifies Supplier that the Services are not subject to prevailing wage requirements, Supplier will comply, and will ensure that all sub-suppliers comply, with California prevailing wage provisions, including but not limited to those set forth in Labor Code sections 1770, 1771, 1771.1, 1772, 1773, 1773.1, 1774, 1775, 1776, 1777.5, and 1777.6. For purposes of the Agreement, the term "sub-supplier" means a person or firm, of all tiers, that has a contract with Supplier or with a sub-supplier to provide a portion of the Services. The term sub-supplier will not include suppliers, manufacturers, or distributors. Specifically, and not by way of limitation, if apprenticeship occupations are involved in providing the Services, Supplier will be responsible for ensuring that Supplier and any sub-suppliers comply with Labor Code Section 1777.5. Supplier and sub-supplier may not provide the Services unless currently registered and qualified to perform public work pursuant to Labor Code Section 1725.5 and 1771.1. Notwithstanding the foregoing provisions, Supplier will be solely responsible for tracking and ensuring proper payment of prevailing wages regardless if Services are partially or wholly subject to prevailing wage requirements. In every instance, Supplier will pay not less than the UC Fair Wage (defined as \$13 per hour as of 10/1/15, \$14 per hour as of 10/1/16, and \$15 per hour as of 10/1/17) for Services being performed at a UC Location (defined as any location owned or leased by UC).

The California Department of Industrial Relations (DIR) has ascertained the general prevailing per diem wage rates in the locality in which the Services are to be provided for each craft, classification, or type of worker required to provide the Services. A copy of the general prevailing per diem wage rates will be on file at each UC Location's procurement office, and will be made available to any interested party upon request. Supplier will post at any job site: A. Notice of the general prevailing per diem wage rates, and any other notices required by DIR rule or regulation. By this reference, such notices are made part of the Agreement. Supplier will pay not less than the prevailing wage rates, as specified in the schedule and any amendments thereto, to all workers employed by Supplier in providing the Services. Supplier will cause all subcontracts to include the provision that all sub-suppliers will pay not less than the prevailing rates to all workers employed by such sub-suppliers in providing the Services. The Services are subject to compliance monitoring and enforcement by the DIR. Supplier will forfeit, as a penalty, not more than \$200 for each calendar day or portion thereof for each worker that is paid less than the prevailing rates as determined by the DIR for the work or craft in which the worker is employed for any portion of the Services provided by Supplier or any sub-supplier. The amount of this penalty will be determined pursuant to applicable law. Such forfeiture amounts may be deducted from the amounts due under the Agreement. If there are insufficient funds remaining in the amounts due under the Agreement, Supplier will be liable for any outstanding amount remaining due. Supplier will also pay to any worker who was paid less than the prevailing wage rate for the work or craft for which the worker was employed for any portion of the Services, for each day, or portion thereof, for which the worker was paid less than the specified prevailing per diem wage rate, an amount equal to the difference between the specified prevailing per diem wage rate and the amount which was paid to the worker. Review of any civil wage and penalty assessment will be made pursuant to California Labor Code section 1742.

## **ARTICLE 25 – FAIR WAGE/FAIR WORK**

If the Agreement is for Services that will be performed at one or more UC Locations, does not solely involve furnishing Goods, and are not subject to extramural awards containing sponsor-mandated terms and conditions, Supplier warrants that it is in compliance with applicable federal, state and local working conditions requirements, including but not limited to those set forth in Articles 11, 12 and 14 herein, and that Supplier pays its employees performing the Services no less than the UC Fair Wage. Supplier agrees UC may conduct such UC Fair Wage/Fair Work interim compliance audits as UC reasonably requests, as determined in UC's sole discretion. Supplier agrees to post UC Fair Wage/Fair Work notices, in the form supplied by UC, in public areas (such as break rooms and lunch rooms) frequented by Supplier employees who perform Services. For Services that exceed \$100,000 annually and are not subject to prevailing wage requirements, Supplier will, a) at Supplier's expense, provide an annual independent verification performed by a licensed public accounting firm (independent accountant) or the Supplier's independent internal audit department (<http://na.theiia.org/standards-guidance/topics/Pages/Independence-and-Objectivity.aspx>) in compliance with UC's required verification standards and procedures, concerning Supplier's compliance with this provision, and b) ensure that in the case of a UC interim audit, its independent accountant/independent internal auditor makes available to UC its UC Fair Wage/Fair Work papers for the most recent verification period. Supplier agrees to provide UC with a UC Fair Wage/Fair Work verification annually, in a form acceptable to UC, no later than ninety days after each one-year anniversary of the agreement's effective date, for the twelve months immediately preceding the anniversary date. All Supplier FW/FW compliance resources available here: <https://www.ucop.edu/procurement-services/for-suppliers/fwfw-resources-suppliers.html>.

## **ARTICLE 26 – MEDICAL DEVICES**

This Article applies when the Goods and/or Services involve UC purchasing or leasing one or more medical devices from Supplier, or when Supplier uses one or more medical devices in providing Goods and/or Services to UC.

Medical Device as used herein will have the meaning provided by the U.S. Food and Drug Administration ("FDA") and means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including a component part, or accessory which is: (i) recognized in the official National Formulary, or the United States Pharmacopoeia, or any supplement to them; (ii) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease, in man or other animals, or (iii) intended to affect the structure or any function of the body of man or other animals, and which does not achieve any of its primary intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for the achievement of any of its primary intended purposes.

Supplier warrants that prior to UC's purchase or lease of any Medical Device or Supplier's use of any Medical Device in providing Goods and/or Services hereunder, Supplier will: (i) perform security testing and validation for each such Goods and/or Services or Medical Device, as applicable;



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(ii) perform a security scan by an anti-virus scanner, with up-to-date signatures, on any software embedded within any Goods and/or Services or Medical Device, as applicable, in order to verify that the software does not contain any known viruses or malware; (iii) conduct a vulnerability scan encompassing all ports and fuzz testing; and (iv) provide UC with reports for (i) – (iii). Supplier warrants that all security testing performed by Supplier covers all issues noted in the “SANS WE TOP 25” and/or “OWASP Top 10” documentation.

Throughout Supplier’s performance of this Agreement, Supplier will provide UC with reasonably up-to-date patches, firmware and security updates for any Medical Device provided to UC, and any other Medical Device used in the course of providing Services, as applicable. All such patches and other security updates will be made available to UC within thirty (30) days of its commercial release or as otherwise recommended by Supplier or Supplier’s sub-supplier, whichever is earlier. Supplier warrants that all software and installation media not specifically required for any Medical Device used by Supplier or Goods and/or Services delivered to UC under this Agreement as well as files, scripts, messaging services and data will be removed from all such Goods and/or Services or Medical Device following installation, and that all hardware ports and drives not required for use or operation of such Goods and/or Services or Medical Device will be disabled at time of installation. In addition, Medical Devices must be configured so that only Supplier-approved applications will run on such Medical Devices.

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

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

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

#### **ARTICLE 27 – FORCE MAJEURE**

Neither Party will be liable for delays due to causes beyond the Party’s control (including, but not restricted to, war, civil disturbances, earthquakes, fires, floods, epidemics, quarantine restrictions, freight embargoes, and unusually severe weather).

#### **ARTICLE 28 – ASSIGNMENT AND SUBCONTRACTING**

Except as to any payment due hereunder, Supplier may not assign or subcontract the Agreement without UC’s written consent. In case such consent is given, the assignee or subcontractor will be subject to all of the terms of the Agreement.

#### **ARTICLE 29 – NO THIRD-PARTY RIGHTS**

Nothing in the Agreement, express or implied, is intended to make any person or entity that is not a signer to the Agreement a third-party beneficiary of any right created by this Agreement or by operation of law.

#### **ARTICLE 30 – OTHER APPLICABLE LAWS**

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

#### **ARTICLE 31 – NOTICES**

A Party must send any notice required to be given under the Agreement by overnight delivery or by certified mail with return receipt requested, to the other Party’s representative at the address specified by such Party.

#### **ARTICLE 32 – SEVERABILITY**

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

## **ATTACHMENT C – UC APPENDIX DATA SECURITY AND PRIVACY DATED 4-12-17**

#### **ARTICLE 1 – PURPOSE AND SCOPE OF APPLICATION**

A. This Data Security and Privacy Appendix is designed to protect the University of California’s (UC) Non-public Information and UC Information Resources (defined below). This Appendix describes the data security and privacy obligations of Supplier and its sub-suppliers that connect to UC Information Resources and/or gain access to Non-public Information (defined below).

B. Supplier agrees to be bound by the obligations set forth in this Appendix. To the extent applicable, Supplier also agrees to impose, by written contract, the terms and conditions contained in this Appendix on any third party retained by Supplier to provide services for or on behalf of the UC.

#### **ARTICLE 2 – DEFINED TERMS**

A. Breach. Breach means the unauthorized acquisition, access, use or disclosure of Non-public Information that compromises the security, confidentiality or integrity of such information.



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B. Non-public Information. Supplier's provision of Services under this Agreement may involve access to certain information that UC wishes to be protected from further use or disclosure. Non-public Information shall be defined as: (i) Protected Information (defined below); (ii) information UC discloses, in writing, orally, or visually, to Supplier, or to which Supplier obtains access to in connection with the negotiation and performance of the Agreement, and which relates to UC, its students or employees, its third-party vendors or licensors, or any other individuals or entities that have made confidential information available to UC or to Supplier acting on UC's behalf (collectively, "UC Users"), marked or otherwise identified as proprietary and/or confidential, or that, given the nature of the information, ought reasonably to be treated as proprietary and/or confidential; (iii) trade secrets; and (iv) business information.

C. Protected Information. Protected Information shall be defined as information that identifies or is capable of identifying a specific individual, including but not limited to personally-identifiable information, medical information other than Protected Health Information as defined under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the HIPAA regulations (including, but not limited to 45 CFR § 160.103), Cardholder Data (as currently defined by the Payment Card Industry Data Security Standard and Payment Application Standard Glossary of Terms, Abbreviations, and Acronyms), student records, or individual financial information that is subject to laws restricting the use and disclosure of such information, including but not limited to Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 *et seq.*); the federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2)); the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g); the federal Fair and Accurate Credit Transactions Act (15 USC § 1601 *et seq.*) and the Fair Credit Reporting Act (15 USC § 1681 *et seq.*).

D. UC Information Resources. UC Information Resources shall be defined as those devices, networks and related infrastructure that UC owns, operates or has obtained for use to conduct UC business. Devices include but are not limited to, UC-owned or managed storage, processing, communications devices and related infrastructure on which UC data is accessed, processed, stored, or communicated, and may include personally owned devices. Data includes, but is not limited to, Non-public Information, other UC-created or managed business and research data, metadata, and credentials created by or issued on behalf of UC.

E. Work Product. Work Product shall be defined as works-in-progress, notes, data, reference materials, memoranda, documentation and records in any way incorporating or reflecting any Non-public Information and all proprietary rights therein, including copyrights. Work Product is subject to the Agreement's Intellectual Property, Copyright and Patents Article. For the avoidance of doubt, Work Product shall belong exclusively to UC and unless expressly provided, this Appendix shall not be construed as conferring on Supplier any patent, copyright, trademark, license right or trade secret owned or obtained by UC.

## **ARTICLE 3 – ACCESS TO UC INFORMATION RESOURCES**

A. In any circumstance when Supplier is provided access to UC Information Resources, it is solely Supplier's responsibility to ensure that its access does not result in any access by unauthorized individuals to UC Information Resources. This includes conformance with minimum security standards in effect at the UC location(s) where access is provided. Any Supplier technology and/or systems that gain access to UC Information Resources must contain, at a minimum, the elements in the Computer System Security Requirements set forth in Attachment 1 to this Appendix. No less than annually, Supplier shall evaluate and document whether Supplier's practices accessing UC Information Resources comply with the terms of this Appendix. Documentation of such evaluation shall be made available to UC upon UC's request. Regardless of whether UC requests a copy of such evaluation, Supplier shall immediately inform UC of any findings of noncompliance and certify when findings of non-compliance have been addressed.

B. Supplier shall limit the examination of UC information to the least invasive degree of inspection required to provide the Goods and/or Services. In the event Goods and/or Services include the inspection of a specific threat to or anomaly of UC's Information Resources, Supplier shall limit such inspection in accordance with the principle of least perusal. Supplier will notify UC immediately upon such events.

C. With UC's prior written consent, Supplier may alter a UC Information Resource to the extent such alteration is specifically required for Supplier to provide Goods and/or Services to UC pursuant to the Agreement.

## **ARTICLE 4 – SECURITY PATCHES AND UPDATES**

Supplier is required to perform patches and updates in connection with the Goods and/or Services provided to UC as follows:

A. Devices and Software Provided Directly to UC. Supplier will make available to UC any patches and other updates to system security software or firmware utilized by Supplier in its provision of Goods and/or Services no later than the earlier of thirty (30) days of its commercial release or as recommended by Supplier or Supplier's sub-supplier.

B. Supplier's Internal Systems and Services Necessary for Supplier to fulfill its Obligations to UC. Supplier will regularly apply security patches and functional updates to its internal systems software and firmware.

## **ARTICLE 5 – COMPLIANCE WITH APPLICABLE LAWS, FAIR INFORMATION PRACTICE PRINCIPLES AND UC POLICIES**



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A. Supplier agrees to comply with all applicable state, federal and international laws, as well as industry best practices, governing the collection, access, use, disclosure, safeguarding and destruction of Protected Information. Additionally Supplier will comply as applicable with the *Fair Information Practice Principles*, as defined by the U.S. Federal Trade Commission. Such principles would typically require Supplier to have a privacy policy, and a prominently-posted privacy statement or notice in conformance with such principles. If collecting Protected Information electronically from individuals on behalf of UC, Supplier's prominently-posted privacy statement will be similar to those used by UC (UC's sample Privacy Statement for websites is available at <http://www.ucop.edu/information-technology-services/policies/it-policies-and-guidelines/records-mgmt-and-privacy/files/sampleprivacystatement.doc>). Supplier also agrees, to the extent applicable, to comply with UC's Business and Finance Bulletin IS-2, *Inventory, Classification, and Release of UC Electronic Information* (<https://policy.ucop.edu/doc/7020447/BFB-IS-2>), and IS-3, *Electronic Information Security* (<https://policy.ucop.edu/doc/7000543/BFB-IS-3>).

B. Supplier shall make available to UC all products, systems, and documents necessary to allow UC to audit Supplier's compliance with the terms of this Article 5. UC shall have the right to audit Supplier's compliance with its Information Security Plan and the obligations set forth in Attachment 1.

C. UC reserves the right to monitor Supplier's connectivity to UC Information Resources while Supplier accesses Non-public Information.

## **ARTICLE 6 – PROHIBITION ON UNAUTHORIZED USE OR DISCLOSURE OF NON-PUBLIC INFORMATION**

Supplier agrees to hold UC's Non-public Information, and any information derived from such information, in strictest confidence. Supplier will not access, use or disclose Non-public Information other than to carry out the purposes for which UC disclosed the Non-public Information to Supplier, except as permitted or required by applicable law, or as otherwise authorized in writing by UC. For avoidance of doubt, this provision prohibits Supplier from using for its own benefit Non-public Information or any information derived from such information. If required by a court of competent jurisdiction or an administrative body to disclose Non-public Information, Supplier will notify UC in writing immediately upon receiving notice of such requirement and prior to any such disclosure, to give UC an opportunity to oppose or otherwise respond to such disclosure (unless prohibited by law from doing so). Supplier's transmission, transportation or storage of Non-public Information outside the United States, or access of Non-public Information from outside the United States, is prohibited except on prior written authorization by UC.

## **ARTICLE 7 – SAFEGUARD STANDARD**

Supplier agrees to protect the privacy and security of Non-public Information according to all applicable laws and regulations, by commercially-acceptable standards, and no less rigorously than it protects its own confidential information, but in no case less than reasonable care. Supplier will implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of the Non-public Information. All Protected Information stored on portable devices or media must be encrypted in accordance with the Federal Information Processing Standards (FIPS) Publication 140-2. Supplier will ensure that such security measures are regularly reviewed and revised to address evolving threats and vulnerabilities while Supplier has responsibility for the Non-public Information under the terms of this Appendix. Prior to agreeing to the terms of this Appendix, and periodically thereafter (no more frequently than annually) at UC's request, Supplier will provide assurance, in the form of a third-party audit report or other documentation acceptable to UC, such as SOC2 Type II, demonstrating that appropriate information security safeguards and controls are in place.

## **ARTICLE 8 – INFORMATION SECURITY PLAN**

A. Supplier acknowledges that UC is required to comply with information security standards for the protection of Protected Information as required by law, regulation and regulatory guidance, as well as UC's internal security program for information and systems protection.

B. Supplier will establish, maintain and comply with an information security plan ("Information Security Plan"), which will contain, at a minimum, such elements as those set forth in Attachment 1 to this Appendix.

C. Supplier's Information Security Plan will be designed to:

- i. Ensure the security, integrity and confidentiality of Non-public Information;
- ii. Protect against any anticipated threats or hazards to the security or integrity of such information;
- iii. Protect against unauthorized access to or use of such information that could result in harm or inconvenience to the person that is the subject of such information;
- iv. Reduce risks associated with Supplier having access to UC Information Resources; and
- v. Comply with all applicable legal and regulatory requirements for data protection.



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D. On at least an annual basis, Supplier will review its Information Security Plan, update and revise it as needed, and submit it to UC upon request. At UC's request, Supplier will make modifications to its Information Security Plan or to the procedures and practices thereunder to conform to UC's security requirements as they exist from time to time. If there are any significant modifications to Supplier's Information Security Plan, Supplier will notify UC within 72 hours.

## **ARTICLE 9 – RETURN OR DESTRUCTION OF NON-PUBLIC INFORMATION**

Within 30 days of the termination, cancellation, expiration or other conclusion of this Appendix, Supplier will return the Non-public Information to UC unless UC requests in writing that such data be destroyed. This provision will also apply to all Non-public Information that is in the possession of subcontractors or agents of Supplier. Such destruction will be accomplished by “purging” or “physical destruction,” in accordance with National Institute of Standards and Technology (NIST) Special Publication 800-88. Supplier will certify in writing to UC that such return or destruction has been completed.

If Supplier believes that return or destruction of the Non-public Information is technically impossible or impractical, Supplier must provide UC with a written statement of the reason that return or destruction by Supplier is technically impossible or impractical. If UC determines that return or destruction is technically impossible or impractical, Supplier will continue to protect the Non-public Information in accordance with the terms of this Appendix.

## **ARTICLE 10 – NOTIFICATION OF CORRESPONDENCE CONCERNING NON-PUBLIC INFORMATION**

Supplier agrees to notify UC immediately, both orally and in writing, but in no event more than two (2) business days after Supplier receives correspondence or a complaint regarding Non-public Information, including but not limited to, correspondence or a complaint that originates from a regulatory agency or an individual.

## **ARTICLE 11 – BREACHES OF NON-PUBLIC INFORMATION**

**A. Reporting of Breach:** Supplier will report any confirmed or suspected Breach to UC immediately upon discovery, both orally and in writing, but in no event more than two (2) business days after Supplier reasonably believes a Breach has or may have occurred. Supplier's report will identify: (i) the nature of the unauthorized access, use or disclosure, (ii) the Non-public Information accessed, used or disclosed, (iii) the person(s) who accessed, used, disclosed and/or received Non-public Information (if known), (iv) what Supplier has done or will do to mitigate any deleterious effect of the unauthorized access, use or disclosure, and (v) what corrective action Supplier has taken or will take to prevent future unauthorized access, use or disclosure. Supplier will provide such other information, including a written report, as reasonably requested by UC. In the event of a suspected Breach, Supplier will keep UC informed regularly of the progress of its investigation until the uncertainty is resolved.

**B. Coordination of Breach Response Activities:** Supplier will fully cooperate with UC's investigation of any Breach involving Supplier and/or the Services, including but not limited to making witnesses and documents available immediately upon Supplier's reporting of the Breach. Supplier's full cooperation will include but not be limited to Supplier:

- i. Immediately preserving any potential forensic evidence relating to the Breach, and remedying the Breach as quickly as circumstances permit
- ii. Promptly (within 2 business days) designating a contact person to whom UC will direct inquiries, and who will communicate Supplier responses to UC inquiries;
- iii. As rapidly as circumstances permit, applying appropriate resources to remedy the Breach condition, investigate, document, restore UC service(s) as directed by UC, and undertake appropriate response activities;
- iv. Providing status reports to UC on Breach response activities, either on a daily basis or a frequency approved by UC;
- v. Coordinating all media, law enforcement, or other Breach notifications with UC in advance of such notification(s), unless expressly prohibited by law; and
- vi. Ensuring that knowledgeable Supplier staff is available on short notice, if needed, to participate in UC-initiated meetings and/or conference calls regarding the Breach.

**C. Grounds for Termination.** Any Breach may be grounds for immediate termination of the Agreement by UC.

**D. Assistance in Litigation or Administrative Proceedings.** Supplier will make itself and any employees, subcontractors, or agents assisting Supplier in the performance of its obligations available to UC at no cost to UC to testify as witnesses, or otherwise, in the event of a Breach or other unauthorized disclosure of Non-public Information caused by Supplier that results in litigation, governmental investigations, or administrative proceedings against UC, its directors, officers, agents or employees based upon a claimed violation of laws relating to security and privacy or arising out of this Appendix.

## **ARTICLE 12 – ATTORNEY'S FEES**



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In any action brought by a party to enforce the terms of this Appendix, the prevailing party will be entitled to reasonable attorney's fees and costs, including the reasonable value of any services provided by in-house counsel. The reasonable value of services provided by in-house counsel will be calculated by applying an hourly rate commensurate with prevailing market rates charged by attorneys in private practice for such services.

## **ARTICLE 13 – INDEMNITY**

The Agreement includes an Indemnity provision, but for the avoidance of doubt regarding a Breach involving Protected Information, Supplier's indemnification obligations under the Agreement will include the following fees and costs which arise as a result of Supplier's breach of this Appendix, negligent acts or omissions, or willful misconduct: any and all costs associated with notification to individuals or remedial measures offered to individuals, whether or not required by law, including but not limited to costs of notification of individuals, establishment and operation of call center(s), credit monitoring and/or identity restoration services; time of UC personnel responding to Breach; fees and costs incurred in litigation; the cost of external investigations; civil or criminal penalties levied against UC; civil judgments entered against UC; attorney's fees, and court costs.

## **ARTICLE 14 – ADDITIONAL INSURANCE**

In addition to the insurance required under the Agreement, Supplier at its sole cost and expense will obtain, keep in force, and maintain an insurance policy (or policies) that provides coverage for privacy and data security breaches. This specific type of insurance is typically referred to as Privacy, Technology and Data Security Liability, Cyber Liability, or Technology Professional Liability. In some cases, Professional Liability policies may include some coverage for privacy and/or data breaches. Regardless of the type of policy in place, it needs to include coverage for reasonable costs in investigating and responding to privacy and/or data breaches with the following minimum limits unless UC specifies otherwise: \$1,000,000 Each Occurrence and \$5,000,000 Aggregate.

## **FIRST AMENDMENT TO APPENDIX – DATA SECURITY AND PRIVACY SAFEGUARD STANDARD FOR PAYMENT CARD DATA (IF APPLICABLE)**

A. Supplier agrees that it is responsible for the security of Cardholder Data (as currently defined by the Payment Card Industry Data Security Standard and Payment Application Standard Glossary of Terms, Abbreviations, and Acronyms) that it possesses (if any), including the functions relating to storing, processing and transmitting Cardholder Data. In this regard, Supplier represents and warrants that it will implement and maintain certification of Payment Card Industry ("PCI") compliance standards regarding data security, and that it will undergo independent third party quarterly system scans that audit for all known methods hackers use to access private information and vulnerabilities that would allow malicious software (*e.g.*, viruses and worms) to gain access to or disrupt UC Information Resources. These requirements, which are incorporated herein, can be found at [https://www.pcisecuritystandards.org/document\\_library](https://www.pcisecuritystandards.org/document_library). Supplier agrees to provide at least annually, and from time to time at the written request of UC, current evidence (in form and substance reasonably satisfactory to UC) of compliance with these data security standards, which has been properly certified by an authority recognized by the payment card industry for that purpose.

B. In connection with credit card transactions processed for UC, Supplier will provide reasonable care and efforts to detect fraudulent payment card activity. In performing the Services, Supplier will comply with all applicable rules and requirements, including security rules and requirements, of UC's financial institutions, including its acquiring bank, the major payment card associations and payment card companies. If during the term of an Agreement with UC, Supplier undergoes, or has reason to believe that it will undergo, an adverse change in its certification or compliance status with the PCI standards and/or other material payment card industry standards, it will promptly notify UC of such circumstances.

C. Supplier further represents and warrants that software applications it provides for the purpose of performing Services related to processing payments, particularly credit card payments, are developed in accordance with all applicable PCI standards, and are in compliance with all applicable PCI standards, including but not limited to Payment Application Data Security Standards (PA-DSS), Point to Point Encryption Solution Requirements (P2PE) including approved card readers or Point of Interaction (POI). As verification of this, Supplier agrees to provide at least annually, and from time to time upon written request of UC, current evidence (in form and substance reasonably satisfactory to UC) that any such application it provides is certified as complying with these standards and agrees to continue to maintain that certification as may be required.

D. Supplier will immediately notify UC if it learns that it is no longer PCI compliant under one of the standards identified above, or if any software applications or encryption solutions are no longer PCI compliant.

## **ATTACHMENT 1**

A. Supplier will develop, implement, and maintain a comprehensive Information Security Plan that is written in one or more readily accessible parts and contains administrative, technical, and physical safeguards. The safeguards contained in such program must be consistent with the safeguards for protection of Protected Information and information of a similar character set forth in any state or federal regulations by which the person who owns or licenses such information may be regulated.



B. Without limiting the generality of the foregoing, every comprehensive Information Security Plan will include, but not be limited to:

- i. Designating one or more employees to maintain the comprehensive Information Security Plan;
- ii. Identifying and assessing internal and external risks to the security, confidentiality, and/or integrity of any electronic, paper or other records containing Protected Information and of UC Information Resources, and evaluating and improving, where necessary, the effectiveness of the current safeguards for limiting such risks, including but not limited to:
  - a. Ongoing employee (including temporary and contract employee) training;
  - b. Employee compliance with policies and procedures; and
  - c. Means for detecting and preventing security system failures.
- iii. Developing security policies for employees relating to the storage, access and transportation of records containing Protected Information outside of business premises.
- iv. Imposing disciplinary measures for violations of the comprehensive Information Security Plan rules.
- v. Preventing terminated employees from accessing records containing Protected Information and/or UC Information Resources.
- vi. Overseeing service providers, by:
  - a. Taking reasonable steps to select and retain third-party service providers that are capable of maintaining appropriate security measures to protect such Protected Information and UC Information Resources consistent with all applicable laws and regulations; and
  - b. Requiring such third-party service providers by contract to implement and maintain such appropriate security measures for Protected Information.
- vii. Placing reasonable restrictions upon physical access to records containing Protected Information and UC Information Resources and requiring storage of such records and data in locked facilities, storage areas or containers.
- viii. Restrict physical access to any network or data centers that may have access to Protected Information or UC Information Resources.
- ix. Requiring regular monitoring to ensure that the comprehensive Information Security Plan is operating in a manner reasonably calculated to prevent unauthorized access to or unauthorized use of Protected Information and UC Information Resources; and upgrading information safeguards as necessary to limit risks.
- x. Reviewing the scope of the security measures at least annually or whenever there is a material change in business practices that may reasonably implicate the security or integrity of records containing Protected Information and of UC Information Resources.
- xi. Documenting responsive actions taken in connection with any incident involving a Breach, and mandating post-incident review of events and actions taken, if any, to make changes in business practices relating to protection of Protected Information and UC Information Resources.

**Computer System Security Requirements**

To the extent that Supplier electronically stores or transmits Protected Information or has access to any UC Information Resources, it will include in its written, comprehensive Information Security Plan the establishment and maintenance of a security system covering its computers, including any wireless system that, at a minimum, and to the extent technically feasible, will have the following elements:

- A. Secure user authentication protocols including:
- i. Control of user IDs and other identifiers;
  - ii. A secure method of assigning and selecting passwords, or use of unique identifier technologies, such as biometrics or token devices;
  - iii. Control of data security passwords to ensure that such passwords are kept in a location and/or format that does not compromise the security of the data they protect;



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- iv. Restricting access to active users and active user accounts only; and
- v. Blocking access to user identification after multiple unsuccessful attempts to gain access or the limitation placed on access for the particular system.
- vi. Periodic review of user access, access rights and audit of user accounts.

## B. Secure access control measures that:

- i. Restrict access to records and files containing Protected Information and systems that may have access to UC Information Resources to those who need such information to perform their job duties; and
- ii. Assign unique identifications plus passwords, which are not vendor supplied default passwords, to each person with computer access, which are reasonably designed to maintain the integrity of the security of the access controls.

## C. Encryption of all transmitted records and files containing Protected Information.

## D. Adequate security of all networks that connect to UC Information Resources or access Protected Information, including wireless networks.

## E. Reasonable monitoring of systems, for unauthorized use of or access to Protected Information and UC Information Resources.

Revised

## **ATTACHMENT D – UC APPENDIX ECOMMERCE DATED 9-19-17 (UC Specific)**

This Electronic Commerce Appendix specifies the electronic commerce requirements applicable to Supplier in providing the Goods and/or Services.

### **SECTION 1 - GENERAL TERMS**

Each UC Location offers an electronic web-based purchasing and catalog system to facilitate the purchase of Goods and/or Services from UC suppliers. UC Locations' eProcurement systems currently are provided by two suppliers. This Appendix sets forth the terms and conditions that will govern Supplier's sale of Goods and/or Services through UC's eProcurement systems.

### **SECTION 2 - DEFINITIONS**

**Catalog(s)** refers to the list of detailed product information, agreement pricing, manufacturer part numbers and/or service descriptions relating to the Goods and/or Services to be offered either as a Punch-Out Catalog, a Hosted Catalog or in a combination. This may include the creation of multiple Hosted Catalogs.

**EProcurement and eCommerce** are used interchangeably to mean UC's electronic web-based purchasing and catalog systems. Each UC location has a branded eProcurement site.

**Go Live Date** means the date on which a Catalog will be active.

**Hosted Catalog** means a Catalog that is a properly formatted computer file supplied to all UC Locations through the Locations' respective eProcurement systems.

**Order** means a purchase order for Goods and/or Services placed by a User through an eProcurement system.

**Order Data** means all data and information relating to Orders, including, without limitation, the specifics of a given transaction.

**Punch-Out Catalog** means a Catalog, hosted by Supplier on Supplier's Site. Users may access this Punch-Out Catalog via an internet link provided by Supplier to UC that redirects a User from the campus eProcurement site to Supplier Site. The Punch-Out Catalog will permit: (a) Users to access the Supplier Website when a User selects the Punch-Out Catalog; (b) User to create an Order through the eProcurement sites; and (c) UC eProcurement sites to forward an Order to Supplier for confirmation and Order processing along with Order status inquiry.

**Supplier Mark** means Supplier's name, trade name, and/or trademarks, service mark, or any derivation thereof.

**Supplier Site** means an internet site operated and maintained by Supplier that has been made subject to this Appendix.

**UC Mark** means UC's name, trade name, and/or trademarks, service marks, or any derivation thereof.

**User** means an individual authorized by a UC location to use an eProcurement system.

### **SECTION 3 – RIGHT TO USE**

UC grants to Supplier the right to sell Goods and/or Services to UC through the eProcurement systems. Supplier will be responsible for any cost of operation or dispute with regard to its interface with UC's eProcurement systems.

### **SECTION 4 – ESTABLISHMENT/MAINTENANCE OF CATALOG; SITE RESPONSIBILITY; LICENSE**

(a) **Establishment and Maintenance.** The parties agree to electronically link the functionality of their respective systems, using commercially reasonable efforts. Supplier will provide its Catalog(s) to UC in a file format that will interface seamlessly with UC's eProcurement systems. These Catalog files will be in compliance with each UC Location's eProcurement system and Order Data will be transmitted according to the appropriate cXML or xCBL standards as the case may be. For Hosted Catalogs, Supplier must provide





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UC with updated versions of the Catalog file with, at a minimum, full descriptions and images that Supplier currently utilizes for items offered in its proprietary websites and Punch-Out Catalogs. The parties will update each other regarding eCommerce specifications as needed from time to time.

Supplier must notify UC's Contract Administrator at least three (3) weeks in advance of the proposed Go Live Date if it will be requesting additions, deletions or modifications to the Catalogs. After such advance notification, Supplier must provide UC with Catalog files containing the requested additions, deletions or modifications with no less than the lead time directed by UC's Contract Administrator; provided, however, that for all Catalogs that Supplier requests to have a January 1 Go Live Date, Supplier must submit proposed files no later than December 1. Upon UC's approval of the new Catalog file, Supplier will make the updated version of the Catalog file effective on the Go Live Date on which UC and Supplier agree. If UC rejects a Catalog more than once because it does not meet UC's acceptance criteria, the Contract Administrator will suspend Supplier's price/content change until the date of Supplier's next contracted change.

If there is a conflict between a price in a Hosted Catalog and a Punch-Out Catalog, UC will be invoiced at the lower price. If the price discrepancy is due to UC's failure to timely update a Hosted Catalog, Supplier may charge the higher price and UC will work with Supplier to rectify the problem as quickly as possible.

All Supplier-provided pricing in any Catalogs, whether Hosted or Punch-Out, will be inclusive of all shipping, handling, fees and charges of any sort, except applicable taxes.

Supplier is responsible for providing UC with Catalogs that contain accurate pricing and data in accordance with the Agreement. If UC determines there are errors in the pricing or data attributes of a Catalog, UC will notify Supplier of those errors in writing and reject the Catalog. Supplier will have no more than ten (10) business days to review and correct the errors. Supplier agrees that UC may block customized Catalogs at the SKU and/or category level.

UC's Terms and Conditions of Purchase state that the Goods and/or Services must be exactly as specified in the Agreement. For the avoidance of doubt, this means that Supplier may not, without UC's prior consent, substitute items, change SKU numbers or change the number of items in a package in any Catalog.

(b) Site Responsibility. Except as otherwise set forth herein, each party will be responsible, at its own expense, for: (i) developing, operating and maintaining its website; (ii) acquiring and maintaining its server hardware and software (or obtaining third-party hosting services) for its website; and (iii) maintaining Internet connectivity.

(c) License. Supplier hereby grants to UC, at no additional cost, a limited, non-exclusive, royalty-free right to link to and access the Supplier Site from the eProcurement sites, subject to the terms and conditions herein and solely for the purpose of permitting Users to access the Services. All Supplier Marks will remain the sole property of Supplier.

## **SECTION 5 – USER SUPPORT**

(a) UC Duties. Each UC Location will provide its Users with initial contact and system support assistance on all functionality and use issues for eProcurement (including links to the Supplier Site). When known, UC will promptly notify Supplier of any such issues relating to the Catalog, the Supplier Site and/or other Supplier materials/systems.

(b) Supplier Duties. Supplier will provide all customer support relating to the Catalog, Supplier Goods and/or Services and Supplier Sites in a manner consistent with the customer support that Supplier provides to other customers, and at least as good as the customer support that Supplier provides to customers who are purchasing through means other than websites.

## **SECTION 6 – PROPRIETARY RIGHTS**

UC's Terms and Conditions of Purchase contains provisions regarding the parties' rights and responsibilities with respect to intellectual property relating to the Goods and Services. Without altering those provisions, the parties additionally agree as follows. UC may require Supplier to "brand" Supplier's Punch-Out Catalog with one or more UC Marks. If UC requires Supplier to utilize one or more UC Marks on Supplier's Punch-Out Catalog, UC will provide the appropriate artwork and such artwork will be deemed to have been provided with a limited, non-exclusive, non-sub licensable right for Supplier to use it solely for the purpose of a UC-branded Punch-Out Catalog hosted by Supplier and subject to the following terms:

Supplier may not make any additional use of the UC Marks without UC's prior written approval.

Supplier's use of the UC Marks in the Punch-Out Catalog must acknowledge UC's ownership of the UC Marks. Supplier will include all notices and legends with respect to UC trademarks, trade names, or copyrights as may be required by applicable trademark and copyright laws or which may be reasonably requested by UC. Supplier agrees not to claim any title to UC Marks or any right to use UC Marks except as permitted by this Appendix. Upon termination of this Appendix or the Agreement, all rights to UC Marks conveyed by UC to Supplier will cease and Supplier will destroy or return to UC all media with UC Marks. UC specifically reserves any and all rights to UC Marks not specifically granted to Supplier.

Supplier grants to UC the right to use Supplier's trademarks, logos, trade names, and service marks for the purpose of promoting UC eProcurement sites to the UC community. UC acknowledges Supplier's right, title and interest in and to Supplier's Marks and Supplier's exclusive right to use and license the use of Supplier Marks and agrees not to claim any title to Supplier Marks or any right to use Supplier Marks except as permitted by this Addendum. UC will include all notices and legends with respect to Supplier trademarks, trade names, or copyrights as may be required by applicable trademark and copyright laws or which may be reasonably requested by Supplier. Upon termination of this Appendix, all rights to Supplier Marks conveyed by Supplier to UC will cease and UC will destroy or



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return to Supplier all media with Supplier Marks. Supplier specifically reserves any and all right to Supplier Marks not specifically granted to UC.

The licenses granted in the previous paragraphs regarding UC Marks and Supplier Marks are subject to the ongoing approval of the party owning the respective trademarks, logos, trade names, or copyrights. Such ongoing approval includes the ability to terminate – at any time, for any reason, and in the sole discretion of the owner of the respective trademarks, logos, trade names, or copyrights – the trademark licenses provided in the preceding paragraphs for any particular trademark, logo, trade name, or copyrighted work without necessarily terminating this Appendix. Each party agrees not to take any action that will adversely reflect upon or damage the goodwill, reputation, or the brand value of the other party. Each party further agrees not to take any action that is inconsistent with the other party’s ownership of the respective trademarks, trade names, or copyrights. At all times (including following termination of the Agreement), Supplier agrees to comply with Section 92000 of California’s Education Code.

(a) Grant of License. Supplier hereby grants UC a non-exclusive, royalty-free: (i) license to use, copy, transmit, and display the Catalog, any information contained therein and the Supplier Marks for the purposes of permitting Customers to access information about and order Supplier Goods and/or Services from a Catalog and (ii) if Supplier is using a Punch-Out Catalog, right to link to and access the Punch-Out Catalog on the Supplier Site, for the purposes of permitting Customers to access the Supplier Website and permitting Customers to order Supplier Goods and/or Services.

(b) Modifications. UC will not modify or remove any of the proprietary rights markings in the Catalog. UC will not modify the Catalog, except as supplied by Supplier. UC will not make any representations or warranties, or provide any information, to any third party regarding any Supplier Goods and/or Services (including, but not limited to, any representations or warranties of any information regarding availability, delivery, pricing, characteristics, qualifications or specifications thereof). If UC believes in good faith that any Supplier information does not conform to the requirements of the associated UC Agreement or this Appendix, UC will be entitled to withdraw the Catalog from UC eProcurement sites. In such a case, UC will promptly notify the Supplier of the actions it has taken and will work with the Supplier promptly to resolve UC’s concerns. When UC’s concerns are satisfactorily resolved, UC will promptly restore the Catalog, if appropriate. UC will have no liability to the Supplier or anyone else for exercising these rights.

(c) Acknowledgment. Each party acknowledges that the technology embodied in the other party’s Site may be based on patented or patentable inventions, trade secrets, copyrights or other intellectual property or proprietary rights (“Intellectual Property Rights”) owned by the other party and its applicable licensors.

(d) UC Rights. As between the parties, UC will be the sole owner of – or, with respect to any items licensed by UC, will retain all rights to – UC eProcurement sites and all Intellectual Property Rights associated with UC eProcurement sites, including any modifications, updates, enhancements or upgrades to any of the foregoing, as well as any Order Data generated or collected on such Site (collectively, the “UC Materials”). Except as provided herein, Supplier may not copy or use in any way, in whole or in part, any UC Materials without UC’s prior written approval. Any permitted copies of such property, in whole or in part, alone or as part of a derivative work, will remain UC’s sole property. Supplier agrees to reproduce and include UC’s copyright, trademark and other proprietary rights notices on any permitted copies of UC Materials including, without limitation, partial copies and copied materials in derivative works. Supplier will not copy or reproduce any third-party copyrighted or trademarked materials, which appear on or are otherwise associated with any UC eProcurement site without UC’s prior written consent.

## **SECTION 7 – MULTIPLE SUPPLIERS**

Supplier acknowledges that all UC eProcurement sites are intended to facilitate Users’ ability to obtain Goods and/or Services from more than one supplier. Nothing in this Appendix will be construed to prevent UC from entering into similar agreements with any third parties including, without limitation, suppliers that may be in competition with Supplier.

## **SECTION 8 – WARRANTY DISCLAIMER**

UC does not warrant that access to UC eProcurement sites will be uninterrupted or that the results obtained by use of UC eProcurement sites will be error-free.

## **SECTION 9 – DISPUTES AND CHANGES IN THE SERVICES**

(a) UC and Supplier agree to negotiate in good faith to resolve problems, questions and disputes.

(b) Where improvements and clarifications can be made in the business processes related to eProcurement, both parties agree to incorporate such changes as long as they are mutually agreed upon.

## **ATTACHMENT E – DEFINITIONS**

### **General**

**Broad Line Manufacturer/Qualified Supplier**– a Manufacturer who can supply the required services and is able to provide their manufactured product covering a minimum of (but not limited to) the five (5) main/mandatory categories of Office Furniture (System, Seating, Storage, Free Standing Furniture, and Tables) which meet RFP specifications (including UC Minimum Sustainability Requirements and Ergonomic Requirements).



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**Dealer or Dealer Service Network Provider** - Subcontractor and/or provider of goods and services on behalf of Manufacturer such as furniture, furniture design, layout design, workspace planning, showroom demonstration, warehouse storing, delivery, installation, customer service, invoicing, payment collections, credit card processing, etc.

**Design - Major Revision** - A major revision is defined as any modification in which an excess of 30% of the design is revised.

**High Volume Tier** – Dollar amount of product purchased, which exceeds predetermined discount off list pricing and therefore qualifies for negotiated pricing; all such pricing tiers to be found within Exhibit A of Statement of Work.

**Project Management** - Enhanced professional services through a Dealer authorized representative. Dealer authorized representative provided under the Agreement will provide project management services, in which many segments of a project must be professionally coordinated and well-orchestrated by a project manager or team and proper oversight must be maintained and milestones must be adhered to.

**Punch List** -A term used to describe an inventory list of all corrections, additions, or deletions to an Installation or project which requires an action on the part of the Supplier, to be completed. The Punch list will detail the point of acceptance, rejection or remedial action necessary for any product. Includes, but not limited, to missing, damaged, mistakenly-shipped or incorrect installation parts, components, or whole pieces of furniture as directly related to the original purchase order.

**Reconfiguration** -A term used to describe the process of disassembly, re-assembly and possible relocation and redesign of existing furniture systems.

**Services** - Refers to all services provided by the Dealer, including "Value-Added" services, and "Per Hourly-Rate" services as noted within and Attachment A – Statement of Work.

**Supplier** – Manufacturer and Primary Contracting Entity, as represented by its Dealers/Authorized Dealer Services Network and its other business entities within its supply chain for the purpose of proposing goods and services under this RFP, as a single contracting entity. The term Supplier, therefore, is used interchangeably with Manufacturer, Seller, Dealer, Designer, Installer, or any supply chain entity the Supplier proposes to carry out its duties and obligations in answer to this solicitation.

**Value-Added Services** - Includes all enhanced professional services, such as design and installation, provided by Dealer.

**Waste Removal/Removal of Debris**- Refers to the removal all packaging materials from the University premises by the Dealer at the time of delivery and Installation and recycled or disposed of in accordance with UC's Sustainability Policy

## Furniture Items Definitions

***Exclusions to below – Any “Product listed or registered with FDA as a medical device or a furnishing that meets a specific clinical requirement for UC clinicians.”***

**Paneled Systems** - Pre-fabricated paneled workstations or cubicle office. Includes panels, desk, storage, filing work surfaces, cabinetry, accessories, etc. **Task Chair**: A task chair is a chair designed for the completion of work tasks that need to be performed while sitting, including paperwork, phones, computer work, or other tasks. A task chair should provide users with an adjustable, stable seating surface that supports the spine, promotes dynamic movement, and can be adjusted to fit a majority of people. All task chairs shall follow the guidelines of Exhibit E of SOW.

CSA- Z412, Guideline on Office Ergonomics, page 161

**Task Chair**: A task chair is a chair designed for the completion of work tasks that need to be performed while sitting, including paperwork, phones, computer work, or other tasks. A task chair should provide users with an adjustable, stable seating surface that supports the spine, promotes dynamic movement, and can be adjusted to fit a majority of people. All task chairs shall follow the guidelines of Exhibit E of SOW.

CSA- Z412, Guideline on Office Ergonomics, page 161



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**Side Chair:** A side chair is a chair designed for short-term sitting (i.e. guest chair) and is not designed to be used during work tasks. A side chair usually has a fixed seat height, seat angle, and backrest, and it may or may not have arms. The minimum weight capacity is 250 pounds.

ANSI-BIFMA x5.1-2002

**Desk/Work Surface:** A desk/work surface is a piece of furniture with a surface designed to allow the user to complete their work tasks. Work tasks can include but are not limited to reading, writing, and use of computers, telephones, calculators, and microscopes. Surfaces can be flat or angle adjustable (for example drafting tables). Work surfaces should be designed to support work equipment and task materials while allowing adequate clearance, access, and support for the majority of users. Desks/work surfaces may be freestanding or part of a panel system which is secured to the wall or floor. All work surfaces shall follow the dimension and height adjustability guidelines of Exhibit E of SOW.

ISO 9241-5, Ergonomic requirements for office work with visual display terminals, page 9, 15

**Storage:** A piece of furniture designed to store items. Storage units shall meet the following requirements:

Adjustment controls should be easy to operate from usual working positions and designed so they encourage correct use

Drawers should be designed to prevent unintentional opening

Drawers should not require undue force to open and close

Drawers should not be able to be pulled out so they unintentionally fall

Casters on mobile pedestal drawers should be chosen to match the floor surface where the pedestal will be used

## **ATTACHMENT F – RFP (RFP-OFFICE FURNITURE - UC SYSTEMWIDE – JULY182019)**

See as separate Attachment

## **ATTACHMENT G – SUPPLIER’S RESPONSE TO RFP, DATED 8-21-19**

See as separate attachment



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**ATTACHMENT A - STATEMENT OF WORK**  
**KIMBALL OFFICE - AGREEMENT #2019.001896**

This Statement of Work – Attachment A (“SOW”) is issued pursuant to Purchasing Agreement #2019.001896 dated May 20, 2020 between UC and Kimball Office Inc. (“Agreement”).

**1. Title and Description of the Scope of Goods and/or Services**

Supplier shall offer a line of Office Furniture and related services; both meeting requirements of this Agreement to the University of California System-wide. These product lines must include the categories of Systems Furniture, Freestanding Furniture, Storage, Tables, and Chairs/Seating. Other categories may include Higher Education Classroom Furniture, Fixed Seating, Architectural Elements, Healthcare/Lab, Integrated Technology, Accessories and Technical Support, Outdoor Furniture, and other related categories as approved by the UC Procurement, Office of the President. Supplier, through this Agreement shall also offer a fully comprehensive product line and list of services to a national market, through OMNIA Partners, Public Sector, noting a ‘fully compressive product line’/national product line is not limited by UC specific ergonomic and sustainability requirements.

Related services, either directly or through a subcontracted dealer network; shall include (but are not limited to) design/consultation, delivery, storage, project management, and installation (“Services”). Together, the “Goods and Services” all in accordance with Federal and State of California laws and the requirements of the UC as further detailed in the incorporated RFP, its responses, and below.

**2. Implementation**

Supplier shall provide and execute an implementation plan which shall provide for an early National roll-out (with Webinar) and a phased plan UC rollout by November 1, 2020, inclusive of the items below:

- Campus Profile Development
- Campus Visits/UCOP Rollout
- Campus Training
- Marketing and Business Development
- Catalog development, aligning Price Discount List with lines/products n with UC Sustainability and Ergonomic Requirements
- Ecommerce Integration with Testing and Pilots (18mo from date of contract)

**Supplier Obligations**

**Action**

Notify our Four (4) Regional Government Sales Managers. They are the owners of the Omnia/UC contract for their respective regions. As the contract specialists, they would coordinate all training among the distribution channel’s sales staff and other Kimball sales representatives

**Date relative to contract signature**

Within 10 days

Kimball Executive leadership and Omnia Executive leadership will communicate the new Omnia/UC national agreement contract through its website and direct communications to its sales teams and authorized distribution channel. As well as a press release to various trade publications

Within 30 days

Create power point and other types of communication that highlight new award and its changes. Create presentation and develop training schedule for all Kimball distribution channel. Review all existing opportunities and notify of new award and date

Within 60 days

Complete presentation and roll out to all Kimball Distribution channel. Develop tracking plan for new contract progress. Meet with Omnia and UC to review progress and activity.

Within 90 days

**Action**

**Contract Start - 11/01/20**

Kimball will launch a soft roll out with the help of UC to all campus and participating agencies.  
 Conduct a meet and greet with design, construction, facilities and department heads  
 Create marketing materials for email, providing contact information  
 Acquire names of design staff and facilities staff, calendar of campus vendor shows

Prior to implementation date

Introduction, by campus with service partners/Dealers  
 Training at each campus with facilities, designers and procurement  
 Post cards announcing new products and or custom designs completed  
 Announcement in the major publications  
 Joint community outreach with various campuses  
 Design marketing and support based on each campus's need and demographic  
 One campus per quarter to factory tour  
 Joint research projects to improve the use of spaces and student engagement/success  
 Seating labs, product display areas  
 Integrate technology where appropriate with AV, VR, AR, etc.

9-28-20 -11/1/2020

**UC ECOMMERCE**

Assign an e-commerce team lead/project manager specific to UC. Kimball would work with the UC System along with individual campuses to understand the priorities and develop a phased implementation schedule based on the priorities

1st Week

Define a specific set of materials (including Options)  
 Within 6 months: Create a punchout site and link to the e-procurement site of the client

1st 3 months

Provide access and training to the dealer(s) who would service the ordering process. For an e-commerce program to be successful, training is of greatest importance. This training needs to happen conjunctly between the dealer and the campus. Communication and knowledge gained through a joint training program will allow Kimball to learn how best to support each campus and integrate seamlessly into their processes and business models.

Within 9 months

Testing/Piloting of the system to insure everything is operating properly

Within 1st year

**UC Obligations**

**Action**

**Contract Start - 11/01/20**

UC agrees to provide staff hours and expertise, as determined necessary by the UC, in order to assist with contract implementation and the required integrations with UC eCommerce systems; such efforts to include, but not be limited to:

Contract Guidance Documents	Prior to Roll-out
Participation - Announcement Webinar	Within 1 month of contract
Launch marketing through UC internal newsletters	Oct-20
Campus Roll-out Events	Estimate 9/29/20 to 10/31/20
Collaboration of UCOP ECOE and P&C to achieve eCommerce integration	Complete -18 mo. from contract
Participation in the development and issuance of surveys	Ongoing

**3. Place(s) of Performance/Locations**

Services shall be provided nationally through OMNIA Partners, for public sector purchasing by Participating Agencies. UC, as Principal Procurement Agency, shall receive services for its locations which are described below; such locations to include any UC Locations added during the term of this contract:

- a. Ten Campuses - UC Berkeley, UC Davis, UC Irvine, UC Los Angeles, UC Merced, UC Riverside, UC San Diego, UC San Francisco, UC Santa Barbara, UC Santa Cruz
- b. Five Medical Centers – UC Davis, UC Irvine, UC Los Angeles, UC San Diego, UC San Francisco
- c. The UC Office of the President – A central system-wide headquarters with offices primarily located in Oakland and Sacramento, California, and teaching/administrative offices in Washington, D.C.

- d. The Division of Agriculture and Natural Resources – Comprised of over 60 local offices and Research and Extension Centers located throughout California, and County Cooperative Extension offices.
- e. UC Hastings College of Law
- f. Lawrence Berkeley National Lab, which is owned by the Federal Government, but managed by the University of California.
- g. Lawrence Livermore Lab and additional centers and offices as further detailed at:  
<http://www.universityofcalifornia.edu/uc-system/parts-of-uc>
- h. Any awarded Agreement(s) will be available to all current and future locations of the University of California and its Affiliates.
- i.

**4. Key Personnel**

**NATIONAL PROGRAM** - Dealers/Subcontractors authorized to provide Goods and/or Services nationally, under this SOW, can be found at <https://www.kimball.com/contactus/all-dealers/>.

UC PROGRAM - Dealers authorized to provide services to the UC are listed in Exhibit F to this Statement of Work.

Dealers may be added or deleted, at request of Kimball International over the lifetime of this Agreement..

**Supplier’s Account Manager** is listed below, is subject to UC approval, and has overall responsibility for managing the UC/Supplier relationship. If this does not include National Contract, please list in next section:

Name	Wendy Schnarr	TITLE: Public Sector Sales Manager
Email	Wendy.schnarr@kimball.com	
Phone	812-631-2995	
Address	512 Balsam Dr. Euless, TX	

**Supplier’s Account Management Team** is:

Name	Lisa Carter	TITLE: Vice President, Sales
Email	Lisa.carter@kimball.com	
Phone	703-975-3329	
Address	1130 Connecticut Ave. NW Ste 1150 Washington DC	
Name	Vikki Gibbs	TITLE: Director of Sales, West
Email	Vikki.gibbs@kimball.com	
Phone	303-396-4581	
Address	5280 E. Caley Ave. Centennial, CO	
Name	Haley Rosenkranz	TITLE: Strategic Sales Manager
Email	Haley.rosenkranz@kimball.com	
Phone	812-482-6468	
Address	1600 Royal St. Jasper, IN	
Name	TBD	TITLE: State Contract Specialist
Email		
Phone		
Address	1600 Royal St. Jasper, IN	

**UC’S Project Mangers:**

Contract Implementation & Rollout for UC Locations	Yvonne Macon, Contract Administrator <a href="mailto:Yvonne.Macon@ucop2022">Yvonne.Macon@ucop2022</a>
eProcurement Implementation	Lia Scott <a href="mailto:liascott@ucdavis.edu">liascott@ucdavis.edu</a> & Terese Merrell <a href="mailto:Terese.Merrell@ucop.edu">Terese.Merrell@ucop.edu</a>
Sustainability Reporting,	Stephanie Lopez <a href="mailto:stephanie.Lopez@ucop.edu">stephanie.Lopez@ucop.edu</a> & Heather Perry <a href="mailto:heather.perry@ucsb.edu">heather.perry@ucsb.edu</a>
CSR Assessment, (EcoVadis), Gap Analysis, and Improvement Planning	Stephanie Lopez <a href="mailto:stephanie.Lopez@ucop.edu">stephanie.Lopez@ucop.edu</a> & Yvonne Macon



## 5. Reporting Requirements

Supplier will provide, at a minimum, periodic reports detailing usage and spend by location, incentives and remittance data, and UC required sustainability data (UC Specific). Supplier agrees to provide other reports to UC, as reasonably requested by UC during the Term of the Agreement and any extension(s) thereof, at no additional cost. Supplier shall use UC provided templates if available. Reporting periods and requirements, specific to the UC, are provided in Exhibit D:

## 6. Assumptions and Exceptions (This section is specific to UC)

This Agreement is one of three Broadline Awards made as a result of RFP ## 001218 - RFP - OFFICE FURNITURE - UC SYSTEMWIDE – JULY182019 and includes the categories (without minimum purchase volumes) and services, stated in Section 1. UC additional requirements, restrictions, or exceptions are listed below and are considered to apply, only to the UC:

- A. Any previously established ergonomic contracts with targeted awards in the areas of task chair, tall task stools, height adjustable worksurfaces, and work tools (monitor arms, keyboard trays).
- B. Goods and Services, purchased by a contractor, awarded business through the UC Construction Bidding Process, are not included in this scope of work, unless the following criteria are met:
  - 1. Use of contract(s) are specified, as a requirement or option, within the Construction RFP documents; such use to benefit the UC project only and to be validated by protocols established by the campus or within those documents.
  - 2. For tracking purposes only, the UC Procurement Contract Administrator, shall be notified of construction usage when purchases made by contractors (general or sub) are high volume =>\$400K and purchased for construction RFP projects (not a solicitation by Campus/UCOP Procurement & Contracts).
- C. Architectural Elements are included (if offered by Supplier) in this scope of work, however Demountable Walls and/or any 'ceiling height wall product', ordered against this Agreement through standard/non-construction channels (e.g. PO or P-card process) will be subject to order restrictions. The below approvals must be obtained in writing and submitted by UC department or Buyer, to Supplier/Dealer prior to an order being placed by a Dealer to a manufacturer. Supplier will obtain and record email approvals. These shall be attached to final campus POs.
  - 1. Campus Fire Marshall (or equivalent, if none exists)
  - 2. Design & Construction Management (PM or Management) or Facilities Management (Director or Associate Director)
- D. Spend directed to Small Businesses, deemed necessary by the UC Location to meet any federal, state, agency, etc. program requirements.
- E. Supplier will complete CSR Assessment with EcoVadis, within 90 days of Contract signing for purpose of establishing a baseline, creating plan for targeted improvements (if below avg. score), and to measure ongoing improvements. If a supplier's score meets, or is above the average score for that category of business, they will not be required to reassess until the contract is reviewed for extension (first Option Year of the contract after the Initial Term of four (4) years).
- F. Supplier will complete Foam Ban Exemption Form within 1 month (30 days) of contract signature. Per Exhibit C requirements, it has been established Supplier is not currently in compliance with the UC Sustainable Procurement Policy, as it pertains to avoidance of Foam Packaging. As such, they have/will complete an exemption form for these non-compliant practices and included a process and target report. The form will be reviewed and revised per accomplishments, prior to any annual systemwide business reviews, as further described in Section 9.B and Exhibit C of this document. The form with table, represent current work and testing that are part of the ongoing efforts by Supplier to meet these requirements and includes a target date for meeting them. If not fully compliant by that date. Supplier will apply for an exemption for review, planning, and approval of the remaining non-compliant item(s).

## 7. Service Level Agreement (This section is specific to the UC)

A. During the Term of the Agreement, and any extension(s) of the Term, Supplier will provide services herein, meeting qualitative standards, as shown below, within the following response times: national also (Wendy will check)

### Response Times

Response time to return call to clients	within 24 hours (Fri. would be Mon.)
Response time to visit clients*	within 3 business days

Initial design completion and quote meeting	within 10 business days from initial (or 1-2 wk.)
Quote for project	within 5 business days (sm) 10 days (lg.)
Final design to ready order quote	within 2 business days
PO (from UC) to acknowledgement	within 3 business days
Standard delivery	standard shipping and delivery 4-5 weeks
Non –Standard delivery	non-standard shipping & delivery 6-10 weeks
Incidental non-assembly items	deliver 3 business days after receipt of items
Items needing assembly or for projects	deliver and assemble 7 business days (sm) and 10 business days (lg.) after receipt by Dealer
Storage	30 business days free
Returns/Restocking (UC error)**	20 business days from date of delivery to customer (see above –Damaged/Returned product for Supplier error)
Pick-ups	within 2-3 business days
Credits/Claims	within 5 business days from pick-up
Requests for reports	within 10 business days
Punch list development*	within 2 business days after installation walk thru
Punch list closure*	within 30 (or 10) business days after both parties agree as to responsible party

\*Punch List--a term used to describe an inventory list of all corrections, to an installation or project which requires an action on the part of the manufacturer and/or its Dealer, Installer, etc., to complete. Includes, but not limited to, missing, damaged, mistakenly-shipped or incorrect installation parts, components, or whole pieces of ergonomic equipment as directly related to the original purchase order.

\*\* Restocking - All returns **of conforming product**, if qualified, are subject to a 50% restocking fee. Only 'made to Stock' product items (stocked inventory – not made to order) may be returned under this provision. SEE 9.F. for Returns of non-conforming goods

The minimum service standards set forth above recognize that occasional errors are likely; however, Supplier further agrees to use its best efforts to achieve 100% of service levels. Should the service levels fall below the minimum standards and Supplier/Dealer must take corrective action within fifteen (15) days following UC written notification. When failure to correct is the fault of Dealer, UC reserves the right to terminate service with a Dealer and to require service be provided (where available) by a different authorized Dealer. Mutually acceptable arrangements will be made for completion and payment of existing orders. Any repeated failure by Manufacturer/Supplier, shall be handled per Section 2 of Master Agreement.

## 8. Pricing

A. Per Master Agreement, all Goods available through this Agreement, include delivery and are priced as a 'Discount off List' which varies according to delivery or services included. Specific pricing and pricing terms are detailed in the Pricing Exhibit(s).

B. Services included in this Agreement, are priced in two ways; 1) as a 'Discount off List Price', included with delivered product; 2) as 'Value Add Services Rates' priced hourly/separately per service and to be rendered in conjunction with Drop Ship Orders. Both forms of Pricing are provided within Exhibits A & B and detail service deliverables. Note: Services for this category of goods, may require the payment of prevailing wage rates. Prevailing Wage installation is quoted separately and rates vary by region.

C. Delivery, Basic Installation, and Complex installation, as captured within Discount Packages, reflect a rate for delivery with loading dock and elevator access. There may be an additional charge (to be quoted) where no loading dock and/or elevator access is available, thereby impacting the estimated delivery time. Supplier and Supplier's Authorized Representatives-Subcontractors will provide written notice to the UC location of any such additional charge and obtain UC location's approval prior to the scheduled delivery. Except as noted above, there shall be no separate or additional charges, fees, handling or other incidental costs for products following any contract award. Noted exception are surcharges, separate and allowable, when offsetting government imposed tariffs

D. Volume Pricing – Pricing within Exhibits, includes Volume Discounts. As indicated on this Exhibit, the UC may negotiate pricing on any single order where Manufacturer's product cost is in excess of the pre-determined discount levels/tiers reflected on Exhibits A &

B to this Agreement for Office Furniture Products. These orders (Negotiable Tiers) are defined as "high-volume" orders. NET is defined as the estimated List-value of the entire order, less discounts, and includes all service fees and expenses, excluding taxes."

E. In addition to volume pricing offered by Supplier during the Contract term, a Supplier may conduct sales promotions involving price reductions for a specified lesser period. Supplier may offer Participating Agencies/UC competitive pricing which is lower than the not-to-exceed price set forth herein at any time during the Contract term and such lower pricing shall not be applied as a global price reduction under the Contract.

## 9. Program Requirements

### A. General

- a. There shall be no minimum order requirements (quantity, dollar size, etc.).
- b. Manufacturer must have a Dealer/Distribution network in California and/or direct support having the capacity to deliver and install products for UC systems, meeting UC requirements.
- c. Manufacturer must have a nationwide Dealer/Distribution network having the capacity to deliver and install products nationwide, with some regional exceptions.
- d. Furniture purchased from Manufacturer and/or Dealer(s) must meet federal, state, regional and local standards and regulations, including, but not limited to: Occupational Safety and Health Administration (OSHA), Business and Institutional Furniture Manufacturers Association (BIFMA) acceptance test levels, Underwriters Laboratory (UL) requirements, Americans with Disabilities Act (ADA), etc. and; current BIFMA standard: <https://www.bifma.org/page/StandardsShortDesc>
- e. Manufacturer and/or Dealer must be in full compliance with specific building and fire code restrictions on all jobs.
- f. Manufacturer/Dealer shall agree to follow protocol (to be established), and to receive authorization prior to orders being placed for Demountable Walls and Fixed Seating (UC specific)

### B. Administration – (This section is UC Specific)

Supplier shall provide the following program administration functions to UC:

- a. Project Manager to coordinate program implementation (see implementation Plan).
- b. Account Management for on-going contract monitoring and maintenance
- c. On-site sales representation on a regular basis to increase sales activity, assist in resolving problems, demonstrate new products, handle returned goods and provide other customer services as required for the efficient operation of the program .
- d. When requested, meetings between Supplier's account manager(s) and UC Purchasing Departments to discuss previous period's activities and resolution of any open issues.
- e. Supplier shall meet with UC/UCOP for Regular Business Reviews to review contract usage and effectiveness, discuss current Services offerings and provide suggestions and discussion for continuous improvement in Services efficiencies, and to address additional topics pertinent to the relationship towards the UC's strategic goals. For each Business Review, the Supplier must provide pertinent performance and management reports detailing a wide range of information related to this Agreement at both the UC-wide level and breakdowns for each individual UC location. At least once annually, provide Power Point presentation including (but not limited to) the below:
  - Sales Data for UC System
  - Fiscal Year to Date (beginning July 1).
  - Fiscal Year to Date for the previous year.
  - Last 12 month spend.
  - Last 12 month spend for the prior year.
  - Company or Dealer updates/changes
  - Sustainability
  - Outreach and Projects
  - SLA Scorecard and Issues
  - Product – changes and new lines
- f. Conduct quarterly business review meeting with each UC location, providing information, as requested. (UC specific)

- g. Keep the contracting departments/customers apprised of any quality issues including recalls, upgrades and product warnings that may affect product performance
- h. A Supplier is required to provide reports (as noted in Section 5 and on Exhibit D) as reasonably requested by UC during the term of the agreement at no additional cost to UC. (UC specific)

### **C. Ecommerce and Related Invoicing/Settlement (This section is UC Specific)**

- a. Integration Requirement: EProcurement Integration is a requirement of this Agreement and must be accomplished within 18 months of contract signing. E-commerce technology is utilized at each of the UC locations. Attachment D of Master Agreement - Appendix eCommerce, details requirements. Supplier and UC shall cooperate in good faith to make available to UC end purchasers and to encourage such end purchasers to use Seller's electronic catalog within each locations e-Commerce platform when ordering Products. Supplier is required to provide (or continue to provide) an acceptable integrated solution to the e-Commerce systems deployed in the UC system within the first 18 months of contract.
- b. E-commerce Platform Orders: UC orders will be placed directly with a supplier's system using either a hosted (static) or punch-out catalog housed in the UC E-commerce system(s). The catalog offerings will include all charges (exclusive of sales tax), including installation/assembly services where applicable. Implementation required within 18 months of contract signing. Note: National Participating Agencies have the option to enter into an e-commerce platform order solution on a per agency negotiated basis.
- c. Quote Functionality: A Supplier is required to provide 'quote retrieval functionality' within 18 months of contract signing, defined as the ability for a customer to request quotes from a dealer and then retrieve them from their e-procurement site to auto-populate a UC PO. Does your platform currently support the ability for a customer to request a quote from a dealer that can then be retrieved, by the customer, through your punchout catalog to populate a Shopping Cart? Please describe your functionality.
- d. Paperless Invoicing: This is a requirement of this Agreement. Supplier will be required (within 18 months of contract signature) to transmit their invoices electronically in a format that can be imported into various e-commerce and financial systems; cXML and EDI are the preferred invoice transmission methods although a Supplier may elect to utilize an e-invoicing service (e.g. Transcepta or Docufree), which allow the supplier to upload invoice data by multiple methods, including e-mail or direct data entry, for final transmission to a campus in their preferred electronic method.
- e. Payment Type: The University of California's preferred payment method is by virtual card (PaymentPlus, administered by US Bank) or procurement card (including ghost card for eCommerce), which includes a processing fee. Through these programs, the University of California can extend NET terms, which means that remittance will be transmitted immediately following full approval of an invoice. With PaymentPlus, suppliers receive email remittance information and are able to retrieve a one-time credit card number for the amount of the remittance. Suppliers can utilize their own point of sale solution, or can receive remittance through US Bank at competitive interchange rates. Alternative payment methods for the University include PaymodeX, EFT or paper check, with varying discounts and net terms offered. Note, some federally funded projects may have additional constraints on providing payment within 30 days.
- f. Established Delivery Dates: An acceptable installation date will be established in writing by mutual agreement of Buyer, Supplier and Manufacturer (s) (example: date on PO satisfies this) at the time of order placement. Supplier must receive a complete and accurate order from Buyer, requiring no clarifications or changes prior to the agreed-upon installation date. To the extent, however, Supplier fails to accurately and completely specify Buyer's requirements when placing an approved order(s) with Manufacturer, Supplier shall bear liability for damages incurred by Buyer related to such failure by Supplier and liquidated damages may apply (see Item 12).

### **D. National Program**

- a. Manufacturer/Supplier must complete and maintain the required contract documents, reporting and/or other responsibilities as required by OMNIA Partners, and detailed in referenced RFP.
- b. Manufacturer/Supplier must have a nationwide Dealer/Distribution network having the capacity to deliver and install products nationwide, with some regional exceptions.

### **E. Product Requirements**

- a. Required Product Categories (as defined within Attachment E of Master Agreement and Section 1 above) – Suppliers are required to provide sufficient product in the below categories; all as subject to Ergonomic requirements as listed on Exhibit E and Sustainability Requirements, as listed in Exhibit C. (UC Specific).
  - Panels and Desks/Work Surface (Adjustable and Fixed)

- Storage
  - Freestanding
  - Seating (task, side, conference room, and stackable, but NOT lab, lounge or lobby)
  - Tables Conference (tables, training table, occasional tables , hgt. adjustable tables, other)
- b. Product Purchase Restrictions (**UC Specific**) - A Supplier should note, there will be special processes put in place surrounding the UC's ordering of Architectural Elements (Demountable Walls) and fixed seating, owing to UC approvals which must be garnered prior to an order being placed. Any awarded Supplier will be required to abide by this process.
  - c. Parts Sales – A Supplier must offer/sell parts for your products to use in UC, and Participating Agencies, in-house repairs. A Web catalog or (acceptable alternative) must be supplied.
  - d. New and Discontinued Products
    1. Supplier(s) must communicate and make available any special product promotional offers as requested. A system to communicate promotions shall be established during the contracting phase of this process.
    2. New Products - The UC recognizes that products and product line additions to the selected Supplier's offerings are likely to occur during the life of this contract. The UC will consider these additions as enhancements. Additions will be considered under the following methods:
      - Products will be categorized with similar products or product lines into existing market commodity codes/product line families previously defined and agreed to by the UC with respect to the discount structure, net price, or total cost of the product.
    3. In the event the selected Supplier(s) add a new specialty product line which represents product(s) that are substantially different from the products or brands represented in the existing market commodity codes/product line families, the UC and the selected Supplier(s) may enter into negotiations to establish a discount structure, net price, or total cost for the product(s) if the UC agrees that the product(s) are not covered under an existing market commodity code/product line family. Pricing must be competitive in order to add into the contract. The selected Supplier(s) will provide appropriate documentation to support its position for special pricing. Negotiations must be completed prior to any purchase orders being processed. In the event the UC and Supplier cannot come to agreement the UC may at its sole opinion conduct a separate formal bidding process.
    4. Supplier shall notify the UC 60 day's in-advance of any products being discontinued wherever possible.
  - e. Cabling - All Manufacturers of cabling products, must comply with Technology Industry Association (TIA-569-C-2012) standards for cabling raceway and data equipment outlet openings.
  - f. Warranty –A minimum warranty of ten (10) years is required for 'seating', with a minimum of five (5) years applying to 'other' products. Note an exception for upholstery, which must have a minimum warranty of 3 years.
  - g. Surcharges and/or Tariffs – With the exception of 'Tariff Related Surcharges', there shall be NO surcharges during the term of any resulting contract. A supplier may request temporary surcharges for newly levied tariffs affecting their global supply chain, either directly or indirectly impacting most/critical materials, whether it is finished goods or directly imported materials, or raw materials that their suppliers must purchase from China for use in their production process. Any such charges must be substantiated through appropriate documentation prior to the approval process beginning. Approved charges will be considered as temporary, with the expectation of removal or reduction in accordance with removal or decreases by the government.
  - h. FOB - Orders shall be shipped "FOB Destination" and all pricing shall be NET less sales tax.

## **F. Services**

- a. Specific Delivery, Installation & Service options, have been detailed for the UC System and National Accounts. These required services are shown separately and/or aligned with a Supplier's Pricing/Declared Discounts off List and are found on Exhibit A and B.
- b. Prevailing Wages – Supplier understands that Prevailing Wage requirements apply to this contract, as detailed in Master Agreement, Section 10 – Prevailing Wages
- c. Customer Satisfaction and Service Standard Metrics (UC Specific) - Supplier will be responsible for product satisfaction. Supplier(s) will act as a customer advocate and coordinator for communications with the dealer that is responsible for performance and problem resolution. Supplier(s) responsibility for support continues even if the Supplier discontinues selling a product to the extent that resolution is possible. Suppliers must take necessary actions with dealers to reduce, minimize and prevent stock-outs of product (i.e. backorders), and to ensure that promised lead-times/ship dates/arrival dates are accurate. Customer satisfaction will be a determining factor in measuring Supplier(s) performance. Supplier and UC jointly will on a routine basis conduct and monitor customer satisfaction with a formal survey process. Results and feedback will be published on a regular basis in a format to be developed. Supplier and/or Dealer shall provide Toll-free number for assistance in order placement and focused customer service team for the UC.

1. Each Location has means to determine their internal level of customer satisfaction and if dealer is meeting performance metrics. If a dealer falls below the service level expectations it will be escalated to that Location's Materiel Manager and to UCOP to determine a mutually agreed upon corrective action plan to resolve the concern. If the service levels do not improve to the satisfaction of the University the issue may ultimately result in termination of the agreement.
- d. Ship to and Consolidation of Orders – Required 'ship to' for UC locations will be determined at the time of order. It is the responsibility of the manufacturer and servicing dealer to achieve this in the most efficient manner. For incidental (non-project) orders, UC expects the servicing dealer to consolidate orders and deliveries in a manner such that multiple deliveries to the same campus on the same day should not be charged full freight for each individual item delivery. Servicing dealer shall track, receive, warehouse, and deliver the product to the jobsite and perform final inside deliveries to specific office, suite, work space, lab, job site, etc. at all UC delivery accessible locations. Orders shall be shipped "FOB Destination" and all pricing shall be NET less sales tax.
  - e. Storage: (UC Specific): First 30 business days of storage required shall be at no cost to UC or participating agencies. UC may require items to be in storage beyond 30 bus days and may be charged at rates not to exceed the charge listed on Exhibit B Discount and Service Pricing. Note: UC must be prepared to accept product within 10 days of shipment or UC must notify Dealer of its need to enact its option for 30 days free storage from the Dealer. The 30 days shall begin when product arrives to Dealer's facility/dock. Any period after that point, will be charged at rates quoted within this Agreement.
  - f. Returns/Damaged product (UC Specific) - Products damaged, duplicated, incorrectly ordered by or incorrectly shipped by the manufacturer or dealer shall be replaced or picked up by the Supplier(s) within 2-3 business days after notification at no cost to the UC or participating agencies and thereafter a credit issued (if applicable) within five (5) business days to the satisfaction of the customer. There shall be no restocking charges or additional shipping charges, etc. for these items. If product has concealed damage due to carrier, Customer and/or Dealer has 15 days from delivery to file a freight claim with Supplier.
  - g. Trade Fairs (UC Specific) - If requested a Supplier is expected to sponsor trade and/or manufacturer exhibit/product shows at each of the UC locations and must comply with each campus' policies regarding space rental, advertising and coordination with each campus Materiel Management office.
  - h. Training (UC Specific) - When requested, the Supplier(s) will provide in-house "start-up" and/or training sessions to the UC users regarding the Supplier's software, ordering system, etc. at no charge to the UC. Similarly, a Supplier shall participate in developing and delivering Web Training for same.
  - i. Manufacturer/Dealer Documentation – A Supplier must provide the following, free of charge; 1) documentation of existing architectural and electrical elements of product (anything that impacts furniture placement), 2) Data and electrical coordination, including Title 24 documentation, 3) Plans and 3D images in AutoCAD and PDF formats.
  - j. Material Samples (UC Specific) - A Supplier must provide Material samples to customers, when requested.
  - k. Seating Labs-Showrooms (UC Specific) - Supplier to work with locations to provide sample product/guidance for seating labs/showrooms for potential customers to evaluate.
  - l. Delivery Delays. Supplier will report any delivery delay whatsoever to the ordering Location, as well as its cause, within two (2) hours after Supplier is able to reasonably determine there will be a delay; the report will be provided to UC by telephone and e-mail. Supplier will keep UC fully informed and will take all reasonable action in eliminating the cause of delay.
  - m. Credit. Requests for credit can be transmitted by the ordering UC personnel via the established order management system (telephone, paper return form, and web-based). Chargebacks and credit memos will be issued to UC ordering departments in the current month's billing period. If Goods were purchased via UC purchasing card, credit must be issued to the same purchasing card.
  - n. Out of Stock Items - If there is an out of stock situation of any ordered inventoried item(s), the out of stock item will be added to the back order file and will be delivered to UC when the item is in stock without a further order being submitted.
  - o. Restocking Fees - For 'made to stock items' (stocked inventory – not made to order), return of conforming goods, are subject to a 50% restocking fee. All freight charges for returned product are the responsibility of the customer. Unauthorized returns will not be accepted and will be returned freight collect. All merchandise being returned must be properly packed and protected in the original cartons. Upon receipt, all returned merchandise will be thoroughly inspected. Any discrepancies, such as additional damage, signs of usage, missing parts, etc., will result in an adjustment to the amount of credit issued

## 10. Changes to the Services

UC may desire to change the Goods and/or Services following execution of an SOW. If so, UC will submit a written Amendment to Supplier describing the changes in appropriate detail. If an Amendment does not require Supplier to incur any additional material costs or expenses, then Supplier will make the modification within ten (10) business days of Supplier's receipt of UC's Amendment. If

an Amendment does require that Supplier incur additional material costs or expenses, then Supplier in good faith will provide UC with a written, high level, non-binding assessment of the costs and expenses and the time required to perform the modifications required by the Amendment, within ten (10) business days of Supplier's receipt of UC's Amendment. UC will notify Supplier in writing within ten (10) business days after receipt of Supplier's response to the Amendment as to whether UC wishes Supplier to implement the Amendment based on the response. UC will compensate Supplier for implementation of an Amendment in accordance with the terms and conditions of the relevant Amendment and Supplier's response to the Amendment, if any. Supplier's implementation of an Amendment will not delay the performance of Services and/or the delivery of deliverables not reasonably affected by an Amendment.

### **11. No Mandatory Use**

Because there is no mandatory use policy at UC, nothing in this Statement of Work will be construed to prevent UC from entering into similar agreements with any third parties including, without limitation, suppliers that may be in competition with Supplier.

### **12. Liquidated Damages** (this section is specific to UC)

If a Supplier fails to accurately and completely specify a UC Buyer's requirements when placing an order(s) with Manufacturer, Supplier shall bear all liability for damages incurred by UC Buyer related to such failure by Supplier and liquidated damages may apply, if deemed appropriate by UC; such liquidated damages noted below:

Supplier shall pay Buyer five hundred dollars (\$500.00) per day as liquidated damages for every business day beyond the agreed-upon installation date that Supplier fails to install a material amount of product, as defined below. In the event of such failure, Supplier shall use its best efforts to provide temporary furniture for use by Buyer until the delayed furniture is installed. It is the Buyer's choice to accept or not accept temporary furniture and waive or not waive any associated liquidated damages associated with the delayed furniture. Payment shall be made in the following manner: Supplier shall issue a credit memo in the amount of the liquidated damages, and such amount will be deducted from any monies due Supplier by Buyer. Supplier will not be in default or liable to pay liquidated damages if the delay is due to order changes by Buyer, construction/inspection delays at the site, Acts of God, or any other reason beyond Supplier's reasonable control. A "material amount of product" means the ordered item(s), functional elements and/or accessories that are necessary to allow a workspace to be utilized fully and immediately following the agreed-upon installation date.

Immediately after or during all installations, Supplier agrees to establish a punch list in cooperation with Buyer. A punch list shall consist of an inventory of any and all missing, damaged, mistakenly shipped, or incorrect installation parts, components, or whole pieces of furniture. The Supplier must correct and remedy all the items on the punch list within 30 calendar days. If Supplier fails to correct and remedy all the items on the punch list by the agreed-upon date (if outside 30 days as if silent 30 days is assumed), Supplier shall deduct 2 1/2% of the total value of the product order from the final invoice submitted to Buyer, as liquidated damages. If Supplier fails a second time to correct and remedy all the items in the punch list by the second agreed-upon date, Supplier shall deduct another 2 1/2% (total of 5%); if Supplier fails a third time to correct and remedy all the items in the punch list on the third agreed-upon date, Supplier shall deduct another 2 1/2% (total of 7 1/2%); and if Supplier fails a fourth time to correct and remedy all the items in a punch list on the fourth agreed-upon date, Supplier shall deduct another 2 1/2% (total of 10%). The foregoing liquidated damages charge is applicable regardless of whether and/or when some items on a punch list are corrected or remedied. All items on a punch list must be corrected and remedied on the agreed-upon date, otherwise, the foregoing liquidated damages shall be applicable. On each installation, Supplier shall hold back from invoicing Buyer 10% of the value of the total order to address timely resolution of punch list issues. The final invoice, if any, shall be submitted after Buyer and Supplier mutually acknowledge, in writing, resolution of all items on the punch list.

### **13. Incorporated Documents**

The following documents are incorporated and made part of this Agreement, as if fully set herein, listed in the order of preference following the Agreement.

- Exhibit A – National Discount and Service Pricing
- Exhibit B – UC Discount and Service Pricing
- Exhibit C - UC Sustainability Requirements
- Exhibit D – UC Reporting Requirements
- Exhibit E – UC Ergonomic Requirements
- Exhibit F – UC Dealer Network & Capabilities
- Exhibit G - UC –Additional Terms and Conditions

This Statement of Work is signed below by the parties' duly authorized representatives.

**THE REGENTS OF THE  
UNIVERSITY OF CALIFORNIA**

*William M. Cooper*

1E90FA0709254CF...  
(Signature)

William Cooper AVP & Chief Procurement Officer

(Printed Name, Title)

5/21/2020

(Date)

**KIMBALL OFFICE, INC.**

*Phyllis Goetz*

(Signature)

Phyllis Goetz, President

(Printed Name, Title)

05/20/2020

(Date)



**EXHIBIT A – NATIONAL PROGRAM - DISCOUNT & SERVICE PRICING AND PRICING TERMS****A.1 – Product/Service Pricing - OMNIA Partners & Participating Public Agencies**

The price for Products purchased under this Agreement shall be those prices shown in the applicable Price List in effect at the time the purchase order is placed, less the minimum discounts on the items listed below. Pricing shall be based on Supplier's current National Price List/Price Book

Deliveries from Dealer to Participating Public Agencies shall be FOB, Participating Public Agency's designated location, freight prepaid and allowed for purchase orders within the United States. Exceptions include Alaska and Hawaii, where additional freight charges apply and will be quoted upon request.

**A.2 – Price Increases**

OMNIA and UC Contract Administrator shall be given written notification of any Price List changes, thirty (30) days prior to effective date of change. Price increases shall be accompanied by information showing the percent increase by line and as an average. In addition, a supplier shall include market information and/or commodity indices (as referenced below) supporting the change:

- Commodity Information/Market Drivers
- Pertinent index/indices covering the previous period of service; 1) PPI- BLS Series ID: WPU122 Price of Commercial Furniture; 2) PPI - BLS Series ID: WPU12220325 Price of Non-wood Office Seating; 3) CPI-U, US city Average, All Items less Food and Energy
- Pertinent labor data including (but not limited to NAICS 3370A1 - Furniture and Related Product Manufacturing (3371 and 3372 only)

Product Category	NATIONAL PROGRAM - Manufacturer Discount off List Volume Discounts are based on Drop Ship for all Product Lines						
	Product line	Drop Ship	Inside Delivery	Basic Installation	Expanded Installation	Volume Discounts 100k-400k	Volume Discounts >400k
Systems Furniture	Narrate	65	63	61	59	67	68
	Footprint	65	63	61	59	67	68
	Traxx & Tiles	65	63	61	59	67	68
	Xsite	65	63	61	59	67	68
	Xsede	65	63	61	59	67	68
	WorkAble	65	63	61	59	67	68
	Canopy	65	63	61	59	67	68
	Cetra	65	63	61	59	67	68
Freestanding Furniture	Footprint	65	63	61	59	67	68
	Priority	54	53	51	47	55	57
	Dock	54	53	51	47	55	57
	Fixt	54	53	51	47	55	57
	Kore	54	53	51	47	55	57
	Teem	54	53	51	47	55	57
	Stow	54	53	51	47	55	57
	Scenario	54	53	51	47	55	57
	Definition	54	53	51	47	55	57
	Fluent	54	53	51	47	55	57
	Guide	54	53	51	47	55	57
	President	54	53	51	47	55	57

	Sanctuary	54	53	51	47	55	57
	Senator	54	53	51	47	55	57
	Transcend	54	53	51	47	55	57
	Innsbruck	54	53	51	47	55	57
Storage	Footprint	65	63	61	59	67	68
	LF Files	58	56	55	53	60	61
	Fundamental Files	58	56	55	53	60	61
	Priority	54	53	51	47	55	57
	Definition	54	53	51	47	55	57
	President	54	53	51	47	55	57
	Senator	54	53	51	47	55	57
	Innsbruck	54	53	51	47	55	57
	Transcend	54	53	51	47	55	57
Seating	Abbott	54	53	51	47	55	57
	Acapella	54	53	51	47	55	57
	Adagiato	54	53	51	47	55	57
	Alpine	54	53	51	47	55	57
	Arpeggio	54	53	51	47	55	57
	Beo	54	53	51	47	55	57
	Bloom	54	53	51	47	55	57
	Boyd	54	53	51	47	55	57
	Clairmont	54	53	51	47	55	57
	Collage	54	53	51	47	55	57
	Enjoy	54	53	51	47	55	57
	Event	54	53	51	47	55	57
	Flip	54	53	51	47	55	57
	Greer	54	53	51	47	55	57
	Helio	54	53	51	47	55	57
	Independence	54	53	51	47	55	57
	Itsa	54	53	51	47	55	57
	Joelle	54	53	51	47	55	57
	Joya	54	53	51	47	55	57
	Lusso	54	53	51	47	55	57
	Meadow	54	53	51	47	55	57
	Nash	54	53	51	47	55	57
	Niles	54	53	51	47	55	57
	Nate & Natty	54	53	51	47	55	57
	Pairings	54	53	51	47	55	57
	Pep	54	53	51	47	55	57
	Physician Exam Stool	54	53	51	47	55	57
	Poly	54	53	51	47	55	57
	Pose	54	53	51	47	55	57
	Shore	54	53	51	47	55	57
Splendor	54	53	51	47	55	57	

	Spruce	54	53	51	47	55	57
	Stature	54	53	51	47	55	57
	Sycamore	54	53	51	47	55	57
	Theo	54	53	51	47	55	57
	Tucker	54	53	51	47	55	57
	Villa	54	53	51	47	55	57
	Wilder	54	53	51	47	55	57
	Wish	54	53	51	47	55	57
	Smile	54	53	51	47	55	57
	Tri	54	53	51	47	55	57
	Cricket	54	53	51	47	55	57
	Twill	54	53	51	47	55	57
	Thatcher	46	45	43	39	50	50
	Entourage	46	45	43	39	50	50
	Otto	46	45	43	39	50	50
	Lolita	46	45	43	39	50	50
	Superkool	46	45	43	39	50	50
	Ynot	46	45	43	39	50	50
	Anora	46	45	43	39	50	50
	Chip	46	45	43	39	50	50
	Aspen	46	45	43	39	50	50
	LSM	46	45	43	39	50	50
	Looper	46	45	43	39	50	50
	Aussie	54	53	51	47	55	57
	Circ	54	53	51	47	55	57
	Fight Club	54	53	51	47	55	57
	Geo	54	53	51	47	55	57
<b>Tables</b>	Bloom	54	53	51	47	55	57
	Contemporary	54	53	51	47	55	57
	Dock	54	53	51	47	55	57
	fiXt	54	53	51	47	55	57
	Kore	54	53	51	47	55	57
	Overbed	54	53	51	47	55	57
	Pose	54	53	51	47	55	57
	Scenario	54	53	51	47	55	57
	Teem	54	53	51	47	55	57
	Villa	54	53	51	47	55	57
	Frill	46	45	43	39	50	50
	Flo	46	45	43	39	50	50
<b>Accessories and Technology Support</b>	Perks	54	53	51	47	55	57
	Jolt	54	53	51	47	55	57

<b>Repair Parts (non-warranty) Net pricing</b>							
<b>Other</b>							
Insert additional rows as needed							
<b>Services - Offered by Dealers for additional cost when not included in Customer's chosen Discount package, listed above.</b>	<b>Hourly Rates (NTE)</b>				<b>Comments</b>		
<b>Design Services</b>	\$70.00						
<b>Project Management Services</b>	\$72.00-125.00						
<b>Asset Management (e.g. Dealer tracks ownership at campus level)</b>	n/a						
<b>Demolition (breakdown and removal or repacking of old stock)</b>	n/a						
<b>Other - Insert rows as needed</b>							
<b>Storage</b>	<b>Rate per Sq. Ft. (NTE)</b>				<b>Comments</b>		
<b>Storage</b>	\$1.57						
<b>Labor/Installation</b> -Hourly installation rates are quoted using the appropriate hourly labor application, such as Union rate, Prevailing Wage rate, or your Standard Labor rate, taking into consideration the labor activity required for the installation and the local labor regulations. Supplier's Basic Installation Rate is stated here as a NTE (not to exceed) rate, inclusive of Standard Labor on the National Program Pricing.	<b>Hourly Rates (NTE)</b>				<b>Comments</b>		
<b>Basic Installation Rate (utilizing Standard Labor)</b>	65.00-250.00						
<b>Services Associated with Discount off List</b>							

**DELIVERY**

- Drop ship or Tailgate Delivery means product is delivered to the site. Purchaser is responsible for unloading.
- Inside Delivery means product is delivered to the site and unloaded.

**BASIC INSTALLATION** - Includes inside delivery, uncrating, assembly, set-up (if required), installation, removal/disposal of all debris from premises, and vacuuming the premises, installation documents, and the bill of materials per the purchaser's approved plan and specifications.

**EXPANDED/COMPLEX INSTALLATION** Includes basic installation; field measurements surveyed, documented and coordinated; electrical and telecommunication/data in-feed locations are surveyed, documented and coordinated; attend required coordination meetings with purchaser and other contractors; and creation and implementation of punch list by project manager.

Pricing Parameters

- During normal business hours, M-F, 7:00am-5:00pm local time.
- Non-union labor
- All necessary tools and equipment required to install per the drawing or quote
- Adequate facilities for the delivery, unloading, moving, and staging/storing of the product during the install process
- Free and clear access to loading docks and elevators
- Job site to be free and clear of debris
- Service work not be hindered by other trades, product tools, equipment
- Reasonable access to space

Exclusions:

- Any work requiring a licensed electrician is the purchaser's responsibility
- Hardwiring of furniture to the building source
- Connection of phone and data lines to the building source

**Additional Cost:**

- Union, prevailing wage, overtime, and "after hours" (evenings, weekends, holidays) work.