

## Kaiser Permanente® Terms and Conditions for the Purchase of Goods and Services

These **Kaiser Permanente Terms and Conditions for the Purchase of Goods and Services** (the “**Terms and Conditions**”) apply to Purchase Orders which incorporate by reference the **Terms and Conditions**, unless the parties have agreed in writing to use other terms and conditions. The **Terms and Conditions** also apply to written agreements which incorporate by reference the **Terms and Conditions**. Please retain a copy for your files.

### 1. DEFINITIONS

“Contract” means the written agreement (or Purchase Order, invoice, statement of work, or the like) which incorporates by reference the **Terms and Conditions**. “Customer” means the entity purchasing the Products and/or Services and is sometimes also referred to as “Kaiser Permanente”, “KP” or “Kaiser”. “Law” means federal, state and local statutes, implementing regulations, executive orders, ordinances and case law, including governmental healthcare program statutes, regulations and policies. “Purchase Order” or “PO” means a purchase order issued by a Customer for the purchase of Products and/or Services. “Product” means any product, equipment, device, consumable, software license or other type of good supplied by Supplier. “Service” means any service, resource, or support supplied by Supplier, including under any statement of work or services description incorporating these **Terms and Conditions**, and/or product support and maintenance services. Services includes “Work” as defined in Section 2.8 below. “Supplier” is the entity selling and/or licensing the Product/Service under the Contract and is sometimes also referred to as a “Consultant”, “Seller”, “Contractor”, “Licensor” or “Vendor”.

### 2. PURCHASING OF PRODUCTS/SERVICES

**2.1. Pricing.** All prices, rates, and charges for Products/Services are stated in the Contract and are firm-fixed. Prices for Products (except software) are FOB origin, freight collect (e.g. Customer arranges and pays freight).

**2.2. Taxes.** Supplier must calculate and pay any applicable taxes with respect to the sale of any Product/Service. Supplier may invoice Customer for the local and state sales/use tax if they are correctly and separately reflected on the invoice, unless Customer is exempt from paying such taxes.

**2.3. Ordering.** Customer may order Products/Services by issuing a PO using Customer’s designated electronic format or entering into a Contract with Supplier. Customer may change a PO at any time prior to shipment by issuing a change notice. Customer is not required to place any minimum orders or pay any minimum order charges for Products/Services.

**2.4. Delivery.** Supplier will deliver Products/Services in accordance with the Contract. With respect to any Product shipments, except software, Supplier will comply with the Kaiser Permanente Distribution and Transportation Guide, available for review at <http://supplier.kp.org/formsreqs/index.html>. All software (except embedded software) must be delivered electronically. Supplier will not make any Product substitutions or partial shipments without Customer’s written approval. Time is of the essence with respect to Supplier’s obligations. Supplier will promptly notify Customer if it anticipates delays or other issues impacting delivery.

**2.5. Inspection/Acceptance.** At Customer’s option, Products/Services will be subject to inspection, testing, and related acceptance processes by Customer or its designee.

**2.6. Invoicing and Payment.** Supplier is solely responsible for invoicing Customer for Products/Services. Unless otherwise agreed in the Contract, Supplier will only invoice Customer for Products/Services that have been delivered

and accepted to Customer's satisfaction and in accordance with the payment schedule agreed in the Contract, or in the absence of such a schedule, on a monthly basis, within 30 days of the end of the month in which the Products/Services were accepted. Customer reserves the right to reject any invoice received more than 90 days late. Supplier will not issue partial invoices or invoices that contain fees or expenses (including fuel or delivery surcharges) not otherwise specified in the Contract. Supplier's invoices must comply with the Kaiser Permanente Invoice and Accounts Payable Requirements, available for review at <http://supplier.kp.org/formsreqs/index.html>. Payment will be made by Customer within 45 days of receipt of an accurate, complete and undisputed invoice, with a 2% discount if Supplier receives payment within 10 days (2% 10, Net 45).

Supplier will not place Customer's facilities on credit hold for any reason. If Supplier is set up and enabled in the KP OneLink Services Procurement (sPro) system, then Supplier shall submit statement of work invoices using the sPro payment submission process, and invoices submitted in any other manner may be delayed or rejected. If Customer has agreed to reimburse Supplier's travel and associated expenses, the Kaiser Permanente Travel and Expense Guidelines for Vendors, Contractors and Suppliers, available for review at <http://supplier.kp.org/formsreqs/index.html>, shall apply.

**2.7. Software License.** Title to software provided by Supplier under this Contract remains with Supplier, except with respect to any Work (as defined below). To the extent a Product/Service provided by Supplier is licensed rather than purchased by Customer, Supplier hereby grants to Customer, for the benefit of the KP Entities (as defined below), a non-exclusive, worldwide, perpetual and unlimited (unless a limitation on the number of users, computer systems or other similar restrictions on Customer's usage is expressly stated in the Contract) license to install, display, access, store and use any software and documentation supplied by Supplier to Customer under the Contract (including any updates or modifications thereof) for the Customer's business purposes. This license grant includes, at no additional charge, the right to make and use a reasonable number of copies of the software and documentation for testing, back-up, archival and disaster recovery purposes, all updates, upgrades and new releases made generally available, and use of the documentation for internal training, support and deployment. To the extent any software delivered hereunder incorporates third party materials, including, without limitation, open source software, Supplier warrants that it has the right to sublicense such third-party materials to Customer consistent with the Contract and hereby grants a license in such third-party materials to the full extent of the license in the software. Customer may permit its consultants and contractors to exercise its rights under this license for the purpose of providing services to Customer. As used herein "**KP Entities**" means the entities participating in the integrated health care organization doing business as Kaiser Permanente, which includes, without limitation, Kaiser Foundation Health Plan, Inc., Kaiser Foundation Hospitals, Kaiser Permanente Insurance Company, The Permanente Federation, the Permanente medical and dental groups and all of the respective subsidiaries and successors of the foregoing.

**2.8. Cloud Service and Online Content.** If Supplier provides Cloud Service(s), including Online Content, the **Additional Terms and Conditions** for the Purchase of Cloud Services, attached as Addendum A below, shall apply and are by this reference incorporated into the Contract. "**Cloud Service**" and "**Online Content**" are defined in Addendum A, Section A1 below.

**2.9. Work Product.** Unless otherwise agreed in writing in the Contract, Supplier agrees that Customer will be the exclusive owner of any creative or custom work performed or developed by Supplier specifically for Customer under the Contract (the "**Work**"), including without limitation any consulting, photographic, design or graphics Work provided as part of the Service, and any modifications, enhancements, and derivative works of or to the Work. To the extent that title to any Work may not, by operation of law, vest in Customer, Supplier warrants that it has the right to assign and hereby does assign to Customer all rights, title, and interest in the Work. Customer will have the right to obtain and to hold in its own name patents, copyrights, marks, registrations and such other protection as may be appropriate to the subject matter of the Work, to any extensions and renewals thereof and in and to all modifications, enhancements, and derivative works of the Work.

### 3. PRODUCT/SERVICES WARRANTIES AND RETURNS

**3.1. Warranties.** Supplier warrants the following: (a) Products will be free from defects in design, workmanship and materials; (b) Products/Services will comply with the requirements of the Contract (including the then-current published specifications or documentation for the Products/Services); (c) the warranty period for a Product will be 12 months from acceptance (or delivery if acceptance is not applicable); and (d) Supplier's employees (and contractors, if permitted) will have the certifications, skills and qualifications necessary to perform Services in a timely, competent, workmanlike, and professional manner in accordance with applicable industry standards and Law. If Supplier is supplying medical device Products, Supplier warrants compliance with Customer's GS1® Healthcare Requirements, available for review at <http://supplier.kp.org/formsreqs/index.html>. If Supplier is supplying software, Supplier warrants that it has used industry standard quality assurance and virus protection procedures to ensure that the software is free of viruses, contaminants, and other malicious code that may harm Kaiser systems. Customer's failure to inspect and test a Product/Service will not relieve Supplier from its obligations under the Contract, including any testing, inspection, warranty and quality control responsibilities.

**3.2. Disclaimer.** Supplier disclaims all other warranties, express or implied, including the implied warranties of merchantability and fitness for a particular purpose. In no event will either party be liable for any special, punitive, indirect or consequential losses or damages, including but not limited to lost profits, business interruption losses or loss of goodwill, even if it has been advised of the possibility of such loss or damage; provided, however, this limitation shall not limit or waive a party's liability with respect to confidentiality, product recall, indemnification, gross negligence, willful misconduct, compliance with law, or any applicable business associate agreement.

**3.3. Product Returns and Recalls.** If Products/Services are nonconforming to the Contract, or in the case of software, with its documentation, Customer may, at its option, return any or all of the Products/Services at Supplier's expense for a full refund or require Supplier to promptly replace, repair or re-perform non-conforming Products/Services without any penalty, termination or cancellation fees. Unless otherwise agreed in writing, Customer may return conforming consumable Products that are unused and unexpired at any time for a full refund without any penalty, termination or cancellation fees. Supplier must notify Customer ([kp-product-recall@kp.org](mailto:kp-product-recall@kp.org)) of any Product recalls not more than 24 hours after Supplier first learns of the recall. Supplier must monitor the recall status, and provide specific information regarding the recall and instructions regarding the appropriate action to be taken by Customer. Supplier must reimburse Customer for its costs associated with the correction of a recall and actions taken in response to a recall.

### 4. GENERAL PROVISIONS

**4.1 Termination.** Customer may terminate a Contract in whole or in part without cause upon 30 days' prior written notice. Either party may terminate a Contract if the other party materially breaches its obligations under the Contract, and such breach is not cured within 30 days after written notice to the other party. In the event of early termination or cancellation by Customer without cause, Customer will pay for any Products/Services delivered and accepted prior to the date of termination/cancellation, and Supplier will provide Customer with a full refund of any over-payment.

**4.2. No Disruption in Use of Products/Services.** Supplier acknowledges that Customer is a provider of health care services; that Customer's use of Products/Services may be vital to the business operations of Customer and to the health and safety of Customer's patients and members; and that any interruption of Customer's business could result in substantial liability to Customer. Supplier warrants and represents that it will not at any time render Products/Services unusable or inoperable, suspend the Services, take possession of Products, or in any way deliberately take any action to impede or interfere with the use or operation of Products/Services by Customer, or otherwise impede or interfere with Customer's business.

**4.3. Indemnification.** Supplier will defend, indemnify and hold harmless Customer, each of the KP Entities (as defined

above) and each of their respective affiliates, officers, directors, employees and agents from and against any and all claims, demands, liabilities, losses, damages, fines, costs and expenses (including attorneys' and expert witness fees) (collectively, "**Claims**") made by a third party and arising from Supplier's breach of the Contract or any warranty hereunder, the negligence, recklessness or willful misconduct of Supplier, any defect or noncompliance in a Product/Service, or infringement or misappropriation of any third party's intellectual property rights.

**4.4. Insurance.** Supplier shall procure and maintain the following insurance coverage (i) all insurance coverage required by federal and state law, including workers' compensation insurance with statutory minimum limits and employer's liability insurance with limits of not less than \$1,000,000 each claim, (ii) current ISO commercial general liability policy, or equivalent coverage, with limits of not less than \$2,000,000 per occurrence and aggregate, including coverage for products liability and contractual liability, (iii) if Supplier is providing professional services - professional liability (E&O) insurance with limits of at least \$2,000,000 which provides coverage on an occurrence basis, or if on a "claims made" basis, then Supplier will maintain continuous coverage for five years after termination or expiration of the Agreement or purchase "tail coverage" for no less than five years after the policy terminates or lapses; (iv) automobile liability insurance with limits of not less than \$1,000,000 covering use of any auto; (v) if the Contract involves hosting or processing of any personally identifiable information or protected health information, cyber liability insurance with limits of not less than \$2,000,000 for each occurrence and an annual aggregate of not less \$5,000,000, covering privacy, media, information theft, damage to or destruction of electronic information, intentional and unintentional release of private information, alteration of electronic information extortion and network security which provides coverage on an occurrence basis or, if on a claims-made basis, then Supplier will maintain continuous coverage for five (5) years after the termination or expiration of the Contract; and (vi) if the Contract is for Cloud Services, excess liability insurance with not less than a \$10,000,000 limit for the commercial general liability policy required in subsection (ii) above. Supplier's insurance must be primary, and no other insurance maintained by Customer will be called upon to contribute to a loss. All insurance required of Supplier shall be through insurance carriers rated "A, X" or better by A.M. Best, and contain a separation of insureds endorsement. Upon request, Supplier will provide Customer with an industry-standard certificate of insurance evidencing these coverages and a revised certificate of insurance if any of the policies are changed.

## 5. MISCELLANEOUS

**5.1. Independent Contractor.** Supplier is an independent contractor and engages in the operation of its own business, and neither Supplier nor Customer will be considered to be the agent of the other for any purpose. Nothing in the **Terms and Conditions** or any Contract will be construed to establish a relationship of agent, employee, partnership, or joint venture between the parties. Supplier is solely obligated for the timely payment of wages, proper classification of its workers, workers' compensation insurance, employee benefits, any payroll-related taxes and any other employment related liability for its workers.

**5.2. Confidentiality and Intellectual Property Rights.** "**Confidential Information**" shall mean any non-public, confidential or proprietary information disclosed or provided by a party or the KP Entities (or their consultants, contractors and/or agents) to the other party pursuant to the Contract that is either marked as confidential or by its nature is proprietary or non-public. Confidential Information of Customer includes the Contract, the Work, and any data, information, documents or communications, including information about Customer's operations, members, patients, employees, contractors or strategies, disclosed or provided to Supplier in connection with the Contract. Customer's Confidential Information is the property of Customer and Customer retains all intellectual property rights therein. Supplier shall have only those rights to access and use Customer's Confidential Information as are expressly granted by Customer under the Contract. Except for personally identifiable information and protected health information, Confidential Information does not include information a party can demonstrate was or became publicly known through no fault of the receiving party, was known by the receiving party before receipt from the disclosing party, was rightfully received by the receiving party without confidential or proprietary restriction from a source other than the disclosing party that does not owe a duty of confidentiality to the disclosing party with respect to the

Confidential Information, or was independently developed by the receiving party without the use of the disclosing party's Confidential Information. Neither Party will, without the other party's prior written consent, disclose the other party's Confidential Information to any third party (other than the party's employees, permitted contractors or agents who need to access the Confidential Information in order to perform obligations or exercise rights under the Contract) or use such Confidential Information for any purpose other than performance of the Contract, regardless of whether the Confidential Information is de-identified, re-identified, anonymized or aggregated. Upon request, Supplier will return or destroy Customer's Confidential Information. Notwithstanding the foregoing, disclosure of Confidential Information shall not be precluded if such disclosure is required by a law, valid subpoena, or other order of a court or request of a government entity, provided that the receiving party provides prompt written notice to the disclosing party sufficiently in advance to permit the disclosing party to contest the disclosure or seek an appropriate protective order. Notwithstanding anything to the contrary in these **Terms and Conditions** or the Business Associate Agreement (if any), Supplier is prohibited from de-identifying, re-identifying, selling, distributing, commercially exploiting, aggregating, data mining, analyzing, benchmarking or otherwise using or disclosing any KP Data (including any anonymized, de-identified, re-identified, or aggregated KP Data) for any purpose other than to provide the Services to Customer under the Contract. Supplier shall store KP Data separately from, and will not combine KP Data with, Supplier's data, third party data, and the data of any other customer of Supplier. KP Entities retain all intellectual property rights in and to all KP Entity systems, software, processes, guidelines, protocols, patents, copyrights, trade secrets, materials, documentation and content that Customer discloses to Supplier or that Supplier may access or use in its performance of Services hereunder. Any rights and licenses not expressly granted by Customer under these Terms and Conditions are expressly reserved by Customer.

**5.3. No Publicity.** Supplier will not, without the prior written consent of Customer, use in advertising, press releases, publicity, on its web site, in any marketing materials or in any other manner, the names, trademarks, trade names, service marks, trade dress or logo of any of Kaiser Permanente or the KP Entities, or refer to the existence of this Contract. The Kaiser Permanente Non-Endorsement Guidelines for Vendors, Contractors and Suppliers, available for review at <http://supplier.kp.org/formsreqs/index.html>, are by this reference incorporated herein.

#### **5.4 Legal Requirements.**

**5.4.1. Compliance with Law.** Supplier will comply with all applicable Law, including without limitation, the Federal Anti-Kickback statute (42 U.S.C. §1320a-7b) and the Health Insurance and Portability and Accountability Act of 1996 and the rules and regulations promulgated under its authority ("**HIPAA**"), as amended. If, due to the nature of the Products/Services provided, Customer determines the Supplier is acting as its business associate pursuant to HIPAA, Supplier will enter into an appropriate business associate agreement with Customer and may be subject additional data security requirements, including an information security assessment by Customer and supplemental contractual terms and conditions.

**5.4.2 Offshore Restrictions.** Neither Supplier, nor any subcontractor at any tier, may access, receive, download, view, print, store, process or maintain any personally identifiable information of Customer's members, patients, or employees outside of the United States, Puerto Rico, or the U.S. Territories. No Services will be performed by Supplier or any Supplier subcontractor outside the United States without Customer's prior written consent.

**5.4.3. Federal Flow-Down Requirements.** Kaiser Foundation Health Plan, Inc. and its health plan subsidiaries have entered into contracts with the U.S. Government Office of Personnel Management and The Centers for Medicare and Medicaid Services that require certain federal contract provisions be made a part of any subsequent agreement with vendors, contractors and suppliers who provide services to support these Federal contracts. Supplier is required to review and, where applicable, comply with the Kaiser Permanente Federal Flow-Down Requirements, available for review at <http://supplier.kp.org/formsreqs/index.html>.

**5.5. Additional Customer Requirements.** Customer strives to demonstrate high ethical standards in its business practices. Customer’s vendors play an integral role in making this happen. The Vendor Code of Conduct (available for review at <http://supplier.kp.org/formsregs/index.html>) contains the minimum standards by which Supplier is expected to conduct itself when providing Products/Services to Customer. Supplier is encouraged to review the Vendor Code of Conduct and report violations on an anonymous basis to Customer’s hotline (1-888-774-9100). In addition, the Contract incorporates by reference the additional online Requirements and Guidelines for Suppliers, Vendors, and Contractors, available for review at <http://supplier.kp.org/formsregs/index.html>, including without limitation, requirements for Site Access and Visitation, National Supplier Visitation Policy, Health Screening Requirements, Drug Screening, Background check, Data Security Requirements, Payment Card Industry Data Security, Web-Based Products and Services Accessibility Requirements, Solution Delivery Life Cycle Requirements, Business Continuity Plan and Quality Assurance Program. Supplier should review each of these additional online requirement documents and comply with those that are applicable to the Contract based on the specific nature of the Products/Services provided.

**5.6. Inspection.** Upon reasonable notice from Customer, and no more than once per year, Supplier will provide Customer’s internal auditors or representatives (or such independent auditors and inspectors as Customer may designate in writing and have agreed to abide by reasonable confidentiality provisions) with access and the right to make copies of the portion of Supplier’s books and records necessary to verify the accuracy of the invoices submitted by Supplier to Customer. If any audit reveals any variance from any invoice in excess of 2% of the amount shown on such invoice, Supplier will reimburse Customer for all reasonable costs and expenses incurred in conducting the audit.

**5.7. Governing Law.** The Contract is governed by and construed in accordance with the internal laws of Customer’s state of incorporation without regard to its choice of law principles. Venue in any lawsuit arising out of the Contract will be exclusively in the state or federal courts in the county or district where Customer resides.

**5.8. General.** Except as set forth herein, all such rights and remedies are cumulative and are not exclusive. The waiver of a breach of any term or condition of this Contract will not be effective unless in writing and signed by the party who holds the right to waive the condition or term and will not serve to waive any other breach of that term or condition, or of any other term or condition. Any provision of the Contract which by its nature must survive termination or expiration in order to achieve the fundamental purposes of the Contract will survive any termination or expiration of the Contract. Supplier is responsible for the performance of its contractors, consultants, and agents including for ensuring their compliance with these **Terms and Conditions**. Supplier will not assign or transfer any of its rights or obligations under the Contract without prior written consent of Customer. A Contract may be signed by Supplier and/or Customer via faxed executed copies, certified electronic signatures, or copies delivered by electronic mail in Adobe PDF or similar format, and any signature transmitted by such means for the purpose of executing a Contract shall be deemed an original signature. Any pre-printed terms and conditions in Supplier’s quote, invoice, confirmation, or other documents sent to Customer in connection with the Contract are null and void. In the event of any conflict between the **Terms and Conditions** and any text on the face of the PO, the text on the face of the PO (and documents referenced on the face of the PO) will take precedence. Notices required under the Contract shall be deemed given when delivered with confirmed receipt to the address of the applicable party set forth in the Contract by U.S. mail, commercial courier service or email. The Contract, which incorporates the **Terms and Conditions**, constitutes the entire agreement between Customer and Supplier for the Products/Services described in the Contract and may only be modified by written amendment signed by authorized representatives of both parties. No “shrink-wrap”, “browse-wrap”, “click-wrap” or other similar license or agreement that is required to be accepted in order to access and use a Product/Service shall apply.

**5.9. COVID-19:** Customer will not be liable to Supplier for damages, liabilities, costs, expenses, or equitable relief, nor will Customer be deemed to be in breach of or subject to any penalties under this Contract for cancellation or termination of Products/Services (or orders for Products and Services), or delays or failures in performance, in whole or in part, including the need to reprioritize work, resulting from impacts to Customer due to Customer’s response to the



COVID-19 outbreak (each a “COVID-19 Impact”). Customer shall take reasonable measures to notify Supplier in writing of an applicable COVID-19 Impact giving rise to (a) any cancellation or termination of Products/Services, or orders for Products/Services, under the Contract or any applicable Purchase Order, Schedule, ordering document, or Statement of Work, or (b) any delay in or inability to perform its obligations hereunder. At Customer’s option, the parties will work together in good faith to adjust the Products/Services or the parties’ obligations under the Contract or applicable Statement of Work as necessary and feasible by, for example and without limitation, extending deadlines for performance, limiting available resources, or rescheduling travel or events.

## **Addendum A - Additional Terms and Conditions for the Purchase of Cloud Services**

### **A1. Definitions**

The following terms shall have the meaning set forth below for purposes of these **Additional Terms and Conditions** for the Purchase of Cloud Services:

**“Authorized User”** means an employee, consultant, provider, contractor or other agent of a KP Entity authorized to access and use the Cloud Service on behalf of a KP Entity, and, if applicable, a patient or member of a KP Entity and their authorized representatives and family members.

**“Cloud Service”** means a Supplier hosted software or platform, or Online Content, that is made available for Customer’s use via the Internet. Cloud Service includes the software application, platform, content, Documentation, hosting, management, support and maintenance services, together with all Updates and workarounds, corrections, modifications, and improvements, provided by Supplier under the Contract. Any services, functions, processes and responsibilities, whether or not specifically described in the Contract, that are required for or inherent in the proper performance and delivery of the Cloud Service described therein shall be deemed to be part of the Cloud Service. The Cloud Service is a Service within the meaning of the **Terms and Conditions**.

**“Documentation”** means all reference and user manuals and guides describing the Cloud Service and other supporting technical information, materials and documentation.

**“Go-Live Date”** means the date the KP Entity’s production usage of the Cloud Service commences.

**“Implementation Services”** means professional services provided by Supplier to configure and implement the Cloud Service and as otherwise specified in an applicable Contract. Implementation Services shall not include software development or customization. Implementation Services are a Service within the meaning of the **Terms and Conditions**.

**“KP Entity”** has the meaning set forth in Section 2.7 (Software License) of the **Terms and Conditions**.

**“KP Data”** means all data and information entered into the Cloud Service by Authorized Users. KP Data is Customer’s Confidential Information.

**“Online Content”** means content, knowledgebases, databases or other information or data that is made available for Customer’s use via the Internet.

**“Service Levels”** means the levels of performance Supplier is required to provide for the Cloud Service, as set forth in the Documentation and/or Contract.

**“Specifications”** means the features, functions, performance requirements, acceptance criteria, interface specifications and other technical or functional specifications applicable to the Cloud Service(s) that are identified or referenced in the Contract and the Documentation.

**“Supplier Infrastructure”** means the computer hardware, software, communications systems, network and other infrastructure used by Supplier to host and provide the Cloud Service.

**“Updates”** shall mean any modifications, error corrections, bug fixes, new releases, updates and upgrades to the Cloud Service (and any related Documentation) that may be provided or otherwise made generally available by Supplier from time to time to customers of the Cloud Service.

## **A2. CLOUD AND IMPLEMENTATION SERVICES**

**A2.1 Provision of Cloud and Implementation Services.** Supplier shall provide the Cloud Service and Implementation Services (if applicable) in accordance with the Contract and any applicable Service Levels, including, setup, configuration, operation and management of Supplier Infrastructure required by Supplier to host, operate, maintain and provide the Cloud Service. Supplier will provide Customer and its Authorized Users with access via the public Internet to the Cloud Service, including all identification numbers, keys and passwords and Documentation which Customer and Authorized Users may require to access and use the Cloud Services, commencing on the Go-Live Date. Supplier hereby grants to Customer and the Authorized Users a worldwide, non-exclusive right and license to (i) access, execute, use, perform, and display the Cloud Service for the benefit of the KP Entities, (ii) modify, publish, transmit, create derivative works of Online Content for the benefit of the KP Entities; and (iii) reproduce, distribute and display the Documentation to Authorized Users. The rights granted by Supplier hereunder include the right of Customer to have such rights exercised by third parties on its behalf. Supplier and its licensors own and shall retain all intellectual property rights in and to the Cloud Service (excluding KP Data) and Documentation and the Supplier Infrastructure.

**A2.2 Maintenance and Support for Cloud Service.** Supplier shall provide maintenance and support regarding the Cloud Service, including as applicable: (i) causing the Cloud Service to operate according to the Specifications and correcting reported errors; (ii) performing preventive maintenance on the Supplier Infrastructure; and (iii) providing periodic Updates to the Cloud Service and Supplier Infrastructure, including at least all Updates made generally available to Supplier’s customers. Notwithstanding the foregoing, (a) no Update shall serve to reduce the features and functionality or the scope of Cloud Service provided under the Contract without Customer’s prior written consent; and (b) any Update that requires a change to Customer’s systems, processes or manner of access to the Cloud Service shall be subject to Customer’s prior written approval. To the extent Supplier acquires some or all components of the Cloud Service and associated Supplier Infrastructure from third parties, Supplier shall be responsible for obtaining appropriate Updates and upgrades from such third-party suppliers and applying them in a manner that does not disrupt the provision of the Cloud Service.

**A2.3 Protection against Malicious Code and Disabling Devices.** Supplier will not knowingly introduce any malware, viruses, worms, Trojan horses, spyware, logic bombs, disabling code, other computer instructions, devices, techniques or other malicious code into the Cloud Service that can or were designed to threaten, infect, assault, vandalize, defraud, disrupt, damage, disable, alter, inhibit or shut down the Cloud Service or any KP Entity’s processing environment, or intended by Supplier to limit the use of the Cloud Service to particular computers, servers or processors/CPUs (**“Malicious Code”**). Supplier will implement reputable and industry standard virus detection/scanning program(s) to scan all files transmitted to Customer and all Supplier Infrastructure used to provide the Cloud Services. Supplier shall continuously update such virus detection/scanning program(s) for the detection, prevention, and recovery to protect against Malicious Code and will also implement appropriate user awareness procedures.



**A2.4 Restrictions on Use of Cloud Service.** Except for use by Authorized Users as permitted herein, Customer may not (i) sell, assign, sublicense or otherwise transfer the Cloud Service to third parties outside of any KP Entities, (ii) resell the Cloud Service to third parties outside of any KP Entities; (iii) use the Cloud Service to provide or perform service bureau processing, or hosting services for any third party outside of any KP Entities; or (iv) use the Cloud Service to knowingly transmit malware, spam or other unsolicited emails in violation of Law, or to post or send any unlawful, threatening, harassing, racist, abusive, libelous, pornographic, defamatory, obscene, or other similarly inappropriate content.

**A2.5 Prohibited Tracking.** Without Customer's prior written approval, Supplier shall not do any of the following: (i) implant any "cookies" on any computer of any KP Entity or its Authorized Users, except as necessary for the Cloud Service to perform for Customer in conformity with its Documentation (and not for purposes of monitoring users or usage within or outside of the Cloud Service) or as explicitly authorized in writing by Customer, (ii) track the Internet usage or other computer usage of Kaiser and its Authorized Users except as explicitly authorized in writing by Customer, (iii) use any data or information of any KP Entities or Authorized Users to directly or indirectly market products or services to any KP Entities or Authorized Users, and (iv) transfer or sell any lists of Authorized Users to any third party.

**A2.6 Implementation Services.** If Implementation Services are required in the Contract, Supplier shall provide such Implementation Services on the terms and schedule set forth therein. The performance of any software development or customization services is outside the scope of the Contract.

**A2.7 Acceptance Testing.** If Acceptance Testing is provided in the Contract, Customer shall have at least thirty (30) days from the Delivery Date of the Cloud Service to perform initial acceptance testing of the Cloud Service ("**Acceptance Period**"). At the end of the Acceptance Period, Customer shall either inform Supplier that Cloud Service is accepted or identify in reasonable detail why the Cloud Service failed to meet the applicable Specifications. Supplier shall have ten (10) business days to address Customer's concerns. If, at the end of such ten (10) business day period, Customer determines the Cloud Service continues to fail to meet its Specifications, Customer may, at its option, either (i) terminate the Contract and receive a refund of any fees paid, or (ii) extend the time for Supplier to address Customer's concerns. Customer's acceptance of the Cloud Service will not limit the obligations of Supplier under the warranty or Service Level provisions of the Contract.

**A2.8 Additional Invoicing Requirements.** In addition to the invoicing and payment requirements in the **Terms and Conditions**, unless otherwise set forth in the Contract, Supplier will not invoice Customer and Customer shall not be obligated to pay any Fees: (a) for the Cloud Service until the Go-Live Date has occurred; and (b) for Implementation Services until Supplier has completed the Implementation Services and they have been accepted by Customer.

### **A3. KP DATA**

**A3.1 Risk of Data Loss.** In the event any KP Data is damaged, lost or destroyed due to any act or omission of Supplier, Supplier shall be responsible for the prompt regeneration or replacement of such information. Supplier shall prioritize this effort so that the loss will not have an adverse effect upon Customer's business or Supplier's provision of the Cloud Service. Customer agrees to cooperate with Supplier to provide any available information, files or raw data needed for the regeneration of the lost information. If Supplier fails to correct or regenerate the lost or destroyed information within the period of time reasonably set by Customer, then Customer may obtain data reconstruction services from a third party, and Supplier shall cooperate with such third party as requested by Customer.

**A3.2 Disposition of KP Data upon Expiration or Termination.** Upon expiration or termination of the Contract (or as part of Transition Assistance, if applicable), Supplier will either provide KP Data in Supplier's or its subcontractors' possession to Customer in the format(s) reasonably requested by Customer or Customer's designee and destroy any residual copies in its/their possession or destroy the KP Data without providing a copy to Customer, as directed by Customer. Supplier shall not be obligated to destroy KP Data maintained in archival form if destruction is infeasible, and any such KP Data

retained shall only be used for archival purposes and will remain subject to the confidentiality terms of the Contract, and the requirements in the Data Security Addendum and/or Business Associate Agreement, if applicable.

#### **A4. TRANSITION ASSISTANCE**

If Transition Assistance is required in the Contract, Supplier shall provide the transition assistance (“**Transition Assistance**”) described in this Section and shall cooperate in an orderly and efficient transition to a KP Entity or to a successor vendor of a KP Entity commencing upon Customer request and continuing for a period up to twelve (12) months after the end of the Term (the “**Transition Period**”). Except as otherwise mutually agreed by the parties, during the Transition Period, Supplier will continue to provide the same level and quality of the Cloud Service required under the Contract as in effect during the period ninety (90) days prior to the start of the Transition Period and Customer will pay the same fees therefor. The parties acknowledge and agree that the overriding principle of the transition shall be maintenance of the continuity of the Cloud Service and Customer satisfaction; and Supplier agrees to provide all services reasonably required by Customer to achieve this principle and a seamless transition. Supplier shall provide Transition Assistance to the KP Entity or its designee regardless of the reason for the expiration or termination of the Contract. Termination of the Contract shall not act as a waiver of any breach of the Contract and shall not act as a release of either party from any liability for breach of such party’s obligations under the Contract.