

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA  
OFFICE OF THE GENERAL COUNSEL



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SANTA BARBARA • SANTA CRUZ

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Charles F. Robinson  
VICE PRESIDENT AND GENERAL COUNSEL

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Re: Retention for Health Affairs, Research & Technology Law Matters

Dear \_\_\_\_\_ :

As you know, the General Counsel has established a Health Affairs and Technology Law (“HATL”) Section within the Office of the General Counsel. This practice group primarily supports UC’s clinical, research, and teaching operations (collectively known as “UC Health” – see <http://health.universityofcalifornia.edu/>) located throughout the UC System. UC Health includes five full-service academic health systems at the Davis, Irvine, Los Angeles, San Diego, and San Francisco campuses, a medical school at the Riverside campus, and other health professions schools throughout California. The Health Law Group also supports the University’s student health centers. The Research & Technology Group supports academic research operations and handles privacy, cybersecurity, and other technology matters for the UC system. We also support advocacy and litigation efforts on behalf of the University within these practice areas.

The Health Affairs & Technology Law Group works continuously to secure high-quality, cost-effective legal services to complement the University’s expert in-house team; and to streamline our processes for choosing and retaining counsel and for payment of legal services in connection with individual transactions, regulatory matters, government investigations, certain litigation, and other matters. \_\_\_\_\_’s <Choose One> team has demonstrated requisite expertise and experience in one or more applicable subfields. Specifically, \_\_\_\_\_ is a member of the HATL Preferred Provider Panel in \_\_\_\_\_.

This letter will serve as the master retention for your firm’s legal services during the course of your engagement or engagements on UC Health, Research, and Technology matters, including matters for Children’s Hospital & Research Center at Oakland d/b/a UCSF Benioff Children’s Hospital Oakland (“BCHO”). An individual HATL matter may be initiated only by completion and execution of the form appended to this letter as [Attachment 1-Health, Research, & Technology Law Matter Retention Schedule](#) (a “Retention Schedule”).

Compliance with Outside Counsel Guidelines and University Contacts

Firm’s retention on any individual matter is made on behalf of The Regents of the University of California by an authorized OGC attorney. That or another attorney – a “UC Monitor” resident in the Oakland Office (“Oakland Monitor”), and/or at a campus or medical center (“Local Monitor”), is responsible for day-to-day work and oversight of the matter, subject to supervision by the Chief Campus Counsel and/or Deputy General Counsel (“Supervising Attorney”). Firm may communicate directly with

internal clients to facilitate a representation, but OGC maintains exclusive authority to direct Firm in the handling of the matter and must be kept apprised of all significant developments and advice given.

Firm's services will be performed consistent with the University's [Outside Counsel Retention Guidelines](#), as amended from time to time, including, if and to the extent applicable to a given matter, the Business Associate Addendum included here as [Attachment 2](#) (collectively the "Guidelines").

#### Participating Attorneys, Rates, and Budgets

As the Relationship Partner(s) for OGC's Health Affairs & Technology Law Group, you will be primarily responsible for the overall relationship between Firm and UC with respect to matters initiated under this retention, and to assure Firm's compliance with the Guidelines in connection with any representation. You are also expected to familiarize yourself over time with the governance structure, principal policies, and core values of the University and to assure that Firm's legal services are delivered consistent with these and with the business or operational objectives set for a given matter. The UC Monitors will be most happy to facilitate your efforts in this regard, as will I.

Your firm's work on a matter may be assigned to you or to other attorneys, consultants, and paraprofessionals in your firm listed on [Attachment 3-Approved Timekeepers Schedule](#) and on the matter-specific Retention Schedule. *Absent prior written approval by me or by a UC Monitor, work performed by timekeepers not listed on the Approved Timekeepers Schedule and the matter-specific Retention Schedule will not be reimbursed.*

#### Communications with University Counsel

We view open and continuous communication between outside and in-house counsel as essential to ensuring efficient handling of a matter and the best possible results. Accordingly, the UC Monitor must be fully apprised and kept current on all developments and participate in all decisions concerning legal tactics and strategy. Provide the UC Monitor or designee with copies of all legal opinions and advice, as well as major correspondence, preferably in electronic form. Drafts of significant documents (agency submissions, definitive agreements, advice memoranda and formal opinions, etc.) should be provided in time for thorough review and discussion. Copies of all significant documents must be provided to the UC Monitor and to me.

#### Philosophy on Conflicts and Conflict Waivers and on Joint Representations

To request a conflict waiver, simply contact my Executive Assistant, Brigid Saulny ([brigid.saulny@ucop.edu](mailto:brigid.saulny@ucop.edu) or 510-987-9945) and provide the relevant information. We aim to respond expeditiously. Please note that the University does not approve advance or blanket waivers of future conflicts, whether client-specific or otherwise, except under extraordinary circumstances and subject to specially designed protections developed to protect the University's interests. Our view is that, as a general matter, it is impossible for a firm to adequately disclose the relevant circumstances and actual and reasonably foreseeable adverse consequences of conflicts that have not yet materialized. *See, e.g., Concat LP v. Unilever, PLC*, 350 F. Supp. 2d 796 (N.D. Cal. 2004). Although no advance waivers are approved pursuant to these Guidelines, we do make every effort to promptly respond to individual waiver requests and we routinely waive conflicts, particularly with respect to transactional work.

#### Political Reform Act

University employees are subject to certain transparency requirements and related restrictions imposed by the California Political Reform Act ("CPRA"). Among other things, the CPRA requires

annual disclosures by certain public officials and disqualifies officials who have defined financial interests from making, participating in, or otherwise influencing certain governmental decisions. OGC attorneys may attend firm-sponsored functions and events, but may be required to disclose any resulting gifts on an annual statement that is subject to public disclosure, and depending on the total value of gifts or other income received in a given year by an OGC attorney and her immediate family from Firm, may be disqualified from engaging Firm on a matter or even making a recommendation regarding an engagement during the subsequent twelve-month period.

#### Notification of Noncompliance or Misconduct

Firm shall immediately report to the Local Monitor (or, if none is identified on a Retention Schedule or in case of a conflict of interest, the Oakland Monitor) any improper governmental activities (“IGAs”), as defined in the University’s [Whistleblower Policy](#), of which Firm becomes aware, regardless of whether such noncompliance or misconduct is the subject of Firm’s retention. In the event of professional misconduct involving the UC Monitor, Firm shall report it to the Supervising Attorney. In the event of professional misconduct involving the Supervising Attorney, Firm shall report it to the General Counsel.

#### Budgets, Billing Procedures and Reimbursement

Most matters will proceed under value-based fee arrangements. Any work performed on an hourly basis requires a budget. A fee arrangement or budget is required for each matter in which Firm has been retained. Although budgets are intended to be estimates of the scope, cost and duration of a given matter, the University will rely on the information provided in planning and funding each matter. We do appreciate that a budget may need to be revised due to circumstances beyond a firm’s control, for example unexpectedly difficult opposing counsel or significant changes in the expected scope of a transaction or investigation. It is critical to communicate proactively regarding any anticipated budget overruns. ***The University will not reimburse any fees or costs prior to receipt and approval of a budget nor, thereafter, incurred in excess of the approved budget, except to the extent approved in advance by the UC Monitor and, depending on the scope of the matter, the Deputy General Counsel.***

We expect any attorney, paraprofessional or consultant assuming responsibility for a matter – or for any component of a matter – to have relevant subject matter expertise, training and experience consistent with his or her specialty and rank (e.g., partner, counsel, associate, paralegal, consultant) at Firm; and for Firm as a whole to efficiently and effectively pursue the matter to its conclusion. Basic research on non-novel questions of law should be unnecessary in most cases. The University will not reimburse the costs of researching or preparing legal memoranda, opinions, or similar documents that were not requested or otherwise approved in advance by the UC Monitor, nor those that Firm fails to distribute to the UC Monitor and/or Supervising Attorney (internal memos developed for a firm’s benefit are never billable to the University). ***Billing entries for an attorney who allocates significant time to a matter but does not display to the UC Monitor a mastery of the facts and understanding of the applicable law will require justification and may be rejected.***

Fees and other expenses must be charged consistent with the rates specified in the Approved Timekeepers Schedule, approved budgets, and the Guidelines. Invoices must exclude non-reimbursable charges, and must be submitted electronically as provided below. ***Failure to comply with these requirements may result in delay of payment or non-payment.***

Invoices for Outside Counsel fees and expenses must be submitted monthly and within 30 days of the end of the previous period. All invoices for work performed during a fiscal year (7/1 – 6/30) must be

received no later than July 15. Invoices must be submitted electronically in LEDES format using Bridgeway's eCorridor website consistent with the attached Requirements for Electronic Invoice Submission.

Final invoices must be submitted through eCorridor no later than 30 days from receipt of settlement or other termination of a matter. If the final bill cannot be submitted within 30 days, Firm must advise the UC Monitor as soon as may be practical. It is Firm's responsibility to obtain all outstanding invoices from outside vendors, including consultants and experts, before submitting the final bill. Absent exigent circumstances, bills submitted after the final bill will not be paid.

Any questions concerning use of eCorridor or our billing procedures should be directed to [legalbilling@ucop.edu](mailto:legalbilling@ucop.edu). Requests for invoice payment status should be directed to the applicable UC Monitor with a copy to Brigid Saulny ([brigid.saulny@ucop.edu](mailto:brigid.saulny@ucop.edu) or 510-987-9945).

\* \* \* \* \*

We very much appreciate your willingness to represent the University on health law, research, and technology matters and look forward to a long and productive working relationship.

Sincerely,

Rachel Nosowsky, Esq.  
Deputy General Counsel

RN/bs

Agreed and Accepted:

\_\_\_\_\_  
By:

## Health, Research & Technology Law Matter Retention Schedule

The firm referenced below (“Firm”) is retained to provide legal services to The Regents of the University of California (“UC”) and specifically to provide services in connection with the matter described below (“Matter”), subject to the previously executed retention letter and the then-current Outside Counsel Retention Guidelines (including, if applicable, the Business Associate Addendum, and all relevant Exhibits), available [online](#).

Campus/Medical Center: **<Choose One>** \_\_\_\_\_

Firm Name: \_\_\_\_\_ Partner in Charge: \_\_\_\_\_

Matter Name: \_\_\_\_\_ Matter Number: \_\_\_\_\_

Matter Type: **<Choose One>** \_\_\_\_\_ Matter Category (iVos): **<Choose One>** \_\_\_\_\_

Matter Description:

Oakland Monitor: \_\_\_\_\_ Local Monitor: \_\_\_\_\_  
Bill Approval? Yes  No  | Budget Approval? Yes  No  | Lead Counsel? Yes  No  N/A

Other Key Attorneys (Information/Updates Only): \_\_\_\_\_

FAU #: \_\_\_\_\_ FAU Contact Name/Number: \_\_\_\_\_

Client/Sponsor Name: \_\_\_\_\_

### Assigned Timekeepers:

Note: UC will not reimburse fees incurred in connection with the Matter by or on behalf of any attorney, consultant, paraprofessional, or other timekeeper who is not listed on the Approved Timekeepers Schedule and on this HATL Retention Schedule, except as approved in advance and in writing by a UC Monitor.

Budget: \_\_\_\_\_

Please attach details. UC will not reimburse unbudgeted work, nor work performed in excess of the budget. Budget revisions must be approved in advance and in writing by a UC Monitor with budget approval authority, following consultation with the Client/Sponsor.

### Accepted and Approved:

Name: \_\_\_\_\_ (“Supervising Attorney”)  
Title:  Chief Campus Counsel  Deputy General Counsel  
The Regents of the University of California - **Office of the President**

Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Firm: \_\_\_\_\_

## HIPAA BUSINESS ASSOCIATE ADDENDUM

This HIPAA Business Associate Addendum (“BA AGREEMENT”) supplements and is made a part of any and all agreements entered into by and between The Regents of the University of California, a California public trust established pursuant to the California Constitution (“UNIVERSITY”), on behalf of its **University of California Health Systems** and **Firm** (“BUSINESS ASSOCIATE”) and is effective concurrent with the Master Retention Letter to which this BA AGREEMENT is attached (“**Effective Date**”). UNIVERSITY has designated all of its HIPAA health care components as a single component of its hybrid entity and therefore this agreement is binding on all other health care components of the UNIVERSITY.

### RECITALS

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

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

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

2. **DEFINITIONS.**

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

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

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

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

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

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

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

2.8 "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an Information System, and shall have the meaning given to such term under HIPAA and the HIPAA Regulations, including 45 CFR § 164.304.

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

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

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

### 3. RESPONSIBILITIES OF BUSINESS ASSOCIATE.

3.1 Permitted Uses and Disclosures of PHI. BUSINESS ASSOCIATE may use, access, and/or disclose PHI received by BUSINESS ASSOCIATE solely for the purpose of performing a function or activity for or on behalf of the University.

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

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

3.1.3 Modification of PHI. Except as permitted under section 3.10.2 below, BUSINESS ASSOCIATE shall not modify any existing data to which it is granted access other than to correct errors, or derive new data from such existing data. BUSINESS ASSOCIATE shall record any modification of data and retain such record for a period of seven (7) years.

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

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

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

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

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

3.4 Prohibition on Sale of PHI for Remuneration. Subject to the limitations set forth in Section 13405(d)(2) of the HITECH Act, BUSINESS ASSOCIATE shall not directly or indirectly receive remuneration in exchange for any of UNIVERSITY's PHI unless BUSINESS ASSOCIATE first obtains authorization from UNIVERSITY. UNIVERSITY shall not grant such authorization unless the subject of the PHI has granted UNIVERSITY a valid authorization that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving the individual's PHI.

3.5 Security Standards. BUSINESS ASSOCIATE shall take appropriate security measures (i) to protect the confidentiality, integrity and availability of UNIVERSITY's Electronic PHI information that it creates receives, maintains, or transmits on behalf of the UNIVERSITY and (ii) to prevent any use or disclosure of UNIVERSITY's PHI other than as provided by the Agreement and this BA AGREEMENT. Appropriate security measures include the implementation of the administrative, physical and technical safeguards specified in 45 CFR §§ 164.306, 164.308, 164.310, 164.312 and 164.316.

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

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

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

3.8.1 Notification of Corrective Action and Provision of Policies. BUSINESS ASSOCIATE will provide written notice to UNIVERSITY as soon as possible but no later than twenty (20) calendar days after discovery of the Breach or Security Incident of (i) the actions taken by BUSINESS ASSOCIATE to mitigate any harmful effect of such Breach or Security Incident and (ii) the corrective action BUSINESS ASSOCIATE has taken or shall take to prevent future similar Breaches or Security Incidents. Upon UNIVERSITY's request, BUSINESS ASSOCIATE will also provide to UNIVERSITY a copy of BUSINESS ASSOCIATE's policies and procedures that pertain to the Breach or Security Incident involving UNIVERSITY's PHI, including procedures for curing any material breach of this BA AGREEMENT.

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

### 3.9 RIGHTS and RESPONSIBILITIES of UNIVERSITY.

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

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

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

3.9.4 Regulatory Compliance. BUSINESS ASSOCIATE shall make its internal practices, books and records relating to the use, disclosure or security of PHI received from UNIVERSITY (or created or received by BUSINESS ASSOCIATE on behalf of UNIVERSITY) available to any state or federal agency, including the U.S. Department of Health and Human Services, for purposes of determining UNIVERSITY's and/or BUSINESS ASSOCIATE's compliance with federal/state privacy and security laws and regulations.



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

### 3.10 Rights of Individuals.

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

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

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

3.10.4 Electronic Health Records. If BUSINESS ASSOCIATE, on behalf of UNIVERSITY, uses or maintains Electronic Health Records with respect to PHI, UNIVERSITY may provide an individual, upon the individual's request, with the name and contact information of BUSINESS ASSOCIATE so that the individual may make a direct request to BUSINESS ASSOCIATE for an accounting of disclosures made by BUSINESS ASSOCIATE during the three (3) years prior to the date on which the accounting is requested or as otherwise provided under the HITECH Act Section 13405(c)(4)(A) or Section 13405(c)(4)(B).

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

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

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

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

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

## 5. TERMINATION AND OTHER REMEDIES.

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

5.1.1 Terminate all applicable agreements, including this BA AGREEMENT, immediately if the other party has breached a material term of this BA AGREEMENT;

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

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

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

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

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

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

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

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

## 6. CHANGES TO THIS BA AGREEMENT.

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

## 7. INSURANCE AND INDEMNIFICATION.

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

7.2 Indemnification by BUSINESS ASSOCIATE. BUSINESS ASSOCIATE agrees to defend at UNIVERSITY's election, indemnify, and hold harmless UNIVERSITY, its officers, agents or employees from and against any and all claims, liabilities, demands, damages, losses, costs and expenses (including costs and reasonable attorneys' fees), or claims for injury or damages that are caused by the acts or omissions of BUSINESS ASSOCIATE, its officers, employees, agents and subcontractors with respect to the use and disclosure of UNIVERSITY's PHI.

7.3 Indemnification by UNIVERSITY. UNIVERSITY agrees to defend at BUSINESS ASSOCIATE's election, indemnify, and hold harmless BUSINESS ASSOCIATE, its officers, agents and employees from and against any and all claims, liabilities, demands, damages, losses, costs and expenses (including costs and reasonable attorneys' fees), or claims for injury or damages that are caused by the acts or omissions of UNIVERSITY, its officers, agents or employees with respect to the use and disclosure of UNIVERSITY's PHI.

## 8. MISCELLANEOUS PROVISIONS.

8.1 Assistance in Litigation or Administrative Proceedings. BUSINESS ASSOCIATE shall make itself, and any employees or agents assisting BUSINESS ASSOCIATE in the performance of its obligations under this BA AGREEMENT, available to UNIVERSITY at no cost to UNIVERSITY to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings against UNIVERSITY, its directors, officers, agents or employees based upon claimed violation of HIPAA, the HIPAA Regulations or other laws relating to security and privacy..

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

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

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

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

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

### **Attachment 3**

#### **Approved Timekeepers Schedule**

The following rates are effective through December 31, 2018 for matters billed on an hourly basis. Only those individuals listed or otherwise referenced below and listed on a matter-specific Retention Schedule may bill time or services to any individual matter.

Please note: all timekeepers must be registered in advance in the University's eCounsel system. For instructions or assistance with this process, please contact [legalbilling@ucop.edu](mailto:legalbilling@ucop.edu).

#### **Contract/Temporary/Staff Attorneys or Other Personnel:**

Contract, temporary, or "staff" attorneys and other professionals are not eligible to perform work according to the above fee schedule but may be approved by a UC Monitor to work on any matter where their participation will make the retention as a whole more cost effective than would otherwise be the case (for example to facilitate diligence or discovery activities); provided, however, that: (i) Firm shall remain responsible for their oversight and work product; and (ii) any mark-up over the hourly rate at which they are being paid reflects associated administrative and overhead costs, is approved in advance by the UC Monitor, and in any event does not exceed twenty percent (20%).