

University of California, Office of the General Counsel Health Affairs, Research & Technology Law Preferred Provider Program Request for Proposals

RFP Overview

The University of California Office of the General Counsel (“OGC”) seeks a limited number of preferred outside law firms to assist with the majority of our health law, academic research, and cybersecurity/technology matters. The types of matters included in this Request For Proposals (“RFP”) are outlined in the Scope section below (collectively, the “Covered Matters”). The firms we ultimately select will be known as OGC Preferred Health Affairs & Technology Law Counsel (“preferred provider panel” or “P3”) and will represent the University as part of the OGC Health Affairs, Research & Technology Law Preferred Provider Program (“PROGRAM”). We anticipate that each firm will have significant opportunities, subject to performance, to represent the University annually. While a separate litigation panel has been developed to handle most litigated matters, our practice groups work closely on non-litigated and litigated matters of interest to both.

OGC is in the process of moving away from the standard billable-hour model, and, unless otherwise approved, all fees under the PROGRAM will be value-based (see Value-Based Pricing section below). P3 firms will be able to represent the University across all Covered Matters for which they have qualified and may have the opportunity to bid for work in other practice areas not indicated in the Scope section below. Although we reserve the right to assign Covered Matters work to non- P3 firms, we anticipate that a significant majority of the Covered Matters work will go to P3 firms.

Responding firms must agree to abide by the P3 Requirements and Terms and Conditions of this RFP as stated below.

Responses to this RFP must be received by OGC by close of business on September 10, 2018 and must contain responses to all questions in the general section and the matter-specific sections for which you wish to be considered.

We are attempting to set up an electronic submission form for responses and if successful will post that form on our main website (lower right corner at <https://www.ucop.edu/general-counsel/>) no later than August 31, 2018. Absent the electronic submission option, responses must conform to the requirements set forth below.

We plan to select P3 firms and initiate the PROGRAM effective January 1, 2019 (see Timeline below).

RFP Timeline

8/13/2018 – RFP distributed to candidate firms and posted on OGC website
8/21/2018 – Last day for any questions regarding RFP from candidate firms
8/28/2018 – OGC will post answers to questions by this date at <https://www.ucop.edu/general-counsel/hatl-p3.html>
9/10/2018 – RFP responses due
10/12/2018 – Finalists notified and interview schedules set
10/15/18 – 11/30/2018 – Finalist interviews
12/15/2018 – Firms notified of results
1/2/2019 – New matter assignments to panels begin

OGC does not guarantee the above schedule and reserves the right to modify this schedule at its discretion.

About UC

The [University of California](#), one of the largest and most acclaimed institutions of higher learning in the world, is dedicated to excellence in teaching, research, health care, and public service. It is a public institution [encompassing](#) ten campuses, five medical centers, eighteen health professions schools, and a statewide Division of Agriculture and Natural Resources. The University also is involved in the operation and management of three national laboratories for the U.S. Department of Energy.

The [Office of the President](#), based in Oakland, California, provides system-wide management of the University. Its divisions oversee UC's academic mission, budget, external relations, legal matters, and business and financial activities. The University is governed by a [Board of Regents](#).

About OGC

The Office of the General Counsel, working collaboratively with our clients, seeks to advance the University's mission through skilled advice, vigorous advocacy, and effective, proactive counsel. Our goal is to be valued and trusted partners, recognized for our creativity, industry-leading expertise, and commitment to client objectives. We are committed to fairness and diversity in all our interactions, and we value a commitment to diversity in our retained counsel. For more information about us and our values, please visit our website at <https://www.ucop.edu/general-counsel/index.html>.

In-house counsel located at the Office of the President and resident at the University's campuses, medical centers, and national laboratories partner with outside counsel to provide legal services in a variety of areas. Covered Matters arising out of this RFP typically will be supervised by Oakland-based attorneys in OGC's Health Affairs & Technology Law ("HATL") section. Other sections of OGC supervise matters in Business, Finance & Innovation; Education, Employment & Governance; and Litigation & Capital Strategies. Smaller matters sometimes are supervised locally at a campus, medical center, or national laboratory.

PROGRAM Scope (Covered Matters)

The scope of this RFP and the P3 is, except as otherwise expressly provided, for U.S. matters only, which are heavily concentrated in California. The matter types are broken into the following groups (listed below): Group I matters are high-impact regulatory/white collar matters that present significant operational, reputational, and/or financial (>\$5MM) risk to the University and complex/significant corporate transactions (e.g., whole hospital mergers, acquisitions or affiliations; multi-year system-wide provider agreements with health plans). Group II matters are moderate impact/value matters that typically present less risk to the University and smaller corporate transactions (e.g., ancillary provider joint ventures; single-campus health plan agreements). Group III matters are highly specialized and typically (but not consistently) smaller impact/value matters and may include fixed-fee retainers for routine advisory work. Group IV matters are consulting work performed in support of the delivery of legal services.

You may choose to represent the University in any or all of the matter types listed, but you should apply only for areas in which you have significant demonstrated expertise (in both substance and risk level) and for which you can offer economically practical services. Please respond to the questions for each matter type for which your firm would like to be considered. Note that demonstrated expertise in one or more Group III categories may be advantageous in being designated to Group I or Group II or in receiving individual case assignments regardless of whether you are selected to the Group I or Group II panel.

Group I (high-impact/high risk regulatory and white collar matters; complex/significant corporate transactions)

- Antitrust (healthcare specific)
- Cybersecurity Advice and Breach Response (including with international implications)
- Reimbursement/Payer Disputes
- Transactions
- White Collar – Internal Investigations and Defense of Government Investigations (including via *qui tam* complaints)

Group II (moderate-impact/moderate-risk matters; smaller corporate transactions)

- Antitrust (healthcare specific)
- Cybersecurity Advice and Breach Response
- Reimbursement/Payer Disputes
- Transactions
- White Collar – Internal Investigations and Defense of Government Investigations (including via *qui tam* complaints)

Group III (highly specialized, typically smaller, less frequent – but sometimes high-impact/high-risk; deep knowledge of both federal and California regulatory systems generally required)

- Academic Affairs
 - Faculty-Administration Relations/Shared Governance
 - Faculty Practice Plans (and affiliations with Academic Health Systems)
 - Graduate Medical Education
 - Religious Liberty/Establishment Issues
- Advocacy
 - California Political Reform Act
 - Lobbying/Honest Leadership and Open Government Act
 - Political and ballot initiative advocacy by state entities and 501(c)(3) organizations
- Health Insurance/Health Plans (employer and provider sides)
 - Captive Insurers; Risk Retention Groups
 - Managed Care/Insurance Contracting
 - Managed Care/Insurance Regulation (esp. Knox-Keene; DMHC; CDI)
 - Self-Funded Health Plan Administration
- Information Privacy, Confidentiality, and Security
 - Cybersecurity and Breach Response
 - Federal privacy laws and regulations including HIPAA, FERPA, GLBA, SAMHSA Regulations, and human subjects research laws and regulations promulgated by OHRP and FDA and related higher education, research, and health privacy rules
 - Federal information security laws including HIPAA and FISMA, and standards including NIST and ISO and related higher education, research, and health privacy rules
 - California privacy and security laws and regulations including the Information Practices Act, Confidentiality of Medical Information Act, and other health privacy rules
 - National and international data breach reporting rules
 - The European Union's General Data Protection Regulation
 - Other international privacy and security laws and regulations
 - *If you are applying for this work, please describe any internal technical experts you employ, specify whether they are attorneys or non-attorneys, and provide their rates*
- Public/Academic Hospital and Health System Operations and Reimbursement
 - Clinical Laboratories – Accreditation and Reimbursement
 - Enrollment (Medicare, Medicaid/Medi-Cal)
 - FQHCs (Federally Qualified Health Centers)
 - Government Health Care Program Reimbursement (including Medicare, California Waiver/Medi-Cal and Supplemental Payment Systems; Intergovernmental Transfers; Certified Public Expenditures)
 - Hospital Operations/Regulatory Advice (e.g., CCR Title 22, Medicare COPs, TJC)
 - Medical Staff Governance and Peer Review; PSQIA
 - Nonprofit Tax Matters
 - Pharmacy Regulation
 - VAMC Affiliations
- Regulatory/Internal Investigations/White Collar
 - Conflicts of Interest/Open Payments
 - Controlled Substances Regulation and Diversion
 - Corporate Governance (with particular focus in public entities, higher education, and/or health care organizations)
 - Fraud and Abuse – Health Care

- Fraud and Abuse – Research
- Government Investigations/Audits (e.g., DOJ, OIG, NIH, NSF, OHRP, FDA, CDPH, CMS)
- Immigration
- Medical Marijuana/Legalization
- Sexual Harassment/Sexual Violence in Academic Medical Centers
- Research and Clinical Trials
 - Animal Research
 - Conflicts of Interest in Research (including NIH, NSF, FDA regulations)
 - Export Controls/Fundamental Research Exclusion/OFAC Sanctions
 - FDA Regulation of Drugs, Devices, and Biologics
 - Grants and Contracts (government and nongovernment sponsors)/OMB Uniform Guidance/Research Terms and Conditions/Cost Principles
 - Human Subjects Research/Clinical Trials
 - NAGPRA (Native American Graves Protection and Repatriation Act)
 - Research and Health Data – ownership, access, data sharing requirements
 - Research Compliance (Miscellaneous)
 - Research Misconduct/Research Integrity Compliance and Investigations (and PHS and NSF regulation)
 - VAMC/VA Research Affiliates
- Transactions/Corporate (specific to healthcare and research)
 - Government Contracts/Federal Acquisition Regulation
 - Group Purchasing Organizations
 - International (specify regions/countries and for each, whether services are provided directly by your firm or by firm partners or affiliates)
 - Mergers/Acquisitions/Joint Ventures
 - Procurement; Public Contracts/Public Bidding (California)
 - Public Entity Affiliations with Catholic Health Systems
 - Venture Investment/Finance

Group IV (Legal Support Services)

- Accounting Services (GASB expertise would be a must here)
- Crisis Communications
- Data Analytics
- Due Diligence and eDiscovery Support
- Health System Consulting
- Other Legal Support Organization/Operations
- Reimbursement Probes and Audits
- Valuations (fraud and abuse; tax)
- *Other (describe)*

PROGRAM Requirements

- Abide by the Health Affairs & Technology Master Retention and, if and as applicable, the Business Associate Addendum, (Appendix A); the OGC Outside Counsel Guidelines (Appendix B); and the Requirements for Electronic Invoice Submission (Appendix C)¹
- Confirm that no conflicts exist (or in response to the General Questions below, specify any that do), and agree that with very limited and narrow exceptions proposals for which must be made as part of your RFP response, OGC will not approve advance blanket waiver requests and instead will consider all waivers on a case-by-case basis
- For Group I and Group II matters, agree that, unless otherwise directed or approved by UC, fees will be structured, quoted, and negotiated using value-based pricing arrangements (see Value-Based Pricing section below)
- For Group II matters only, agree that all discovery/due diligence pricing will be preset (see Discovery/Due Diligence Pricing below)
- For Group III matters only, provide a proposal for a heavily discounted monthly retainer for routine advice in any combination of the practice areas listed (all-in, by group, or individually)
- Use the UC eBilling system for electronic invoice submittals²
- Provide and update an invoice schedule for all value-based fee arrangements (see Invoice Schedule section below)
- Participate in the Annual Performance Review (see Annual Performance Review section below)
- No mention of the University of California or use of its marks in any marketing or similar material without prior written approval and then only consistent with the requirements of Cal. Ed. Code §§ 92000 et seq. and applicable University policies
- Provide at least a 15% discount for any hourly fees (hourly work performed only with prior approval)

Value-Based Pricing

The Health Affairs & Technology Law Group is responsible for regulatory advice, transactions, and internal and government investigations throughout the University's academic medical centers (which collectively form a \$12 billion enterprise) and for other regulatory work throughout the University involving research, technology, and cybersecurity. In order to drive better value per dollar spent and increased budget predictability, we are transitioning away from the standard billable-hour model to value-based fee arrangements in many of our matters. Our focus is on substantive deliverables and results, not time or effort expended. Unless otherwise approved by OGC in advance, all work done by PROGRAM firms will be under value-based fee arrangements. These arrangements usually take the form of fixed fees, success fees, contingent fees, or monthly retainers.

¹ The current master retention letter and outside counsel guidelines are attached. OGC is in the process of revising the guidelines for simplification and clarification but does not anticipate material changes that would affect law firm pricing.

² OGC's current billing vendor requires a percentage use fee for billings in excess of \$50,000, up to a maximum fee of \$13,000 per year per firm.

Matter Engagement Process

We intend to name only 3-5 firms in each of Group I and Group II (and some may cross both); more may be named for certain categories of Group III matters depending on expertise needed and proposals received. For each new matter in which we intend to engage outside counsel, those firms that have been qualified for that matter type will be given a summary of the matter and copies of relevant materials, as well as a Matter Engagement Proposal Form. This form will ask a few substantive questions about the specific matter as well as request a list of the attorneys who are proposed to work on it. In addition, the firm will submit a pricing template with a proposed value-based pricing proposal. We will review the proposals and select a firm to represent the University in that matter. Selection will be weighted heavily on the substantive responses, but the proposed pricing certainly will be a factor, as will the composition of the proposed team.

Invoice Schedules

For each matter engagement, an approved fixed fee will be converted into an invoice schedule. The invoice schedule will be based upon the expected timeline submitted for each phase (where appropriate). Invoices will be submitted to UC based on a calculation of 2/3 of the total fixed fee of the respective phase amortized in equal monthly amounts across the estimated timeline with the residual to be invoiced at the completion of the phase. Success fees (where applicable) will be invoiced upon the successful resolution of the matter as defined. An invoice schedule and all individual invoices will be submitted to our e-billing and document management systems. The firm will update the invoice schedule with each invoice submittal. The invoice schedule and the invoice should match. The fee for any phase should be billed only after the work for that specific phase has commenced.

Discovery/Due Diligence Pricing (Group II Matters Only)

Because of reduced variability of discovery and due diligence items for Group II matters, we will preset fixed fee pricing through this RFP for standard discovery and due diligence tasks. If you are submitting for Group II matters, please use the electronic submission form if one is provided, or attach an Excel spreadsheet to include a fixed fee proposal for each discreet discovery or due diligence task described below. Please note that these fixed fees are for each discreet task (e.g., a fixed fee per witness interview or per set of due diligence questions for a particular type of transaction).

- **Supervision of document collection and production** - Supervise UC team or outside vendor regarding collection and production of documents (note this fee is for *supervision*; we intend to have a cost-effective vendor perform actual collection and initial review for production).
- **Secondary review of documents** - Perform secondary/substantive review per set of 5000 documents.
- **Written discovery/due diligence (offensive)** – Lead the University’s work to prepare and serve requests for production, interrogatories, requests for admission, or informational requests, and conduct all related meeting and conferring; fixed fee per set of written discovery for adversarial proceedings or due diligence for transactions.

- **Written discovery/due diligence (defensive)** – Lead the University’s response to requests for production, interrogatories, requests for admission, or informational requests, including all related meeting and conferring, witness interviews, and verification of responses; fixed fee per set of written discovery for adversarial proceedings or due diligence for transactions.
- **In-person presentations to regulatory or law enforcement agencies (e.g., HHS OIG or DOJ), executive leaders/board members** - For each presentation not already covered by other fixed fees (include all preparations).
- **Interviews (of primary complainants or respondents)** - Fixed fee per interview, including review of relevant documents, preparation, and attendance.
- **Interviews (other fact witnesses)** - Fixed fee per interview, including review of relevant documents, witness preparation, other preparation, and attendance.
- **Experts (defensive)** - Fixed fee per expert, including review and analysis of opposing expert’s report (if any), preparation and attendance at interview/deposition.
- **Experts (offensive)** - Fixed fee per expert, including expert retention, consulting, report preparation, deposition and witness preparation, and deposition attendance. Does not include expert fees.

Annual Performance Review

As a means to enhance communication and provide feedback to PROGRAM firms, OGC will schedule an annual performance review with each PROGRAM firm at the OGC office in Oakland or via videoconference at the firm’s discretion. We may request the PROGRAM relationship partner(s) to attend. Attendees from OGC may include the General Counsel, Deputy General Counsel and Managing Counsel of Health Affairs & Technology Law, other OGC lawyers, and/or representatives from our clients. The annual performance review will include a review of the matters, substantive issues, results, financials and any other topics requested by either party. PROGRAM firms will not charge for time or expenses to attend the annual performance review. Results of these reviews may influence continued participation in the PROGRAM.

Engagement Requirements

Upon acceptance into the PROGRAM, OGC will provide selected firms with an engagement letter indicating agreement to abide by the PROGRAM Requirements and Terms and Conditions as stated in this RFP. After the engagement letters are signed and approved, each subsequent matter assigned to a PROGRAM firm under the PROGRAM will require only an approved Retention Schedule and a reference to the approved engagement letter (including Business Associate Agreement).

General Questions – Responses Required

Please provide succinct responses that clearly and directly answer each question below.

1. **Contact Information/Relationship Partner(s)**. Provide the name and contact information of the attorney with primary responsibility for the overall relationship with OGC (note: more than one attorney may be named; for example, if you are the relationship partner for the Litigation Team, you may name a different relationship partner for the Health Affairs & Technology Law Team,

and within HATL, you may name more than one relationship partner – e.g., one for transactional matters and one for regulatory matters or one for California and one for Washington, DC/Federal matters).

2. **Firm/Office Demographics.** Provide the following information (you may attach your current NALP form to this application if the information requested is contained therein, but all points below must be addressed in your response):
 - Location of offices
 - Number of attorneys firmwide and number in California offices by location
 - Number of partners/members, associates, counsel, non-traditional track/staff attorneys, and summer associates in total and in each NALP-designated population (gender identity, race/ethnicity, disability status, and openly LGBTQ)
 - The name and contact information for your diversity chair
 - Information about your firm’s recruitment methods
 - Information about diversity fellowships or scholarships offered by your firm
 - Information about any other initiatives sponsored or supported by your firm aimed at promoting diversity within your firm or in the profession
 - Information about any other initiatives sponsored or supported specifically by the proposed relationship partner(s) identified in your response to Question No. 1 aimed at promoting diversity within your firm or in the profession
3. **Program/Matter/Knowledge Management.** Describe your firm’s processes and systems for both program and knowledge management, and explain how these processes and systems will be used to benefit OGC. These may range from client extranets to billing/reimbursement dashboards to access to educational presentations, for example.
4. **Personal Conflicts of Interest.** Describe any business or personal relationships your firm or proposed members of your panel team has with any OGC attorney or staff member, or with other senior leaders of the University of California or UC Health (e.g., Board of Regents, Regents committee members, Regents Officers, President, Vice Presidents, Chancellors, Vice Chancellors, Deans, CEOs, CFOs, CMOs, COOs, CSOs).
5. **Value-Added Services.** Describe any additional services that you would provide OGC at no cost to enhance the value of your service overall (e.g., in-service training, access to extranets, etc.).
6. **Firm Conflicts.** Describe any conflicts your firm has with the University as a result of your representation of other clients for which you will require a waiver, e.g., as a result of pending litigation or transactions. Also describe any (narrowly tailored) blanket or future waivers you would like us to consider should we choose you for our panel.
7. **Ethical Walls.** Describe the arrangements you are willing and able to make to assure that confidential client information is not inadvertently released or otherwise utilized when the University has waived a conflict.
8. **Information Security.** Describe your firm’s information security infrastructure including, without limitation, data security, document security and safeguards against release of confidential

information. Confirm your CISO's willingness to confer with our security experts during the RFP process and occasionally thereafter on issues of common interest or concern.

9. **Information Security.** Describe your firm's information security infrastructure including, without limitation, data security, document security and safeguards against release of confidential information. Confirm your CISO's willingness to confer with our security experts during the RFP process and occasionally thereafter on issues of common interest or concern.
10. **Value-Based Pricing/Alternative Fee Arrangements.** Describe your experience with value-based pricing and other alternative fee arrangements in each area where you are applying. Be as specific as possible. A general "we are open to alternative fee arrangements" or "we have worked under alternative fee arrangements" is not a useful response.
11. **Hourly Rates.** For situations where OGC approves hourly work, please provide your current rack rates and rates expected for CY 2019 for all attorneys and other billing staff you propose to work on PROGRAM matters. Also provide your proposed hourly rate for partners, senior counsel/of-counsel, associates, and non-attorney billing staff (e.g., paralegals; crisis communications experts). We strongly prefer standardized rates in each class but will accept proposals by practice group or, if absolutely necessary, by individual. *Provide a proposal that will be good for at least three years (whether one fee good for the entire period or a fee plus a defined escalator).*
12. **Professional Misconduct/Professional Malpractice.** Has your firm or any firm attorney been a named defendant in a legal malpractice case during the past 10 years, or has any firm attorney been sanctioned by a court or regulatory authority or otherwise disciplined by the California Bar? If so, please provide details.
13. **Major Expected Changes.** Describe any potential or planned changes that, in the next 12-24 months, could significantly change any of the information provided in your response to this RFP.
14. **Fellowships.** State whether your firm would be willing to sponsor or co-sponsor a health law, academic research, or cybersecurity legal residency (immediate post-graduate placement for one or two years, approximately \$150,000 per resident per year inclusive of benefits) at our Oakland office, and if so include any limits or conditions on such sponsorship. The program is aimed at students with excellent academic credentials and a demonstrated interest in one or more of the fields referenced under Group III above. Its goal is to contribute to the University's teaching and public service missions, and to increase diversity in the legal profession. In the spirit of the [Mansfield Rule](#), we are committed to assuring a highly diverse applicant pool. Program graduates have taken advantage of this outstanding professional development opportunity to prepare for work in the best health law practices in the nation and have been highly successful there.
15. **Additional Considerations.** Discuss any other issues or considerations that you believe are relevant as a candidate for the PROGRAM.

Group-Specific Questions – Responses Required

For each matter group or specific matter type for which you wish to be considered in Group I or Group II, please provide:

1. A brief description of your relevant practice and how this practice differentiates itself from similar practices at other firms.
2. The name, contact information and background information of the attorney proposed to have primary responsibility for the specific area of practice for UC as well as of all other members of the proposed team. Explain why each individual has been proposed and his/her specific area of work or specialty, including any relevant experience with government agencies regulating health care, academic research or teaching, or cybersecurity.
3. A description of at least three similar matters handled in the past year along with the final disposition as applicable.

For Group III and Group IV matters, please respond at least to the first two questions.

Terms and Conditions

OGC will accept proposals responding to the requests contained in this document until close of business on September 10, 2018. As noted above, a web-based form may be furnished for submission. In addition to the form, please email an electronic copy of your complete proposal to OGC at HATLRFP2018@ucop.edu and Brigid.Saulny@ucop.edu, with the subject line “OGC HATL RFP.” To facilitate our review, please provide your response in the form of a PDF – and entitle the PDF file in the following format: FirmName_UCHATL2018RFPRresponse.PDF. If you are submitting for Group 2 matters, please submit your completed due diligence/discovery pricing spreadsheet via the web form, if made available, or otherwise in native Excel format and entitled in the following format: FirmName_UCHATL2018RFPRresponse.xlsx.

We do not intend to look at extraneous marketing material during this process. **ALSO, DO NOT SEND PAPER. IT WILL BE RECYCLED WITHOUT REVIEW AND ITS CONTENT WILL NOT BE CONSIDERED IN THIS PROCESS. WE LIKE THE TREES AND DO WHAT WE CAN TO SAVE THEM.**

All information provided by OGC in connection with this RFP shall be considered proprietary information of OGC. All documentation and/or ideas submitted by your firm shall also become the property of OGC.

If your firm has a question during this process, please send it to HATLRFP2018@ucop.edu with a copy to Brigid.Saulny@ucop.edu. All such questions or requests must be received by close of business on August 21, 2018, and all such questions or requests received after such date will be answered, if at all, by OGC, in its sole discretion. You are not authorized to contact any other University employee concerning this RFP. Failure to adhere to this requirement will be grounds for disqualifying your proposal.

Following review of the written proposals, OGC may ask firms in which it continues to have an interest to travel to OGC's Oakland office at their own expense for an interview or, at their discretion, to participate in an interview by videoconference. In no event will OGC schedule meetings in advance of receipt of your RFP response, and the only meetings OGC intends to hold, if any, are with the finalist law firms. If your firm is invited to an interview, only the individuals being proposed to work as part of the PROGRAM should attend. This means, for example, that you should not send an employment lawyer to represent your firm on the HATL P3 just because that person happens to have a pre-existing relationship with the University; doing so will be counterproductive. OGC also may award a position as a Preferred HATL Counsel without further negotiations or discussions or further interviews with any given finalist law firm.

This RFP does not bind OGC to any obligations or impose liability for any costs or expenses incurred by your firm in responding to the proposal or traveling to an interview in connection with this RFP. OGC, in its sole discretion, may or may not make an award, and reserves the right to reject any and all responses received. OGC also reserves the right to terminate a retention at any time in its sole discretion.

Evaluation Criteria

OGC will award the matter to the bidder(s) in its sole discretion based upon a combination of experience, expertise, proposed team and the greatest overall value.

Appendices

- Appendix A: Health Affairs & Technology Law Group Master Retention with Business Associate Addendum
- Appendix B: OGC Outside Counsel Guidelines
- Appendix C: Requirements for Electronic Billing Submission

THE REGENTS OF THE UNIVERSITY OF CALIFORNIA
OFFICE OF THE 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 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. Requests for invoice payment status should be directed to the applicable UC Monitor with a copy to Brigid Saulny (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.

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%).

UNIVERSITY OF CALIFORNIA
GUIDELINES FOR OUTSIDE COUNSEL
NON-RISK PROGRAM MATTERS

I. INTRODUCTION

The following are the standard University of California (“University”) Outside Counsel Defense Panel Guidelines. Any law firm or attorney retained by the University is expected to comply fully with all of the elements of these guidelines. You will be asked to certify annually that you and your firm are in compliance with these Guidelines. Failure to comply with the guidelines may result in reduction or non-payment of legal bills, and may subject you and or your firm to removal from the University’s list of outside counsel.

The Guidelines can be summarized as requiring: (a) proactive representation of the University; (b) solid understanding the University’s public mission; (c) efficiency in legal representation; (d) clear, open and complete reporting, particularly in advance of significant activity.

II. PHILOSOPHY AND UNIVERSITY REPRESENTATION STRATEGY

The University’s philosophy is to defend non-meritorious claims or disputes and to resolve as soon as practicable claims or disputes where liability is reasonably clear. The University takes a proactive approach to defending cases. Legal services should be directed towards collecting necessary information about the matter as quickly as possible, then making a realistic evaluation of the matter with an appropriate case handling plan. The budget for this retention, described below in these guidelines, is an important tool in managing and planning for this retention. Outside Counsel (“Counsel”) for the University is expected to take initiative in order to assess and resolve matters at their earliest practical stage. Counsel should not simply react to the opposing side or case developments.

As an integral part of implementing this philosophy and representation strategy, the University expects Counsel to master the facts, circumstances, and legal issues as early as possible and to prioritize tasks and chart a course for the matter with specific objectives and timing estimates. As the matter progresses, Counsel is expected to reevaluate the case posture and to ensure the best possible outcome, particularly as new facts, legal issues, or other matters are discovered. Successful implementation of this philosophy and representation strategy is one of the fundamental professional responsibilities of Counsel.

Early dispute resolution is a key objective for the University in any disputed matter and Counsel will be evaluated on its ability to bring matters to a rapid and successful conclusion. Initial efforts of Counsel should therefore be directed to accomplishing only those items necessary to evaluate the matter under retention and facilitate early resolution if such is warranted. In coordination with attorneys in The Regents of the University of California Office of the General Counsel (“UC Counsel”), Counsel shall pursue early dispute resolution (including informal settlement negotiations). All settlement offers/demands shall be discussed in advance with UC Counsel and the campus before being communicated. If informal settlement negotiations fail but other alternatives become at all encouraging, Counsel, in consultation with UC Counsel, shall seek the use of programs such as mediation or stipulated arbitration. UC Counsel will participate

in any resolution process. Settlement will require prior approval of UC Counsel in consultation with campus and/or Office of the President representatives and, depending upon the terms, may require approval by the University's Board of Regents. UC Counsel may elect at UC Counsel's discretion to employ separate settlement counsel for purposes of pursuing settlement negotiations while the matter progresses. In such event, Counsel will be expected to cooperate fully in supplying necessary information and work product to settlement counsel.

Counsel is responsible for gathering available records and other pertinent information at the outset, including all available records and internal reviews. UC Counsel will assist in this process, where appropriate. Counsel must be familiar with rules regarding preservation of documents and electronically stored information, and take appropriate steps, if not already taken, to meet notice and preservation requirements.

The Office of the General Counsel has recently initiated a formal diversity initiative including adopting a Diversity Statement (attached as Exhibit A). Counsel should be familiar with this Statement and be aware that OGC will be developing a program to measure and evaluate firms' diversity goals, initiatives and results.

III. ROLE OF OUTSIDE COUNSEL.

A. General Instructions:

Unless otherwise noted retained Counsel shall be the primary legal representative of the University and its employees in the matter under retention and shall be responsible for complying with all court or other dates, responding promptly to requests for information, e-discovery, correspondence and so forth, and generally responsible for the proper handling of the matter under retention.

All retentions of Counsel are made on behalf of The Regents of the University of California, Office of the General Counsel, by an attorney located at the Oakland Office, or at a campus or medical center. UC Counsel will identify appropriate campus representatives, if necessary. Since open and continuous communication between Counsel and UC Counsel is essential to ensuring efficient outside counsel work and the best possible results, UC Counsel shall be fully apprised and kept current on all developments and participate in all decisions concerning legal tactics and strategy. UC Counsel or his/her designee shall be provided with copies of all legal opinions and advice, and significant correspondence. All significant submissions shall be submitted to UC Counsel, preferably in electronic form, in time for thorough review and discussion before any court or other deadline. UC Counsel will be responsible for planning and coordination with appropriate University administrative personnel and outside consultants. UC Counsel shall be consulted prior to direct communication with other University personnel unless prior consent has been given for such communication. If other University personnel request Counsel to perform legal work, Counsel shall advise UC Counsel before proceeding and inform the University person requesting the work that Counsel is advising UC Counsel of such request. UC Counsel will make the final decision regarding tactics and/or strategy in any given matter. UC Counsel may assume other responsibilities in individual cases, including -- although rarely -- the role of lead counsel, in which case, Counsel shall assist UC Counsel as assigned.

B. Attorney E&O Coverage

Counsel firms must carry Errors & Omissions insurance with limits per individual attorney of at least \$1,000,000 per claim and \$3,000,000 in the aggregate. Certificates of insurance must be provided to UC Counsel annually by no later than July 1 of each year. Any changes in this requirement must be pre-approved by UC Counsel.

C. Establishing Legal Fees

Counsel hourly rates are approved within established ranges by the University. The University does not accept unilateral rate increases. Requests for adjustments of hourly rates should be directly raised with UC Counsel and will be approved only in writing.

D. Relationships with Opposing Counsel and the Court

As a state-wide public agency, the public expects and deserves the University and its personnel and agents to represent its interests in a professional and ethical manner. The University fully expects that Counsel will maintain the highest ethical and professional standards on behalf of the University, and will establish and maintain cordial and professional working relationships with opposing counsel, the judiciary, mediators, third parties witnesses, and any others.

E. Media Contact or Exposure

Counsel must immediately notify UC Counsel if he or she becomes aware of possible media exposure or contact by media in the retained matter so that the University may designate the appropriate spokesperson to respond to inquiries. Typically, Counsel will not will not make comments to the press, and will do so only with the prior input and approval of UC Counsel.

IV. PERSONNEL.

It is expected that the principal attorney responsible for each matter will be a partner. The assigned partner will be responsible for assigning other attorneys and legal assistants as necessary. *All of Counsel's attorneys must be pre-approved by UC Counsel.*

UC Counsel and Counsel will jointly evaluate, decide to employ and supervise expert witnesses and other consultants. UC Counsel will make the final decision on selection or termination of expert witness services in any given matter. Experts will be evaluated for selection in a given matter based on qualifications, cost, willingness to accept University form agreements and willingness to follow other University policies and procedures. Expert and consultant bills shall be reviewed and approved by Counsel prior to submitting them for payment in accordance with Section VII of these Guidelines.

Counsel shall be responsible for immediately notifying UC Counsel when any approved Counsel leaves the firm. Additionally, Counsel will ensure that all approved Counsel are licensed to practice law in California, are not presently subject to any disciplinary proceedings in the state, and have not previously been subject to any disciplinary proceedings in the state. Counsel must notify UC Counsel of any past or present disciplinary proceedings, or any change in approved Counsel's license status with any state bar organization.

UC Counsel recognizes that firms may reorganize or dissolve. These circumstances require special attention and must be reported immediately to UC Counsel. Any newly organized firm must be approved by UC Counsel to represent the University. Under no circumstances are any University files to be removed from the originally approved law firm's office without prior written permission of UC Counsel.

On rare occasions, the University may choose to discontinue its relationship with a firm. UC Counsel will review the circumstances, and make the decision whether to remove the firm from its panel. If the firm is removed, cases will be reassigned to other approved firms.

V. REPORTING REQUIREMENTS, MATTER PLANNING AND BUDGET.¹

A. Overview

Counsel must report on all significant developments as they occur, including emerging facts, shifting claims or strategies, and other changes in a matter. Report letters should be directed to UC Counsel, unless instructed otherwise by UC Counsel. E-mail attachment, and appropriate confidentiality notation, is the preferred mode of communication for required reports which are sent to UC Counsel. When e-mail is used, appropriate copy recipients must be carefully considered to avoid inadvertent waiver of attorney-client privilege and unintended distribution. Reports should be concise and well-written and analyze all of the relevant facts. Routine correspondence need not be copied to UC Counsel.

A Budget is required for each matter in which Counsel has been retained. Although budgets are intended to be estimates of the scope, cost and duration of the matter, the University will rely on these reports in planning and funding the matter. Amended or corrected Budgets should be provided immediately if Counsel becomes aware of changes in the estimation of matter costs and fees.

B. Specific Reports and Formats

Unless instructed otherwise by UC Counsel, Counsel are required to provide the following reports:

- A letter of acknowledgement as soon as a new matter is received;
- An Initial Case Evaluation Plan within the first 60 days, including a description of the matter, an estimated timeline for disposition, and discussion of early disposition potential;
- An Initial Budget within the first 60 days for litigated matters or within 45 days for non-litigated matters;
- A Revised Budget as appropriate;
- A written Status Report every 60 days or sooner if developments warrant;
- A Counsel Evaluation at least 72 hours before any conference call or meeting where settlement authority will be requested.

Compliance with timely reporting will promote timely payment of Counsel.

1. Format for Initial Case Evaluation Plan

• Summary of Facts – Briefly describe, based on review of records, discussions with campus personnel and witness interviews:

-Any relevant history of the matter;

¹ If this is a Short Term Retention, please note, the reporting obligations outlined in Sections V and VI do not apply.

- The incident that forms the subject of the matter;
- Information about other parties (if any);
- Any applicable contracts or affiliation agreements.

- Liability – Provide an opinion on potential liability against or in favor of the University (if any)
- Damages – Provide any known information on potential damages (if any)
- Legal Issues – Describe all known legal issues
- Early Disposition Potential (if any)
- Settlement History (if any)
- Plan and Timeline – Describe anticipated handling of the matter, including an estimated timeline. If any out of the ordinary expenses, such as travel outside of the local area (e.g. out of state or between Northern and Southern California) or expensive expert or consultant fees are anticipated, Counsel should include an estimate of such fees and/or costs.
- Identify consultants and potential experts by name, expertise, or specialty, sub-specialty (if any)

If plans change, please provide a written update.

2. Format for Budget Reports

An Initial Budget is required to be submitted to UC Counsel within 60 days of assignment for litigated matters and within 45 days of assignment for non-litigated matters. **No invoices will be paid until the initial budget is received.** UC Counsel must approve the Initial Budget. If estimated fees and/or costs change, Counsel must discuss a modified budget with UC Counsel and provide an updated budget report before incurring any additional expenses. If Counsel invoices exceed the current budget estimate amount, an updated budget will be required before any new invoices will be paid.

The budget should name the matter, provide a brief overview of the case, and estimate costs and attorneys' fees for the matter.

3. Format for Written Status Reports

In addition to the name and a brief overview of the matter, please use the following headings:

- Report on activity since the last status report (use sub-headings, e.g. "Interview with Witness X;" "Potential Conflicts of Interest;" etc.).
- Summary and Analysis – Briefly summarize the reported activity and analyze its impact on the matter.

4. Format for Counsel Evaluation

The Counsel Evaluation is designed to give the reader the best and most up-to-date information on a claim prior to any voluntary or mandatory settlement meeting, conference, mediation or arbitration. After a Counsel Evaluation is prepared, it must be edited for content and signed by Counsel. This report must be distributed 72 hours in advance of a scheduled conference call or any meeting where settlement authority will be requested. In cases where there is not a scheduled event providing opportunity for a Counsel Evaluation, the report must be delivered to the University promptly upon request by UC Counsel.

In addition to the name and a brief overview of the matter, please use the following headings:

- Factual Background – Provide a summary of the facts pertinent to the evaluation.
- Parties – Identify each party, including your opinion as to the strength of that party's position.
- University Parties – Identify all University employees involved in the matter, including your opinion as to the strength of that person as a witness.
- Liability – Present a thorough discussion of each party's position, including a discussion of all claims asserted and the strengths and weaknesses of those claims.
- Damages – Identify and fully discuss all monetary and non-monetary damages asserted by each party.
- Attorneys' Fees and Costs – For any statutory claims provide an estimated calculation of attorneys' fees and costs to date.
- Percipient Witnesses – Identify each percipient witness, and for each, state whether the witness is currently or has been previously affiliated with the University, as well as your opinion as to how that witness will be viewed.
- Expert Witnesses/Consultants – Describe the opinions of the experts and consultants for all parties. If experts and consultants have not been disclosed, describe any anticipated opinions.
- Settlement Discussions/Demand – Report on any settlement discussions with opposing parties. Please include any demands or statements by the attorney for any party with reference to case value.
- Matter Evaluation – In this section, summarize overall position and make recommendations for settlement and/or continued handling of the matter. A settlement range may be recommended with a maximum recommended settlement figure. Also discuss the likelihood that the opposing party will prevail or the chances for success of the University. Provide information on similar cases or settlements. Elaborate on the rationale for recommendations if necessary or useful. If settlement is appropriate, identify any obstacles to settlement and suggest a strategy for negotiations and addressing any such obstacles.
- Anticipated fees/costs through the conclusion of the matter.
- Conclusion – If additional work needs to be done, or you have additional recommendations not included previously in the report, please describe. Also state anticipated dates of completion or time constraints relevant to such additional work or recommendations.

VI. SETTLEMENTS²

Where liability is apparent, whether in favor of or against the University (including exposure to statutory attorneys' fees), early settlement frequently is the recommended course. Counsel is responsible for assessing liability exposure as soon as practicable and for recommending timely resolution strategies.

A. Settlement Demands

All settlement demands and offers to mediate or arbitrate must be immediately reported to UC Counsel.

B. Settlement Authority

Counsel may not enter into negotiation, agreement or binding settlement without first obtaining the appropriate prior authorization. Proposals for negotiations should be made to UC Counsel, who will schedule a conference call with the appropriate representatives of the University. **The written Counsel Evaluation, in the format set forth in Section V(B)(4) above must be provided to all conference call participants at least 72 hours before the scheduled call.**

Settlement authority may be provided during the conference call, but any settlement is contingent on approval by The Regents or its designee, and this fact should be communicated during any settlement negotiations. UC Counsel maintains template letters that may be sent to opposing counsel explaining the contingent nature of settlement authority, as well as allocation and tax issues related to settlement. In cases involving statutory attorneys' fees, all settlement offers including statutory offers to compromise should be structured to resolve all claims including attorneys' fees.

Counsel is encouraged to explore the settlement of cases informally with opposing counsel after obtaining the appropriate authorization. The University also encourages mediations and participation in voluntary settlement in appropriate cases. Approval to mediate a case must be given by the University through UC Counsel. A representative of the University will be present at the mediation. If a proposed settlement is reached, Counsel must emphasize that recommendations for all settlements are subject to approval by The Regents or its designee.

C. Settlement Agreements

A settlement agreement accurately reflecting the terms of a proposed settlement shall be prepared by Counsel immediately following an oral agreement. Following any mediation, it is critical to have the parties and their attorneys, at the very least, sign a written memorandum of the material terms and conditions. Counsel is responsible for assuring that the Settlement Agreement and Release ("Release") is accurate and legally enforceable. The University maintains standard, approved settlement and release language which should be used in most cases. Approval must be obtained from UC Counsel for any language modifications in the standard Releases. Upon execution of the Release by the opposing party and his/her/its counsel, the same shall be mailed by Counsel to UC Counsel to secure the necessary University signatures.

² If this is a Short Term Retention, please note, the reporting obligations outlined in Sections V and VI do not apply.

VII. LEGAL BILLING PROCEDURES.

Legal fees and related expenses represent a significant cost to the University. In most cases, the University is self-insured, which means that the institution pays for all legal fees and costs from its operating funds. As such, the University considers efficiency in the delivery of legal services as a critical component of successful legal representation and closely scrutinizes the invoices of all counsel. The University reserves the right to require backup documents to support charges and/or require that they be submitted in a format that permits the invoice information to be electronically analyzed. By representing the University, Counsel agrees to comply with such requests and to do so at firm expense. Payment of any invoice by the University, at any time, does not constitute a waiver of the University's rights to subsequently question, dispute, obtain reimbursement of, compromise or request repayment or future credit, or any bill or invoice previously paid.

A. Billing Submissions

Invoices for counsel fees and expenses must be submitted monthly and within 30 days of the end of the billing period. All invoices for work performed during a fiscal year (7/1 – 6/30) must be received by July 15th. Final invoices must be received by UC Counsel or their designee no later than 30 days from receipt of the conformed copy of the settlement agreement. If the final bill cannot be submitted within 30 days, Counsel must advise UC Counsel or their designee as soon as practical. It is Counsel's responsibility to obtain all outstanding invoices from outside vendors, including consultants and experts, before submitting the final bill. Unless there are exigent circumstances, bills submitted after the final bill will not be paid. Expenses must be substantiated with receipts.

B. Billing Format

Invoices shall identify and describe each item of service in sufficient detail to identify the persons involved and the work performed by date and time billed and the person providing the services (with the hourly rate for each such person also indicated.) Legal assistants and law clerk time shall be separated by category in the billing statement and identified as such. Statements must accurately itemize in detail all work performed on a matter in a task or activity based format. Attorneys and paralegals are to bill actual time incurred. If an activity warrants a minimum billing entry, it should not exceed 1/10th (.10) of an hour. Minimum charges for any activity in any amount above 1/10th (.10) of an hour are not acceptable.

Each bill must include the following:

- Law firm name and address;
- Date of the bill;
- Name of the UC Counsel;
- Name of involved Campus/Medical Center;
- Law firm tax identification number;
- The claim number (if any);
- Matter name(s);
- Date(s) of the task and/or activity;
- Detailed description of the task and/or activity so as to permit the University to determine the exact name, purpose and necessity of the expense;

- Actual time spent, in increments no greater than 1/10th of an hour for each entry or task.
- Summary at the end of the bill subtotaling number of hours for each specific billing rate and the name and initials of each attorney and paralegal;
- Summary at the end of the bill subtotaling fees, costs, consultants, and experts.
- Each billing entry must indicate the name or initials of the timekeeper who performed the work, the date the work was performed, the hours billed, a description of the services performed, and the total amount billed for that entry. Narrative and/or block billing is not permitted;
- Final bills should be so designated;
- Bills must reflect activity for only one case or matter;
- Billing entries on each invoice are to be structured chronologically (in order of occurrence) and not sub-divided by individual or task. Every entry must include the related work product. For example, “Researched law pertaining to jurisdiction of Florida state court over the University of California for motion.”
- If numerous tasks are undertaken in one day, each task must be separately identified with a specified time for performing that task, i.e., a telephone call, a meeting and legal research.
- Telephone calls must specify the participants and the subject matter discussed.
- Travel costs should identify the person who traveled and the reason for the travel. For example: “Airline ticket to New York for Jane Smith to interview consultant John Doe.”

Generic descriptions such as the following, without further detail, are not acceptable:

- Attention to matter;
- Review case and issues;
- Conference;
- Review correspondence/documents;
- Telephone call;
- Meeting;
- Trial Preparation;
- Motion Work;
- Work on project or case;
- Work on file;
- Prepare for meeting;
- Work on discovery;
- Research;
- Any other nondescript activity.

Vendor invoices (e.g., experts, consultants, mediators, photocopy services, court reporters, and others) in an amount up to five thousand dollars (\$5,000) should be paid by the law firm and included with the monthly attorney billing. Counsel must review and approve all vendor invoices, which are subject to the formatting and content requirements as Counsel bills.

C. Level of Work Performed

1. Firm staffing on all cases will be as lean as possible. As a general rule, there will be no more than two (2) attorneys and one (1) paralegal doing most of the work and billing most of the time on a case. These individuals are the “core” billers and must be identified in writing at the outset. They must be drawn from the group of individuals at the firm who are pre-designated to handle University work. For larger, more complex cases, UC Counsel may be consulted regarding whether additional “core” billers on the case will be allowed.

2. Firm personnel may occasionally have to work on a case because of job departures, vacations, illnesses, schedule conflicts, etc., but this is to be the exception, not the rule. These occasional billers will not record more than ten percent (10%) of the total firm time on a case. Overly-fragmented staffing produces duplication of effort and inefficiencies.

3. All billers at your firm who are working on University cases must be either members, full-time employees, or of counsel attorneys at your firm, unless you notify UC Counsel in advance to the contrary. Contract, temporary, or part-time personnel, whether attorneys or otherwise, working on University cases may be billed at a reasonable mark-up over and above the hourly rate which they are being paid by your firm to reflect associated administrative and overhead costs. However, the amount of any such mark-up must first be approved in writing by UC Counsel; mark-ups shall not exceed 20%.

4. The University will not pay for “learning” time or “orientation” time as occasional billers become involved in a matter and are brought up to speed on the facts and issues. Such time will be written off on your own initiative, and it is recommended, but not required, that UC Counsel be notified of such write offs by the notation of “No Charge” or “NC”.

5. If new or inexperienced attorneys are going to be working on a case in any capacity, the University will not pay for “training” time, i.e., time spent on research or other matters which would likely be within the knowledge of more experienced attorneys. If the University is retaining your firm for its expertise in a given field, attorneys should not need to learn that area of the law and any such time should be written off by your firm. The time of summer associates shall not be billed without the prior approval of UC Counsel.

6. As a general rule, two or more billers should not be performing the same task or activity on a case when one biller is sufficient. Unnecessary duplication of effort will be avoided, but, in certain cases, this can sometimes be a judgment call. When in doubt, please discuss such situations with UC Counsel in advance.

7. Generally, only one attorney should bill for attending mediations, arbitrations or meetings. You will advise UC Counsel in advance and get prior approval before having two or more attorneys attend such proceedings. The University reserves the right to require you to absorb all or part of any charges for the involvement of more than one attorney without prior approval.

8. While the University is willing to pay for office conferences which relate to a given case, billing should only be for the time spent by the most senior individual in attendance. The senior biller should indicate the other individuals in attendance in their time entry for the

conference. Please do not bill for the time spent by additional billers in office conferences by using alternative billing terminology, such as “strategize.” Notwithstanding the above, in certain cases two billers may be allowed to attend office conferences together, so long as that practice is pre-approved for the case. If the amount of conferencing time appears out of proportion to the total firm time spent on the case, you will be asked to justify it.

9. If there is consistent billing of more than *7 hours* in a given day or more than *150 hours per month* by a single biller on a given case, that level of billing activity must be justified.

10. Work will be assigned to those individuals who are most appropriate for the task in terms of their competency and experience. Whenever it is possible, in your judgment, to assign a certain task or activity to a less expensive biller without a loss of competency, please do so. For example, you should make liberal use of paralegals for work which does not require an attorney’s involvement, but paralegals shall not perform tasks usually performed by secretaries, clerks, and messengers (i.e., photocopying, filing and delivering materials). Also, a senior attorney should not perform work which can be handled by a more junior attorney.

11. Clerical, secretarial, and administrative work is a part of law office overhead and non-billable, regardless of who performs it. However, sometimes billable and non-billable work are intermixed, e.g., a paralegal who is examining evidentiary documents for privilege before production to the opposing party (billable activity) may simultaneously be sorting, bates-stamping, and labeling them (non-billable work). For such necessary “mixed” work you should use less expensive staff than paralegals, so long as they are not billing purely for clerical or secretarial work.

12. When the University asks you to research, analyze or brief a particular legal issue and report back, you should provide the clearest, most concise answer possible. The quicker the response, the better for University purposes, and you should provide copies (in electronic form) of all of your completed written work product in this regard. All work product should be submitted to UC Counsel directly prior to your billing the University for it, unless UC Counsel instructs you to post it on an extranet. When the document extranet is operational you must search its knowledge database and make use of any available and suitable content for all your research, analysis, drafting or briefing needs before creating and billing the University for an original new work. **The University reserves the right not to pay for any billings that do not adhere to this requirement. You must justify why you could not avail yourself of the expertise of internal lawyers or previously produced research.**

13. You must justify any document review charges which seem excessive or disproportionate for the particular task or activity involved, or which seem to involve too many billers without apparent explanation.

14. Detailed document summaries should be performed by paralegals, wherever possible.

15. Please note that the University may decide to waive or modify some or all of the above staffing and efficiency guidelines as the situation demands. **However, you are expected to adhere to these guidelines as written, unless you are specifically exempted from any of their provisions in writing.**

16. Each firm must identify means of utilizing information technology to make the provision of services to the University more efficient. Also, you are expected to cooperate with the University when it takes the initiative and proposes the introduction of efficiency-enhancing information technology. Because the University expects that all firms are introducing new information technology continuously for the general benefit of the firm, it would not be expected to pay for its use of such technology except where it was installed and utilized expressly for the University's benefit. **In such case, the University must give its approval in writing before such technology is purchased or installed if the firm expects repayment for the work or materials.**

D. Maximum Allowable Charges

The following guidelines are provided regarding maximum allowable charges:

- The University will pay only the actual costs for reasonable expenses without any premiums or markups.
- A firm may conduct research up to three hours per case. In the event more extensive research is necessary, UC Counsel should be contacted.
- Photocopy Costs: Actual cost to the law firm not to exceed \$.10 per page. Firms are expected to limit the making of photocopies and, wherever cost effective, to use the resources of designated copy services. Bill entries for photocopies must provide the number of copies made, the per page rate, and the total amount billed. The \$.10 per page rate may be exceeded only when the firm cannot control costs, such as certified copies from the courthouse.
- Telephone: Actual long distance charges only.
- FAX: For actual long distance charges only. No charge for an incoming FAX. No per-page fax charge.

E. Travel

- Travel expenses are reimbursable only to the extent permitted under the University of California travel guidelines absent specific prior approval. See Business and Finance Bulletin G-28 ("BUS-G28") at <http://www.ucop.edu/ucophome/policies/bfb/g28.pdf> for the University's travel policies.
- Prior to attending an "out of town" matter-related meeting, (e.g. out of state or between Southern and Northern California), the firm must obtain the approval of UC Counsel. Travel expenses are reimbursable only to the extent permitted under the University of California travel guidelines absent specific prior approval.
- Mileage: Reimbursement Rate provided in Appendix A to BUS-G28 at <http://www.ucop.edu/ucophome/policies/bfb/g28a.pdf>. Indicate the actual number of miles driven.
- Air travel is limited to coach or economy rate.
- Rental cars are acceptable only if such vehicles are the most economical means of accomplishing necessary business; reimbursement is limited to the mid-size class.
- When counsel is out of town overnight, reasonably priced meals and incidentals that do not exceed the dollar limits provided in Appendix B to BUS G-28 (<http://www.ucop.edu/ucophome/policies/bfb/g28b.pdf>), are allowed. Incidentals, such as movies, alcohol, and entertainment, are not allowed.

- Travel time shall be prorated if the travel includes time spent on non-University business.
- Travel for current University employees must be processed through the University and not through Counsel. Travel for former University employees will be reimbursed through the University, however, expenses will be limited according to University travel policy.
- Travel billing should indicate the actual round trip travel time, reduced by the usual commuting time from home to office or vice versa, if appropriate.

F. Disallowed Charges

The University considers the following items to be overhead and therefore, part of the basic hourly rate and will not reimburse for these items:

- Telephone calls and all cellular phone charges.
- Per-page fax charges.
- Routine postage, such as U.S. Postal Service rates for letters. Any necessary extraordinary postage charges (such as certified mail, overnight service, or oversized packages) must be delineated on the bill with an explanation of the nature and purpose of the charge. Any postage charges that are not explained will not be reimbursed.
- File opening, file organization, or other administrative charges.
- Books, magazines, subscriptions, or library charges unless prior written specific approval by UC Counsel is obtained.
- Intraoffice conferences between members of the firm, including assigning files or tasks to members of the firm.
- Case administration (e.g., reviewing status of assignments given to associates and paralegals; directing associates, paralegals or secretaries; preparing or reviewing bills).
- Clerical tasks (e.g., transcription, pulling files, photocopying documents, arranging for copying, labeling documents for production, communication with court clerks, updating master case caption, preparing proofs of service, indexing pleadings, faxing, etc.).

The University considers the following items to be inappropriate and will not reimburse for these items:

- More than one attorney/staff at arbitrations, mediations, third party meeting, conference call or any similar event without prior UC Counsel approval.
- Absent prior approval, meals, except in conjunction with University authorized out-of-town travel.
- Entertainment.
- Staff overtime charges.
- Routine or elementary legal research, including issues considered to be common knowledge among reasonably experienced counsel in the local jurisdiction (e.g., research on local rules, special verdict forms, standards for motions for summary judgment).
- Lexis/NEXIS and other database legal research search costs.

- Billing more than once for documents which are reproduced for multiple witnesses, such as subpoenas.
- Routine file review and learning time to get up to speed (even when "filling in" for personnel assigned to the file) or in-firm transfer of file reviews.
- Staffing inefficiencies caused by the unavailability of the firm's personnel.
- Unnecessary or premature summaries of medical records.
- Routine scheduling or rescheduling of depositions, hearings, and the like.
- All work customarily performed by secretaries and other administrative personnel.
- Reviewing or analyzing the firm's conflict of interest issues.
- Subscription services (e.g., Westlaw, Lexis-Nexis or other legal database charge), unless the service provides a case specific invoice for actual charges incurred.
- Time and/or expenses incurred due to change or departure of law firm resources.
- Work performed by an attorney not on approved defense panel list.
- Expenses/disbursements without supporting invoices.
- Responding to requests from University auditors.

G. Audits

The University retains the right to audit all invoices or files that are or have been the subject matter of any billing in the past. Such an audit will require the firm to produce any and all documentation that would support the billing submitted by the firm. The firm will produce any individual that has submitted billing on behalf of the firm, as well as any firm personnel who would have knowledge or information regarding any billing, and the firm shall produce such persons to answer any and all questions regarding the billings. Each firm subject to these guidelines acknowledges, without protest, that the University may utilize either its own personnel, an outside auditing service, or such other company or service as the University designates, to perform such audits.

H. Bill Review by Counsel

The firm's responsible UC Counsel or their designee must review and verify all of the firm's bills before submitting them for payment. Each invoice should contain the following verification statement, signed by the Counsel:

I personally examined this billing statement. All entries are in accordance with the University's Guidelines for Outside Counsel – Non-Risk Program Matters and are correct and reasonable for the services performed and costs incurred. No item in this statement has been previously billed to the University of California. All work has been performed in compliance with the University of California Defense Counsel Guidelines

Counsel

I. Billing Questions

Any billing questions, discrepancies, or payments must be resolved with UC Counsel or their designee.

Attachments:

Addendum A: OGC Diversity Statement

Addendum B: University of California Requirements for Electronic Invoice Submission

ADDENDUM A

University of California Office of the General Counsel Diversity Statement

The University of California Office of the General Counsel (“OGC”) embraces the University of California Diversity Statement, which the President of the University of California endorsed on June 30, 2006, and The Board of Regents adopted on September 20, 2007.

The UC Diversity Statement describes the value of diversity to the University at large. Diversity is equally valuable to OGC’s goal of providing the institution with the best possible legal services. The University of California serves one of the world’s most diverse communities and draws its student body, its faculty, and its employees from a wide array of backgrounds, cultures, and experiences. Providing effective legal representation and advice therefore demands that the University’s legal representatives and staff are capable of understanding and communicating with individuals from many backgrounds. Diversity within OGC enhances the ability of all of the University’s lawyers and staff to stay connected to the communities we serve and to more effectively anticipate and resolve potential legal issues. Diversity of ideas, backgrounds, and experiences among OGC staff also promotes creativity in analyzing and solving legal problems. OGC’s commitment to diversity can improve the quality of its legal service by removing barriers and therefore broadening the pool of talented individuals available to serve the University both within OGC and in the ranks of retained counsel. By establishing a diverse workplace and a culture that respects individual differences, OGC can foster the qualities necessary to provide excellent legal service in a diverse community. Furthermore, the legal profession has a special obligation to ensure equal opportunity because of its privileged societal status, its commitment to law and justice, and the historical underutilization of women and minorities in its ranks. For the same reasons, OGC values a commitment to diversity in its retained counsel.

To achieve these benefits the Oakland and campus office of OGC will:

- Broaden the pool from which the office recruits to ensure inclusion of all qualified individuals, including members of traditionally underrepresented groups;
- Foster a culture of inclusion and respect for differences in the workplace;
- Evaluate and revise office policies and practices relating to employee hiring, retention and advancement to identify and eliminate barriers to diversity;
- Retain outside counsel with a demonstrated commitment to diversity.

ADDENDUM B
UNIVERSITY OF CALIFORNIA
REQUIREMENTS FOR ELECTRONIC INVOICE SUBMISSION

Invoices must be submitted electronically, in LEDES format, using Bridgeway's Corridor web portal. Secure login information and instructions will be provided under separate cover.

Each firm must complete Corridor onboarding, which involves registering for Bridgeway's Corridor portal and providing a formatted list of approved timekeepers and rates.

- Each invoice must reference the UC matter number provided to you in the CLIENT_MATTER_ID field.
- Each invoice number must be unique.
 - If re-submitting an invoice, append "-1", "-2", "revised" or some other indicator to the original invoice number.
 - Invoices resubmitted with the same invoice number will be automatically rejected by the system.
- Only one matter per invoice. If submitting invoices for multiple matters, please use separate invoice numbers and separate files.
- Billing Start and End Dates are required.
- Standard UTBMS Task Codes are required.
 - Note: Activity Codes and Phase Codes may be used, but are not required.
- Standard UTBMS Expense Codes are required.
- Descriptions are required for all Fees and Expenses.
- All invoice details must include Fee or Expense dates.
- All fees must be billed by the 1/10th (.10) of an hour.
 - E.g., billings of the .25 or .75 of an hour are not accepted.

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