UNIVERSITY OF CALIFORNIA

SOFTWARE LICENSE AGREEMENT TEMPLATE

UC Technology Acquisition Support (TAS) Group
http://www.ucop.edu/tas/welcome.html

April 26, 2011

SOFTWARE LICENSE & SERVICES AGREEMENT
UNIVERSITY OF CALIFORNIA

This Software License & Services Agreement ("Agreement"), dated [MONTH] [DATE], [YEAR] ("Effective Date"), is by and between [SOFTWARE SUPPLIER NAME] ("Supplier"), having an office for notices at [STREET ADDRESS], [CITY], [STATE] [ZIP CODE], and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA ("University"), located at [STREET ADDRESS], [CITY], [STATE] [ZIP CODE].

INTENDING to be legally bound, Supplier and University agree that the following terms and conditions will apply to the licenses and services provided under this Agreement, including the attached which are incorporated by reference: [LIST PERTINENT DOCUMENTS TO INCORPORATE BY REFERENCE HERE].

1. DEFINITIONS

Whenever used in this Agreement, any schedules, exhibits, or addenda to this Agreement, or any Source Code escrow agreement between University and Supplier, the following terms shall have the meanings assigned below. Other capitalized terms used in this Agreement are defined in the context in which they are used.

1.1 *"Agreement"* means this Software License & Services Agreement between University and Supplier, inclusive of all schedules, exhibits, attachments, addenda and other documents incorporated by reference.

1.2 *"Authorized User"*, notwithstanding any attached schedules, means: (a) University, including its employees, authorized agents, students and volunteers of University; (b) Third Party consultants, auditors and other independent contractors performing services for University; (c) any governmental, accrediting or regulatory bodies lawfully requesting or requiring access to any system on which the Software may be in use; and (d) external users collaborating with University.

1.3 *"Class 1 Error"* means any error that renders the Software unusable for its intended purpose.

1.4 *"Confidential Information"* means any information that a disclosing party treats in a confidential manner and that is marked "Confidential Information" prior to disclosure to the other party. Confidential Information does not include information which: (a) is public or becomes public through no breach of the confidentiality obligations herein; (b) is disclosed by the party that has received Confidential Information (the "Receiving Party") with the prior written approval of the other party; (c) was known by the Receiving Party at the time of disclosure; (d) was developed independently by the Receiving Party without use of the Confidential Information; (e) becomes known to the Receiving Party from a source other than the disclosing party through lawful means; (f) is disclosed by the

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disclosing party to others without confidentiality obligations; or (g) is required by law to be disclosed.

1.5 *"Documentation"* means, collectively: (a) all materials published or otherwise made available to University by Supplier that relate to the functional, operational and/or performance capabilities of the Software; (b) all user, operator, system administration, technical, support and other manuals and all other materials published or otherwise made available by Supplier that describe the functional, operational and/or performance capabilities of the Software; (c) any Requests for Information and/or Responses for Proposals (or documents of similar effect) issued by University, and the responses thereto from Supplier, and any document which purports to update or revise any of the foregoing; and (d) the results of any Supplier "Use Cases Presentation", "Proof of Concept" or similar type presentations or tests provided by Supplier to University.

1.6 *"Enhancements"* means any improvements, modifications, upgrades, updates, fixes, revisions and/or expansions to the Software that Supplier may develop or acquire and incorporate into its standard Version of the Software or which the Supplier has elected to make generally available to its licensees who are on a support and/or maintenance plan. Enhancements shall include any replatformed Software, whether for different operating systems or hardware.

1.7 *"Intellectual Property Rights"* includes without limitation all right, title, and interest in and to all (a) Patent and all filed, pending, or potential applications for Patent, including any reissue, reexamination, division, continuation, or continuation-in-part applications throughout the world now or hereafter filed; (b) trade secret rights and equivalent rights arising under the common law, state law, federal law, and laws of foreign countries; (c) copyrights, other literary property or authors rights, whether or not protected by copyright or as a mask work, under common law, state law, federal law, and laws of foreign countries; and (d) proprietary indicia, trademarks, tradenames, symbols, logos, and/or brand names under common law, state law, federal law, and laws of foreign countries.

1.8 *"Project Manager"* means the individual who shall serve as each party's point of contact with the other party's personnel as provided in this Agreement. The initial Project Managers and their contact information are set forth in the Notices section below and may be changed by a party at any time upon written notice to the other party.

1.9 *"RFP Response"* means any proposal submitted by Supplier to University in response to University's Request for Proposal ("*RFP*") titled [ENTER RFP NAME, NUMBER, AND DATE HERE].

1.10 *"Software"* means the Supplier's computer programs, licensed to University pursuant to this Agreement, that provide the functionality and/or produce the results described in the Documentation, including without limitation all Enhancements thereto, all interfaces, and all Third Party Software, including open source software.

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1.11 *"Source Code"* means computer Software in the form of source statements for the Software including, without limitation, all Software in the form of electronic and printed human-readable, mnemonic or English-like program listings.

1.12 *"Support and Maintenance Services"* means the technical support, error correction services and support, and Enhancements provided by Supplier to University in order to use, maintain and enhance the Software provided by Supplier to University.

1.13 *"Third Party"* means persons, corporations and entities other than Supplier, University or any of their employees, contractors or agents.

1.14 *"Third Party Software"* means any Software provided by Supplier to University that Supplier licensed from a Third Party and is to be delivered by Supplier to University in connection with the Software.

1.15 **"Version"** means one of a sequence of copies of a Software program, each incorporating new modifications commonly identified by a number in the form X.Y, where X is the Version number and Y is the release number. An increment in X (with Y reset to zero) signifies a substantial increase in the function of the program or a partial or total re-implementation, whereas Y increases each time the program is changed in any way and re-released.

2. ORDER OF PRECEDENCE

The following order of precedence shall be followed in resolving any inconsistencies between the terms of this Agreement and the terms of any schedules, exhibits, attachments, addenda and other attached and included documents: (a) first, the terms contained in the body of this Agreement; (b) second, the terms of the schedules, exhibits, attachments and addenda to this Agreement, provided that no order of precedence shall be applied among schedules, exhibits, attachments and addenda; and (c) third, all Documentation (as defined in DEFINITIONS section above) not included in the foregoing (a) or (b) above.

3. SCOPE OF AGREEMENT

3.1 The Software and/or Support and Maintenance Services included under this Agreement are as follows: [LIST THE FUNCTIONALITY AND NAME(S) OF THE INCLUDED PRODUCTS AND/OR SERVICES HERE].

3.2 Supplier agrees to extend the terms and conditions of this Agreement, including pricing, to all current and future UC locations at their request.

3.3 Supplier also agrees to extend the terms and conditions of this Agreement, including pricing, to the California State University System. An Agreement of Understanding exists between THE REGENTS OF THE UNIVERSITY OF CALIFORNIA and The Trustees of the California State University (CSU), establishing the California

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Higher Education Consortium (CHEC). Through a collaborative relationship, the Consortium seeks to combine procurement and contracting activities and efforts to obtain best value goods and services while reducing total acquisition costs. Accordingly, the Agreement resulting from this solicitation shall recognize the participation of the 23 campuses of the Trustees of the California State University with the following understandings:

a) Supplier agrees to extend the product pricing and services to the CSU Institutions under the terms of this Agreement, under a separate CSU agreement.

b) All contractual administration issues regarding this Agreement (e.g. terms and conditions, extensions, renewals, etc.) shall remain the responsibility of the University of California. Operational issues, fiduciary responsibility, payment issues, performance issues and liabilities, and disputes involving individual CSU campuses shall be addressed, administered, and resolved by that CSU campus. The University of California and the California State University are separate and distinct governmental entities. As such, each administrative unit and campus therein is financially separate and shall be responsible for individual financial commitments. No fiduciary responsibility for performance liability, unless otherwise expressed, exists between the University of California and California State University and their respective campuses.

4.   **GRANT OF LICENSE**

4.1   Supplier grants to University a perpetual, irrevocable , unlimited user, non-exclusive, fully paid-up right and license for University and its Authorized Users to use the Software and Documentation to conduct University business at any and all locations where University business may be conducted. For the purposes of this Agreement, "University business" shall include, but not be limited to, use for production, internal development, testing, quality assurance, training and support, and maintenance purposes.

4.2   Supplier will provide any name changes that have occurred with any licensed Software provided to University under this Agreement within thirty (30) days and/or within thirty (30) days of University's request.

4.3   If Supplier eliminates any functionality of any of the Software licensed under this Agreement and subsequently offers that functionality in other or new products (whether directly or indirectly through agreement with a Third Party), then the portion of those other or new products that contain the functions in question, or the entire product if the functions cannot be separated out, shall be licensed to University at no additional charge and under the terms of this Agreement, including Support and Maintenance Services for such Software. If Supplier incorporates the functionality of the Software licensed under this Agreement into a newer product and continues to offer both products, University may, in its sole discretion, exercise the option to upgrade to the newer product license at no additional cost.

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4.4   University at its sole discretion may make and use a reasonable number of copies of the Software and Documentation for University business and for backup, disaster recovery/use and archival purposes. University retains the right to keep backup, disaster recovery/use and archival copies at a Third Party disaster or data recovery site that is geographically separate from University.

4.5   Testing, development, backup, disaster recovery/use and archival use licenses shall be available to University at no additional cost.

4.6   Should University determine that it is in its best interest to change the location of its current operations, University shall have the right to use the Software and associated Support and Maintenance Services in both locations for a transition period not to exceed twelve (12) months at no additional cost.

4.7   University acquires the right to use Software acquired under this Agreement at any location under the direct control of THE REGENTS OF THE UNIVERSITY OF CALIFORNIA.

4.8   When the Software is used in a virtual machine environment, University shall have the following rights:

4.8.1   When the Software is used in a virtual environment, licensing costs to accomplish the same functionality shall be no higher than they would be in a functionally identical physical environment.

4.8.2   University has the right to run the Software on multiple, different, successor or replacement operating environments at no additional cost.

4.8.3   University has the right to transfer the Software, without prior notice or consent of the Supplier, to new users, machines or locations at no additional charge, and the right for a duplicate environment to exist for a reasonable period of time during the transition.

4.8.4   University has the right to use the Software on a processing complex, which shall be the pricing equivalent of a single computer regardless of the number of CPUs or tier grouping.

4.8.5   University has the right to use the Software on hardware using multi-core processors, which shall be the pricing equivalent of a single computer.

5.   LICENSE RESTRICTIONS

University understands and agrees that, except as permitted by this Agreement, it may not: (a) sell, assign, lease, license, sub-license or otherwise distribute the Software or Documentation, except to other locations of University; (b) use the Software for the purposes of providing commercial data processing services to Third Parties, such as

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commercial use in a service bureau, timesharing, remote batch, or other similar commercial operation; (c) create or attempt to create, or permit others to create or attempt to create, by reverse engineering or other process, the Software; and (d) export, re-export, divert or transfer the Software or Documentation to any country that is embargoed by U.S. Executive Order.

6.   ACCEPTANCE

University shall have ninety (90) days from the date of receipt of Software to determine whether it complies in all material respects with the Documentation. Within this period, University shall notify Supplier whether it has accepted the Software ("Accept") or whether it has identified discrepancies with the Documentation ("Reject"). If University Rejects the Software, University shall provide a written list of items that must be corrected. On receipt of University's notice, Supplier shall promptly commence, at no additional charge to University, all reasonable efforts to complete, as quickly as possible, such necessary corrections, repairs and modifications to the Software as will permit it to be ready for retesting and review, but in no event shall such corrective measures exceed twenty (20) days from receipt of University's notice. The evaluation process shall resume, as set forth above. If University Accepts the Software, it shall issue a written "Acceptance Notice." The date of such Acceptance Notice shall be deemed the "Acceptance Date." If University determines the Software, as revised, still does not comply in all material respects with the Documentation, University may either: (1) afford Supplier the opportunity to repeat the correction and modification process as set forth above at no additional cost or charge to University, or (2) depending on the nature and extent of the failure in University's sole judgment, terminate this Agreement. The foregoing correction and modification procedure shall be repeated until the Software is Accepted or University elects to terminate the Agreement as provide above. In the event of termination under this Section, Supplier shall pay to University within ten (10) business days of written notice of termination, all sums paid to Supplier by University under this Agreement for the Software, including all prepaid Support and Maintenance Services fees.

7.   SUPPORT AND MAINTENANCE SERVICES

7.1   INTELLECTUAL PROPERTY INDEMNIFICATION section below notwithstanding, Supplier shall provide to University the Support and Maintenance Services outlined herein for the current Version and three (3) prior Versions of the Software.

7.2   Supplier may not withdraw Support and Maintenance Services for any product license without twelve (12) months advance notice to University, and then only if Supplier is withdrawing Support and Maintenance Services from all of its customers.

7.3   Support and Maintenance Services shall be provided by Supplier to University for an initial one (1) year term (the "Initial Support Term") commencing on the "Support and Maintenance Services Commencement Date" (as hereafter defined). The Initial Support Term shall be renewable for successive one (1) year terms ("Extension Terms", and

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collectively with the Initial Support Term, the "Support Term") upon written notice from University to Supplier. For the purposes of this Agreement, the term "Support and Maintenance Services Commencement Date" shall refer to the first day of the month following the month in which the end of the Warranty Period (as hereafter defined) occurs.

7.4   University shall, in its sole discretion, have the option to renew annual Support and Maintenance Services for at least ten (10) annual renewal periods.

7.5   Grant of License shall be unaffected by subsequent Support and Maintenance Services renewals, cancelations, or order documents.

7.6   University acquires the right to use Support and Maintenance Services acquired under this Agreement at any location under the direct control of THE REGENTS OF THE UNIVERSITY OF CALIFORNIA.

7.7   University may, in its sole discretion, discontinue Support and Maintenance Services on any Software and/or product with no effect on other Support and Maintenance Services, or other Software and/or products.

7.8   If University opts to discontinue Support and Maintenance Services on any licenses and subsequently determines in its sole discretion to reinstate Support and Maintenance Services on those licenses, then it may do so at the rates specified in this Agreement and will not be subject to any reinstatement or back payment of fees.

7.9   In consideration of the Support and Maintenance Services, University agrees at its option to pay Supplier annual fees (the "Support and Maintenance Services Fees") as described herein. During each Extension Term, University shall at its option pay Supplier annual Support and Maintenance Services Fees (on the annual anniversaries of the Support Commencement Date).

7.10   If University opts to renew, University shall pay Supplier annual renewal fees based upon Suppliers rates for renewal; provided that Supplier may not increase the Support and Maintenance Service Fee more than the lesser of CPI-All Index or three percent (3%) from one year term to another; and provided further that the Support and Maintenance Services Fees shall, at all times, be equal to or less than the lowest rate charged for such Support and Maintenance Services to any of Supplier's other licensees.

7.11   University shall receive at its option the general help desk Support and Maintenance Services offered by Supplier to its other licensees. Irrespective of Supplier's general Support and Maintenance Services offerings, Supplier shall provide University at University's option with the following Support and Maintenance Services:

7.11.1 Supplier shall provide telephone and online assistance to University for the purpose of answering questions relating to the Software, including (a) clarification of functions and features of the Software; (b) clarification of the Documentation; (c) guidance

in the operation of the Software; and (d) error verification, analysis, and correction, including the failure to produce results in accordance with the Documentation.

7.11.2 Such assistance shall be provided by Supplier twenty-four (24) hours a day, seven (7) days a week via a toll-free telephone number and live, online chat staffed by help desk technicians sufficiently trained and experienced to identify and resolve most support issues and who shall respond to all University requests for support within fifteen (15) minutes after receiving a request for assistance.

7.11.3 Supplier shall provide a current list of persons and telephone numbers for University to contact to enable University to escalate its support requests for issues that cannot be resolved by a help desk technician or for circumstances where a help desk technician does not respond within the time specified herein.

7.12   The following provisions shall be applicable to the correction of Software errors:

7.12.1 If University detects what it considers to be an error in the Software which causes it not to conform to, or produce results in accordance with, the Documentation, then University shall by telephone or e-mail notify Supplier of the error.

7.12.2 Supplier shall deliver to University and keep current a list of persons and telephone numbers (the "Calling List") for University to contact in order to obtain corrections of Software errors. The Calling List shall include: (1) the first person to contact if a question arises or problem occurs; and (2) the persons in successively more responsible or qualified positions to provide the answer or assistance desired. If Supplier does not respond promptly to any request by University for telephone consultative service, University may attempt to contact the next more responsible or qualified person on the Calling List until contact is made and a designated person responds to the call.

7.12.3 Supplier shall respond within two (2) hours to University's initial request for assistance in correcting or creating a workaround for a Software error. Supplier's response shall include assigning fully-qualified technicians to work with University to diagnose and correct or create a workaround for the Software error and notifying University's representative making the initial request for assistance of Supplier's efforts, plans for resolution of the error, and estimated time required to resolve the error. Supplier shall correct errors caused by the Software by modifying the Software and distributing the modified Software to University.

7.12.4 For Class 1 Errors, within twenty-four (24) hours after University first reports the error, Supplier shall provide a correction or workaround acceptable to University. Supplier's correction process shall include assigning fully-qualified technicians to work with University without interruption or additional charge.

7.12.5 If Supplier fails to provide a reasonable correction or workaround for a Class 1 Error within twenty-four (24) hours , Supplier shall pay University, as a price adjustment reflecting the reduction of value University will incur as a result of the Class 1 Error and

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not as a penalty or compensation for damage, the sum of 2/365 of the Support and Maintenance Services Fees, expressed as an annual charge, for each additional day or part thereof that Supplier fails to provide a reasonable correction or workaround for the Class 1 Error.

7.12.6 The Project Managers, or such persons as otherwise designated by University and Supplier, shall serve as said parties' contacts for all communications relating to Support and Maintenance Services. Each party may change its own contact person by written notice to the other party.

7.13   The following provisions shall set forth Supplier's obligations to provide Enhancements:

7.13.1 Supplier shall generally enhance and improve the Software for as long as University elects to receive and pays for Support and Maintenance Services.

7.13.2 Supplier shall provide to University during the Support Term for use in accordance with this Agreement, at no charge, (a) any and all Enhancements which it develops with respect to the Software; (b) any and all Enhancements necessary to operate the Software on the currently in use Versions of the operating system software; (c) any and all Enhancements necessary to maintain compatibility with all currently in use Third Party Software; (d) any and all Enhancements required by federal or state governmental, or professional regulatory mandates related to University's use of the Software; and (e) the Documentation associated with any Enhancements.

7.13.3 Supplier shall provide Enhancements to University upon their general release and no later than the time when the first five percent (5%) of Supplier's customers receive those Enhancements.

7.13.4 INTELLECTUAL PROPERTY INDEMNIFICATION section below notwithstanding, University, in its sole discretion, shall have the right to use the most recent Version of the Software or either of the three (3) Versions immediately preceding the most recent Version of the Software.

7.13.5 All Enhancements shall become part of the Software and subject to all terms and provisions of this Agreement.

7.13.6 Title to all Enhancements shall remain with Supplier.

7.13.7 Except as otherwise provided in a signed addendum to this Agreement, nothing herein shall obligate Supplier to enhance the Software in any particular respect or on any particular date. The decision as to whether and/or when, to enhance the Software will be within Supplier's discretion.

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7.14   Supplier will provide University with advance notice of proposed product changes as well as product road maps relating to the Software and/or Support and Maintenance Services provided to University under this Agreement.

8.   TRAINING

8.1   Supplier shall provide University with training for the purposes of understanding and using the Software ("Training Services"). Training Services will be provided by Supplier as detailed below at no additional cost to University. Training Services will be provided by Supplier at University at mutually agreeable dates and times, but no later than 180 days following the Effective Date of this Agreement.

8.2   [INCLUDE DESCRIPTION, FREQUENCY AND TIMING OF ANY NEGOTIATED TRAINING SERVICES HERE (OR AS A REFERENCED ATTACHED SCHEDULE)].

9.   TRANSITION ASSISTANCE

9.1   Supplier will provide the following transition assistance ("Transition Assistance") to support University's transition from its current software, or other solution in this area, to Supplier's Software. Transition Assistance will be provided by Supplier as detailed below at no additional cost to University. Transition assistance will be provided by Supplier at University at mutually agreeable dates and times, but no later than ten (10) days following the Effective Date of this Agreement.

[INCLUDE DESCRIPTION, FREQUENCY AND TIMING OF ANY NEGOTIATED TRANSITION ASSISTANCE HERE. EXAMPLE TEXT IS BELOW].

9.2   Within a reasonable period of time not to exceed ten (10) days after the Effective Date of this Agreement, Supplier shall, at its own expense, provide qualified individuals to (a) uninstall existing solution, (b) install the Software, and (c) assist in testing of the Software to ensure that it is functioning in accordance with the terms of this Agreement. Supplier's Project Manager shall coordinate with University's Project Manager, and they shall develop a mutually agreeable installation plan and schedule for the assistance provided above.

9.3   University agrees (a) to have the license installation site(s) prepared in accordance with applicable Supplier requirements prior to the Effective Date of the installation plan and schedule; and (b) maintain the site(s) at its own expense subsequent to completion of the installation plan and schedule. University shall provide any and all necessary utility services for use of the Software.

9.4   In connection with Supplier's Transition Assistance, University will provide information, data, computer access and time, work space, forms, data entry and telephone service and personnel reasonably necessary to assist Supplier consistent with University's policies and procedures.

10. FEES, INVOICING, PAYMENT AND TAXES

10.1   University agrees to pay all net undisputed amounts due to Supplier in accordance with the license and support fee schedule set forth below. Such fees will be payable after receipt of the Software by University and within thirty (30) calendar days of University's receipt of Supplier's invoice or the invoice due date, whichever is later. University shall not be subject to late payment fees.

10.2   [SPECIFY LICENSE AND SUPPORT FEE DETAILS HERE (OR AS A REFERENCED ATTACHED SCHEDULE) INCLUDING LIST PRICE AND UNIVERSITY COST PER UNIT OF EACH SOFTWARE PRODUCT BEING ACQUIRED, AND QUANTITY OF UNITS INITIALLY BEING ACQUIRED.]

10.3   If an invoiced amount is disputed in good faith by University then University shall work with the Supplier to resolve the dispute. University may suspend the payment of all disputed amounts until the dispute is resolved. All of Supplier's obligations shall continue unabated until dispute resolution.

10.4   University will have the option to acquire additional licenses throughout the duration of the Agreement at the same or lower per unit cost as the initial purchase. For term licenses and Support and Maintenance Services, University will have the option to acquire additional licenses for a monthly pro-rated portion of the same or lower per unit cost as the initial purchase.

10.5   At University's option, University purchases of additional licenses will be on a quarterly basis where an order will be issued to Supplier at the end of each quarter for those additional licenses that University began using during that quarter ("True-up").

10.6   If this Agreement includes term licenses, then:

10.6.1 Any licenses acquired during the initial purchase shall be provided by Supplier to University for an initial one (1) year term (the "Initial License Term") commencing on the "License Commencement Date" (as hereafter defined). The Initial License Term shall be renewable for successive one (1) year terms ("Extension Terms", and collectively with the Initial License Term, the "License Term") upon written notice from University to Supplier. For the purposes of this Agreement, the term "License Commencement Date" shall refer to the first day of the month following the month in which the end of the Warranty Period (as hereafter defined) occurs.

10.6.2 Any additional term licenses acquired by University will be co-terminus with the license period of the initially acquired term licenses.

10.6.3 After the first anniversary of the Initial License Term, the term licenses shall be renewable for successive one (1) year terms ("Extension Terms") upon written notice from University to Supplier.

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10.6.4 University shall, in its sole discretion, have the option to renew annual term licenses for a period of at least ten (10) annual renewal periods.

10.7   If University opts to renew, University shall pay Supplier annual renewal fees based upon Supplier's rates for Extension Terms; provided that Supplier may not increase the annual fee more than the lesser of CPI-All Index or three percent (3%) from one year term to another; and provided further that the fees shall, at all times, be equal to or less than the lowest rate charged for such renewal to any of Supplier's other licensees.

10.8   Taxes required for the Software purchase by University under this Agreement will be based on the current sales and use tax regulations of the State of California as they apply to Software purchases. Supplier must pay all other taxes.

10.9   Supplier shall provide University with an invoice for the Software acquired no later than thirty (30) calendar days prior to the invoice payment due date. Invoices shall provide and itemize, as applicable:
   a) Supplier name, address, phone number, and Federal Tax Identification Number;
   b) University Purchase Order number;
   c) Description of Software, including quantity ordered;
   d) Date(s) of fulfillment and/or date(s) of Training and/or date(s) of Transition Assistance;
   e) Supplier's list price per unit for each item, applicable discounts, University's price per unit for each item, and extended price;
   f) Applicable taxes;
   g) Other applicable charges;
   h) Total invoice price;
   i) Payment terms including any available prompt payment discounts; and
   j) Supplier's Project Manager Name, Title, Location, and Department.

10.10 To support the California Sales and Use tax exempt status of electronically downloaded software allowed under California Regulation 1502(f)(1)(D), Supplier invoices for all purchases made under this Agreement must include the following text, whenever applicable:

"All products purchased under this agreement are available via electronic download only. No tangible media or documentation will be available or shipped under this agreement. Access to the products purchased under this agreement is in no way dependent upon any tangible media that may have been received prior to, or separately from this agreement."

11.   DISTRIBUTION

11.1   All products purchased under this Agreement are available via electronic download only. No tangible media or documentation will be available or shipped to University under this Agreement. Access to the products purchased under this Agreement is in no way

dependent upon any tangible media that may have been received prior to, or separately from this Agreement.

11.2   University retains the right to distribute internally via electronic information technology networks and mechanisms.

11.3   Supplier will not send University any Software that University is not licensed to use unless some protection (such as license keys) that will protect University from having unlicensed Software installed in error exists. University retains the right to remove any such unlicensed Software in case of accidental installation.

12.   ORDERING PROCEDURES

Supplier (including Supplier web site) must direct all inquiries from all University units regarding obtaining the products available under this Agreement to the contact listed in the Notices section herein, University's coordinating office for this Agreement.

13.   REPORTING

13.1   Supplier shall provide University with Supplier's current retail, government, non-profit and academic price lists for the licensed Software upon each annual anniversary of this Agreement, and within five (5) business days of any mid-term changes to any of the above referenced price lists.

13.2   Supplier will provide University with monthly reports summarizing purchases made under this agreement at no additional cost to University.

13.3   Supplier agrees to provide other reports as reasonably requested by University during the term of the Agreement and any extension(s) to such term at no additional cost to University.

14.   TERM AND TERMINATION

14.1   This Agreement is effective on [EFFECTIVE DATE]. Unless terminated in accordance with the terms of this Agreement, the Agreement shall renew annually upon written notification of intent to renew from University to Supplier.

14.2   University may terminate this agreement upon thirty (30) days written notice. Following termination, University shall retain the right to (a) use the Software on the number of devices specified in the attached Schedules for its own internal business purposes, (b) use and make copies of the Documentation in conjunction with such use, and (c) make a reasonable number of copies of the Software solely for back-up or archival purposes.

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14.3 Supplier shall provide written notification regarding upcoming annual Agreement term expiration dates, including but not limited to those dates for Software licenses and Support and Maintenance Services, no less than sixty (60) days prior to expiration dates.

14.4 University may terminate this Agreement immediately upon any Supplier substantive breach of the terms of this Agreement, any Business Associate Agreement or incorporated Appendix DS in accordance with the terms of this Agreement.

14.5 In the event of an uncorrected breach of this Agreement by Supplier, University shall be entitled to: (a) subject to the terms of the Limitation of Liability Section of this Agreement, seek to recover damages from Supplier; and/or (b) recover from Supplier all applicable attorneys' fees and any litigation costs; and/or (c) discontinue any Software term licenses and receive a refund of any pre-paid but unearned Software term licenses fees; and/or (d) if applicable, exercise its rights to deposits under any Source Code escrow agreement.

14.6 Supplier may terminate this Agreement if University intentionally and materially breaches this Agreement and then fails to correct such breach within thirty (30) days following receipt of written notice from Supplier of the breach. In the event of an uncorrected breach by University, Supplier shall be entitled to recover actual amounts owed by University to Supplier that accrued on or before the date of termination. Supplier expressly waives and disclaims any right or remedy it may have to unilaterally de-install, disable or repossess any Software or any portion of it.

14.7 Notwithstanding anything to the contrary in this Agreement, failure of University to pay invoices or other amounts due Supplier on a timely basis will not be deemed a breach of this Agreement; provided (a) such failure results from a bona fide dispute which has been communicated to Supplier prior to the due date; (b) any undisputed amounts are paid in a timely fashion; (c) University Project Manager is available to resolve the dispute; and (d) any payment ultimately required to be made by University by settlement or order of a court or arbitrator is paid within thirty (30) business days after such resolution ("Bona Fide Dispute Provisions"). So long as the Bona Fide Dispute Provisions are being, or have been, complied with by University, University shall be entitled to exercise its license rights granted under this Agreement, Supplier shall continue to perform its obligations under this Agreement (including any Support and Maintenance Services), and University shall not be responsible for Supplier's attorneys' fees or court costs regardless of the outcome of the dispute.

14.8 If this Agreement includes term licenses, then for term licenses, upon a complete or partial termination of this Agreement for any reason, University shall retain the right to a transition period of up to twelve (12) months in order to transition to an alternative solution. During the transition period, University may at its sole discretion: (a) continue to use the Software, or any portion, on the number of devices specified for its own business purposes; (b) use and make copies of the Documentation in conjunction with such use; (c) make a reasonable number of copies of the Software solely for back-up or archival purposes; and (d) obtain from Supplier continued Support and Maintenance Services.

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14.9   University's rights to the Software as provided in this Agreement will survive a bankruptcy claim by the Supplier consistent with applicable laws.

14.10   The following Sections shall survive the expiration or termination of this Agreement: Grant of License; Title; Taxes; Warranties, Representations and Covenants; Limitation of Liability; Confidentiality; Proprietary Rights Indemnification; Indemnification; Insurance; Termination; Dispute Resolution; Audit; Governing Law; and Bankruptcy. Any terms of this Agreement which by their nature extend beyond its termination remain in effect until fulfilled, and apply to respective successors and assignees.

15.   WARRANTIES, REPRESENTATIONS AND COVENANTS

15.1   University shall have the right to return the Software for any reason, and shall receive a full refund of all payments, for a period of ninety (90) days after purchase (the "Warranty Period").

15.2   Software Warranty. Supplier represents and warrants that the Software provided under this Agreement shall function substantially in accordance with the Documentation and produce results substantially in accordance with the Documentation. Supplier shall offer University warranty coverage equal to or greater than that offered by Supplier to any of its customers.

Supplier's obligations for breach of the Software Warranty shall be limited to using its best efforts, at its own expense, to correct or replace that portion of the Software which fails to conform to such warranty, and, if Supplier is unable to correct any breach in the Software Warranty by the date which is sixty (60) days after University provides notice of such breach, University may, in its sole discretion, either extend the time for Supplier to cure the breach or terminate this Agreement and receive a full refund of all amounts paid to Supplier under this Agreement, including the Software license Fee, Support and Maintenance Services Fee, and any other fees stated herein.

15.3   Services Warranty. Supplier represents, warrants and agrees that it shall perform its obligations required by this Agreement in a professional manner, in accordance with the highest applicable industry practices and standards and in compliance with all applicable laws and regulations; provided, however, that where this Agreement specifies a particular standard or criteria for performance, this warranty shall not diminish that standard or criteria for performance.

15.4   Disabling Code Warranty. Supplier represents, warrants and agrees that the Software does not contain and will not receive from Supplier any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design, including surveillance Software or routines which may, or is designed to, permit access by any person, or on its own, to erase, or otherwise harm or modify the Software or any University system or data (a "Disabling Code"). Examples of a Disabling Code shall include without limitation, any limitations that are triggered by: (a) the Software being used or copied a certain number of times, or after the lapse of a certain period of time; (b)

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the Software being installed on or moved to a central processing unit or system that has a serial number, model number or other identification different from the central processing unit or system on which the Software was originally installed; or (c) the occurrence or lapse of any similar triggering factor or event. In the event a Disabling Code is identified, Supplier shall take all steps necessary, at no additional cost to University, to: (a) restore and/or reconstruct any and all data lost by University as a result of Disabling Code; (b) furnish to University a new copy of the Software without the presence of Disabling Codes; and, (c) install and implement the new copy of the Software at no additional cost to University. This warranty shall remain in full force and effect as long as the Grant of License remains in effect.

15.5   Intellectual Property Warranty. Supplier represents, warrants and agrees that: Supplier has all Intellectual Property Rights necessary to license the Software to University in accordance with the terms of this Agreement; Supplier is the sole owner or is a valid licensee of the Software and has secured all necessary licenses, consents, and authorizations with respect to the use of the Software to the full extent contemplated herein, including, but not limited to: all Source Code, text, pictures, audio, video, logos and copy contained therein; the Software does not and shall not infringe upon any patent, copyright, trademark or other proprietary right or violate any trade secret or other contractual right of any Third Party; and there is currently no actual or threatened suit against Supplier by any Third Party based on an alleged violation of such right. This warranty shall survive the expiration or termination of this Agreement.

15.6   Warranty of Authority. Each party represents and warrants that it has the right to enter into this Agreement. Supplier represents and warrants that it has the unrestricted right to license the Software, and that it has the financial viability to fulfill its obligations under this Agreement. Supplier represents, warrants and agrees that Software shall be free and clear of all liens, claims, encumbrances or demands of Third Parties. Supplier represents and warrants that it has no knowledge of any pending or threatened litigation, dispute or controversy arising from or related to the Software. This warranty shall survive the expiration or termination of this Agreement.

15.7   Third Party Warranties and Indemnities. Supplier will assign to University all Third Party warranties and indemnities that Supplier receives in connection with any products provided to University. To the extent that Supplier is not permitted to assign any warranties or indemnities through to University, Supplier agrees to specifically identify and enforce those warranties and indemnities on behalf of University to the extent Supplier is permitted to do so under the terms of the applicable Third Party agreements.

15.8   Date/Time Change Warranty. Supplier represents and warrants to University that the Software provided will accurately process date and time-based calculations under circumstances of change including, but not limited to: century changes and daylight saving time changes. Supplier must repair any date/time change defects at Supplier's own expense.

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15.9 <u>Open Source Software Warranty</u>. Supplier represents and warrants to University that, if any open source software is incorporated or embedded in the Software being provided to University, then Supplier will specifically identify each instance of open source software that is incorporated or embedded along with any associated license terms and conditions.

15.10 <u>Most Favored Customer Warranty</u>. Supplier represents and warrants and agrees that the Software, Support and Maintenance Services and other fees stated herein are and shall be the lowest fees Supplier charges any of its other licensees. In any case where University fees are found to be higher, then Supplier will provide University with a retroactive refund for any overpayment.

15.11 <u>Compliance With Laws Warranty</u>. Supplier represents and warrants to University that it will comply with all applicable laws, including its tax responsibilities, pertaining to the Agreement and its provision of the Software to University.

15.12 THE WARRANTIES SET FORTH ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THE SOFTWARE PURSUANT TO THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

16. <u>INTELLECTUAL PROPERTY INFRINGEMENT INDEMNIFICATION</u>

16.1 Supplier shall indemnify, defend and hold University harmless from any and all actions, proceedings, or claims of any type brought against University alleging that the Software and/or Documentation or University's use of the Software and/or Documentation constitutes a misappropriation or infringement upon any patent, copyright, trademark, or other proprietary right or violates any trade secret or other contractual right of any Third Party. Supplier agrees to defend against, and hold University harmless from, any claims and to pay all litigation costs, all reasonable attorneys' fees, settlement payments and all judgments, damages, costs or expenses awarded or resulting from any claim. University shall, after receiving notice of a claim, advise Supplier of it. University's failure to give Supplier timely notification of said claim shall not effect Supplier's indemnification obligation unless such failure materially prejudices Supplier's ability to defend the claim. University reserves the right to employ separate counsel and participate in the defense of any claim at its own expense.

16.2 If the Software and/or Documentation, or any part thereof, is the subject of any claim for infringement of any patent, copyright, trademark, or other proprietary right or violates any trade secret or other contractual right of any Third Party, or if it is adjudicated by a court of competent jurisdiction that the Software and/or Documentation, or any part thereof, infringes any patent, copyright, trademark, or other proprietary right or violates any trade secret or other contractual right of any Third Party, and University's use of the Software and/or Documentation, or any part of it, is enjoined or interfered with in any manner, Supplier shall, at its sole expense and within thirty (30) calendar days of such

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injunction or interference, either: (a) procure for University the right to continue using the Software and/or Documentation free of any liability for infringement or violation; (b) replace or modify the Software and/or Documentation, or parts thereof, with non-infringing Software and/or Documentation of equivalent or better functionality that is reasonably satisfactory to University.

16.3   Supplier shall have no obligation to indemnify University for a claim if: (a) University uses the Software in a manner contrary to the provisions of this Agreement and such misuse is the cause of the infringement or misappropriation; or (b) University's use of the Software in combination with any product, software or system not authorized, approved or recommended by Supplier and such combination is the cause of the infringement or misappropriation.

16.4   No limitation of liability set forth elsewhere in this Agreement is applicable to the Intellectual Property Infringement Indemnification.

17.   <u>GENERAL INDEMNIFICATION</u>

17.1   Supplier shall defend, indemnify, and hold harmless University, its officers, employees, and agents, respective assigns and successors-in-interest from and against all losses, expenses (including attorneys' fees), damages, and liabilities of any kind resulting from or arising out of this agreement and/or Supplier's performance hereunder, provided such losses, expenses, damages and liabilities are due or claimed to be due to the negligent or willful acts or omissions of Supplier, its officers, employees, agents, subcontractors, or anyone directly or indirectly employed by them, or any person or persons under Supplier's direction and control.

17.2   Supplier shall defend, indemnify and hold the University, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages caused by or resulting from the negligent or intentional acts or omissions of the Supplier, its officers, employees, or agents.

17.3   University shall defend, indemnify and hold the Supplier, its officers, employees, and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees), or claims for injury or damages arising out of the performance of this Agreement but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages caused by or resulting from the negligent or intentional acts or omissions of the University, its officers, employees, or agents.

17.4   The indemnifying party shall keep the other reasonably apprised of the continuing status of the claim, including any proceedings resulting from it, and shall permit the other

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party, at its expense, to participate in the defense or settlement of the claim provided that the indemnifying party has the sole right to control the defense.

18. LIMITATION OF LIABILITY

EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE FOR ANY LOST PROFITS, CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, OR SPECIAL DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING LIMITATION OF LIABILITY IS NOT APPLICABLE TO SUPPLIER'S WARRANTY AND INDEMNIFICATION OBLIGATIONS SET FORTH ELSEWHERE IN THIS AGREEMENT OR ANY PERSONAL INJURY CLAIM. FURTHER, THE FOREGOING LIMITATION IS NOT APPLICABLE TO DAMAGES ARISING OUT OF ANY LOSS, CORRUPTION, OR BREACH OF DATA CAUSED BY OR RESULTING FROM SUPPLIER'S ERRORS OR OMISSIONS.

19. INSURANCE

19.1 On or before the Effective Date, Supplier shall provide to University proof, such as an insurance certificate, evidencing full compliance with the insurance requirements set forth herein.

Supplier, at its sole cost and expense, shall insure its activities in connection with the work under this order and obtain, keep in force, and maintain insurance as follows:

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

Each Occurrence $1,000,000.00

Products/Completed Operations Aggregate $2,000,000.00

Personal and Advertising Injury $1,000,000.00

General Aggregate (Not applicable to the Comprehensive Form) $2,000,000.00

If the above insurance is written on a claims-made form, it shall continue for three years following termination of this Agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the effective date of this Agreement.

b) Business Automobile Liability Insurance for owned, scheduled, non-owned, or hired automobiles with a combined single limit not less than $1,000,000.00 per occurrence.

c) Professional Liability Insurance with a limit of $2,000,000.00 per occurrence with an aggregate of not less than $2,000,000.00.

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If this insurance is written on a claims-made form, it shall continue for three years following termination of this Agreement. The insurance shall have a retroactive date of placement prior to or coinciding with the effective date of this Agreement.

d) Workers' Compensation as required by California State law.

19.2 It is agreed that the coverage and limits referred to under 19.1 a, b, and c above shall not in any way limit the liability of Supplier. Supplier shall furnish the University with certificates of insurance evidencing compliance with all requirements prior to commencing work under this Agreement. Such certificates shall:

a) Provide for thirty (30) days advance written notice to the University of any modification, change, or cancellation of any of the above insurance coverage.

b) Indicate that THE REGENTS OF THE UNIVERSITY OF CALIFORNIA has been endorsed as an additional insured for the coverage referred to herein. This provision shall only apply in proportion to and to the extent of the negligent acts or omissions of Supplier, its officers, agents, or employees.

c) Include a provision that the coverage will be primary and will not participate with nor be excess over any valid and collectible insurance or program of self-insurance carried or maintained by the University.

d) Such insurance shall be with insurers with at least an "A+" rating.

e) The insurance policies shall provide that the insurance company shall notify University in writing at least thirty (30) days in advance if Supplier's insurance coverage is to be canceled or materially altered so as not to comply with the requirements of this Agreement.

20. CONFIDENTIALITY

20.1 Each party acknowledges that certain information that it shall acquire from the other is of a special and unique character and constitutes Confidential Information.

20.2 The Receiving Party agrees to exercise the same degree of care and protection with respect to the Confidential Information that it exercises with respect to its own similar Confidential Information and not to directly or indirectly provide, disclose, copy, distribute, republish or otherwise allow any Third Party to have access to any Confidential Information without prior written permission from the disclosing party. However: (a) either party may disclose Confidential Information to its employees and authorized agents who have a need to know; (b) either party may disclose Confidential Information if so required to perform any obligations under this Agreement; and (c) either party may disclose Confidential Information if so required by law (including court order or subpoena).

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20.3　HIPAA Compliance.

a) <u>Background</u>. In connection with the use of the Software and Services provided by Supplier hereunder, University may disclose to Supplier certain patient data, including Protected Health Information ("PHI") (which, for purpose of this Agreement, shall include Electronic Protected Health Information), that is subject to protection under the Standards for Privacy of Individually-Identifiable Health Information ("Privacy Rule") and the Security Standards for the Protection of Electronic Protected Health Information ("Security Rule"), collectively set forth at 45 CFR Parts 160, 162 and 164 promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (the "Act"). The Act, the Privacy Rule and the Security Rule are collectively referred to herein as HIPAA. Supplier and University further agree that any and all such PHI transmitted pursuant to this Agreement shall be deemed to be Confidential Information of University which is subject to HIPAA, applicable state confidentiality and security laws, and University policies.

b) <u>Business Associate Agreement</u>. The parties agree that all confidential patient PHI that Supplier receives or otherwise has access to pursuant to this Agreement is subject to the terms and conditions of the Business Associate Agreement, attached hereto as Exhibit [ENTER APPROPRIATE EXHIBIT LETTER HERE].

c) Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the parties to comply with the requirements of HIPAA and all California statutes and regulations governing confidentiality and privacy.

20.4　Nothing in this Agreement shall in any way limit the ability of University to comply with any laws or legal process concerning disclosures by public entities. Supplier acknowledges that any responses, materials, correspondence, documents or other information provided to University are subject to applicable state and federal law, including the California Public Records Act, and that the release of Confidential Information in compliance with those acts or any other law will not constitute a breach or threatened breach of this Agreement.

20.5　University reserves the right to have the terms of this Agreement and associated information reviewed by a designated Third Party advisor.

21.　PERSONAL INFORMATION

During the course of this Agreement should Supplier come into possession of any personal information related to University's Authorized Users that is considered sensitive, nonpublic personal data or contains individually identifiable information, Supplier may not disclose this information to any Third Party under any circumstances.

22.　TITLE/OWNERSHIP

22.1 University acknowledges that Supplier holds all right, title and interest in any copyrights, patents, trade secrets and any other Intellectual Property Rights in the Software. Nothing in this Agreement shall be construed to convey any title or ownership rights in the Software to University.

22.2 All data created and/or processed by the Software is and shall remain the property of University and shall in no way become attached to the Software, nor shall Supplier have any rights in or to the data of University.

22.3 Any documents, forms, compilations and/or spreadsheets that are generated from the utilization of the functionality of the Software are not the intellectual property of the Supplier, and can be used by University in its ordinary course of business, including but not limited to University sharing such documents with Third Parties.

22.4 In the event that University develops any enhancements, modifications, improvements, expansions and revisions of or to the Software (collectively, the "Licensee Modifications"), all right, title and interest in and to such Licensee Modifications, as well as related copyright, patent, trade secret, and other related proprietary rights therein, shall rest with University, provided that University agrees that it will only use such Licensee Modifications for University business. University shall have no obligation to make such Licensee Modifications available to Supplier, but to the extent that Licensee Modifications are provided to Supplier, they will be provided AS IS, WITHOUT WARRANTY OF ANY KIND, AND UNIVERSITY SPECIFICALLY DISCLAIMS IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

23. **AUDIT**

23.1 Supplier is responsible for keeping accurate records related to its performance and obligations under this Agreement. In particular, records will be kept documenting any price, cost or budget computations required under the Agreement.

23.2 Supplier agrees that University or its authorized representative has the right to audit any directly pertinent books, documents, papers and records related to transactions and/or performance of the terms and conditions of the Agreement. Supplier shall make available to University or its representative all such records and documents for audit on Supplier's premises during regular business hours within ten (10) business days of a written request for availability. Supplier agrees to either: (a) allow University to make and retain copies of those documents useful for documenting the audit activity and results; or (b) sequester the original or copies of those documents which University identifies for later access by University.

23.3 Supplier further agrees to disclose to University within ninety (90) days of receipt any independent auditors' reports which bear directly on the performance or administration of this Agreement.

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23.4   The right to audit shall include periodic examinations of records throughout the term of the Agreement and for a period of five (5) years after its termination.

23.5   University's right to audit shall also apply to agents and subcontractors hired by Supplier for the purpose of fulfilling the Agreement.

23.6   In the event that audits discover substantive findings related to fraud, misrepresentation or non-performance, University may recoup the costs of the audit work from Supplier.

24.   <u>SOURCE CODE ESCROW</u>

24.1   Within thirty (30) days of the Effective Date, Supplier shall, at its own expense, (a) establish a Source Code escrow ("Escrow") with an escrow agent (the "Escrow Agent") reasonably acceptable to University pursuant to a written agreement (the "Escrow Agreement") which complies with the terms of this Agreement, and which Escrow Agreement either (i) shall be jointly signed by Supplier and University or (ii) shall be an already existing Escrow Agreement, with respect to which University shall become a signatory; and (b) deposit into said Escrow, the Source Code for the Software, including code for any Enhancements hereafter developed, and all technical and design Documentation relating to such Source Code which would allow a reasonably competent software programmer to understand, use, support and modify such Source Code (collectively, the "Deposit"). Supplier shall update the Deposit whenever an Enhancement is made available to University, but not less frequently than quarterly, such that at least on a quarterly basis the Deposit shall be complete and accurate as it relates to the then-current Version of the Software. The Escrow Agreement shall have such other provisions as may be mutually agreeable. Supplier shall pay all costs of the Escrow, and the Escrow Agreement shall provide that before the Escrow Agent can terminate the Escrow for failure to pay, the Escrow Agent must give at least thirty (30) days prior written notice to University.

24.2   The Escrow Agreement shall provide that upon University's written notice to the Escrow Agent that a Release Condition has occurred ("Notice of Release Condition"), the Escrow Agent shall deliver a copy of the Deposit to University, and a written notice to Supplier that a "release" has been made under the Escrow Agreement (a "Release Notice"). A "Release Condition" shall mean the existence of one or more of the following events:

a) Supplier's commission of a breach of any material term or condition of this Agreement;
b) Supplier breaches its obligations to update the Escrow as provided herein;
c) Any of the representations and/or warranties set forth in the Escrow are untrue or incorrect when made, or become untrue or incorrect;
d) Supplier fails to provide, decides not to provide, or materially breaches its obligations with respect to the Support and Maintenance Services;
e) Supplier's failure to continue to do business in the ordinary course; or

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f) A Bankruptcy Condition.

24.3   Supplier shall have thirty (30) days following the date of the Release Notice to provide written notice to the Escrow Agent (with a copy to University) that it, in good faith, believes that the Release Condition did not occur or has been cured (a "Contrary Notice"), and if the Contrary Notice is not timely given, then Supplier waives any right to contest the release of the Deposit to University. If Supplier does provide the Contrary Notice within the required time period, then, notwithstanding such Contrary Notice, University shall continue to have the right to possess and use the Deposit as provided herein unless and until (a) Supplier and University mutually agree in writing that the Deposit shall be returned to Supplier or Escrow Agent or (b) there has been a legal determination through the procedure set forth in this Agreement by a court or mutually agreed arbitration, that the Release Condition did not occur or was cured within thirty (30) days following the date of the Release Notice. So long as the Notice of Release Condition was issued in good faith, University shall have no liability to Supplier for an incorrect Notice of Release Condition.

24.4   University's use of the Deposit is subject to the following terms and conditions:

a) University's right to use the Deposit will be limited to the maintenance and support of the Software, including the development of Enhancements ("Permitted Use"). University may make up to three (3) copies of the Deposit as necessary for archival and backup purposes.

b) Except when actually being utilized for its Permitted Use, the Deposit will be kept in a restricted, limited access area with access thereto limited to designated personnel (including subcontractors) who have a need to use the Deposit for the Permitted Use.

c) University may not remove or destroy any proprietary markings or proprietary legends placed upon or contained within the Deposit. University may not market, sell, lend, rent, lease, or otherwise distribute, or assign, sublicense or otherwise transfer any rights in and to, the Deposit, except in connection with a permitted assignment and/or transfer of the Software. In addition, University may not provide, disclose or otherwise make available the Deposit to any third party, except as provided herein, and except that copies of the Deposit may be kept at a Third Party disaster or data recovery/use center and may be disclosed to subcontractors of University for the Permitted Use.

24.5   University shall have the right to routinely verify that Escrow Deposits are current and in accordance with the terms of the Agreement, or have a Third Party do so on its behalf.

25.   DISPUTE RESOLUTION

25.1   Designated Supplier and University Project Managers shall meet as often as is reasonably required to review the performance of the parties under this Agreement and to resolve any disputes.

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25.2 If a dispute arises and these representatives are unable to resolve the dispute within ten (10) business days, then the dispute will be escalated to an executive level representative of each party with the authority to resolve such matters. Supplier and University executives must meet to resolve any disputes.

25.3 This article does not prohibit a party from seeking judicial relief at any time.

25.4 Supplier shall continue performance of obligations under this Agreement while resolving any outstanding invoices or disputes.

26. JOINT DRAFTING

SUPPLIER AND UNIVERSITY AGREE THAT THE TERMS OF THIS AGREEMENT WERE MUTUALLY NEGOTIATED, AND ACKNOWLEDGE THAT EACH HAS BEEN ADVISED BY THEIR RESPECTIVE ATTORNEYS REGARDING THE TERMS, EFFECTS AND CONSEQUENCES OF THE AGREEMENT. ACCORDINGLY, SUPPLIER AND UNIVERSITY AGREE THAT THIS AGREEMENT SHALL NOT BE CONSTRUED AS HAVING BEEN DRAFTED SOLELY BY OR ON BEHALF OF EITHER PARTY.

27. ASSIGNMENT

This Agreement shall be binding on the parties and their successors (through merger, acquisition or other process) and permitted assigns. Neither party may assign, delegate or otherwise transfer its obligations or rights under this Agreement to a Third Party without the prior written consent of the other party.

28. GOVERNING LAW

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California, excluding its conflicts of laws provisions. Any dispute, claims, demands or actions arising out of or in relation to this Agreement, or the interpretation, making, performance, breach or termination thereof shall be brought in and resolved by the Superior Court of the County of [COUNTY NAME] in [CITY NAME], California or in the Federal District Court that has jurisdiction over [CITY NAME], California.

29. NAMES AND LOGOS

Supplier may not advertise that University is a client, list University as a reference or otherwise use University's name, logos, trademarks, etc. without prior written permission obtained from University personnel authorized to permit University brand use.

30. NOTICES

30.1 All notices, requests, consents, approvals, or authorizations in connection with this Agreement (collectively, "Notices") must be given in writing, sent by personal delivery,

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messenger, overnight delivery service, or the United States mail, postage prepaid, certified or registered, return receipt requested, and addressed as follows:

If to Supplier:
[SOFTWARE SUPPLIER NAME]
[STREET ADDRESS], [CITY], [STATE] [ZIP CODE]
Attention: [POSITION TITLE]

If to University:
THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
[STREET ADDRESS]
[CITY], [STATE] [ZIP CODE]
Attention: [POSITION TITLE]

30.2   All Notices sent in accordance with the foregoing shall be deemed received by the intended recipient: (a) upon personal delivery; or (b) one (1) business day following deposit with an overnight courier service submitted in time for next day delivery.

30.3   Either party may change its notice contact information above by written notice to the other party.

31.   SEVERABILITY

31.1   The terms of this Agreement are severable. If any provision of this Agreement, or any portion thereof, is declared by a court of competent jurisdiction to be illegal, void, invalid or unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of the Agreement will continue in full force and effect for the same purpose.

31.2   In the event that any provision shall be held to be illegal, void, invalid or unenforceable, that provision shall in good faith be renegotiated to reflect as closely as possible the intent of the original provisions of this Agreement in a manner that is valid and enforceable.

32.   WAIVER

32.1   No waiver of any right or remedy under this Agreement shall be effective unless such waiver is in writing signed by the performing or non-breaching party.

32.2   The waiver of any performance required under this Agreement or of any breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent failure to perform or breach of the same or any other provision of this Agreement.

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32.3   The delay or omission by either party to exercise any right or remedy under this Agreement shall not be construed to be either acquiescence or the waiver of the ability to exercise any right or remedy in the future.

33.   BANKRUPTCY

33.1   The rights granted under the Agreement, as amended hereby, shall be deemed a license of "intellectual property" for purposes of the United States Code, Title 11 ("Bankruptcy Code"), Section 365(n).

33.2   In the event of the bankruptcy of Supplier and a subsequent rejection of this Agreement pursuant to Section 365(a) of the Bankruptcy Code, or in the event of a similar action under applicable law, University may elect to retain its license rights, subject to and in accordance with the provisions of the Section 365(n) of the Bankruptcy Code or other applicable law.

34.   EQUITABLE RELIEF

Notwithstanding anything contained in this Agreement to the contrary, the parties shall be entitled to seek injunctive or other equitable relief whenever the facts or circumstances permit.

35.   FORCE MAJEURE

Neither party shall be liable to the other for failure or delay of performance hereunder due to earthquake, flood, storm, fire, epidemics, acts of government, governmental agencies or officers, war, insurrection, riots, civil disturbances, or any other cause beyond the reasonable control of the non-performing party. The non-performing party will promptly notify the other party in writing of an event of force majeure, the expected duration of the events, and its anticipated effect on the ability of the party to perform its obligations, and make reasonable effort to remedy the event of force majeure in a timely fashion.

36.   COUNTERPARTS

This Agreement may be executed in multiple counterparts, each of which when so executed and delivered shall be deemed an original, and such counterparts together shall constitute one and the same instrument. Each party shall receive a duplicate original of the counterpart copy or copies executed by it. For purposes hereof, a facsimile or emailed copy of this Agreement, including the signature pages hereto, shall be deemed an original, and each party agrees that it will not contest the validity of the execution of this Agreement solely on the basis of any signature being a facsimile or electronic transmission. Notwithstanding the foregoing, the parties shall each deliver original execution copies of this Agreement to one another as soon as practicable following execution thereof. If this Agreement is executed in counterparts, no signatory hereto shall be bound by this Agreement until all parties have executed a counterpart of this Agreement.

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37. HEADINGS

The section headings in this Agreement are inserted for convenience only, are not substantive, and shall not be interpreted to define, describe, modify or otherwise limit the interpretation or scope of the provision under the section heading or of the Agreement as a whole.

38. ENTIRE AGREEMENT

This Agreement, together with all of the incorporated exhibits, schedules, attachments, and proposals and addenda, constitutes the entire, final and exclusive Agreement between the parties with respect to the subject matter herein and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, between the parties. The parties expressly disclaim the right to claim the enforceability or effectiveness of any oral modifications to this Agreement or any amendments based on course of dealing, waiver, release, estoppel or other similar legal theory. No shrink-wrap, click-wrap, or other end user terms and conditions or agreements ("Additional Terms") provided with any Software or products hereunder shall be binding on University, even if use of such Software or products requires an affirmative "acceptance" of those Additional Terms before access is permitted. All such Additional Terms shall be of no force and effect and shall be deemed rejected by University in their entirety. Any amendment or modification to this Agreement shall be effective only if in writing and signed by duly authorized representatives of both Supplier and University.

The authorized signatory from each party has read the Agreement, understands it and is authorized to bind his/her organization. This Agreement becomes binding when signed by the authorized signatory of both parties.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date.

[SOFTWARE SUPPLIER NAME]

By: _____

Print Name: _____

Title: _____

Date: _____

THE REGENTS OF THE
UNIVERSITY OF CALIFORNIA

By: _____

Print Name: _____

Title: _____

Date: _____

04/26/11