

## 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.

**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. 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/formsregs/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. If Supplier is providing website Products/Services that will be accessible to the public, then Supplier warrants that its Products/Services are accessible for users with disabilities by meeting the Web Content Accessibility Guidelines (WCAG) 2.0, Level AA. 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, 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) 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.** Unless otherwise specified in the Contract, Customer may terminate or cancel a Contract in whole or in part without cause prior to delivery of Products/Services. Customer may also terminate a Contract with or without cause upon 30 days' prior written notice. In the event of early termination or cancellation, 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; and (iv) automobile liability insurance with limits of not less than \$1,000,000 covering use of any auto. 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, workers' compensation insurance, employee benefits, any payroll-related taxes and any other employment related liability for its workers.

**5.2. Confidentiality and No Publicity.** The Contract, including any data, information, documents or communications disclosed or provided by Customer or KP Entities (or their consultants, contractors and/or agents) as part of the Contract, is the property of Customer and is deemed to be confidential and proprietary information of Customer. Supplier will not, without Customer's prior written consent, disclose to any third party any confidential or proprietary information made available to Supplier in connection with the Contract or use such information or data for any purpose other than performance of the Contract, regardless of whether such information or data are de-identified or aggregated, including information about Customer's operations, members, patients or strategies. Upon request, Supplier will return or destroy any such confidential or proprietary information of Customer. Notwithstanding the foregoing, disclosure of confidential information by a Supplier shall not be precluded if such disclosure is required by a law, valid subpoena, or other order of a court or government entity, provided that Supplier provides prompt written notice to Customer sufficiently in advance to permit Customer to contest the disclosure or seek an appropriate protective order. 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, 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.

### **5.3. Legal Requirements.**

**5.3.1. 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.

**5.3.2 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.

**5.3.3. Federal Flowdown 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 Flowdown Requirements, available for review at <http://supplier.kp.org/formsreqs/index.html>.

**5.4. 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/formsreqs/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/formsreqs/index.html>, including without limitation, requirements for site access and visitation, health and drug screening, background checks, data security and quality assurance. 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.

**5.5. 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.

**5.6. 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.

**5.7. 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**. 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. The Contract, which incorporates the **Terms and Conditions**, constitutes the entire agreement between Customer and Supplier for the Products/Services described in the Contract.

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