

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/formsregs/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/formsregs/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 issue any refunds/credits due to Customer within 30 days from receipt of returned products or the cancellation of an order, as applicable.

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 will be 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/formsregs/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 and Deliverables. Unless otherwise agreed in writing in the Contract, Supplier agrees that Customer will be the exclusive owner of any creative or custom work product or deliverables performed or developed by Supplier specifically for Customer under the Contract (the "**Deliverables**"), 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 Deliverables. To the extent that title to any Deliverables 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 Deliverables. 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 Deliverables, to any extensions and renewals thereof and in and to all modifications, enhancements, and derivative works of the Deliverables.

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. 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 the Kaiser Permanente National Recall Department (kp-product-recall@kp.org) of any Product recalls not more than 24 hours after Supplier first learns of the recall. Supplier must also send the Kaiser Permanente National Recall Department a list of all affected facilities and the lot numbers of affected Products (if applicable). 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 Contract 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 Deliverables, 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 any applicable business associate agreement, 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.

5.4.2. Business Associate and Data Security Requirements. If, due to the nature of the Products/Services provided, Supplier is acting as a business associate pursuant to HIPAA, Supplier agrees to comply with the terms of the written business associate agreement executed by Supplier and applicable to Customer, or if no such applicable business associate agreement between the parties exists, then Supplier shall comply with the terms of the Kaiser Permanente Business Associate Agreement, as updated from time-to-time, available for review at <http://supplier.kp.org/formsreqs/index.html>, and incorporated herein by this reference. Supplier may also be subject to additional data security requirements, including an information security assessment by Customer and supplemental contractual terms and conditions (see Section 5.5).

5.4.3. 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.

5.4.4. 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>.

5.4.5. Federal Program Participation. Supplier is not and shall not be debarred, suspended, excluded, precluded (i.e., included on the "preclusion list" as defined under 42 C.F.R. §422.2 (Preclusion List)) or have otherwise opted out from receiving a contract or subcontract funded in whole or in part by federal or state funds, including without limitation Medicare and Medicaid funds. Supplier shall ensure that no persons or entities employed by or contracted with Supplier to provide services under the Contract are sanctioned by or debarred, suspended, excluded, precluded or

have opted out from, participation in Medicare or Medicaid under Sections 1128 or 1128A of the Social Security Act; and if Supplier becomes aware that it has employed or contracted with such a person or entity, Supplier will take prompt and appropriate remedial action to remove the Employee or contractor from providing services under this Contract. Supplier will review DHHS OIG List of Excluded Individuals and Entities (LEIE list) and the GSA Excluded Parties Lists System (EPLS) prior to initial hiring or contracting and monthly thereafter to ensure that employees and contractors providing services under the Contract are not so sanctioned, debarred, suspended, excluded, or have otherwise opted out of participating in Medicare. "Employees" shall be defined as those employees (including contingent workers and volunteers) who have involvement in the administration or delivery of services under the Contract. Supplier shall also ensure that payments are not made to individuals and entities included on the Preclusion List.

5.4.6. CA Department of Managed Health Care Regulatory Program Requirements. The California Department of Managed Health Care Regulatory Program Requirements for Vendors, Contractors and Suppliers contains the additional contractual provisions required by the California Department of Managed Health Care (DMHC) to be included in certain agreements between Kaiser Foundation Health Plan, Inc. and its suppliers. Each supplier providing services is required to review and, where applicable, comply with the California Department of Managed Health Care Regulatory Program Requirements, available for review at <http://supplier.kp.org/formsreqs/index.html>.

5.4.7. Medi-Cal HIPAA Flow-Down Requirements. Kaiser Foundation Health Plan, Inc., as a Medicaid managed care contractor of the California Department of Health Care Services ("DHCS"), is required to flow-down the DHCS' Medi-Cal HIPAA Requirements to its suppliers that create, receive, maintain, transmit, use or disclose Medi-Cal Member Information. Kaiser Foundation Hospitals may procure goods/services for the benefit of Kaiser Foundation Health Plan, Inc., and in such cases, is also required to flow-down the Medi-Cal HIPAA Requirements. If supplier will create, receive, maintain transmit, use or disclose Medi-Cal member information, then supplier must review, and if applicable, comply with the provisions applicable to contractors in the Medi-Cal HIPAA Flow-Down Requirements, available for review at <http://supplier.kp.org/formsreqs/index.html>.

5.5. Additional Customer Requirements and Guidelines. 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: Business Continuity Planning, Quality Assurance Program, Clinical Technology, Background Check, Drug Screening, Health Screening, Vendor Portal Registration Program, Vendor Financial Risk Assessment Program, Computer System Access, Web-Based Products and Services Accessibility, Data Security Requirements, Edge Security Requirements, Payment Card Industry (PCI) Data Security Requirements, Solution Delivery Life Cycle (SDLC) Requirements, Distribution and Transportation Guidelines, Rules of Engagement for Product Evaluation, Environmentally Preferable Purchasing (EPP) Program, and Site Access and Visitation: Vendor Visitation Requirements and Doing Business with Kaiser Permanente Brochure.. 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. See COVID-19 - Addendum B below - for additional terms and conditions relating to COVID-19.

5.10. Changes to Terms and Conditions. Kaiser reserves the right to change or modify these Terms and Conditions, or any of the online Requirements and Guidelines as set forth at <http://supplier.kp.org/formsreqs/index.html>, at any time. Kaiser will provide notice by posting the updated Terms and Conditions, Requirements and Guidelines on Kaiser's website and revising the date at the bottom of any updated document. Any changes or modifications will be effective from the day the updated document is published at <http://supplier.kp.org/formsreqs/index.html>. You acknowledge that your continued sale of goods and services to Kaiser following such notice constitutes your acceptance of the modified Terms and Conditions, Requirements and Guidelines.

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 any applicable business associate agreement.

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.

COVID-19

Addendum B - FEMA-Required Provisions Applicable to Vendor Contracts for the Purchases of Goods and Services Funded or Reimbursed by FEMA - including the clauses marked with an asterisk (*) which are additional requirements for construction contracts.

The following contract provisions are required by the regulations at 2 C.F.R. Part 200 or by FEMA guidance to be included in all contracts funded in whole or in part with a FEMA Public Assistance grant. These terms shall be in effect for all costs associated with COVID-19 and shall remain in effect until Kaiser has determined that the Contract's costs are no longer reimbursable in whole or in part with FEMA Public Assistance funding; provided, however, the terms regarding Access to Books and Records shall remain in effect for a period of 5 years after the date of transmission by the State to FEMA of final certification of costs for closeout.

I. TERMINATION FOR CONVENIENCE

This Contract may be terminated, in whole or in part, without cause, in accordance to the terms of the base Contract.

II. TERMINATION FOR CAUSE & REMEDIES

Customer reserves the right to terminate this Contract immediately, in whole or in part, at its sole discretion, for the following reasons:

- A. Lack of funding. Lack of, or reduction in, funding or resources in which instance, Customer shall provide the Supplier ten (10) days written notice of such termination or lack of funds;
- B. The Supplier's failure to comply with any terms of the Contract, including, but not limited to, provisions of this Contract Attachment, FEMA Required Contract Provisions;
- C. The Supplier's submission of invoices, data, statements and/or reports that are incorrect, incomplete and/or false in any way; and/or
- D. In Customer's sole discretion, if termination is necessary to protect the health and safety of its personnel, members, patients or visitors.

III. REMEDIES

If any work performed by the Supplier fails to meet the requirements of the Contract, any other applicable standards, codes or laws, or Supplier otherwise breaches the Contract, Customer may in its sole discretion:

- (i) elect to have the Supplier re-perform or cause to be re-performed at Supplier's sole expense, any of the work which failed to meet the requirements of the Contract;
- (ii) hire another supplier to perform the work and deduct any additional costs incurred by Customer as a result of substituting a supplier from any amounts due to Supplier; or
- (iii) pursue and obtain any and all other available legal or equitable remedies.

This Section shall in no way be interpreted to limit Customer's right to pursue and obtain any and all other available legal or equitable remedies against Supplier.

IV. EQUAL EMPLOYMENT OPPORTUNITY*

During the performance of this Contract, the Supplier agree as follows:

- 1. The Supplier will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Supplier will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Supplier agree to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2. The Supplier will, in all solicitations or advertisements for employees placed by or on behalf of the Supplier, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The Supplier will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Supplier's legal duty to furnish information.
4. The Supplier will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Supplier's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
5. The Supplier will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
6. The Supplier will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
7. In the event of the Supplier's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Supplier may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
8. The Supplier will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractors or vendor. The Supplier will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event Supplier becomes involved in, or is threatened with, litigation with a subcontractors or vendor as a result of such direction by the administering agency, the Supplier may request the United States to enter into such litigation to protect the interests of the United States.

Customer further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if Customer so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

Customer agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Supplier and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

Customer further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with Supplier debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Supplier and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, Customer agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to Customer under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such State; and refer the case to the Department of Justice for appropriate legal proceedings.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT*

- (1) Overtime requirements. No Supplier or subcontractors contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.
- (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the Supplier and any subcontractors responsible therefor shall be liable for the unpaid wages. In addition, such Supplier and subcontractors shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. Customer Emergency Management Agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Supplier or subcontractors under any such contract or any other Federal contract with the same prime Supplier, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime Supplier, such sums as may be determined to be necessary to satisfy any liabilities of such Supplier or subcontractors for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts. The Supplier or subcontractors shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime Supplier shall be responsible for compliance by any subcontractors or lower tier subcontractors with the clauses set forth in paragraphs (1) through (4) of this section.

VI. COMPLIANCE WITH CLEAN AIR AND CLEAN WATER ACT

CLEAN AIR ACT

- (1) The Supplier agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The Supplier agrees to report each violation to Customer and understands and agrees that Customer will, in turn, report each violation as required to assure notification to Federal Emergency Management Agency and the appropriate Environmental Protection Agency Regional Office.
- (3) The Supplier agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

FEDERAL WATER POLLUTION CONTROL ACT

- (1) The Supplier agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq.
- (2) The Supplier agrees to report each violation to Customer and understands and agrees that Customer will, in turn, report each violation as required to assure notification to Federal Emergency Management Agency and the appropriate Environmental Protection Agency Regional Office.
- (3) The Supplier agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with federal assistance provided by FEMA.

VII. SUSPENSION AND DEBARMENT

Federal regulations restrict Customer from contracting with parties that are debarred, suspended, or otherwise excluded from or ineligible for participation in Federal assistance programs and activities, where the contract is funded in whole or in part with federal funds. Accordingly, a contract or subcontract must not be made with any parties listed on the SAM Exclusions list. SAM Exclusions is the list maintained by the General Services Administration that contains the name of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under certain statutory or regulatory authority. The Supplier can verify its status and the status of its principals, affiliates, and subcontractors at www.SAM.gov.

- (1) This Contract is a covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such the Supplier are required to verify that none of the Supplier, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The Supplier must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- (3) This certification is a material representation of fact relied upon by Customer. If it is later determined that the Supplier did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to the Recipient, Subrecipient and Customer, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000,

subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

VIII. BYRD ANTI-LOBBYING AMENDMENT

Suppliers who apply or bid for an award of \$100,000 or more shall file the required certification found at APPENDIX A, 44 C.F.R. PART 18. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

Certification for Contracts, Grants, Loans, and Cooperative Agreements
(to be submitted with each bid or offer exceeding \$100,000)

The undersigned certifies, to the best of his or her knowledge and belief, that:

- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
- (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The Supplier, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Supplier understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

_____ Date _____

Signature

Name:

Title:

IX. CHANGES

Any changes to the scope of work, price, or schedule shall be done in accordance with the terms of the Contract.

X. ACCESS TO RECORDS

The following access to records requirements apply to this Contract:

- A. The Supplier agrees to provide Customer, the FEMA Administrator, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Supplier which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions.
- B. The Supplier agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- C. The Supplier agrees to provide the FEMA Administrator or his authorized representatives access to construction or other work sites pertaining to the work being completed under the Contract.
- D. In compliance with the Disaster Recovery Act of 2018, the Customer and the Supplier acknowledge and agrees that no language in this Contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.

XI. DHS SEAL, LOGO AND FLAGS

The Supplier shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.

XII. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

This is an acknowledgement that FEMA financial assistance will be used to fund the Contract, in whole or in part. The Supplier will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.

XIII. NO OBLIGATION BY FEDERAL GOVERNMENT

The Federal Government is not a party to this Contract and is not subject to any obligations or liabilities to Customer, the Supplier, or any other party pertaining to any matter resulting from the Contract.

XIV. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

The Supplier acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Supplier's actions pertaining to this Contract.

XV. PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES

- A. Definitions. As used in this clause, the terms *backhaul*; *covered foreign country*; *covered telecommunications equipment or services*; *interconnection arrangements*; *roaming*; *substantial or essential component*; and *telecommunications equipment or services* have the meaning as defined in FEMA Policy, #405-143-1 Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services.

B. Prohibitions.

(1) Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.

(2) Unless an exception in paragraph (C) of this clause applies, Supplier and its subcontractors may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- (i) Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (ii) Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- (iii) Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- (iv) Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

C. Exceptions.

(1) This clause does not prohibit Supplier from providing—

- a. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
- b. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.

(2) By necessary implication and regulation, the prohibitions also do not apply to:

- a. Covered telecommunications equipment or services that:
 - i. Are not used as a substantial or essential component of any system; and
 - ii. Are not used as critical technology of any system.
- b. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

D. Reporting requirement.

(1) In the event Supplier identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or Supplier is notified of such by a subcontractor at any tier or by any other source, Supplier shall report the information in paragraph (D)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.

(2) Supplier shall report the following information pursuant to paragraph (D)(1) of this clause:

- (i) Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.
- (ii) Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, Supplier shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

E. Subcontracts. Supplier shall insert the substance of this clause, including this paragraph in all subcontracts and other contractual instruments.