

USING THE FORM STANDARD SERVICES AGREEMENT

Whenever possible, it is the University's policy to use the following Standard Services Agreement (or Short-Form Agreement if appropriate) in executing contracts with third parties – whether individuals or companies.

When using the form Standard Services Agreement (“**Agreement**”), the items set forth below must be considered and/or completed before the Agreement can be finalized. Capitalized terms not defined below are as defined in the Agreement.

1. This Agreement should be provided to Contractor early in the negotiation process and the Contractor informed that use of a different form of agreement may cause delays in contracting for the Services.
2. The Effective Date of the Agreement in the introductory paragraph must be filled in.
3. The Contractor's name and type of entity must be added in the introductory paragraph.
4. The name of the school within the University contracting for the Services should be added in the bracketed language in Recital B, if applicable. If this is not applicable, the bracketed language should be deleted.
5. The Scope of Work referenced in Section 1 and attached as Exhibit A must be completed.
6. If the Services will provide Contractor with any access to protected health information maintained by the University, **either** Section 7(c) or Section 7(d) must be included in the Agreement. (See Page 4.) If Section 7(c) is included Exhibit B (Business Associates Agreement) also must be attached to the Agreement. If Contractor will not have access to protected health information as part of the Services, Sections 7(c) and (d) and Exhibit B should be deleted from the Agreement.
7. If the **primary** Work Product of the Services involves designs, drawings, artwork, software or other written material, a more detailed Section 8 (Ownership of Work Product) provision may be necessary. (See Page 4.) In such cases, please consult with the Provost's office, Dean Ferrillo, Dean Parker or Vice President Mary Lou Lackey, as applicable. If the work product will not involve such materials, the Note at the end of this section should be deleted from the Agreement.
8. Section 18 (Notice) must be completed with the appropriate contact information for both the University and Contractor. (See Page 9.)
9. On the signature block at the end of the Agreement, be sure to fill in the name and title of both the University's and the Contractor's signatory. (See Page 11.)
10. Remove this page of instructions from the document before sending to the Contractor.

NOTE: FOR MORE DETAILED INFORMATION ON THE USE OF THE STANDARD SERVICES AGREEMENT PLEASE CONSULT THE STANDARD SERVICES AGREEMENT CHECKLIST.

UNIVERSITY OF THE PACIFIC STANDARD SERVICES AGREEMENT

This Standard Services Agreement (this “**Agreement**”) is made and entered into effective as of _____, 2011 (the “**Effective Date**”) by and between University of the Pacific, a California nonprofit public benefit corporation (“**University**”), and _____, [if an entity, describe state of organization and type of entity (*i.e.*, a California corporation); if an individual, so state and include any applicable dba (*i.e.*, an individual d/b/a XYZ Consulting)] (“**Contractor**”).

Recitals

A. University is an independent, comprehensive university offering more than 80 undergraduate and graduate majors and degrees through nine schools and colleges at its campuses in Stockton, Sacramento, and San Francisco.

B. Subject to the terms and conditions of this Agreement, University desires to engage Contractor to provide certain services (the “**Services**”) [to its {name of School if applicable} located in {name of city}], and Contractor desires to provide such Services to the University.

In consideration of the promises and the mutual covenants and agreements set forth below, the parties hereto agree as follows:

Agreement

1. **Services.** Contractor agrees to perform the Services required under this Agreement and as specifically set forth in the scope of work attached hereto and incorporated herein by reference as **Exhibit A (“Scope of Work”)**. Use of the term “Agreement” shall include the Scope of Work and all other exhibits, schedules or attachments referenced herein. Contractor and its employees shall perform all the Services and Contractor may not subcontract to any third party any portion of the Services without University’s prior written consent.

2. **Compensation and Expenses.** University shall pay to Contractor the fees set forth in the Scope of Work (“**Fees**”). Unless otherwise stated in the Scope of Work, the Fees shall include, and Contractor shall be responsible for, all expenses and taxes incurred by Contractor in connection with providing the Services.

3. **Payment Terms.** Contractor shall submit to University on a monthly basis an invoice listing in detail all Services provided to University and Fees incurred by Contractor in the prior month (“**Invoice**”). University shall remit payment to Contractor on undisputed Invoices within forty-five (45) days (excluding holidays) of receiving the Invoice. The provisions of this Section 3 shall apply unless different payment terms are set forth in the Scope of Work.

4. **Term and Termination.**

(a) **Term.** The term of this Agreement shall commence on the Effective Date and shall expire as set forth in the Scope of Work, provided that this Agreement may be terminated earlier as provided in this Section 4.

(b) Termination Without Cause. University may terminate this Agreement at any time, without cause or penalty, by giving at least thirty (30) days' advance written notice to Contractor.

(c) Termination For Cause. Each party shall have the right to terminate this Agreement in the event of the other party's material breach of an obligation, representation, or warranty set forth in this Agreement; provided, however, that such termination will not become effective unless and until (i) the party not in default has given the other party written notice of breach, which notice shall state in reasonable detail the nature of said breach, and (ii) the party allegedly in default shall have failed to remedy said default to the reasonable satisfaction of the party not in default within ten (10) business days following the giving of the notice. Material breach shall include, but not be limited to, Contractor's failure to perform the Services in accordance with the terms set forth in this Agreement including the Scope of Work (with time being deemed of the essence with respect to adherence to any timetable set forth in the Scope of Work or otherwise agreed to in writing by Contractor).

(d) Effect of Termination. Any early termination of this Agreement, whether for a party's breach or otherwise, shall be without prejudice to any claims or damages or other rights of one party against the other party. In the event of early termination of this Agreement by either party:

(i) University shall pay Contractor all undisputed amounts due for Services rendered and, if applicable, non-refundable expenses incurred, prior to the termination date; provided, however, that University may set off and apply all or any portion of the amount owing by University to Contractor against any and all damages or other amounts owed by Contractor to University.

(ii) If any Fees have been prepaid by University, Contractor shall refund to University the amount of any such prepaid Fees that exceeds the value of Services actually rendered by Contractor prior to the termination date.

(iii) Contractor shall deliver to University, at a time and in a manner acceptable to University, all Confidential Information (as defined below in Section 7) and copies of all finished or unfinished Work Product (as defined below in Section 8), whether in paper, electronic, or any other form.

(iv) The provisions of Sections 4(d) (Effect of Termination), 5 (Independent Contractor Relationship), 6 (Acknowledgment of Ineligibility for Benefits), 7 (Confidentiality), 8 (Ownership of Work Product), 9 (Contractor's Representations and Warranties), 10(b) (Continuous Coverage), 11 (Indemnification), 12 (Limitation on Damages), 13 (Governing Law), 14 (Dispute Resolution), 15 (Use of Names and Logos), 18 (Notices), 21 (No Third Party Beneficiaries), 23 (Captions), 24 (Construction), 26 (Severability of Terms) and 28 (Entire Agreement) shall survive termination of this Agreement.

5. Independent Contractor Relationship. Contractor enters into this Agreement as, and shall continue to be, an independent contractor. Except as set forth in this Agreement, Contractor shall determine the method, details, and means of performing the Services. Neither

Contractor nor Contractor's employees or subcontractors shall be deemed to be employees or agents of University. Contractor is responsible for direct payment, when and as due, of any taxes incurred as a result of the compensation paid under this Agreement, including estimated taxes, as well as for any such payments with respect to Contractor's employees or subcontractors, and Contractor shall provide University with proof of payment upon request. Nothing in this Agreement is intended to establish a partnership, joint venture, or agency relationship between the parties, and neither Contractor nor Contractor's employees or subcontractors are authorized to bind University or make any representations on its behalf in any matter.

6. **Acknowledgement of Ineligibility for Benefits.** Contractor and Contractor's employees or subcontractors will not be entitled to, and will not seek, any benefits made available to University employees, including, but not limited to: worker's compensation, group health insurance, disability insurance, or participation in any employee retirement plan.

7. **Confidentiality.**

(a) **Proprietary Information.** At all times hereafter, Contractor will keep in confidence and trust all Confidential Information (as defined below) that Contractor learns of or receives during the term of this Agreement, and will not use, reproduce, or disclose to others any Confidential Information without University's advance written consent, except (i) as may be directly necessary in the ordinary course of performance of the Services under this Agreement, or (ii) in accordance with a judicial or other governmental order, provided however, that, to the extent reasonably possible, Contractor shall give University reasonable notice prior to making any such disclosure in sufficient time so University may object to such disclosure if it so chooses, and provided further, that Contractor shall disclose only that portion of the Confidential Information that it is legally required to disclose. "Confidential Information" shall mean any and all proprietary information of University, including, without limitation, information on University finances, employees, students, or alumni, and information relating to any current, future, or proposed University program, project, business practice, method of operation, funder, or marketing plan. "Confidential Information" also includes proprietary or confidential information of any third party who may disclose such information to University in the normal course of business. "Confidential Information," however, shall not include any information which Contractor can establish (x) was known to Contractor before disclosure to Contractor under this Agreement as a result of being made generally available in the public domain, or (y) becomes publicly known and made generally available in the public domain after disclosure to Contractor under this Agreement, or is received by Contractor from a source other than University, in both cases other than by a breach of an obligation of confidentiality. Contractor further agrees that it shall not disclose the existence or terms of this Agreement to any third party without the prior written consent of University. Contractor's failure to comply with the provisions of this Section 7(a) shall constitute a material breach of this Agreement.

(b) **Student Records.** If University provides Contractor with access to any "personally identifiable information" from student education records as defined by the Family Educational Rights and Privacy Act and its implementing regulations (collectively, "**FERPA Protected Information**"), Contractor hereby certifies that access to FERPA Protected Information is necessary for the performance of the Services and Contractor's duties and responsibilities under this Agreement, and agrees that Contractor shall be subject to, and shall

comply with, the same conditions and restrictions on the use and re-disclosure of FERPA Protected Information as apply to University pursuant to applicable law. Contractor's failure to comply with the provisions of this Section 7(b), or Contractor's failure to abide by legally applicable security measures and disclosure and re-disclosure restrictions with regard to FERPA Protected Information, shall constitute a material breach of this Agreement.

[Insert either sub-section (c) or sub-section (d) immediately below IF Contractor will or may have access to any patient or student health information or records as a result of the Services Contractor is to provide under the Agreement.]

[Insert sub-section (c) if Contractor is a "Business Associate" under HIPPA. See Contract Checklist for definition of "Business Associate."]

(c) Protected Health Information. Contractor hereby certifies that access to "protected health information" ("PHI") as that term is defined in the Health Insurance Portability and Accountability Act of 1996 and the rules and regulations promulgated thereunder (collectively, "HIPAA") is necessary for the performance of the Services and Contractor's duties and responsibilities under this Agreement. As a result, Contractor agrees and acknowledges that it is a "Business Associate" of the University as that term is defined under HIPAA. As a Business Associate, Contractor shall be subject to, and shall comply with, the conditions and restrictions regarding the use of PHI as required under HIPAA and as more specifically set forth in Exhibit B attached hereto. Contractor's failure to comply with the provisions of this Section 7 and Exhibit B shall constitute a material breach of this Agreement.

[Insert following section if Contractor is NOT a "Business Associate" under HIPPA. DO NOT INSERT BOTH SUB-SECTIONS (C) AND (D)]

(d) Protected Health Information. It is possible that in providing the Services, Contractor may have or be provided access to "protected health information" ("PHI") as that term is defined in the Health Insurance Portability and Accountability Act of 1996 and the rules and regulations promulgated thereunder (collectively, "HIPAA"). Contractor agrees and acknowledges that all protected health information shall be treated as Confidential Information as defined above in Section 7(a).

8. **Ownership of Work Product.** Contractor acknowledges and agrees that all work product or deliverables prepared for, arising from, related to, or incorporated in the Services including, without limitation, all ideas, concepts, inventions, expressions, information, material, works of authorship, plans, programs, programming code, systems, work notes, drafts, specifications, design documents, flow charts, software programs, reports, analyses, data, surveys, print copy, artwork, plates, photo negatives and positives, boards, preliminary outlines, sketches, letters, invoices, proposals, databases, and reports (collectively, "**Work Product**") shall be owned solely and exclusively by University, including without limitation, all corrections, modifications, and derivative works to such Work Product. The Work Product shall be considered University's Confidential Information for purposes of Section 7.

[Note: if the primary Work Product is designs, drawings, artwork, software or other written material a more expansive work product section may be needed than is provided in Section 8 above.]

9. Contractor's Representations and Warranties.

(a) Authorization. Contractor represents and warrants that Contractor has full power and authority to enter into this Agreement and to carry out the Services contemplated by this Agreement, and that the execution, delivery, and performance of this Agreement have been duly authorized by all requisite corporate action on the part of Contractor.

(b) Compliance with Laws. Contractor represents and warrants that Contractor will comply with all laws applicable to the performance of its obligations under this Agreement and to the provision of the Services.

(c) No Violations. Contractor represents and warrants that Contractor's execution, delivery, and performance of this Agreement will not constitute: (i) a violation of any judgment, order, or decree binding on Contractor; (ii) a breach under any contract by which Contractor is bound; or (iii) an event that would, with notice or lapse of time, or both, constitute such a breach.

(d) Performance Warranty. Contractor represents and warrants that the Services will be performed with the degree of skill and care that is required by current, good, and sound professional procedures and practices, and in conformance with generally accepted professional procedures and industry standards prevailing at the time the Services are performed, and that all Services meet the specifications set forth in the Scope of Work. Contractor further represents and warrants that Contractor and all personnel used to perform the Services, including permitted subcontractors, possess the knowledge, skill, and experience necessary to perform the Services.

(e) Licenses and Permits. Contractor represents and warrants that Contractor has, and shall maintain in effect for the duration of this Agreement, all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for Contractor to render the Services. Contractor shall also ensure that all permitted subcontractors are similarly licensed and qualified.

(f) Intellectual Property. Contractor represents and warrants that no Work Product prepared or produced by Contractor pursuant to this Agreement, nor the use of any such Work Product by University, will infringe or constitute an infringement of any intellectual property right of any third party, that no third party shall have any proprietary rights in any Work Product, and that Contractor has the authority to deliver title free and clear of all liens or encumbrances to all such Work Product to University. Contractor also represents and warrants that unless otherwise specifically stated in the Scope of Work, no proprietary information of Contractor or any permitted subcontractor will be included in any Work Product and that to the extent Work Product includes any permitted third party proprietary information, including that of Contractor, delivery of the Services shall include a perpetual, non-exclusive, world-wide, royalty free license to use such proprietary information for the purposes for which it was provided.

10. Contractor's Insurance.

(a) Required Insurance Coverage. Contractor shall, at Contractor's sole cost and expense, procure and maintain for the duration of this Agreement the insurance coverage set forth below for claims arising from Contractor's performance under this Agreement and for which Contractor may be legally liable, whether such liability results from any actions or

omissions of Contractor, Contractor's subcontractors, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable:

(i) Commercial General Liability insurance coverage to include premises and operations, personal/advertising injury, products/completed operations, and liability assumed under an insured contract (including defense costs assumed under contract), with limits of not less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) general aggregate, and Two Million Dollars (\$2,000,000) products/completed operations aggregate. Such insurance shall provide, or be endorsed to provide, that University and its officers, directors, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of Contractor's performance under this Agreement.

(ii) Workers' Compensation insurance covering Contractor's own employees as required by law, to include Employer's Liability coverage with a limit of not less than One Million Dollars (\$1,000,000) per accident for bodily injury or disease.

(iii) Errors and Omissions Liability insurance appropriate to Contractor's profession with limits of not less than One Million Dollars (\$1,000,000) per occurrence/claim and One Million Dollars (\$1,000,000) aggregate.

(iv) If an automobile is to be used by Contractor in performing the Services, a policy of comprehensive automobile liability insurance covering the operation of all automobiles used in connection with the performance of this Agreement (whether owned, non-owned, or hired) with such policy to afford protection to the limit of One Million Dollars (\$1,000,000) with respect to bodily injury or death of any one person, One Million Dollars (\$1,000,000) with respect to bodily injury or death of any number of persons in any one occurrence, and One Million Dollars (\$1,000,000) with respect to damage to property of any one owner from one occurrence. Such insurance shall provide, or be endorsed to provide, that University and its officers, directors, employees, and volunteers are to be covered as additional insureds with respect to liability arising out of Contractor's performance under this Agreement.

(b) Continuous Coverage. Should any of the insurance required of Contractor under this Agreement be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three (3) years beyond the expiration or earlier termination of this Agreement, such that, should occurrences during the term of this Agreement give rise to claims made after the expiration or termination of this Agreement, such claims shall be covered by such claims-made policy (or an equivalent policy affording prior acts coverage).

(c) Insurance Carriers. All insurance required of Contractor hereunder shall be through insurance carriers licensed to do business in the State of California and otherwise reasonably acceptable to University.

(d) Certificates and Endorsements. Contractor shall furnish University with original certificates and amendatory endorsements affecting the insurance coverage required of Contractor under this Agreement. All certificates and endorsements are to be received and approved by University before performance under the Agreement commences, and on an annual

basis thereafter for the duration of the term of this Agreement. University reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications, at any time.

(e) Waiver of Subrogation; Cancellation or Modification. Each insurance policy required of Contractor under this Agreement shall include a waiver of subrogation clause and shall be endorsed to state that Contractor's coverage shall not be canceled, modified, or materially changed except after thirty (30) days' prior written notice by certified mail, return receipt requested, to the person set forth in Section 18 below has been given to University.

(f) Contractor's Insurance Primary. For any claims arising out of this Agreement, Contractor's insurance coverage, whether or not required under this Agreement, shall be primary insurance as respects University, its regents, officers, directors, employees, and volunteers. Any insurance or self-insurance maintained by University, its regents, officers, directors, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it. Contractor agrees that it shall obtain any necessary endorsements to its insurance policies to effect the requirements of this paragraph.

11. Indemnification.

(a) Indemnification by Contractor. Contractor agrees to hold harmless, defend (with counsel acceptable to University), and indemnify University and its regents, officers, directors, employees and agents (each an "**Indemnified Party**" and collectively, "**Indemnified Parties**") from and against all claims, damages, losses, and expenses (including without limitation attorneys' fees and costs of litigation) arising out of (i) the performance of the Services, except to the extent that such claims, damages, losses, or expenses are caused by the active negligence, sole negligence, or willful misconduct of University, or (ii) any breach or default in the performance of any of Contractor's obligations hereunder including, without limitation, any breach of any warranty or representation.

(b) Defense of Claims. In the event an Indemnified Party is made a party to any action or proceeding by reason of any matter for which Contractor has hereby agreed to indemnify the Indemnified Party, then Contractor, upon notice from the University, shall defend such action or proceeding on behalf of the Indemnified Party at Contractor's sole cost and expense. If Contractor or its attorney is not vigorously or adequately defending any such claim, the Indemnified Party shall have the right, but not the obligation, to join and participate in, as a party if it so elects, any proceedings or actions related to such claims and to have its attorneys' fees and costs in connection therewith paid by Contractor. Notwithstanding the foregoing, the University may participate at any time in proceedings with counsel of its own choosing at its own cost.

(c) Judgment or Settlement of Claims. Contractor shall not consent to the entry of any judgment or enter into any settlement with respect to any third-party claim without the prior written consent of the Indemnified Party (not to be unreasonably withheld) unless the judgment or proposed settlement involves only the payment of money damages to be paid solely by Contractor or its insurance carrier and does not impose an injunction or other equitable relief upon the Indemnified Party.

(d) Survival. This indemnity shall not be limited by reason of any insurance coverage required under this Agreement and shall survive termination of this Agreement.

12. **Limitation on Damages**. In no event shall either party be liable to the other party for any special, consequential, indirect, exemplary, punitive, incidental, or similar damages (including, without limitation, loss of profits), even if such party has been apprised of the possibility thereof; provided, however, that the foregoing limitation shall not apply in the event that Contractor breaches any of the provisions of Sections 7 (Confidentiality) or 9(f) (Intellectual Property) of this Agreement.

13. **Governing Law**. This Agreement, and any dispute between the parties arising out of this Agreement, shall be governed by and construed in accordance with the laws of the State of California, excluding its conflict of laws rules.

14. **Dispute Resolution; Legal Fees and Costs; Forum for Legal Action.**

(a) Meet and Confer. In the event of any dispute, controversy, claim, or disagreement arising out of or related to this Agreement or the acts or omissions of the parties with respect to this Agreement (each, a “**Dispute**”), the parties shall, as soon as reasonably practicable after one party gives written notice of a Dispute to the other party (the “**Dispute Notice**”), meet and confer in good faith regarding such Dispute at such time and place as mutually agreed upon by the parties. If any Dispute is not resolved to the mutual satisfaction of the parties within ten (10) business days after delivery of the Dispute Notice (or such other period as may be mutually agreed upon by the parties in writing), the parties shall settle such Dispute as otherwise set forth in this Section 14.

(b) Other Proceedings. In the event a Dispute is not resolved by the meet and confer provisions under Section 14(a) above, the parties may choose any other available legal means to settle the Dispute. Each party agrees that a violation or threatened violation of this Agreement may cause irreparable injury to the other party, entitling the other party to seek injunctive relief in addition to all legal remedies.

(c) Legal Fees and Costs. Each party shall be entitled to recover the cost of enforcing the understanding and agreements as reflected herein, including, without limitation, any attorney’s fees and costs incurred.

(d) Forum for Legal Action. Any and all legal action that is initiated to enforce any provision of this Agreement or arising out of or related to this Agreement must be brought or filed in either the state or federal court of California.

15. **Use of Names and Logos**. Contractor agrees that it shall not use the University’s name, or the name of any school or division thereof, or any logo or insignia of the University or any school or division thereof, or otherwise identify the University or any of its schools or divisions in any form of publicity or disclosure without the prior written permission of the University, which permission may be given or withheld in the University’s sole discretion.

16. **No Assignment.** The Services to be rendered pursuant to this Agreement are personal in nature, and Contractor may not, voluntarily or by operation of law, assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the University.

17. **No Subcontracting.** Notwithstanding anything in this Agreement to the contrary, Contractor may not use any subcontractor to perform any of Contractor's obligations under this Agreement unless (a) Contractor has obtained the prior written consent of the University to the use of the subcontractor, and (b) Contractor has entered into a separate written agreement with the subcontractor which requires the subcontractor to agree to and abide by all the terms and conditions of this Agreement. The University shall be deemed to be a third party beneficiary of any such agreement between Contractor and a permitted subcontractor. Notwithstanding the foregoing, Contractor shall not be relieved of any of its duties or obligations under this Agreement as a result of entering into a written agreement with a permitted subcontractor.

18. **Notice.** All notices or other communications given hereunder shall be in writing and shall be deemed to have been duly given (a) on the date delivered if delivered by personal delivery or by overnight delivery service (such as FedEx); (b) on the third (3rd) business day after mailing via U.S. registered or certified mail, first class, postage prepaid; or (c) on the date transmitted by facsimile with confirmation of successful transmission. Any notices or other communications given hereunder shall be addressed as follows, provided that either party may specify a different address by written notice to the other party in accordance with this paragraph:

If to University: University of the Pacific
 [Name of School if applicable]
 [address]
 Attn: _____
 Fax number: _____

If to Contractor: [Contractor]
 [Address]
 [City, State, Zip]
 Attn: _____
 Fax number: _____

19. **Compliance with Laws.** Each party shall be separately responsible for compliance with all laws, rules, and regulations which may be applicable to its respective activities under this Agreement.

20. **Accreditation, Licensing, and Credentials.** Each party shall be separately responsible for accreditation, licensing, and credentialing of its own entities and employees, as applicable, and each party agrees to furnish to the other evidence of such accreditation, licensing, and credentials upon request by the other.

21. **No Third Party Beneficiaries.** No provision of this Agreement is intended to confer any benefit upon any third party and no third party shall have the right to enforce any provision of this Agreement.

22. **Waiver.** No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.
23. **Captions.** All paragraph and section captions and headings in this Agreement are for convenience of reference only and shall not be considered in construing this Agreement.
24. **Construction.** This Agreement shall be interpreted in an even-handed manner and without regard to any presumption against the party that was responsible for its drafting.
25. **Time of Essence.** Time is of the essence with respect to every provision of this Agreement.
26. **Severability of Terms.** If any provision of this Agreement is held invalid, illegal, or unenforceable, the validity, legality, and enforceability of the remaining provisions will not in any way be affected or impaired thereby.
27. **Modifications.** This Agreement including, without limitation, the Scope of Work, may not be modified except by an instrument in writing executed by duly authorized representatives of the parties.
28. **Entire Agreement.** This Agreement together with the exhibits hereto constitutes the entire agreement between the parties pertaining to its subject matter, superseding all prior and contemporaneous agreements, proposals, letters of intent and memorandums of understanding, and no other representations or understandings of the parties, whether written or oral, shall be binding.
29. **Counterparts.** This Agreement may be executed in several counterparts, each of which so executed shall constitute one and the same instrument.

[Signatures to immediately follow on next page]

IN WITNESS WHEREOF, this Agreement has been duly executed on behalf of the parties hereto as of the Effective Date.

UNIVERSITY OF THE PACIFIC

By: _____

Name: _____

Title: _____

CONTRACTOR

By: _____

Name: _____

Title: _____

Exhibit A

SCOPE OF WORK

SERVICES:

[Describe services to be performed under the Agreement. Include details about specific deliverables and/or completion dates.]

COMPENSATION:

[State compensation to be paid to Contractor (*i.e.*, flat fee, per diem, hourly rate). Include any limits on compensation (*i.e.*, Contractor's total compensation shall not exceed \$X without prior written authorization from Pacific.)]

EXPENSES:

[The "default rule" under the Agreement (see Section 2) is that Pacific will not reimburse Contractor for expenses. If Pacific will reimburse Contractor for expenses, describe here the expenses that will be considered reimbursable and not reimbursable, including any pre-approval requirements and/or limits on the total amount of expenses that will be reimbursed. If expenses will be reimbursed, also include the requirement that no reimbursement for expenses shall be provided unless Contractor substantiates the expenses claimed by submitting to Pacific receipts or other documentation acceptable to Pacific in its sole discretion.] It is recommended that all costs, including reimbursement for travel, lodging, etc., be part of a not-to-exceed amount. All expenses, plus all compensation, will be reported by the University on IRS Form 1099-misc.

PAYMENT TERMS:

[The "default rule" under the Agreement (see Section **Error! Reference source not found.**) is that Contractor will submit monthly invoices to Pacific and Pacific will pay undisputed invoices within 45 calendar days of receipt. If other payment terms have been negotiated (*i.e.*, if payments will be tied to specifically identified performance milestones, etc.), describe them here.]

TERM:

[The "default rule" under the Agreement (see Section 4) is that the Agreement will expire upon Contractor's completion of the Services to Pacific's satisfaction. If the Agreement should expire in a different manner (*i.e.*, on a specific date or after a specific period of time after the Effective Date), describe that here.]

Exhibit B

BUSINESS ASSOCIATE AGREEMENT

[if applicable]

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“**BAA**”) is made and entered into concurrently with and is an integral part of the _____ Agreement (the “**Primary Agreement**”) by and between UNIVERSITY OF THE PACIFIC (hereinafter, the “**Covered Entity**”), and _____ (hereinafter the “**Business Associate**”) dated _____. As used in this BAA, the term (“**Agreement**”) means the Primary Agreement and this BAA.

A. Business Associate and Covered Entity have entered into the Primary Agreement whereby Business Associate will be providing goods and/or services to Covered Entity pertaining to Covered Entity’s provision of health care services to various individuals.

B. Covered Entity is required to enter into this BAA in order to comply with the federal health care Privacy Rule as defined below and federal health care Security Rule as defined below.

C. The parties agree that Business Associate shall have all the rights and obligations of a “Business Associate” under the Regulations, as defined below, and that Covered Entity shall have all the rights and obligations of a “Covered Entity” under the Regulations, as defined below.

11. Definitions.

(a) “Breach” shall mean the unlawful or unauthorized access to, viewing, acquisition, use or disclosure of Protected Health Information.

(b) “Designated Record Set” shall mean a group of records maintained by or for Covered Entity that is (i) the medical records and billing records about Individuals maintained by or for Covered Entity, (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for Covered Entity or a health plan; or (iii) used, in whole or in part, by or for Covered Entity to make decisions about Individuals.

(c) “Individual” shall have the same meaning as the term “individual” in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

(d) “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Subparts A and E of Part 164.

(e) “Protected Health Information” shall have the same meaning as the term “protected health information” in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity, in any form, including electronic form.

(f) “Record” means any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or for Covered Entity.

(g) “Regulations” shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-005, and regulations promulgated thereunder by the U. S. Department of Health & Human Services, as amended from time to time.

(h) “Required By Law” shall have the same meaning as the term “required by law” in 45 CFR § 164.103.

(i) “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.

(j) “Secured” shall mean protection of Protected Health Information by a technology or methodology which renders the data unreadable, unusable, or indecipherable to unauthorized individuals and is consistent with guidance published by the Secretary as then in effect.

(k) “Security Incident” shall have the same meaning as the term “security incident” in 45 CFR § 164.304, which generally means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system.

(l) “Security Rule” shall mean the Security Standards for protection of Electronic Protected Health Information at 45 CFR Part 160 and Subparts A and C of Part 164.

(m) “Transaction Standards” shall mean the Standards for Electronic Transactions, 45 CFR §§ 160 and 162.

(n) Additional Terms. Terms used, but not otherwise defined, in this BAA shall have the same meaning as those terms in the Privacy Rule and the Security Rule.

30. Obligations and Activities of Business Associate.

(a) Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.

(b) Business Associate agrees to use appropriate administrative, physical, and technical safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement. Business Associate shall ensure that all Protected Health Information is Secured.

(c) Business Associate agrees to promptly mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

(d) Business Associate agrees to immediately report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement.

(e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees in writing to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. Moreover, Business Associate shall ensure that any such agent or subcontractor agrees to implement reasonable and appropriate safeguards to protect the Covered Entity's Protected Health Information. Notwithstanding anything to the contrary in the Primary Agreement or this BAA, Business Associate shall not use any agent or subcontractor to perform any service requiring access to Protected Health Information without the express written consent of an authorized representative of Covered Entity.

(f) Business Associate agrees to provide prompt access, at the request of Covered Entity to Protected Health Information in a Designated Record Set, to Covered Entity, or, if directed by Covered Entity, to an Individual, in order to meet the requirements under 45 CFR § 164.524. If an Individual requests directly from Business Associate (i) to inspect or copy his or her Protected Health Information, or (ii) requests its disclosure to a third party, the Business Associate shall promptly notify Covered Entity in writing of such request.

(g) Business Associate agrees to promptly make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR § 164.526 at the request of Covered Entity, and in the time and manner as mutually agreed by the parties.

(h) Business Associate agrees to make its internal practices, books, and records, including its policies and procedures, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity, available to Covered Entity or the Secretary, in a time and manner designated by Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

(i) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

(j) Business Associate agrees to promptly provide to Covered Entity or an Individual information collected in accordance with Section 2(i) of this BAA, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

(k) Business Associate hereby represents and warrants that to the extent it is transmitting a financial or administrative transaction described in the Regulations (each a "**Transaction**") for Covered Entity, the format and structure of such transmissions shall be in compliance with the Transaction Standards. With respect to any such Transactions, neither party

shall: (i) change the definition, data, condition, or use of a data element or segment in a Transaction Standard; (ii) add any data elements or segments to the maximum defined data set; (iii) use any code or data elements that are either marked “not used” in the Transaction Standard’s implementation specification or are not in the Transaction Standard’s implementation specification(s); or (iv) change the meaning or intent of the Transaction Standard’s implementation specification(s).

(l) With respect to Electronic Protected Health Information, Business Associate will:

(i) Implement, in compliance with the requirements of the Security Rule, administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information it creates, receives, maintains, or transmits on behalf of Covered Entity;

(ii) Ensure that any agent, including a subcontractor, to whom Business Associate provides Electronic Protected Health Information agrees in writing to implement reasonable and appropriate safeguards to protect such information;

(iii) Report to Covered Entity any Security Incident of which Business Associate becomes aware, including any failure of safeguards or unauthorized access to Electronic Protected Health Information.

(m) Business Associate shall comply with all the obligations required of a Business Associate under the Health Information Technology for Economic Clinical Health Act (“**HITECH Act**”), Title XIII of the American Recovery and Reinvestment Act of 2009. 45 CFR Sections 164.308, 164.310, 164.312, and 164.316 shall apply to Business Associate in the same manner that such sections apply to Covered Entity. The written policies and procedures and documentation required by 45 CFR Section 164.316 shall be made available to Covered Entity, upon Covered Entity’s request. The additional requirements of the HITECH Act that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate and shall be and by this reference hereby are incorporated into this BAA.

31. Permitted Uses and Disclosures by Business Associate.

Except as otherwise limited in this BAA, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Primary Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

32. Specific Use and Disclosure Provisions.

(a) Except as otherwise limited in this BAA, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(b) Except as otherwise limited in this BAA, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) Except as otherwise limited in this BAA, Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).

(d) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

(e) Business Associate shall promptly following the discovery of a Breach of unsecured Protected Health Information as defined in the Regulations, notify the Covered Entity of the Breach. Business Associate shall provide the notification without unreasonable delay and in no case later than twenty-four (24) hours after discovery of a Breach. The notification shall include, to the extent possible, the identification of each individual whose unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used, or disclosed during the Breach. Business Associate shall also provide the Covered Entity with any other available information that the Covered Entity is required to provide to the individual(s) who are the subject of the Breach. Business Associate shall cooperate with Covered Entity to take (i) prompt corrective action to cure any such Breach and (ii) any action required by the Regulations and applicable federal or state laws, rules or regulations as a result of such Breach. If the Business Associate causes such Breach, Business Associate shall pay any required notification costs for purposes of complying with the Regulations or any other applicable federal or state laws, rules or regulations.

33. Indemnity.

(a) Business Associate shall promptly and fully defend, indemnify and hold harmless Covered Entity, its affiliates and respective officers, directors, agents and employees (“**Indemnified Parties**”) against any act or omission of Business Associate which gives rise to or results in any claim, demand, liability, losses, fine, penalty, assessment, cost, judgment and award, including attorney’s fees, made or recovered against Indemnified Parties or issued in favor of a third party, or cost of notification or remediation relating to notification required by law for individuals whose Protected Health Information or personal information have been inappropriately accessed or disclosed.

(b) In the event that either party is required by law to notify individuals whose Protected Health Information was inappropriately accessed, used, or disclosed by Business Associate or its agents, and the Protected Health Information contains: (i) the individual’s first initial or first name, last name, and social security number; (ii) the individual’s first initial or first name, last name, and driver’s license or state identification card; (iii) the individual’s first initial

or first name, last name, account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account; and/or (iv) the individual's first initial or first name, last name, and Protected Health Information, then Business Associate and Covered Entity shall work together to structure a credit monitoring offering commensurate to the risk posed by the Breach and Business Associate shall, in any event, pay the costs of credit monitoring for one (1) year for such individuals and the costs and fees related to timely notification in accordance with law.

34. Term and Termination.

(a) Term. The Term of this BAA shall be effective as of the Effective Date of the Primary Agreement, and shall terminate when all of the Protected Health Information in Business Associate's possession or control (including Protected Health Information in the possession or control of Business Associate's subcontractors or agents) is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

(b) Termination for Cause. If Covered Entity determines that Business Associate has violated a material term of this BAA, Covered Entity shall either:

(i) Provide an opportunity for Business Associate to cure the breach and end the violation within 30 days, and terminate this BAA and the Primary Agreement if Business Associate does not cure the breach or end the violation within the foregoing time period;

(ii) Immediately terminate this BAA and the Primary Agreement if Business Associate has breached a material term of this BAA and cure is not possible; or

(iii) If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.

(c) Effect of Termination.

(i) Except as provided in paragraph (ii) of this Section, upon termination of this BAA, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity by (i) shredding; (ii) securely erasing, or (iii) otherwise modifying the information to make it unreadable or undecipherable through any means. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information. At Covered Entity's request, Business Associate shall certify in writing that it has complied with the requirements of this Section.

(ii) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual determination of the parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this BAA to such Protected Health

Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

35. Miscellaneous.

(a) Regulatory References. A reference in this BAA to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.

(b) Amendment. The parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for Covered Entity to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (“**HIPAA**”), the HITECH Act, and the Regulations.

(c) Survival. The respective rights and obligations of Business Associate under Sections 5, 6 and 7 of this BAA shall survive the termination of this BAA.

(d) Interpretation. Any ambiguity in this BAA shall be resolved to permit Covered Entity to comply with HIPAA, the HITECH Act, and the Regulations.

(e) Notices. All notices contemplated by the terms of this BAA shall be in writing and shall be given and effective as provided in the Primary Agreement.

(f) No Third Party Beneficiaries. It is the intent of the Parties that this BAA is to be effective only in regards to their rights and obligations with respect to each other. It is expressly not the intent of the Parties to create any independent rights in any third party or to make any third-party beneficiary of this BAA and no privity of contract shall exist between third parties and each party.