

BEVERAGE SALES AGREEMENT

This sets forth the agreement (“**Agreement**”) between Bottling Group, LLC, a Delaware limited liability company, and its affiliates and/or respective subsidiaries collectively comprising Pepsi Beverages Company with an office located at 7995 Armour Street, San Diego, CA 92111 (“**Pepsi**”) and UC San Diego Health Systems, with its principal place of business at 200 West Arbor Drive, San Diego, CA 92103 on its own behalf, on behalf of its affiliates and wholly-owned subsidiaries, and on behalf of its individual franchisees and licensees, if any (the “**Customer**”). The support described below is in lieu of any other discounts, allowances or rebates to which the Customer might otherwise be entitled from time to time. When fully executed, this Agreement will constitute a binding obligation of both parties until expiration or termination.

Definitions

As used in this Agreement, the following capitalized terms have the respective meanings assigned thereto below.

“**Beverage**” or “**Beverages**” means all carbonated and non-carbonated, non-alcoholic drinks, chilled beverage products, however dispensed during the Term of the Agreement.

“**Cases**” means cases of Packaged Products (as defined herein) purchased by Customer from Pepsi during the Term, initially delivered in quantities of 24 plastic bottles, aluminum cans, glass bottles (or equalized 24 pack cases, e.g., two 12-pack cases), eight 2-liter plastic bottles, or such other size, quantity and type of containers as Pepsi may make available from time to time during the Term.

“**Competitive Products**” means any and all Beverages other than the Products.

“**Equipment**” means equipment loaned by Pepsi to Customer to dispense, store or cool Products (as defined below), as more fully described in Section 4 herein and shall include Legacy Equipment and Innovation Equipment (as defined herein).

“**Flavor Shots**” means the flavors provided by Pepsi to be used in the Innovation Equipment to mix together with the Pepsi beverage products dispensed from such Innovation Equipment.

“**Gallons**” means gallons of the Postmix Products and Flavor Shots purchased by Customer from Pepsi during the Term.

“**Facilities**” means the entire premises of every facility owned, leased, occupied, operated, now or in the future, by the Customer or its Food Service Provider and includes the hospital locations, clinics, urgent care facilities, satellite locations, patient rooms, corporate offices, and additional building locations affiliated with the Customer, including all buildings, the grounds, parking lots, dining/cafeteria facilities, snack bars, food carts, retail locations, the grounds, unbranded and branded food service outlets, parking lots and all vending areas located at or around the Facilities. A current list of the Facilities is set forth in attached Exhibit A hereto.

“**Packaged Products**” means Beverages that are sold or distributed by Pepsi in pre-packaged form

(e.g., bottles and cans). A current list of Pepsi's Packaged Products is listed in attached Exhibit B which may be amended by Pepsi from time to time.

"Postmix Products" means Beverages sold and/or distributed by Pepsi and used to create and prepare fountain beverages, frozen carbonated or non-carbonated beverages. A current list of Pepsi's Postmix Products is listed in attached Exhibit B which may be amended by Pepsi from time to time.

"Products" means Postmix Products, and Packaged Products.

"Year" means each 12-month period during the Term commencing on the first day of the Term or an anniversary thereof.

1. Term

The term of this Agreement is the three (3) year period commencing on January 1, 2020 and expiring on December 31, 2022 (the **"Initial Term"**). Upon expiration of the Term, Pepsi and Customer shall have the option to renew the Agreement upon the terms and conditions set forth herein for two (2) additional one-year periods upon mutual written consent (each the **"Renewal Period"**, together with the Initial Term, the **"Term"**).

2. Performance

This Agreement, including all of Pepsi's support to Customer as described below, is contingent upon Customer complying, throughout the Term, with all of the following performance criteria:

(A) **Exclusivity.** Pepsi is the exclusive Beverage supplier to Customer and the Facilities. Customer agrees to take all necessary steps to ensure that the Products are the exclusive Beverages of their respective types sold, dispensed or otherwise made available, or in any way advertised, displayed, represented or promoted at or in connection with the Facilities by any method or through any medium whatsoever (including without limitation print, broadcast, direct mail, coupons, handbills, displays and signage), whether public or private. The Facilities and Customer will not serve, dispense or otherwise make available or permit the availability of, or in any way advertise, display, represent or promote, beverage products licensed by, or produced by bottlers licensed by, The Coca-Cola Company or any affiliate thereof, or any other supplier of Competitive Products.

Permitted Exceptions: The parties acknowledge and agree that the Customer's patient feeding water shall be permitted for sale at the Facilities without violating the exclusivity provisions of this Agreement.

(B) **Purchase of Products.** Customer agrees to purchase, and require its Facilities and purchasing representatives to purchase, Products exclusively and directly from Pepsi.

(C) **Fountain Products.** Customer agrees to use the Postmix Products for use in preparing the fountain beverage products (the **"Fountain Products"**): (i) in accordance with the standards established by Pepsi and (ii) only for immediate or imminent consumption; Customer agrees not

to resell the Postmix Products either to nonaffiliated outlets or to consumers in any form other than the Fountain Products.

(D) **Ancillary Product.** Customer agrees to purchase and require its purchasing representatives to purchase all of their branded disposable cups exclusively from Pepsi as outlined in Exhibit B attached hereto (“*Ancillary Products*”). Pepsi shall provide Facilities carbon dioxide free of charge.

(E) **Advertising Rights.** Pepsi may advertise and promote its Products in and with respect to Customer and its Facilities upon mutually agreed to terms and conditions.

(F) **Innovation Equipment Advertising.** Customer shall grant Pepsi the right to utilize the digital interface on any Innovation Equipment for the purpose of displaying Product brands and graphics, as well for advertisement for any products manufactured or distributed by PepsiCo, Inc. or its subsidiaries, provided that Customer shall have reasonable approval rights to deny any advertisements which it reasonably deems to be in violation of any third party contracts with other suppliers or inconsistent with its Outlet’s appearance or conceptual theme..

(G) **Changes in Facilities.** Customer will promptly notify Pepsi, in writing, of each new Facility which is opened or acquired during the Term, as well as of any Facility which is closed, sold or otherwise disposed of during the Term so that the parties may promptly update Exhibit A.

(H) **Product Mix; Minimum SKU/Brand Requirement.** Customer must mandate the distribution of a minimum core assortment of Products, including a mix of both Postmix Products and Packaged Products at each of the Facilities throughout the Term, as identified by Pepsi, based on Equipment type at the Facilities.

(I) **Restrictions for Products.** The parties recognize and agree that there are certain additional territorial restrictions that pertain to the purchase and resale of the Products. To the extent any prospective Outlet(s) are located outside the territories serviced by Pepsi, then Pepsi may, upon request by the Customer, use commercially reasonable efforts to facilitate an agreement between the Pepsi-Cola bottler servicing the applicable territory and the Customer with terms substantially similar to the terms of this Agreement. Furthermore, Customer agrees not to distribute or resell the Products, directly or indirectly, outside the territories serviced by Pepsi and shall cause its purchasing representative to abide by such territorial restrictions.

3. **Funding**

Provided Customer is not in breach of this Agreement, Pepsi agrees to provide Customer with the funding described below.

(A) **Initial Support Funds.** Pepsi agrees to provide Customer with initial support funds in the amount of Twenty-Five Thousand US Dollars (\$25,000), payable to Customer within sixty (60) days after the later of (i) the first day of the Term or (ii) the signing of this Agreement by both parties (the “*Initial Support Funds*”). The Initial Support Funds are earned by Customer over the Term. In the event of early termination for any reason other than an uncured material breach by

Pepsi pursuant to Section 6(A) herein, the unearned Initial Support Funds will be repaid to Pepsi pursuant to the terms of Section 6(B)(i) herein.

(B) **Annual Sponsorship Funds.** In each of Years One through Three, Pepsi agrees to provide Customer with annual sponsorship funds in the amount of Seventy Thousand US Dollars (\$70,000) not to exceed Three (3) consecutive payments (the “*Annual Sponsorship Funds*”). The Annual Sponsorship Funds will be paid to Customer within sixty (60) days after the commencement of each applicable Year, except that in the event Annual Sponsorship Funds are payable for Year One, such payment will be made within sixty (60) days of the later of (i) the first day of the Term or (ii) the signing of this Agreement by both parties. The Annual Sponsorship Funds are earned throughout the Year in which they are paid. In the event of early termination for any reason other than an uncured material breach by Pepsi pursuant to Section 6(A) herein, the unearned Annual Sponsorship Funds will be repaid to Pepsi pursuant to the terms of Section 6(B)(i) herein.

(C) **Marketing Support.** Each Year during the Term, Pepsi will provide Customer with marketing support, valued at up to Five Thousand US Dollars (\$5,000) (“*Marketing Support*”). The Marketing Support will be used and spent by Pepsi to pay for promotional programs in support of sale of the Products at the Facilities, as mutually agreed to by the parties. Customer acknowledges and agrees that unused Marketing Support in any Year will not be carried over to a subsequent Year and will not be redeemable for a cash payment.

(D) **Annual Flex Fund.** Each Year during the Term, Pepsi will provide Customer with annual flex fund, valued at up to Fifteen Thousand US Dollars (\$15,000) (“*Annual Flex Fund*”). The Annual Flex Fund will be used and spent by Pepsi to pay for mutually agreed programs in support of sale of the Products at the Facilities. Customer acknowledges and agrees that unused Annual Flex Fund in any Year will not be carried over to a subsequent Year and will not be redeemable for a cash payment.

(E) **Innovation Growth Fund.** Each Year during the Term, Pepsi will provide Customer with innovation growth funds, valued at up to Three Thousand US Dollars (\$3,000) (“*Innovation Growth Fund*”). The Innovation Growth Fund will be used and spent by Pepsi to pay for a mutually agreed upon spend. Customer acknowledges and agrees that unused Innovation Growth Funds in any Year will not be carried over to a subsequent Year and will not be redeemable for a cash payment.

(F) **Annual Bannister House Support.** Each Year during the Term, Pepsi will provide Customer with annual bannister house support, valued at up to Five Thousand US Dollars (\$5,000) (“*Annual Bannister House Support*”). The Annual Bannister House Support will be used and spent by Pepsi to pay for programs in support of sale of the Products at the Facilities, as mutually agreed to by the parties. Customer acknowledges and agrees that unused Annual Bannister House Support in any Year will not be carried over to a subsequent Year and will not be redeemable for a cash payment.

(G) **Rebates.** Each Year throughout the Term, Pepsi agrees to calculate the total number of eligible Cases purchased by each of the applicable Facilities from Pepsi pursuant to this Agreement, and will provide Customer with rebates calculated based on applicable rates set forth below (the “*Rebates*”). The Rebates, as applicable, will be paid by Pepsi within sixty (60) days

after the end of each Year. The parties agree that Pepsi will not accrue or pay any Rebates for sales to Facilities that are in breach of the Performance Requirements listed in Section 2 above.

Rebates Rates	Eligible Products*
\$2.25/Case	All Bottle and Can Corporate Packaged Product
\$1.00/Case	Kevita, Naked and Tropicana
*The following Products are excluded from Rebates: 7.5oz and 12oz cans, 16.9oz Aquafina	

4. Non-Monetary Consideration

(A) **Product Free of Charge.** Upon request from Customer, Pepsi will provide up to a total of 500 Cases of a combination of 12 oz. cans of carbonated soft drinks or 16.9 oz. Aquafina per Year at no additional charge to Customer, provided, however, that the Customer will administer all requests through a central contact so that the Customer may prioritize the requests. Customer acknowledges and agrees that unrequested Product in any Year shall not be carried over to the subsequent Year or be redeemable for cash payment.

(B) Hospitality

In each Year of the Term, Customer shall provide Pepsi will complimentary foursome tickets to Customer's annual golf outing.

5. Equipment and Service

(A) **Legacy Equipment.** As it pertains to standard technology, (i.e., "**Legacy**"), Pepsi will loan to the Customer, at no charge, appropriate Legacy Equipment for dispensing the Products at the Facilities. Customer agrees that the Legacy Equipment will be exclusively used to display and merchandise the Products as reasonably determined by Pepsi, and subject to applicable local law, rule or regulation. Customer will not use the Legacy Equipment to display, stock, advertise, sell or maintain any other products (including on the exterior of the Legacy Equipment).

(B) **Innovation Equipment.** As it pertains to any equipment (e.g., Spire) that is considered by Pepsi to be innovation or updated technology ("**Innovation Equipment**"), Pepsi does not guarantee that Customer will be entitled to receive such Innovation Equipment, and new Facilities shall not be guaranteed Innovation Equipment even if all current Facilities possess same. However, if Pepsi, in its reasonable determination, decides to provide any such Innovation Equipment to Customer during the Term, then Customer shall be responsible for:

- (i) all costs and preparation of the applicable Outlet to accept installation of such Equipment Innovation (including but not limited to providing adequate counter space, electric Facilities, utilities, etc.); and
- (ii) Pepsi agrees to waive program fees in connection with the right to use Innovation Equipment units ("**Program Fees**"), and sales tax – such Program Fee amounts to be determined by Pepsi based on the type of Innovation Equipment placed at the Facilities and communicated to Customer; and

- (iii) purchase of applicable Flavor Shots necessary for the proper operation of the Innovation Equipment; and
- (iv) the procurement and installation of a manual ice dispensing equipment for use in connection with the Innovation Equipment; *and*
- (v) achieving any minimum volume requirements (“*VPO*”) required for the continued placement of Innovation Equipment at the Facility. At the end of each Agreement Year, or at any time upon thirty (30) days’ notice, if Customer fails to, or if Customer purchase trends indicate that Customer will fail to, purchase the average Cases/Gallons as required by Pepsi for the placement of Innovation Equipment, then Pepsi shall have the right to remove Innovation Equipment completely and terminate this Agreement pursuant to Section 6(A), or substitute/adjust equipment placement to Legacy Equipment. The Customer shall return the Innovation Equipment within 20 days after written notice from Pepsi.

In addition to the foregoing, Customer agrees that Pepsi shall have discretion to select and notify Customer of the exact beverage products that are permitted to be included on the Innovation Equipment. Only Pepsi beverage products will be permitted on the Innovation Equipment, specifically excluding Customer brands and/or third-party brands unless consented to in writing by Pepsi.

(C) **Title; IP.** Title to such all Equipment will remain vested in Pepsi or its affiliate and Customer will return all Equipment to Pepsi upon expiration or earlier termination of this Agreement. In addition to the foregoing, any intellectual property rights existing in or relating to the Equipment, specifically including but not limited to the Innovation Equipment, are and remain the sole property of Pepsi. At Pepsi’s request, Customer will provide Pepsi with a written Legacy Equipment verification list indicating the asset number, Legacy Equipment type and location of the Legacy Equipment loaned to Customer pursuant to this Agreement.

(D) **Facility Remodel/Closure.** If at any time subsequent to the initial install of any Equipment, Customer requests that Pepsi disconnect/remove/relocate/reinstall Equipment (“*Equipment Move*”) in connection with a remodel or closure, then Customer will notify Pepsi of such request in writing at least 30 days in advance of the requested move, and will promptly reimburse Pepsi for any and all costs incurred by Pepsi in meeting Customer’s requirements, payable within thirty (30) days of invoice by Pepsi.

(E) **Equipment Removal.** Customer acknowledges and agrees that any request to remove Innovation Equipment and substitute Legacy Equipment shall constitute material breach.

(F) **Equipment Updates.** The parties agree that the functionality and capabilities of the Innovation Equipment is an evolving process which will no doubt see innovations, technical improvements and operational changes during the Term of this Agreement. In order to provide for maximum innovation and optimal performance of any Equipment at an Outlet, and to the extent that future technology enhancements, equipment platforms or products to support these platforms are substantially different in scope or composition compared to existing equipment components and products, Pepsi and Customer will work in good faith to negotiate the economic terms for implementation of the new technology equipment.

(G) **Service.** Pepsi will provide, at no charge to Customer, preventative maintenance and service to the Equipment. Pepsi will also provide Customer with a telephone number to request emergency repairs and receive technical assistance related to the Equipment after business hours. Pepsi will promptly respond to each Customer request, and will use reasonable efforts to remedy the related Equipment problem as soon as possible, however because delays in service may be caused by factors well outside of Pepsi's control, Pepsi's service record will be measured in the aggregate such that an isolated failure is not a material breach of the Agreement.

6. **Pricing**

Customer will purchase, and will require that any third parties or purchasing representative for the Facilities to purchase, Products and Ancillary Products directly and exclusively from Pepsi pursuant to the pricing and terms and conditions set forth herein. The initial pricing schedule for Products is set forth on attached Exhibit B. Notwithstanding the foregoing, Customer agrees that Pepsi shall have the right to increase prices annually, not to exceed 3%, effective January 1, 2021. Pepsi will be entitled to pass-through any incremental fees, deposits, taxes or other governmentally imposed charges (whether local, state, federal or judicially imposed on manufacturers, distributors, consumers or otherwise). The pass-through of any such governmentally imposed fees, deposits, taxes or charges on the Products will not be subject to any pricing cap or notification restrictions that may be specified in this Agreement.

7. **General Terms**

(A) **Termination for Default.** Either party may terminate this Agreement if the other commits a material breach of this Agreement; provided, however, that the terminating party has given the other party written notice of the breach and the other party has failed to remedy or cure the breach within thirty (30) days of such notice. If for any reason Customer closes one or more Facilities or if one or more Facilities breaches the Agreement, then Pepsi shall have the option, in lieu of termination of the entire Agreement, to (i) adjust funding in Section 3 commensurate with the projected decline in volume; (ii) terminate the Agreement only as it pertains to the sold, closed or breaching Outlet(s); and (iii) obtain an equitable reimbursement for the portions of funding and other costs attributable to such sold, closed or breaching Outlet(s). Notwithstanding the foregoing, this paragraph will not apply to seasonal Outlet closures with Pepsi prior written approval, such approval not to be unreasonably withheld.

(B) **Remedies.** If the Term of this Agreement is terminated early for any reason other than an uncured material breach by Pepsi pursuant to subsection (A) above, the Customer and its Facilities will surrender to Pepsi all Equipment provided by Pepsi and will forfeit all funding not paid as of the date of termination. In addition, without prejudice to any other right or remedy available to Pepsi, Pepsi will have the right to immediately seek reimbursement from Customer and the Facilities for the following:

- (i) An amount reflecting reimbursement for all funding previously advanced by Pepsi but not earned by Customer pursuant to the terms of this Agreement. With regard to the Initial Support Funds, if any, the amount of such reimbursement will be the result of

multiplying the Initial Support Funds by a fraction, the numerator of which is the number of months remaining in the Term at the time such termination occurs and the denominator of which is the higher of the total number of months in the Term (e.g., 5 year term is 60 months) or, as applicable, the number of months expected to comprise the Term based on volume trends as of the time of termination and the Volume Threshold (if applicable). With regard to the Annual Support Funds and, if applicable, any other annual funds, the amount of such reimbursement will be the result of multiplying, such funds by a fraction, the numerator of which is the number of months remaining in the Year in which the Agreement is terminated at the time such termination occurs and the denominator of which is 12 (twelve) if applicable;

(ii) An amount reflecting reimbursement for the cost of installation, service and refurbishing of Equipment provided during the Term and the cost of removal of all Equipment that has been installed in the Facilities, as applicable; and

(iii) An amount as liquidated damages, for lost sales suffered by Pepsi as a result of such termination, equal to the sum of: (a) the product of \$7 multiplied by the projected number of Gallons of Postmix Products and Flavor Shots that Customer would have been expected to purchase during the remainder of the Term based on the Volume Threshold and Customer's average annualized purchase rate and (b) the product of \$10 multiplied by the projected number of 24-pk case equivalents of Packaged Products that Customer would have been expected to purchase during the remainder of the Term based on the Volume Threshold and Customer's average annualized purchase rate.

(C) **Expiration.** Upon expiration of this Agreement, if Customer has not entered into a further agreement with Pepsi for the purchase of the Products, Customer will surrender to Pepsi all Equipment installed in the Facilities.

(D) **Right of Offset.** Pepsi reserves the right to withhold payments due hereunder as an offset against amounts not paid by Customer or its Facilities for Products ordered from and delivered by Pepsi and any and all balances due and payable to Pepsi pursuant to this Agreement.

(E) **Non-Disclosure.** Except as may otherwise be required by law or legal process or as reasonably necessary for either party to enforce its rights hereunder, neither party will disclose to unrelated third parties the terms and conditions of this Agreement without the consent of the other.

(F) **Assignment.** Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned or otherwise transferred by either party (whether by operation of law or otherwise) without the prior written consent of the other party, *provided, however*, that Pepsi may assign and transfer this Agreement (in whole and not in part) to an affiliate without the consent of Customer hereto if such affiliate is (x) capable of fully performing all obligations of the assignor hereunder and (y) agrees, in writing to perform all of the obligations and assume all liabilities of the assignor hereunder. In the event that a third party acquires Customer or substantially all Facilities or if Customer is acquired or merges with a third party, Customer will, in connection with such transaction, cause the acquiring party/merged entity, in writing, to ratify this Agreement and assume all of the obligations of Customer hereunder. In the event that Customer does not

deliver written evidence of such ratification and assumption of this Agreement by the acquiring party or merged entity within ten (10) days following the closing of the transaction, Customer will be in breach of this Agreement and Pepsi may, at its option, terminate this Agreement effective immediately and Customer will pay to Pepsi all sums specified in Section 6(B) herein.

(G) **Governing Law.** The laws of the state of New York govern all matters arising out of this Agreement.

(H) **Price Discrepancy.** Any price discrepancy claim must be submitted to Pepsi within 365 days of the date of the invoice in question. If Customer makes a price discrepancy claim within 90 days of the invoice date, Customer must submit a written request specifying the particular Product, amount in dispute and reason for the dispute. This request should be addressed to:

Accounts Receivable
Pepsi-Cola Customer Service Center
P.O. Box 10
Winston-Salem, North Carolina 27102

If Customer makes a price discrepancy claim from 91 to 365 days after the date of invoice, in addition to the written request as specified above, Customer must submit to Pepsi a copy of the invoice in question, copies of any check remittances pursuant to the invoice in question and any additional supporting documentation.

(I) **Tax.** Neither Pepsi nor its affiliates will be responsible for any taxes payable, fees or other tax liability incurred by Customer in connection with the consideration or any other fees payable by Pepsi under this Agreement. If Pepsi is charged common area maintenance fees, taxes or other charges related to Pepsi's occupation of the space allocated to its Equipment at the Facilities, Pepsi may make an adjustment to the consideration provided Section 4 above to offset for such costs.

(J) **Force Majeure.** Pepsi will not be responsible for any delay or lack of delivery resulting directly or indirectly from any foreign or domestic embargo, product detention, seizure, act of God, insurrection, war and/or continuance of war, the passage or enactment of any law ordinance, regulation, ruling, or order interfering directly or indirectly with or rendering more burdensome the purchase, production, delivery or payment hereunder, including the lack of the usual means of transportation due to fire, flood, explosion, riot, strike or other acts of nature or man that are beyond the control of Pepsi or that of the suppliers to Pepsi unless such contingency is specifically excluded in another part of this Agreement. Subject to the provisions below, this Agreement will be suspended as to both Product and delivery during any of the above force majeure contingencies. Any and all suspended deliveries will resume after such contingencies cease to exist, if possible, and this Agreement will resume in accordance with its terms, unless otherwise provided for herein.

(K) **Waiver.** No failure or delay of either party to exercise any rights or remedies under this Agreement will operate as a waiver thereof, nor will any single or partial exercise of any rights or remedies preclude any further or other exercise of the same or any other rights or remedies. Any waiver must be in writing and signed by the party waiving the rights.

(L) **Relationship of the Parties.** The parties are independent contractors with respect to each other. Nothing contained in this Agreement creates a joint venture partnership between the parties.

(M) **Construction.** Customer and Pepsi acknowledge that both parties participated equally in the negotiation of this Agreement and that, accordingly, in interpreting this Agreement, no weight shall be placed upon which party hereto or its counsel drafted the provision being interpreted.

(N) **Notices.** Any notice which either party is required or permitted to give hereunder will be in writing, signed by the notifying party and will be either delivery by hand or nationally-recognized overnight courier service or deposited in the United States mail, certified or registered mail, return receipt requested, postage paid, addressed as follows: If to Customer, to the name and address set forth in the preamble herein. If to Pepsi, to the name and address set forth in the preamble herein, with a copy thereof to: Pepsi Beverages Company, 1111 Westchester Avenue, White Plains, NY 10604, Attention: Law Department or to such addresses as the parties may subsequently provide in writing. Notice will be deemed to have been given when delivered by hand or nationally recognized overnight courier service, or when received as evidenced by the return receipt, or the date such notice is first refused, if that be the case.

(O) **Right of First Negotiation/Refusal.** As of the commencement of this Agreement until ninety (90) days prior to the expiration of the Term, Customer hereby agrees to grant Pepsi exclusive negotiation rights with respect to extending the current Agreement or entering into a new agreement for Beverage pouring rights at the Facilities upon expiration of the current Term. If the parties have not entered into a new agreement by the ninetieth day prior to expiration of the Term, Customer will be free to enter into discussions/negotiations with third parties except that Customer hereby grants Pepsi the absolute right of first refusal to match any bona fide offers made by a third party with respect to Beverage pouring rights/sales at the Facilities. Customer will provide Pepsi with details of any such bona fide offers, and Pepsi will have a fifteen (15) day window to decide whether it will match such offer and exercise its right of first refusal. The parties agree that beverage type/category and not brand names will be considered for the purposes of determining a match. In the event that Pepsi declines to match such offer, or fails to respond within the fifteen (15) day period, then Customer will be free to enter into an agreement with any third party based on terms and conditions equal or favorable to those presented to Pepsi in connection with the notice specified herein.

(P) **Distribution Limitations.** Pepsi reserves the right to limit quantities, withhold or deduct funding as an offset to amounts not paid by Customer or terminate this Agreement if Customer (i) sells Products directly or indirectly for resale outside of the Pepsi's exclusive territory where the Outlet operates and (ii) purchases Products outside Pepsi's exclusive territory where the Outlet operates and resells such Products within Pepsi's exclusive territory.

(Q) **Unsaleable Products.** Customer understands that the Products provided hereunder are code dated and that Pepsi does not replace stale or spoiled Products. Customer shall abide by applicable policies on product handling and quality control periodically communicated by Pepsi and ensure that no Products are sold past the code date.

(R) **Entire Agreement.** This Agreement contains the entire agreement between the parties



hereto regarding the subject matter hereof and supersedes all other agreements between the parties. This Agreement may be amended or modified only by a writing signed by each of the parties.

(S) **Representations.** The parties, represents and warrants to the other party that (1) the execution, delivery and performance of this Agreement will not violate any agreements with, or rights of, third parties or any statute, rule or regulation applicable to the party or any of its properties, assets or operations (including without limitation any financial reporting and disclosure requirements promulgated by the Securities and Exchange Commission) and (2) is duly authorized and empowered to bind itself to the terms and conditions of this Agreement for the duration of the Term and (3) it possesses legal authority to enter into and perform the terms and conditions of this Agreement.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly executed as of the date set forth below.

Bottling Group, LLC

By: 

Print Name: Jennifer Wood

Title: Key Account Manager

Date: 3/11/2020

UC San Diego Health Systems

By: 

Print Name: David Meléndez

Title: Senior Procurement Analyst

Date: 3/11/2020

Exhibit A
Customer Facilities

UC San Diego Health

200 West Arbor Dr.
San Diego, CA 92103

- Including Gift Shop

Jacobs Medical Center (includes Thorton Pavilion)

9300 Campus Point Dr.
La Jolla, CA 92037

- Including Gift Shop

Moore's Cancer Center

3855 Health Sciences Dr.
La Jolla, CA 92037

Sulpizio Cardiovascular Center

9434 Medical Center Dr.
La Jolla, CA 92037

Exhibit B
Products and Prices

UCSD MEDICAL CENTERS					
2019-20 PRICING effective 1/1/2020					
FS WP C4 UCSD MED CTR JUN 0630 - SC					
PACKAGE	PRODUCT	Units Per Case	New Price	Price Per Unit	Effective Date
1 Liter 12L	Water_PET_1 Liter 12L_LifeWTR TM_All Brands	12	\$ 18.00	\$ 1.50	1/1/2020
1 Liter 12L	Water_Carton_1 Liter 12L_ONE TM_All Brands	12	\$ 52.60	\$ 4.38	1/1/2020
1 Liter 15L	Water_PET_1 Liter 15L_Aquafina TM_All Brands	15	\$ 12.75	\$ 0.85	1/1/2020
1 Liter 15L	NCB_PET_1 Liter 15L_Lipton TM_All Brands	15	\$ 24.10	\$ 1.61	1/1/2020
1 Liter 15L	CSD_PET_1 Liter 15L_All TMs_All Brands	15	\$ 24.10	\$ 1.61	1/1/2020
1.25 Liter 12L	Water_PET_1.25 Liter 12L_Aquafina TM_All Brands	12	\$ 14.95	\$ 1.25	1/1/2020
1.5 Liter 12L	Water_PET_1.5 Liter 12L_Aquafina TM_All Brands	12	\$ 14.95	\$ 1.25	1/1/2020
11.2oz 12L	Water_Carton_11.2oz 12L_ONE TM_All Brands	12	\$ 22.00	\$ 1.83	1/1/2020
11oz 12L	NCB_Glass_11oz 12L_Starbucks TM_All Brands	12	\$ 19.50	\$ 1.63	1/1/2020
11oz 12L	NCB_Glass_11oz 12L_Starbucks Cold Brew TM_All Brands	12	\$ 28.00	\$ 2.33	1/1/2020
11oz 12L	NCB_Carton_11oz 12L_Gatorade TM_All Brands	12	\$ 37.00	\$ 3.08	1/1/2020
12oz 12L	CSD_Glass_12oz 12L_All TMs_All Brands	12	\$ 13.50	\$ 1.13	1/1/2020
12oz 12L	Inven: 12OZ PL MM 100 SF GF CHOC 1/12	12	\$ 33.00	\$ 2.75	1/1/2020
12oz 12L	Inven: 12OZ PL MM 100 SF GF VAN CREME 1/12	12	\$ 33.00	\$ 2.75	1/1/2020
12oz 12L	Inven: 12OZ PL MM ORGNC CHOC 1/12	12	\$ 33.00	\$ 2.75	1/1/2020
12oz 12L	Inven: 12OZ PL MM ORGNC VAN 1/12	12	\$ 33.00	\$ 2.75	1/1/2020
12oz 12P	NCB_PET_12oz 12P_Gatorade TM_All Brands	12	\$ 22.15	\$ 1.85	1/1/2020
12oz 24L	Water_PET_12oz 24L_Aquafina TM_All Brands	24	\$ 11.75	\$ 0.49	1/1/2020
12oz 24L	NCB_PET_12oz 24L_Gatorade TM_All Brands	24	\$ 22.15	\$ 0.92	1/1/2020
12oz 4P	NCB_PET_12oz 4P_Gatorade TM_All Brands	24	\$ 22.15	\$ 0.92	1/1/2020
12oz 6P	NCB_PET_12oz 6P_Gatorade TM_All Brands	24	\$ 22.15	\$ 0.92	1/1/2020
12oz 8P	Water_PET_12oz 8P_Aquafina TM_All Brands	24	\$ 11.75	\$ 0.49	1/1/2020
12oz 8P	CSD_PET_12oz 8P_All TMs_All Brands	24	\$ 18.25	\$ 0.76	1/1/2020
12oz LN 24L	CSD_Glass_12oz LN 24L_All TMs_All Brands	24	\$ 22.55	\$ 0.94	1/1/2020
12oz LN 24P	CSD_Glass_12oz LN 24P_All TMs_All Brands	24	\$ 2.55	\$ 0.11	1/1/2020
13.7oz 12L	NCB_Glass_13.7oz 12L_Starbucks TM_All Brands	12	\$ 28.50	\$ 2.38	1/1/2020
14oz 12L	NCB_Glass_14oz 12L_Lipton TM_All Brands	12	\$ 20.25	\$ 1.69	1/1/2020
14oz 12L	NCB_PET_14oz 12L_Starbucks TM_All Brands	12	\$ 28.50	\$ 2.38	1/1/2020
14oz 12L	NCB_PET_14oz 12L_Muscle Milk TM_Muscle Milk 100 Total	12	\$ 33.00	\$ 2.75	1/1/2020
14oz 12L	NCB_PET_14oz 12L_Muscle Milk TM_Muscle Milk Total	12	\$ 33.00	\$ 2.75	1/1/2020
14oz 12L	NCB_PET_14oz 12L_Muscle Milk TM_Muscle Milk Pro Total	12	\$ 33.00	\$ 2.75	1/1/2020
15.2oz 12L	NCB_PET_15.2oz 12L_Ocean Spray TM_All Brands	12	\$ 17.50	\$ 1.46	1/1/2020
15.2oz 12L	NCB_PET_15.2oz 12L_Dole TM_All Brands	12	\$ 17.50	\$ 1.46	1/1/2020
15.8oz 12L	NCB_PET_15.8oz 12L_Muscle Milk TM_All Brands	12	\$ 33.00	\$ 2.75	1/1/2020
16.9oz 12L	NCB_PET_16.9oz 12L_Gatorade TM_Gatorade Organic Total	12	\$ 18.55	\$ 1.55	1/1/2020
16.9oz 12L	Water_Carton_16.9oz 12L_ONE TM_All Brands	12	\$ 23.90	\$ 1.99	1/1/2020
16.9oz 12L	NCB_PET_16.9oz 12L_Gatorade TM_All Brands	12	\$ 24.25	\$ 2.02	1/1/2020
16.9oz 24P	Water_PET_16.9oz 24P_Aquafina TM_Aquafina Base Total	24	\$ 6.00	\$ 0.25	1/1/2020
16oz 12L	NCB_PET_16oz 12L_Gatorade TM_All Brands	12	\$ 19.50	\$ 1.63	1/1/2020
16oz 24L	CSD_PET_16oz 24L_All TMs_All Brands	24	\$ 27.00	\$ 1.13	1/1/2020
18.5oz 12L	NCB_PET_18.5oz 12L_Lipton TM_All Brands	12	\$ 15.10	\$ 1.26	1/1/2020
18.5oz 6P	NCB_PET_18.5oz 6P_Lipton TM_All Brands	21	\$ 15.10	\$ 0.72	1/1/2020
2 Liter 8L	CSD_PET_2 Liter 8L_All TMs_All Brands	8	\$ 13.65	\$ 1.71	1/1/2020

2.0oz 12L	NCB_PET_2.0oz 12L_Gatorade TM_All Brands	12	\$ 23.20	\$ 1.93	1/1/2020
2.1oz 12L	Inven: 2.1OZ PL GAT PRM FL OML RAI 1/12	12	\$ 14.75	\$ 1.23	1/1/2020
2.1oz 12L	Inven: 2.1OZ PL GAT PRM FL CCHP 1/12	12	\$ 14.75	\$ 1.23	1/1/2020
2.8oz 12L	NCB_PET_2.8oz 12L_Gatorade TM_All Brands	12	\$ 23.20	\$ 1.93	1/1/2020
2.8oz 12L	Inven: 2.8OZ PL GAT RVR PB CCPNUT 1/12	12	\$ 23.20	\$ 1.93	1/1/2020
2.8oz 12L	Inven: 2.8OZ PL GAT RVR PB CHC MNTCCH 1/12	12	\$ 23.20	\$ 1.93	1/1/2020
20oz 12L	NCB_PET_20oz 12L_Tropicana TM_All Brands	12	\$ 14.35	\$ 1.20	1/1/2020
20oz 12L	Water_PET_20oz 12L_Gatorade TM_All Brands	12	\$ 15.45	\$ 1.29	1/1/2020
20oz 24L	Water_PET_20oz 24L_Aquafina TM_Aquafina Base Total	24	\$ 13.35	\$ 0.56	1/1/2020
20oz 24L	Water_PET_20oz 24L_Bubly TM_All Brands	24	\$ 16.00	\$ 0.67	1/1/2020
20oz 24L	CSD_PET_20oz 24L_All TMs_All Brands	24	\$ 18.55	\$ 0.77	1/1/2020
20oz 24L	NCB_PET_20oz 24L_Lipton TM_All Brands	24	\$ 18.55	\$ 0.77	1/1/2020
20oz 24L	Water_PET_20oz 24L_Gatorade TM_All Brands	24	\$ 19.50	\$ 0.81	1/1/2020
20oz 24L	Water_PET_20oz 24L_Schweppes TM_All Brands	24	\$ 18.55	\$ 0.77	1/1/2020
20oz 24L	NCB_PET_20oz 24L_Gatorade TM_All Brands	24	\$ 19.00	\$ 0.79	1/1/2020
20oz 24L	NCB_PET_20oz 24L_Tampico TM_All Brands	24	\$ 20.75	\$ 0.86	1/1/2020
20oz 24L	Water_PET_20oz 24L_LifeWTR TM_All Brands	24	\$ 25.45	\$ 1.06	1/1/2020
20oz 24P	NCB_PET_20oz 24P_Gatorade TM_All Brands	24	\$ 19.00	\$ 0.79	1/1/2020
24oz 24L	NCB_PET_24oz 24L_Gatorade TM_All Brands	24	\$ 35.00	\$ 1.46	1/1/2020
32oz 15L	NCB_PET_32oz 15L_Gatorade TM_All Brands	15	\$ 21.75	\$ 1.45	1/1/2020
375ml 4P	CSD_Glass_375ml 4P_Bundaberg TM_All Brands	24	\$ 28.85	\$ 1.20	1/1/2020
64oz 8L	NCB_PET_64oz 8L_Gatorade TM_All Brands	8	\$ 20.60	\$ 2.58	1/1/2020
700ml 12L	Water_PET_700ml 12L_LifeWTR TM_All Brands	12	\$ 14.85	\$ 1.24	1/1/2020
750ml 12L	Water_PET_750ml 12L_Gatorade TM_All Brands	12	\$ 16.25	\$ 1.35	1/1/2020
750ml 12L	CSD_Glass_750ml 12L_Bundaberg TM_All Brands	12	\$ 28.85	\$ 2.40	1/1/2020
8.5oz 24L	CSD_Glass_8.5oz 24L_All TMs_All Brands	24	\$ 24.35	\$ 1.01	1/1/2020
9.5oz 12L	NCB_Glass_9.5oz 12L_Starbucks TM_All Brands	12	\$ 18.55	\$ 1.55	1/1/2020
9.5oz 15L	NCB_Glass_9.5oz 15L_Starbucks TM_All Brands	15	\$ 23.20	\$ 1.55	1/1/2020
9.5oz 15P	NCB_Glass_9.5oz 15P_Starbucks TM_All Brands	15	\$ 23.20	\$ 1.55	1/1/2020
Can 11.5oz 12L	NCB_Aluminum_Can 11.5oz 12L_All Other TM_Yachak Total	12	\$ 18.55	\$ 1.55	1/1/2020
Can 11.5oz 12P	NCB_Aluminum_Can 11.5oz 12P_All Other TM_Yachak Total	12	\$ 18.55	\$ 1.55	1/1/2020
Can 11oz 12L	NCB_Aluminum_Can 11oz 12L_Starbucks TM_All Brands	12	\$ 26.65	\$ 2.22	1/1/2020
Can 12oz 12L	Water_Aluminum_Can 12oz 12L_Aquafina TM_All Brands	12	\$ 10.15	\$ 0.85	1/1/2020
Can 12oz 12L	NCB_Aluminum_Can 12oz 12L_Lipton TM_All Brands	12	\$ 11.00	\$ 0.92	1/1/2020
Can 12oz 12L	CSD_Aluminum_Can 12oz 12L_All TMs_All Brands	12	\$ 13.50	\$ 1.13	1/1/2020
Can 12oz 12L	Inven: 12OZ CN MDEW KSTRT BL ORG 1/12 SLK	12	\$ 13.50	\$ 1.13	1/1/2020
Can 12oz 12L	Inven: 12OZ CN MDEW KSTRT BLUE POM 1/12SLK	12	\$ 13.50	\$ 1.13	1/1/2020
Can 12oz 12L	NCB_Aluminum_Can 12oz 12L_Mt Dew TM_All Brands	12	\$ 13.90	\$ 1.16	1/1/2020
Can 12oz 12L	NCB_Aluminum_Can 12oz 12L_Energy TM_AMP Total	12	\$ 17.50	\$ 1.46	1/1/2020
Can 12oz 12L	NCB_Aluminum_Can 12oz 12L_Starbucks TM_All Brands	12	\$ 12.95	\$ 1.08	1/1/2020
Can 12oz 12P	Water_Aluminum_Can 12oz 12P_Bubly TM_All Brands	12	\$ 8.50	\$ 0.71	1/1/2020
Can 12oz 12P	CSD_Aluminum_Can 12oz 12P_Pepsi TM_All Brands	12	\$ 13.50	\$ 1.13	1/1/2020
Can 12oz 12P FM	CSD_Aluminum_Can 12oz 12P FM_All TMs_All Brands	24	\$ 8.50	\$ 0.35	1/1/2020
Can 12oz 12P FM	NCB_Aluminum_Can 12oz 12P FM_Lipton TM_All Brands	24	\$ 8.50	\$ 0.35	1/1/2020
Can 12oz 24P Cube	CSD_Aluminum_Can 12oz 24P Cube_All TMs_All Brands	24	\$ 8.50	\$ 0.35	1/1/2020
Can 12oz 24P Cube	NCB_Aluminum_Can 12oz 24P Cube_Lipton TM_All Brands	24	\$ 8.50	\$ 0.35	1/1/2020
Can 12oz 6P	CSD_Aluminum_Can 12oz 6P_All TMs_All Brands	24	\$ 8.50	\$ 0.35	1/1/2020
Can 12oz 6P	NCB_Aluminum_Can 12oz 6P_Lipton TM_All Brands	24	\$ 8.50	\$ 0.35	1/1/2020
Can 12oz 8P FM	CSD_Aluminum_Can 12oz 8P FM_All TMs_All Brands	24	\$ 8.50	\$ 0.35	1/1/2020
Can 12oz 8P FM	NCB_Aluminum_Can 12oz 8P FM_Lipton TM_All Brands	24	\$ 8.50	\$ 0.35	1/1/2020
Can 12oz 8P FM	Water_Aluminum_Can 12oz 8P FM_Bubly TM_All Brands	24	\$ 8.50	\$ 0.35	1/1/2020
Can 12oz 8P FM	Water_Aluminum_Can 12oz 8P FM_Aquafina TM_All Brands	24	\$ 8.50	\$ 0.35	1/1/2020
Can 15oz 12L	NCB_Aluminum_Can 15oz 12L_Starbucks TM_All Brands	12	\$ 26.50	\$ 2.21	1/1/2020
Can 15oz 12L	NCB_Aluminum_Can 15oz 12L_Rockstar Almd Mlk TM_All Brands	12	\$ 25.50	\$ 2.13	1/1/2020
Can 16oz 12L	NCB_Aluminum_Can 16oz 12L_Lipton TM_All Brands	12	\$ 9.85	\$ 0.82	1/1/2020
Can 16oz 12L	Inven: CSD_Aluminum_Can 16oz 12L_Pepsi TM_All Brands	12	\$ 10.45	\$ 0.87	1/1/2020
Can 16oz 12L	Inven: CSD_Aluminum_Can 16oz 12L_Pepsi TM_All Brands	12	\$ 10.45	\$ 0.87	1/1/2020
Can 16oz 12L	Inven: CSD_Aluminum_Can 16oz 12L_Pepsi TM_All Brands	12	\$ 10.45	\$ 0.87	1/1/2020
Can 16oz 12L	Inven: 16OZ CN MDEW WHT LBL 1/12	12	\$ 13.00	\$ 1.08	1/1/2020
Can 16oz 12L	Inven: 16OZ CN MDEW GRN LBL 1/12	12	\$ 13.00	\$ 1.08	1/1/2020
Can 16oz 12L	Inven: 16 OZ CN MDEW BLK LBL 1/12	12	\$ 13.00	\$ 1.08	1/1/2020
Can 16oz 12L	NCB_Aluminum_Can 16oz 12L_Mt Dew TM_All Brands	12	\$ 16.25	\$ 1.35	1/1/2020
Can 16oz 12L	NCB_Aluminum_Can 16oz 12L_Energy TM_All Brands	12	\$ 17.50	\$ 1.46	1/1/2020
Can 16oz 12L	NCB_Aluminum_Can 16oz 12L_All Other TM_Yachak Total	12	\$ 21.50	\$ 1.79	1/1/2020
Can 16oz 24L	NCB_Aluminum_Can 16oz 24L_Rockstar TM_All Brands	24	\$ 35.00	\$ 1.46	1/1/2020
Can 6.5oz 12L	NCB_Aluminum_Can 6.5oz 12L_Starbucks TM_All Brands	12	\$ 24.45	\$ 2.04	1/1/2020
Can 6.5oz 12P	NCB_Aluminum_Can 6.5oz 12P_Starbucks TM_All Brands	12	\$ 24.45	\$ 2.04	1/1/2020
Can 6.5oz 4P	NCB_Aluminum_Can 6.5oz 4P_Starbucks TM_All Brands	24	\$ 48.90	\$ 2.04	1/1/2020
Can 7.5oz 6P	CSD_Aluminum_Can 7.5oz 6P_All TMs_All Brands	24	\$ 7.85	\$ 0.33	1/1/2020
Can 8oz 6P	CSD_Aluminum_Can 8oz 6P_All TMs_All Brands	24	\$ 7.85	\$ 0.33	1/1/2020
Can 8oz 8P FM	CSD_Aluminum_Can 8oz 8P FM_All TMs_All Brands	24	\$ 7.85	\$ 0.33	1/1/2020
Can 8oz 8P FM	NCB_Aluminum_Can 8oz 8P FM_Lipton TM_All Brands	24	\$ 7.85	\$ 0.33	1/1/2020

UCSD MEDICAL CENTERS					
2019-20 PRICING effective 1/1/2020					
FS WP C4 UCSD MED CTR JUN 0630 - SC					
PACKAGE	PRODUCT	Units Per Case	New Price	Price Per Unit	Effective Date
BIB 1G	NCB_Bag_BIB 1G_All Other TM_All Brands	1	\$ 21.00	\$ 21.00	1/1/2020
BIB 3G	Inven: 3G BIB BRSK FTM UNSNL POS	3	\$ 15.86	\$ 5.29	1/1/2020
BIB 3G	Water_Bag_BIB 3G_Bubly TM_All Brands	3	\$ 15.86	\$ 5.29	1/1/2020
BIB 3G	CSD_Bag_BIB 3G_Tropicana TM_All Brands	3	\$ 15.86	\$ 5.29	1/1/2020
BIB 3G	CSD_Bag_BIB 3G_Sierra Mist TM_All Brands	3	\$ 15.86	\$ 5.29	1/1/2020
BIB 3G	CSD_Bag_BIB 3G_Mug TM_All Brands	3	\$ 15.86	\$ 5.29	1/1/2020
BIB 3G	CSD_Bag_BIB 3G_Pepsi TM_All Brands	3	\$ 15.86	\$ 5.29	1/1/2020
BIB 3G	CSD_HY-Bag_BIB 3G_Pepsi TM_All Brands	3	\$ 15.86	\$ 5.29	1/1/2020
BIB 3G	CSD_Bag_BIB 3G_Mt Dew TM_All Brands	3	\$ 15.86	\$ 5.29	1/1/2020
BIB 3G	CSD_Bag_BIB 3G_Dr Pepper TM_All Brands	3	\$ 15.86	\$ 5.29	1/1/2020
BIB 3G	CSD_Bag_BIB 3G_Schweppes TM_All Brands	3	\$ 15.86	\$ 5.29	1/1/2020
BIB 3G	NCB_Bag_BIB 3G_Gatorade TM_All Brands	3	\$ 15.86	\$ 5.29	1/1/2020
BIB 3G	Water_Bag_BIB 3G_SoBe TM_SoBe Life Water Total	3	\$ 15.86	\$ 5.29	1/1/2020
BIB 3G	CSD_FCB-Bag_BIB 3G_Mt Dew TM_All Brands	3	\$ 15.86	\$ 5.29	1/1/2020
BIB 3G	Inven: 3G BIB DOL OLDFSND LMND POS	3	\$ 15.86	\$ 5.29	1/1/2020
BIB 3G	CSD_Bag_BIB 3G_IZZE TM_All Brands	3	\$ 20.00	\$ 6.67	1/1/2020
BIB 3G	CSD_Bag_BIB 3G_All Other TM_All Brands	3	\$ 20.00	\$ 6.67	1/1/2020
BIB 3G	NCB_Bag_BIB 3G_Citrus Springs TM_All Brands	3	\$ 29.00	\$ 9.67	1/1/2020
BIB 3G	NCB_Bag_BIB 3G_Dole TM_All Brands	3	\$ 29.00	\$ 9.67	1/1/2020
BIB 3G	Inven: 3G BIB CL ATT RD ALRT POS	3	\$ 41.00	\$ 13.67	1/1/2020
BIB 5G	Inven: Inven: 5G BIB BRSK FTM UNSNL POS	5	\$ 15.86	\$ 3.17	1/1/2020
BIB 5G	CSD_Bag_BIB 5G_Crush TM_All Brands	5	\$ 15.86	\$ 3.17	1/1/2020
BIB 5G	CSD_Bag_BIB 5G_Dr Pepper TM_All Brands	5	\$ 15.86	\$ 3.17	1/1/2020
BIB 5G	CSD_Bag_BIB 5G_Schweppes TM_All Brands	5	\$ 15.86	\$ 3.17	1/1/2020
BIB 5G	CSD_Bag_BIB 5G_Mirinda TM_All Brands	5	\$ 15.86	\$ 3.17	1/1/2020
BIB 5G	CSD_Bag_BIB 5G_Tropicana TM_All Brands	5	\$ 15.86	\$ 3.17	1/1/2020
BIB 5G	NCB_Bag_BIB 5G_Tropicana TM_All Brands	5	\$ 15.86	\$ 3.17	1/1/2020
BIB 5G	CSD_Bag_BIB 5G_Sierra Mist TM_All Brands	5	\$ 15.86	\$ 3.17	1/1/2020
BIB 5G	CSD_Bag_BIB 5G_Manzanita Sol TM_All Brands	5	\$ 15.86	\$ 3.17	1/1/2020
BIB 5G	CSD_Bag_BIB 5G_Mug TM_All Brands	5	\$ 15.86	\$ 3.17	1/1/2020
BIB 5G	CSD_Bag_BIB 5G_West TM_All Brands	5	\$ 15.86	\$ 3.17	1/1/2020
BIB 5G	CSD_Bag_BIB 5G_Pepsi TM_All Brands	5	\$ 15.86	\$ 3.17	1/1/2020
BIB 5G	CSD_Bag_BIB 5G_Mt Dew TM_All Brands	5	\$ 15.86	\$ 3.17	1/1/2020
BIB 5G	NCB_Bag_BIB 5G_Lipton TM_All Brands	5	\$ 15.86	\$ 3.17	1/1/2020
BIB 5G	CSD_FCB-Bag_BIB 5G_All TMs_All Brands	5	\$ 15.86	\$ 3.17	1/1/2020
C02 20LB Full	Supply_CO2 Full Total_C02 20LB Full	1	\$ -	\$ -	1/1/2020
C02 50LB Full	Supply_CO2 Full Total_C02 50LB Full	1	\$ -	\$ -	1/1/2020
Can Almtk 16oz 12	NCB_Aluminum_Can Almtk 16oz 12L_Energy TM_All Brands	24	\$ 17.50	\$ 0.73	1/1/2020
Cups: 12oz	Supply_Cups Total_Cups: 12oz	1000	\$ 60.69	\$ 0.06	1/1/2020
Cups: 16oz	Supply_Cups Total_Cups: 16oz	1000	\$ 56.12	\$ 0.06	1/1/2020
Cups: 16oz	Inven: CUP 16OZ PAPER 1200C PCM - MAUI	1000	\$ 67.35	\$ 0.07	1/1/2020
Cups: 21oz	Supply_Cups Total_Cups: 21oz	1000	\$ 70.24	\$ 0.07	1/1/2020
Cups: 22oz	Supply_Cups Total_Cups: 22oz	1000	\$ 70.24	\$ 0.07	1/1/2020
Cups: 24oz	Supply_Cups Total_Cups: 24oz	1000	\$ 78.27	\$ 0.08	1/1/2020
Cups: 32oz	Supply_Cups Total_Cups: 32oz	480	\$ 59.79	\$ 0.12	1/1/2020
Cups: 44oz	Supply_Cups Total_Cups: 44oz	480	\$ 70.35	\$ 0.15	1/1/2020
Lids: 12oz	Supply_Lids Total_Lids: 12oz	2000	\$ 45.44	\$ 0.02	1/1/2020
Lids: 12oz	Inven: LID 12/16/21/24OZ 2400C 16SL-100494	2000	\$ 54.54	\$ 0.03	1/1/2020
Lids: 22oz	Supply_Lids Total_Lids: 22oz	2000	\$ 45.44	\$ 0.02	1/1/2020
Lids: 24oz	Supply_Lids Total_Lids: 24oz	2000	\$ 45.44	\$ 0.02	1/1/2020
Lids: 32oz	Supply_Lids Total_Lids: 32oz	960	\$ 45.44	\$ 0.05	1/1/2020

UCSD MEDICAL CENTERS					
2019-20 PRICING effective 1/1/2020					
FS WP C4 UCSD MED CTR JUN 0630 - SC					
PACKAGE	CHILLED PRODUCT	Units Per Case	New Price	Price Per Unit	Effective Date
15.2oz 8pk	Naked Juice Smoothie TM All Flavors	8	\$ 17.00	\$ 2.13	1/1/2020
15.2oz 8pk	Naked Juice Protein TM All Flavors	8	\$ 20.50	\$ 2.56	1/1/2020
15.2oz 6pk	Kevita TM All Flavors	6	\$ 14.00	\$ 2.33	1/1/2020
12oz 8pk	Naked Juice Pressed TM All Flavors	8	\$ 24.00	\$ 3.00	1/1/2020
12oz 12pk	Tropicana Pure Premium Juice TM All Flavors	12	\$ 15.00	\$ 1.25	1/1/2020
10oz 12pk	Tropicana Juice	12	\$ 15.00	\$ 1.25	1/1/2020
14oz 12pk	Muscle Milk Protein TM All Flavors	12	\$ 33.00	\$ 2.75	1/1/2020

Exhibit C
University of California Terms and Conditions of Purchase



UNIVERSITY
OF
CALIFORNIA

Terms and Conditions of Purchase

ARTICLE 1 – GENERAL

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

ARTICLE 2 – TERM AND TERMINATION

- A. ~~As applicable, the term of the Agreement ("Initial Term") will be stated in the Agreement. Following the Initial Term, the Agreement may be extended by written mutual agreement.~~
- B. ~~UC's obligation to proceed is conditioned upon the appropriation of state, federal and other sources of funds not controlled by UC ("Funding"). UC will have the right to terminate the Agreement without damage, penalty, cost or further obligation in the event that through no action or inaction on the part of UC, the Funding is withdrawn.~~
- C. ~~UC may, by written notice stating the extent and effective date thereof, terminate the Agreement for convenience in whole or in part, at any time. The effective date of such termination shall be consistent with any requirements for providing notice specified in the Agreement, or immediate if no such terms are set forth in the Agreement. As specified in the termination notice, UC will pay Supplier as full compensation the pro rata Agreement price for performance through the later of the date that (i) UC provided Supplier with notice of termination or (ii) Supplier's provision of Goods and/or Services will terminate.~~
- D. ~~UC may by written notice terminate the Agreement for Supplier's breach of the Agreement, in whole or in part, at any time, if Supplier refuses or fails to comply with the provisions of the Agreement, or so fails to make progress as to endanger performance and does not cure such failure within five (5) business days, or fails to supply the Goods and/or Services within the time specified or any written extension thereof. In such event, UC may purchase or otherwise secure Goods and/or Services and, except as otherwise provided herein, Supplier will be liable to UC for any excess costs UC incurs thereby.~~
- E. ~~UC's Appendix – Data Security, Appendix – BAA, and/or Appendix – GDPR will control in the event that one or more appendices are incorporated into the Agreement and conflicts with the provisions of this Article.~~

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

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



ARTICLE 4 – INSPECTION.

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

ARTICLE 5 – ASSIGNED PERSONNEL; CHARACTER OF SERVICES

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

ARTICLE 6 – WARRANTIES

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

- A. General Warranties. Supplier represents, warrants and covenants that: (i) Supplier is free to enter into this Agreement and that Supplier is not, and will not become, during the Term, subject to any restrictions that might restrict or prohibit Supplier from performing the Services or providing the Goods ordered hereunder; (ii) Supplier will comply with all applicable laws, rules and regulations in performing Supplier's obligations hereunder; (iii) the Goods and/or Services shall be rendered with promptness and diligence and shall be executed in a skilled manner by competent personnel, in accordance with the prevailing industry standards; and if UC Appendix Data Security is NOT included:(iv) Supplier has developed a business interruption and disaster recovery program and is executing such program to assess and reduce the extent to which Supplier's hardware, software and embedded systems may be susceptible to errors or failures in various crisis (or force majeure) situations; (v) if Supplier uses electronic systems for creating, modifying, maintaining, archiving, retrieving or transmitting any records, including test results that are required by, or subject to inspection by an applicable regulatory authority, then Supplier represents and warrants that Supplier's systems for electronic records are in compliance; and (vi) Supplier agrees that the Goods and/or Services furnished under the Agreement will be covered by the most favorable warranties Supplier gives to any customer for the same or substantially similar goods or services, or such other more favorable warranties as specified in the Agreement. The rights and remedies so provided are in addition to and do not limit any rights afforded to UC by any other article of the Agreement.
- B. Permits and Licenses. Supplier agrees to procure all necessary permits or licenses and abide by all applicable laws, regulations and ordinances of the United States and of the state, territory and political subdivision or any other country in which the Goods and/or Services are provided.
- C. Federal and State Water and Air Pollution Laws. Where applicable, Supplier warrants that it complies with the requirements in UC Business and Finance Bulletin BUS-56 (Materiel Management; Purchases from Entities Violating State or Federal Water or Air Pollution Laws). Consistent with California Government Code 4477, these requirements do not permit UC to contract with entities in violation of Federal or State water or air pollution laws.
- D. Web Accessibility Requirements. As applicable to the Supplies and/or Services being provided under the Agreement, Supplier warrants that:



1. It complies with California and federal disability laws and regulations; and
 2. The Goods and/or Services will conform to the accessibility requirements of WCAG 2.0AA.
 3. Supplier agrees to promptly respond to and resolve any complaint regarding accessibility of its Goods and/or Services;
- E. General Accessibility Requirements. Supplier warrants that:
1. It will comply with California and federal disability laws and regulations;
 2. 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 (i) UC may terminate the Agreement without further obligation for noncompliance, and (ii) Supplier will forfeit to UC the amount UC paid for the percentage of work that was performed with workers outside the United States and not described in Supplier's bid.

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

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



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.
- D. UC Rights to Institutional Information. Institutional Information shall belong exclusively to UC and unless expressly provided, this Agreement shall not be construed as conferring on Supplier any patent, copyright, trademark, license right or trade secret owned or obtained by UC. Any right for Supplier to use Institutional Information is solely provided on a non-exclusive basis, and only to the extent required for Supplier to provide the Goods or Services under the Agreement. As used herein, "Institutional Information" means any information or data created, received, and/or collected by UC or on its behalf, including but not limited to application logs, metadata and data derived from such data.

ARTICLE 8 – INDEMNITY AND LIABILITY

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

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



ARTICLE 9 – INSURANCE

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

- A. Commercial General Liability Insurance (contractual liability included) with limits as follows:
 - 1. Each Occurrence \$ 1,000,000
 - 2. Products/Completed Operations Aggregate \$ 2,000,000
 - 3. Personal and Advertising Injury \$ 1,000,000
 - 4. General Aggregate \$ 2,000,000
- B. Business Automobile Liability Insurance for owned, non-owned, or hired automobiles with a combined single limit of 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. Workers' Compensation as required by applicable state law and Employer's Liability with limits of one million dollars (\$1,000,000) per occurrence.



ARTICLE 10 – USE OF UC NAME AND TRADEMARKS

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

ARTICLE 11 – FEDERAL FUNDS

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

- A. For commercial transactions involving funds on a federal contract (federal awards governed by the FAR), the following provisions apply, as applicable:
1. FAR 52.203-13, Contractor Code of Business Ethics and Conduct;
 2. FAR 52.203-17, Contractor Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights;
 3. FAR 52.203-19, Prohibition on Requiring Certain Internal Confidentiality Agreements or Statements;
 4. FAR 52.219-8, Utilization of Small Business Concerns;
 5. FAR 52.222-17, Non-displacement of Qualified Workers;
 6. FAR 52.222-21, Prohibition of Segregated Facilities;
 7. FAR 52.222-26, Equal Opportunity;
 8. FAR 52.222-35, Equal Opportunity for Veterans;
 9. FAR 52.222-36, Equal Opportunity for Workers with Disabilities;
 10. FAR 52.222-37, Employment Reports on Veterans;
 11. FAR 52.222-40, Notification of Employee Rights Under the National Labor Relations Act;
 12. FAR 52.222-41, Service Contract Labor Standards;
 13. FAR 52.222-50, Combating Trafficking in Persons;
 14. FAR 52.222-51, Exemption from Application of the Service Contract Labor Standards to Contracts for Maintenance, Calibration, or Repair of Certain Equipment - Requirements;
 15. FAR 52.222-53, Exemption from Application of the Service Contract Labor Standards to Contracts for Certain Services - Requirements;
 16. FAR 52.222-54, Employment Eligibility Verification;
 17. FAR 52.222-55, Minimum Wages Under Executive Order 13658;
 18. FAR 52.222-62, Paid Sick Leave under Executive Order 13706;
 19. FAR 52.224-3, Privacy Training;
 20. FAR 52.226-6, Promoting Excess Food Donation to Nonprofit Organizations;
 21. FAR 52.233-1, Disputes; and
 22. FAR 52.247-64, Preference for Privately Owned U.S.-Flag Commercial Vessels.
- B. For non-commercial transactions involving funds on a federal contract, the UC Appendix titled '*Federal Government Contracts Special terms and Conditions (Non-Commercial Items or Services)*' and located at www.ucop.edu/procurement-services/policies-forms/index.html is hereby incorporated herein by this reference.
- C. For transactions involving funds on a federal grant or cooperative agreement (federal awards governed by eCFR Title 2, Subtitle A, Chapter II, Part 200) the following provisions apply, as applicable:



1. Rights to Inventions. If Supplier is a small business firm or nonprofit organization, and is providing experimental, development, or research work under this transaction, Supplier must comply with the requirements of 3 CFR Part 401, "Rights to Inventions Made by nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements".
 2. Clean Air Act. Supplier agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
 3. Byrd Anti-Lobbying. Supplier certifies that it will not, and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.
 4. Procurement of Recovered Materials. If Supplier is a state agency or agency of a political subdivision of a state, then Supplier must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act.
- D. In these provisions, the term "contractor" as used therein will refer to Supplier, and the terms "Government" or "Contracting Officer" as used therein will refer to UC. Where a purchase of items is for fulfillment of a specific U.S. Government prime or subcontract, additional information and/or terms and conditions may be included in an attached supplement. By submitting an invoice to UC, Supplier is representing to UC that, at the time of submission:
1. Neither Supplier nor its principals are presently debarred, suspended, or proposed for debarment by the U.S. government (see FAR 52.209-6);
 2. Supplier has filed all compliance reports required by the Equal Opportunity clause (see FAR 52.222-22); and
 3. Any Supplier representations to UC about U.S. Small Business Administration or state and local classifications, including but not limited to size standards, ownership, and control, are accurate and complete.
 4. Byrd Anti-Lobbying. Supplier certifies that it will not, and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.

ARTICLE 12 – EQUAL OPPORTUNITY AFFIRMATIVE ACTION

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

ARTICLE 13 – LIENS

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



ARTICLE 14 – PREMISES WHERE SERVICES ARE PROVIDED

- A. Cleaning Up. Supplier will at all times keep UC premises where the Services are performed and adjoining premises free from accumulations of waste material or rubbish caused by its employees or work of any of its sub-suppliers, and, at the completion of the Services; will remove all rubbish from and about the premises and all its tools, scaffolding, and surplus materials, and will leave the premises "broom clean" or its equivalent, unless more exactly specified. In case of dispute between Supplier and its sub-suppliers as to responsibility for the removal of the rubbish, or if it is not promptly removed, UC may remove the rubbish and charge the cost to Supplier.
- B. Environmental, Safety, Health and Fire Protection. Supplier will take all reasonable precautions in providing the Goods and Services to protect the health and safety of UC employees and members of the public and to minimize danger from all hazards to life and property, and will comply with all applicable environmental protection, health, safety, and fire protection regulations and requirements (including reporting requirements). In the event that Supplier fails to comply with such regulations and requirements, UC may, without prejudice to any other legal or contractual rights of UC, issue an order stopping all or any part of the provision of the Goods and/or Services; thereafter a start order for resumption of providing the Goods and/or Services may be issued at UC's discretion. Supplier will not be entitled to make a claim for extension of time or for compensation or damages by reason of or in connection with such stoppage. Supplier will have sole responsibility for the safety of all persons employed by Supplier and its sub-suppliers on UC premises, or any other person who enters upon UC premises for reasons relating to the Agreement. Supplier will at all times maintain good order among its employees and all other persons who come onto UC's premises at Supplier's request and will not engage any unfit or unskilled person to provide the Goods and/or Services. Supplier will confine its employees and all other persons who come onto UC's premises at Supplier's request or for reasons relating to the Agreement and its equipment to that portion of UC's premises where the Services are to be provided or to roads leading to and from such work sites, and to any other area which UC may permit Supplier to use. Supplier will take all reasonable measures and precautions at all times to prevent injuries to or the death of any of its employees or any other person who enters upon UC premises at Supplier's request. Such measures and precautions will include, but will not be limited to, all safeguards and warnings necessary to protect workers and others against any conditions on the premises that could be dangerous and to prevent accidents of any kind whenever the Goods and/or Services are being provided in proximity to any moving or operating machinery, equipment or facilities, whether such machinery, equipment or facilities are the property of or are being operated by, Supplier, its sub-suppliers, UC or other persons. To the extent compliance is required, Supplier will comply with all relevant UC safety rules and regulations when on UC premises.
- C. Tobacco-free Campus. UC is a tobacco-free institution. Use of cigarettes, cigars, oral tobacco, electronic cigarettes and all other tobacco products is prohibited on all UC owned or leased sites.

ARTICLE 15 – LIABILITY FOR UC - FURNISHED PROPERTY

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

ARTICLE 16 – COOPERATION

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

ARTICLE 17 – ADDITIONAL TERMS APPLICABLE TO THE FURNISHING OF GOODS

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

- A. Price Decreases. 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. Supplier agrees to provide UC (the contact listed on the Purchase Order) with written notification that identifies the export-controlled Goods and such Goods' export classification if any of the Goods is export-controlled under the International Traffic in Arms Regulations (ITAR) (22 CFR §§ 120-130), the Export Administration Regulations (15 CFR §§ 730-774) 500 or 600 series, or controlled on a military strategic goods list. Supplier agrees to provide UC (the contact listed on the Purchase Order) with written notification if Supplier will be providing information necessary for the operation, installation (including on-site installation), maintenance (checking), repair, overhaul, and refurbishing of the Goods that is beyond a standard user manual (i.e. "Use" technology as defined under the EAR 15 CFR § 772.1), or "Technical Data" (as defined under the ITAR 22 CFR § 120.10).

ARTICLE 18 – CONFLICT OF INTEREST

Supplier affirms that, to the best of Supplier's knowledge, no UC employee who has participated in UC's decision-making concerning the Agreement has an "economic interest" in the Agreement or Supplier. A UC employee's "economic interest" means:

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

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

ARTICLE 19 – AUDIT REQUIREMENTS

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

ARTICLE 20 – PROHIBITION ON UNAUTHORIZED USE OR DISCLOSURE OF INSTITUTIONAL INFORMATION

- A. Prohibition on Access, Use and Disclosure of Institutional Information. Supplier will not access, use or disclose Institutional Information, other than to carry out the purposes for which UC disclosed the Institutional Information to Supplier, except as required by applicable law, or as otherwise authorized in writing by UC prior to Supplier's disclosure. Supplier shall have the limited right to disclose Institutional Information to Supplier's employees provided that: (i) Supplier shall disclose only such Institutional Information as is necessary for the Supplier to perform its obligations under this Agreement, and (ii) Supplier informs such employees of the obligations governing the access, use and disclosure of Institutional Information prior to Supplier's disclosure. Supplier shall be liable



for any breach of this Agreement by its employees. For avoidance of doubt, this provision prohibits Supplier from using for its own benefit Institutional Information and any information derived therefrom. For the avoidance of doubt, the sale of Institutional Information is expressly prohibited.

- B. Compliance with Applicable Laws and Industry Best Practices. Supplier agrees to comply with all applicable state, federal, and foreign laws, as well as industry best practices, governing the collection, access, use, disclosure, safeguarding and destruction of Institutional Information. Supplier agrees to protect the privacy and security of Institutional Information according to all applicable laws and industry best practices, and no less rigorously than it protects its own information, but in no case less than reasonable care.
- C. Confidential Institutional Information. Supplier agrees to hold UC's Confidential Institutional Information, and any information derived therefrom, in strict confidence. Confidential Institutional Information shall be defined as any Institutional Information which is (i) marked as "Confidential" at the time of disclosure; (ii) if disclosed orally, identified at the time of such oral disclosure as confidential, and reduced to writing as "Confidential" within thirty (30) days of such oral disclosure; and (iii) if not marked as "Confidential," information that would be considered by a reasonable person in the relevant field to be confidential given its content and the circumstances of its disclosure. Confidential Information will not be considered confidential to the extent that: (i) Supplier can demonstrate by written records was known to Supplier prior to the effective date of the Agreement; (ii) is currently in, or in the future enters, the public domain other than through a breach of the Agreement or through other acts or omissions of Supplier; (iii) is obtained lawfully from a third party; or (iv) is disclosed under the California Public Records Act or legal process. For the avoidance of doubt, as applicable to Supplier's Services, Confidential Institutional Information may include any information that identifies or is capable of identifying a specific individual, including but not limited to:
1. Personally identifiable information,
 2. Protected Health Information as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the HIPAA regulations (including, but not limited to 45 C.F.R. § 160.103),
 3. Medical information as defined by California Civil Code § 56.05,
 4. Cardholder data,
 5. Student records, or
 6. Individual financial information that is subject to laws restricting the use and disclosure of such information, including but not limited to:
 - a. Article 1, Section 1 of the California Constitution; the California Information Practices Act (Civil Code § 1798 *et seq.*);
 - b. The federal Gramm-Leach-Bliley Act (15 U.S.C. §§ 6801(b) and 6805(b)(2));
 - c. The federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g);
 - d. The federal Fair and Accurate Credit Transactions Act (15 U.S.C. § 1601 *et seq.*);
 - e. The Fair Credit Reporting Act (15 U.S.C. § 1681 *et seq.*), and
 - f. Applicable international privacy laws, including, but not limited to the General Data Protection Regulation.
- D. Required Disclosures of Institutional Information. If Supplier is required by a court of competent jurisdiction or an administrative body to disclose Institutional Information, Supplier will notify UC in writing immediately upon receiving notice of such requirement and prior to any such disclosure (unless Supplier is prohibited by law from doing so), to give UC an opportunity to oppose or otherwise respond to such disclosure. To the extent Supplier still required to disclose Institutional Information, Supplier will furnish only that portion that is legally required and will exercise all reasonable efforts to obtain reliable assurance that confidential treatment will be afforded to any Confidential Institutional Information.
- E. No Offshoring. Supplier's transmission, transportation or storage of Institutional Information outside the United States, or access of Institutional Information from outside the United States, is prohibited except with prior written authorization by UC.
- F. Conflict in Terms. UC's Appendix – Data Security, Appendix – BAA, and/or Appendix GDPR will control in the event that one or more appendices is incorporated into the Agreement and conflicts with the provisions of this Article.
- G. Acknowledgement. Supplier acknowledges that remedies at law would be inadequate to protect UC against any actual or threatened breach of this Section by Supplier, and, without prejudice to any other rights and remedies otherwise available to UC, Supplier agrees 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>).

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

- A. Sustainability Marketing Standards. Supplier sustainability related claims, where applicable, must meet UC recognized certifications and standards set forth in the UC Sustainable Procurement Guidelines and/or meet the standards of Federal Trade Commission's (FTC) Green Guides.
- B. Electronic Transfer of Supplier Information. Suppliers, when interacting with the UC, shall be prohibited from providing hard copies of presentations, marketing material, or other informational materials. Suppliers will be required to present all information in electronic format that is easily transferable to UC staff. Materials may be provided in hard copy or physical format if specifically required or requested by a UC representative.
- C. Packaging Requirements. All packaging must be compliant with the Toxics in Packaging Prevention Act (AB 455) and must meet all additional standards and requirements set forth in the UC Sustainable Practices Policy. In addition, UC requires that all packaging meet at least one of the criteria listed below:
 - 1. Uses bulk packaging;
 - 2. Uses reusable packaging (e.g. totes reused by delivery service for next delivery);
 - 3. Uses innovative packaging that reduces the weight of packaging, reduces packaging waste, or utilizes packaging that is a component of the product;
 - 4. Maximizes recycled content and/or meets or exceeds the minimum post-consumer content level for packaging in the U.S. Environmental Protection Agency Comprehensive Procurement Guidelines;
 - 5. Uses locally recyclable or certified compostable material.
- D. Foodservice Foam Ban. As of 2018, the University no longer allows packaging foam or expanded polystyrene (EPS) for takeaway containers or other food service items, in any University-owned or -operated food service facility.
- E. Product Packaging Foam Ban. Beginning January 1st, 2020, the University will prohibit all contracted and non-contracted suppliers from selling or distributing packaging foam (other than that utilized for laboratory supply or medical packaging) to UC campuses. Packaging foam is defined as any open or closed cell, solidified, polymeric foam used for cushioning or packaging, including but not limited to: low-density polyethylene foam, polypropylene foam, polystyrene foam (i.e. expanded polystyrene (EPS)), polyurethane foam, polyethylene foam, polyvinyl chloride (PVC) foam, and microcellular foam. Not included in this ban are easily biodegradable, plant-based foams such as those derived from corn or mushrooms.
- F. E-Waste Recycling Requirements. All recyclers of UC electronic equipment must be e-Steward certified by the Basel Action Network (BAN).
- G. Hosted and Punch-out Catalog Requirements. Suppliers enabled with eProcurement hosted catalog functionality must clearly identify products with UC-recognized certifications, as defined by the UC Sustainable Procurement Guidelines, in both hosted and punch-out catalog e-procurement environments.

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

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

- A. If Supplier is an Applicable Large Employer (as defined under Treasury Regulation Section 54.4980H-1(a)(4)):
 - 1. Supplier offers health coverage to its full-time employees who are performing Services for UC;
 - 2. Supplier's cost of enrolling such employees in Supplier's health plan is factored into the fees for the Services; and
 - 3. The fees for the Services are higher than what the Services would cost if Supplier did not offer health coverage to such full-time employees.



- B. If Supplier is not an Applicable Large Employer (as defined above):
1. Supplier offers group health coverage to its full-time employees who are performing Services for UC and such coverage is considered Minimum Essential Coverage (as defined under Treasury Regulation Section 1-5000A-2) and is Affordable (as defined under Treasury Regulation Section 54.4980H-5(e)); or
 2. Supplier's full-time employees who are performing services for UC have individual coverage and such coverage satisfies the PPACA requirements for mandated individual coverage.

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

ARTICLE 24 - PREVAILING WAGES

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

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

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

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

ARTICLE 25 – FAIR WAGE/FAIR WORK

If the Agreement is for Services that will be performed at one or more UC Locations, does not solely involve furnishing Goods, and are not subject to extramural awards containing sponsor-mandated terms and conditions, Supplier warrants that it is in compliance with applicable federal, state and local working conditions requirements, including but not limited to those set forth in Articles 11, 12 and 14 herein, and that Supplier pays its employees performing the Services no less than the UC Fair Wage. Supplier agrees UC may conduct such UC Fair Wage/Fair Work interim compliance audits as UC reasonably requests, as determined in UC's sole discretion. Supplier agrees to post UC



Fair Wage/Fair Work notices, in the form supplied by UC, in public areas (such as break rooms and lunch rooms) frequented by Supplier employees who perform Services.

For Services rendered (actual spend) not subject to prevailing wage requirements in excess of \$100,000 in a year (under the Agreement or any combination of agreements for the same service), Supplier will (i) at Supplier's expense, provide an annual independent verification (<https://www.ucop.edu/procurement-services/for-suppliers/fww-resources-suppliers.html>) performed by a licensed public accounting firm (independent accountant) or the Supplier's independent internal audit department (<http://na.theiia.org/standards-guidance/topics/Pages/Independence-and-Objectivity.aspx>) in compliance with UC's required verification standards and procedures (<https://www.ucop.edu/procurement-services/for-suppliers/fww-resources-suppliers.html>), concerning Supplier's compliance with this provision, and (ii) ensure that in the case of a UC interim audit, its independent accountant/independent internal auditor makes available to UC its UC Fair Wage/Fair Work work papers for the most recent verification period. Supplier agrees to provide UC with a UC Fair Wage/Fair Work verification annually, in a form acceptable to UC, no later than ninety days after the end of the 12-month period in which \$100,000 in spend is reached.

The Fair Wage Fair Work annual independent verification requirement does not extend to contracts for professional services or consulting for which pre-certification has been provided to UC (<https://www.ucop.edu/procurement-services/for-suppliers/fww-resources-suppliers.html>). Please see the UC Procurement/Supply Chain Management Policy BUS-43 (<https://www.ucop.edu/procurement-services/policies-forms/business-and-finance/index.html>) for the definition of professional services and consulting.

ARTICLE 26 – MEDICAL DEVICES

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

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

Supplier warrants that prior to UC's purchase or lease of any Medical Device or Supplier's use of any Medical Device in providing Goods and/or Services hereunder, Supplier will: (i) perform security testing and validation for each such Goods and/or Services or Medical Device, as applicable; (ii) perform security scans to detect malware on any software embedded within any Goods and/or Services or Medical Device, as applicable, in order to verify that the software does not contain any known malware; (iii) conduct a vulnerability scan encompassing all ports and fuzz testing; and (iv) provide UC with reports for (i) – (iii). Supplier warrants that any Good or Medical Device is compliant with FDA's most current guidance or regulation for the quality system related to the cybersecurity and the Management of Cybersecurity in Medical Devices, and that Supplier will maintain compliance with any updates to such guidance or regulations.

Throughout Supplier's performance of this Agreement, Supplier will provide UC with reasonably up-to-date patches, firmware and security updates for any Medical Device provided to UC, and any other Medical Device used in the course of providing Services, as applicable. All such patches and other security updates will be made available to UC within thirty (30) days of its commercial release or as otherwise recommended by Supplier or Supplier's sub-supplier, whichever is earlier.

Supplier warrants that all software and installation media not specifically required for any Medical Device used by Supplier or Goods and/or Services delivered to UC under this Agreement as well as files, scripts, messaging services and data will be removed from all such Goods and/or Services or Medical Device following installation, and that all hardware ports and drivers not required for use or operation of such Goods and/or Services or Medical Device will be disabled at time of installation. In addition, Medical Devices must be configured so that only Supplier-approved applications will run on such Medical Devices.



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.

ARTICLE 33 – WAIVER

Waiver or non-enforcement by either Party of a provision of the Agreement will not constitute a waiver or non-enforcement of any other provision or of any subsequent breach of the same or similar provision.

ARTICLE 34 – AMENDMENTS

The Parties may make changes in the Goods and/or Services or otherwise amend the Agreement, but only by a writing signed by both Parties' authorized representatives. In the event there is a Material Change to the Agreement, the parties agree to meet and confer in good faith in order to modify the terms of the Agreement. A Material Change as used herein refers to:



- A. A change to the scope of Goods and/or Services to be provided by Supplier, as agreed to by UC;
- B. A change in the Institutional Information Supplier is required to create, receive, maintain or transmit in performance of the Agreement, such that the Protection Level Classification of such Institutional Information changes;
- C. Changes in the status of the parties;
- D. Changes in flow down terms from external parties; and
- E. Changes in law or regulation applicable to this Agreement.

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

ARTICLE 35 – GOVERNING LAW AND VENUE

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

ARTICLE 36 – ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS

Supplier will make itself and its employees, subcontractors, or agents assisting Supplier in the performance of its obligations reasonably available to UC at no cost to UC to testify as witnesses, or otherwise, in the event of investigations, or proceedings against UC, its directors, officers, agents, or employees relating to the Goods or Services.

ARTICLE 37 – SUPPLIER TERMS

Any additional terms that Supplier includes in an order form or similar document will be of no force and effect, unless UC expressly agrees in writing to such terms.

ARTICLE 38 – SURVIVAL CLAUSE

Upon expiration or termination of the Agreement, the following provisions will survive: WARRANTIES; INTELLECTUAL PROPERTY, COPYRIGHT, PATENTS, AND DATA RIGHTS; INDEMNITY AND LIABILITY; USE OF UC NAMES AND TRADEMARKS; LIABILITY FOR UC-FURNISHED PROPERTY; COOPERATION; TERMS APPLICABLE TO THE FURNISHING OF GOODS; AUDIT REQUIREMENTS; PROHIBITION ON UNAUTHORIZED USE OR DISCLOSURE OF INSTITUTIONAL INFORMATION; GOVERNING LAW AND VENUE, and, to the extent incorporated into the Agreement, the terms of the APPENDIX–DATA SECURITY, APPENDIX–BAA, and/or APPENDIX–GDPR