

**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 (“Terms and Conditions”) apply to Purchase Orders which incorporate by reference these Terms and Conditions unless the Parties have agreed in writing to use other terms and conditions. These Terms and Conditions also apply to written agreements which incorporate by reference these Terms and Conditions. Please retain a copy for your files.

1. DEFINITIONS

For the purposes of these Terms and Conditions, unless the context otherwise requires, words in the singular shall include the plural and words in the plural shall include the singular. This provision is intended to ensure that all terms are interpreted consistently and comprehensively throughout these Terms and Conditions, thereby avoiding any ambiguity or misinterpretation.

- 1.1. “Agreement” means the written agreement, or Purchase Order, Statement of Work, or the like which refers to or incorporates the Terms and Conditions by reference. By this reference, these Terms and Conditions and Addendums are hereby incorporated into and form a part of the Agreement.
- 1.2. “Capital Equipment Product” are individually priced at \$5,000 or more.
- 1.3. “Change Order” means a mutually executed amendment to a PO which specifies changes to the Products and Services and any resulting changes to the schedules and/or Fees.
- 1.4. “Confidential Information” means information that is disclosed to or otherwise acquired by the Receiving Party in the course of or as a result of its performance under the Agreement that is not generally available to the public, including the terms of the Agreement, and purchases, operations, customers, and strategies.
- 1.5. “Customer” means any KP Affiliate purchasing Products and Services under the Agreement.
- 1.6. “Delivery Location” means the location specified by the Customer to which a Product must be delivered.
- 1.7. “Disclosing Party” means the entity disclosing Confidential Information to Receiving Party.
- 1.8. “Dispute” means a controversy or claim of any kind or nature arising under or in connection with the Agreement.
- 1.9. “Fees” means the prices for Products and Services set forth in the Agreement.
- 1.10. “Force Majeure Event” means an event resulting from causes beyond Customer or Supplier’s reasonable control, including fire or other casualty, act of God, pandemic, war or other violence, or any law, order or requirement of any governmental agency or authority.
- 1.11. “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, P.L.104-191 and the HITECH Act, each, as amended, and all regulations promulgated thereunder.
- 1.12. “Intellectual Property Rights” means all intellectual property or other proprietary rights worldwide, including patents, copyrights, trademarks, service marks, trade names, domain name rights, know-how, moral rights, trade secrets and all other intellectual or industrial property, including all associated applications, registrations, renewals and extensions of those rights.
- 1.13. “KP Affiliate” means (i) an entity participating in the integrated health care delivery system doing business as Kaiser Permanente®, including Kaiser Foundation Health Plan, Inc., Kaiser Foundation Hospitals, the Permanente Medical Groups, and all subsidiaries and successors of the foregoing, and (ii) Risant Health, Inc. and Kaiser Permanente Insurance Company, and all subsidiaries, and successors of the foregoing.
- 1.14. “KP Indemnified Party” means KP Affiliates and their respective officers, directors, employees, and agents.
- 1.15. “KP Losses” means all liabilities, damages, claims, costs, expenses (including fees of attorneys and expert witnesses) and other losses.

- 1.16. "Law" means all federal, state, and local statutes, implementing regulations, executive orders, ordinances, and case law applicable to a Party to the Agreement and its operations and business, including governmental healthcare program statutes, the Anti-Kickback Statute (42 U.S.C. § 1320a-7b), the Stark Law (42 U.S.C. § 1395nn), regulations, and policies, established by any governmental or administrative body, instrumentality, department or agency, or by any accreditation or standards bodies that establish standards and/or protocols in the respective countries, states, and localities where a Party is located or where any actions or obligations concerning the Agreement take place by a Party or its contractors.
- 1.17. "Notice" means a written communication provided to a Party at the Party's address in the Agreement or at such other address as the Party may designate in writing.
- 1.18. "Party" means Supplier or Customer.
- 1.19. "Parties" means Supplier and Customer.
- 1.20. "Product" means any item identified in the Agreement that Supplier is offering for sale to Customer, including related documentation, deliverables, Software, spare parts, and upgrades.
- 1.21. "Purchase Order" or "PO" means a purchase order for Products and Services issued by Customer to Supplier under the Agreement.
- 1.22. "Receiving Party" means the entity receiving Confidential Information from the Disclosing Party.
- 1.23. "Services" means any services that Supplier is offering for sale to Customer under the Agreement.
- 1.24. "Specifications" means the descriptions, functional and technical requirements, documentation and all other requirements for the Products and Services identified in the Agreement.
- 1.25. "Software" means the software program(s) identified in the Agreement, or included or supplied with the Products, including any bug fixes, patches, updates or new releases of the Software provided by Supplier.
- 1.26. "Statement(s) of Work" or "SOW(s)" means agreements between Customer and Supplier that outlines the Services to be provided, the fees, deliverables, and acceptance criteria.
- 1.27. "Supplier" means a vendor, contractor or supplier providing Products and/or Services under the Agreement.
- 1.28. "Supplier Indemnified Party" means Supplier and its respective officers, directors, employees, and agents.
- 1.29. "Supplier Losses" means damages, claims, costs (including fees of attorneys and expert witnesses) or other losses.
- 1.30. "Supplier Personnel" means any individuals who are engaged by Supplier, either directly or indirectly through one or more contractors, subsidiaries or affiliates, to perform Services.

2. PRODUCTS AND SERVICES

2.1. Products.

- 2.1.1. Packaging. Products must be properly packed. Shipping containers must identify the PO number, UPC barcodes, expiration date and other Product identifiers reasonably required by Customer. All shipments must include a packing slip.
- 2.1.2. Discontinuing Products. Supplier will not discontinue (i) Product without twelve (12) months' prior written notice to Customer, or (ii) Services during the useful life of the Products.
- 2.1.3. Software License. For Software, Supplier grants Customer (i) a non-exclusive, worldwide, perpetual, and unlimited (unless stated otherwise in the Agreement) license to install, display, access, store and use any software and documentation supplied by Supplier (including updates and modifications) for the benefit of KP Affiliates, and (ii) the right to make and use a reasonable number of copies of the (a) software and Documentation (defined in Addendum A - Additional Terms and Conditions for the Procurement of IT Technology and Services ("Addendum A")) for testing, back-up, archival and disaster recovery purposes, and (b) documentation for internal training, support and deployment. Customer's consultants and contractors may exercise Customer's license rights when

providing services to Customer. For Capital Equipment Products, this license also includes, at no additional charge, the right to freely assign the license to any of Customer's affiliates for use with the Products, and if so assigned, the right to subsequently assign the license from one affiliate to another affiliate. In the event Customer determines that the supply of Capital Equipment Products should be made to a third-party lessor that will then lease the Capital Equipment Product to Customer, Supplier hereby grants the license in all Software hereunder to the lessor, at no additional charge, together with the right to freely assign the license to Customer inclusive of all rights specified in this section. Supplier will provide maintenance and support for Software as provided in Addendum A and Addendum B - Service Level Agreement.

- 2.1.4. IT Technology and Services. If Supplier provides Cloud Service, Software, Implementation Services, consulting or professional Services, IT equipment or hardware, and/or Online Content (collectively, "IT Technology and Services"), the Additional Terms and Conditions for the Procurement of IT Technology and Services, attached as Addendum A below, shall apply and are by this reference incorporated into the Agreement. "Cloud Services," "Implementation Services," and "Online Content" are defined in Addendum A, Section A1 (Definitions) below.
- 2.2. Purchase Orders. Customer may issue PO(s) to purchase Products and Services, and each PO constitutes a separate and independent agreement between Supplier and Customer. Customer may change a PO prior to the shipment date by issuing a Change Order.
- 2.3. Shipment of Products. Unless otherwise specified in a PO, Supplier must ship (i) Product using the method identified below, (ii) Product to the Delivery Location within two days after receipt of the PO and (iii) all Product and Services identified on the PO at one time, unless Customer has provided prior written approval for partial shipments.
 - 2.3.1. Products Excluding Capital Equipment. Fees for non-Capital Equipment Products include shipping the Products FOB Origin, Freight Collect, with risk of loss passing to Customer upon delivery to Customer's common carrier. Supplier will arrange shipment using the carrier, shipping and billing information provided by Customer, and will comply with the Distribution and Transportation requirements posted on KP's Supplier Information website: <http://supplier.kp.org/formsreqs/index.html>.
 - 2.3.2. Capital Equipment. Fees for Capital Equipment Product include shipping the Products FOB Destination, with risk of loss passing to Customer upon delivery to Customer. However, Supplier will ship the Products FOB Origin, Freight Collect using the Customer carrier and billing information, if the Customer requests such shipping, and Supplier will decrease the Fees by removing the cost of freight.
 - 2.3.3. Software. All Software not embedded in the Products and Cloud Services (defined in Addendum A) must be delivered to Customer electronically.
- 2.4. Product Returns.
 - 2.4.1. If Products or Services do not conform to the Specifications, Customer may (i) return any or all of the Products, at Supplier's expense, for a full refund or (ii) require Supplier to promptly replace, repair or re-perform non-conforming Products and/or Services and reimburse Customer for its reasonable costs and expenses for collecting and transporting rejected Products to Supplier.
 - 2.4.2. Failure of Customer to inspect and test the Products or Services will not relieve Supplier from its obligations under the Agreement.
- 2.5. Product Recalls. In addition to any notification required by Law, within twenty-four (24) hours of Supplier learning of a recall or other circumstance where a Product may present an unreasonable risk of substantial harm, Supplier will notify (i) the Kaiser Permanente National Recall Department (kp-product-recall@kp.org) and (ii) any Customer that received or ordered the affected Product, and the notification will include specific information related to the recall and suggested action to be taken by the Customers. Supplier must use reasonable commercial efforts to monitor the recall status. Supplier must reimburse each Customer for its reasonable costs associated with a recall.
- 2.6. Training Materials. Prior to shipment of Products or Services that require education for proper operation, Supplier will provide Customer with necessary training, documentation, assistance, or

other problem solutions, including training materials, at no additional cost, unless specified in the Agreement.

- 2.7. Tools. Supplier will ensure that Supplier Personnel and Supplier's contractors and subcontractors will have the hardware, software, computers, networking capabilities and other tools ("Tools") necessary to perform the Services.
- 2.8. Reservation of Security Interest Prohibited. Supplier will not (i) reserve a security interest in the Products, (ii) encumber Products or (iii) impair a Customer's ability to obtain financing of Products.

3. FEES AND PAYMENT

- 3.1. Fees. Supplier will provide the Products and Services for the Fees identified in the Agreement. For Capital Equipment Products, Supplier will separately state the purchase price of the tangible components and the intangible Software components for each piece of Capital Equipment Product based on reasonable agreed upon Software percentages. Supplier and Customer acknowledge that all POs and invoices will also reflect separately stated amounts for the tangible components and the intangible Software components.
- 3.2. No Minimum Obligation. Customer has no minimum purchase obligations or any restrictions from purchasing similar products and services from other suppliers. Supplier has no minimum sales obligations or any restrictions from selling similar products and services to other customers.
- 3.3. Invoicing. Supplier invoices must comply with the Invoice and Accounts Payable Requirements posted on KP's Supplier Information website: <http://supplier.kp.org/formsreqs/index.html>. Supplier will not issue an invoice for Products and Services until the shipment date.
- 3.4. Payment Terms. Customer will pay Supplier within forty-five (45) days (or within fifteen (15) days for a 2% rebate) of receipt of an accurate, complete, and undisputed invoice. Supplier will not place any Customer on credit hold for any reason. If Customer disputes an invoice in whole or in part, Customer will provide written Notice to Supplier stating the amount and basis of Customer's objection. Customer and Supplier will work together in good faith to resolve the dispute. If Supplier submits a separate invoice to Customer for the undisputed portion of the disputed invoice, Customer will pay that undisputed invoice according to the Agreement.
- 3.5. Taxes.
 - 3.5.1. Direct Purchases of Products and Services. Supplier must pay any applicable local and state sales/use tax for the Products and Services purchased and any related Software transferred via separate tangible storage media. Supplier may invoice Customer for the cost (reflected separately) unless the Customer is tax-exempt. Should Supplier not be required to collect sales taxes on a taxable transaction, Customer will (i) self-assess use taxes, (ii) remit to the tax authorities and (iii) provide verification upon Supplier request.
 - 3.5.2. Property Taxes. The Party with title to a Product must pay any property tax.
 - 3.5.3. Federal Excise Tax. Supplier must pay any Federal Excise Tax and may invoice Customer if (i) it is required by law; and (ii) the costs are separately reflected on the invoice.
 - 3.5.4. Income or Payroll Taxes. Customers will have no obligation to Supplier, Supplier's employees, Supplier's subcontractors, or any governing body to withhold federal, state, or local income tax, payroll tax or other taxes relating to any Supplier Personnel.

4. REPRESENTATIONS AND WARRANTIES

- 4.1. Supplier Warranties. Supplier represents and warrants the following to (i) Customer, (ii) Customers' successors, assigns, customers, and users of the Products and Services, (iii) any other person or entity to whom Products and Services are transferred:
 - 4.1.1. The Products and Cloud Services will (i) be free from defects in design, workmanship, and materials, and (ii) operate in accordance with the applicable Documentation and conform to the applicable Specifications for 12 months from the date of delivery.
 - 4.1.2. All Services will be provided by trained Supplier Personnel and Supplier's contractors' and subcontractors' personnel who have the certifications, skills, and qualifications necessary to perform the Services in a timely, competent, and professional manner in accordance with industry standards, applicable Law and with the requirements in the Agreement.

- 4.1.3. Supplier's performance of the Services and provisioning of the Products, and the Products and Services will not violate any Law.
- 4.1.4. Consumable Products will have a minimum of twelve (12) month expiration date/shelf life from the shipment date.
- 4.1.5. Since Customer is a provider of health care services and any interruption of Customer's business could result in substantial liability, Supplier will not render Products or Services unusable or inoperable or in any way deliberately take any action to impede or interfere with the Products or Services or Customer's businesses.
- 4.1.6. The Products and Services do not include any of the following: (i) malware, viruses, worms, Trojan horses, spyware and other computer instructions, devices or techniques than can or were designed to threaten, infect, assault, vandalize, defraud, disrupt damage, disable, alter, inhibit or shut down the Products, Services or Customer's environment; or (ii) computer instructions, code or other disabling devices intended to limit the use of the Products or Services to particular computers, servers or processors/CPU's. Supplier will utilize industry standard anti-malware and advanced threat detection capabilities to aid in the detection and response to malware and will maintain commercially reasonable quality assurance and virus protection procedures to ensure that its systems and all software are free of viruses, contaminants, and other malicious code.
- 4.1.7. Supplier has good and merchantable title to the Products, and the Products delivered to Customer are free and clear of all liens and encumbrances.
- 4.2. Disclaimer of Warranty. EXCEPT FOR THE WARRANTIES SET FORTH IN THE AGREEMENT, SUPPLIER DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

5. TERM AND TERMINATION

- 5.1. Term. The Term of the Agreement can be extended by Customer and Supplier executing an extension amendment.
- 5.2. Termination without Cause. Customer may terminate the Agreement and any PO without identifying a cause upon thirty (30) days prior written Notice to Supplier.
- 5.3. Termination for Cause. Any Party may terminate the Agreement or a PO, if a material breach by the other Party has not been cured within thirty (30) days after receipt of Notice describing such breach in reasonable detail.
- 5.4. Effect of Termination.
 - 5.4.1. Termination of the Agreement does not terminate accepted POs, unless specifically stated in the termination Notice.
 - 5.4.2. Termination of the Agreement without cause does not excuse either Party from performing any obligation assumed prior to the effective date of termination.
 - 5.4.3. Termination of the Agreement or a PO for material breach (i) does not waive any right the non-breaching Party has to obtain performance, and (ii) does not preclude the non-breaching Party from pursuing any remedies available to it.
 - 5.4.4. Customer (i) will not be obligated to make any payments due on or after the effective date of termination of a PO for Supplier's material breach and (ii) will be entitled to a pro-rata refund of any prepayments.

6. REPORTS

- 6.1. Sales Records. Supplier must (i) provide Customer with periodic sales reports identifying the number of each Product and any Services distributed to Customers pursuant to the Agreement and (ii) not sell or distribute sales or usage information to anyone not a Party, including Customer personnel, without the prior approval of the Customer's personnel who originally requested the information.
- 6.2. Product Catalog. If requested, Supplier will deliver a Product and Services Catalog ("Catalog") to Customer with the information reasonably required by Customer to make informed purchasing decisions.

7. CONFIDENTIALITY

- 7.1 Confidentiality. The Receiving Party will (i) use the Disclosing Party's Confidential Information solely to the extent necessary for the performance of its obligations under the Agreement and not for its own benefit or the benefit of a third party, and (ii) take appropriate steps to protect the Disclosing Party's Confidential Information from any unauthorized use and disclosure; however, the Receiving Party may disclose Confidential Information to a third party having a need to know such Confidential Information to the extent necessary to perform the Receiving Party's obligations under the Agreement or as may otherwise be required by Law, but the Receiving Party is responsible to ensure that such third parties keep the Confidential Information confidential. The Receiving Party will, at the Disclosing Party's option, (i) deliver and return any and all Disclosing Party's Confidential Information, and all copies thereof, to the Disclosing Party, or (ii) destroy any and all Disclosing Party's Confidential Information with Notice of destruction to the Disclosing Party, upon (a) Disclosing Party's request and in any event upon the earlier of (b) the time when such Confidential Information is no longer necessary to perform Supplier's obligations under the Agreement and (c) any termination of the Agreement.

8. INDEMNIFICATION

- 8.1. General Indemnity by Supplier. Supplier will defend, indemnify, and hold each KP Indemnified Party harmless from and against all KP Losses brought by a third party against any KP Indemnified Party and arising out of, relating to, or in any way connected with any of the following by Supplier's, Supplier's Personnel, or Supplier's affiliates', subcontractors' or agents': (i) violation of Law; (ii) negligence or willful misconduct; (iii) breach of the Agreement or a SOW, including, if applicable, the KP Data Security Requirements, Business Associate Agreement or Offshore Services Addendum; or (iv) employment-related claims by Supplier's Personnel.
- 8.2. Infringement Indemnity. Supplier will defend, indemnify, and hold each KP Indemnified Party harmless from and against any KP Losses resulting from a claim that the Products (including Deliverables (defined in Addendum A), Software, or Services furnished to Customer, or use thereof, infringe any Intellectual Property Rights of any third party or has become the subject of an injunction or settlement prohibiting the use of the Products including Deliverables, Software, or Services. If there is a material, bona fide claim (or threat of a claim) of infringement, misappropriation, or violation of any Intellectual Property Right or other right of any third person in connection with the Products including Deliverables, Software, or Services, Supplier will promptly: (i) procure for Customer the right to continue using the Products including Deliverables, Software, or Services; or (ii) replace or modify the Products including Deliverables, Software, or Services to make them non-infringing; or (iii) if options (i) and (ii) are not feasible, refund to Customer all Fees paid for the Products including Deliverables, Software, or Services. This Section 8.2 states Supplier's entire liability and each KP Indemnified Party's sole and exclusive remedy with respect to third party claims of infringement or misappropriation of Intellectual Property Rights.

9. LIMITATION OF LIABILITY

- 9.1. Limitation of Liability. TO THE EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT AS SET FORTH IN SECTION 9.2 ("EXCEPTIONS"), IN NO EVENT WILL A PARTY BE LIABLE TO ANOTHER PARTY FOR ANY SPECIAL, PUNITIVE OR CONSEQUENTIAL LOSSES OR DAMAGES ARISING HEREUNDER, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE.
- 9.2. Exceptions. The limitation of liability in subsection 9.1 will not apply to: (i) confidentiality obligations; (ii) indemnification obligations; (iii) Supplier's product recall obligations; or (iv) gross negligence, recklessness, willful misconduct, or fraud.

10. GENERAL PROVISIONS

- 10.1. Assignment. No Party will assign, transfer or delegate any of the rights or obligations under the Agreement without the prior written consent of the other Party. The Agreement will inure to the benefit of and become binding upon the Parties and the successors and permitted assigns of the respective Parties. Any assignment in violation of this section will be null and void.
- 10.2. Compliance with Law. Each Party will comply with applicable Law in its performance of the Agreement. Supplier will reasonably cooperate with Customer to comply with the applicable Law, or regulatory requests or inquiries, that apply to Customer and/or relate to the Services or Products. To the extent Supplier's performance under this Agreement is performed from outside the United

States, Supplier will also comply with the following:

- (i) Foreign Corrupt Practices Act of the United States, 15 U.S.C. § 78 dd et seq., and the prohibited transactions and the penalties for violation thereof;
 - (ii) Anti-Boycott Regulations of the United States, 5 CFR, Part 369, promulgated under the U.S. Export Administration Act, 50 U.S.C. App. 2407; and
 - (ii) U.S. Export Administration Regulations of the United States.
- 10.3. Controlling Terms. Any pre-printed or online terms in Supplier’s invoice, ordering or similar documents, quote, proposal, acceptance, acknowledgement, or any “shrink-wrap,” “browse wrap” or “click-wrap” terms will be void. In the event that any such “shrink-wrap,” “browse wrap,” or “click-wrap” license or other agreement is required to be accepted to access and use the Products and Services, the Agreement will nevertheless apply and the terms of the “shrink-wrap,” “browse wrap,” or “click-wrap” license will be void. If there is a conflict between the terms of the Agreement (including these Terms and Conditions and Addendums thereto), a PO, and any exhibit or attachment, the Agreement will control and take precedence, unless expressly stated otherwise in the Agreement.
- 10.4. Dispute Resolution. If Customer or Supplier issues a written Notice of a Dispute, each Party will appoint a senior manager who will meet to resolve the Dispute. If the Dispute is unresolved after ten (10) business days, then upon the written request of either Party, each Party will appoint a senior business executive who will meet within ten (10) business days to resolve the Dispute. The executives will meet in good faith as often as reasonably necessary to resolve the Dispute. If a Dispute is not resolved within ninety (90) days after the initial written Notice, either Party may take any available at action in law or in equity. Nothing in this provision will prevent a Party from seeking equitable relief before commencing or during this informal dispute resolution processes.
- 10.5. Entire Agreement. The Agreement may be executed in one or more counterparts, including by exchange of electronic or PDF signatures having the same legal effect as though they were original signatures, and taken together will constitute a single Agreement. The Agreement is the entire agreement on this subject matter and supersedes all previous and contemporaneous communications, representations, or agreements among Customer, KP Affiliates and Supplier regarding the referenced subject matter. No modification, amendment, or supplement is binding unless in writing and signed by the Parties.
- 10.6. Force Majeure. No Party will be liable for delays resulting from a Force Majeure Event, if the Party claiming the Force Majeure Event uses reasonable efforts to continue to perform and gives prompt written Notice to the other Party. A Force Majeure Event does not excuse the Party claiming Force Majeure from fulfilling its business continuity plan. If a Force Majeure Event continues or is reasonably expected to continue for more than thirty days, the other Party may provide written Notice of immediate termination of the Agreement and/or any applicable PO.
- 10.7. Governing Law. The Agreement 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 Agreement will be exclusively in the state or federal courts in the county or district where Customer resides.
- 10.8. Headings. The headings of the Agreement are for convenience only and do not control or affect the meaning or construction.
- 10.9. KP Requirements. Supplier will comply with the following requirements posted on KP’s Supplier Information website: <http://supplier.kp.org/formsreqs/index.html>:
- 10.9.1. Insurance Requirements
 - 10.9.2. Business Associate Agreement
 - 10.9.3. Vendor Code of Conduct
 - 10.9.4. Business Continuity Planning Requirements
 - 10.9.5. Travel and Expense Guidelines
 - 10.9.6. Non-Endorsement Guidelines
 - 10.9.7. Quality Assurance Program
 - 10.9.8. Vendor Financial Risk Assessment Program Requirements
 - 10.9.9. Invoice and Accounts Payable Requirements
 - 10.9.10. Clinical Technology Service Request Requirements

- 10.9.11. Federal Flow-Down Requirements
- 10.9.12. CA Department of Managed Health Care Regulatory Program Requirements
- 10.9.13. Medi-Cal HIPAA Flow-Down Requirements
- 10.9.14. Background Check Requirements
- 10.9.15. Drug Screening Requirements
- 10.9.16. Health Screening Requirements
- 10.9.17. Vendor Portal Registration Program Requirements
- 10.9.18. Computer System Access Requirements
- 10.9.19. Digital Products and Services Accessibility Requirements
- 10.9.20. Data Security Requirements
- 10.9.21. Edge Security Requirements
- 10.9.22. Payment Card Industry Requirements
- 10.9.23. IT Solution Delivery Life Cycle Requirements
- 10.9.24. Distribution and Transportation Guidelines
- 10.9.25. GS1® Healthcare Requirements
- 10.9.26. Supplier Rules of Engagement for Medical Product Evaluations
- 10.9.27. Impact Spending
- 10.9.28. Vendor Visitation Requirements
- 10.9.29. Doing Business with Kaiser Permanente Brochure

The above requirements described in this Section 10.9 are hereby incorporated into these Terms and Conditions by this reference.

- 10.10. No Publicity. No Party will use the names, trade names, service marks, trade dress or logo of the other Party or its affiliates or refer to the existence of the Agreement or any PO to any third parties without the prior written consent of the other Party.
- 10.11. No Waiver. No waiver is (i) effective unless in writing and signed by the waiving Party and (ii) a waiver of any further performance.
- 10.12. Notices. All Notices will be (i) sent to the recipient and at the address specified in the signature block or as updated by the other Party in a subsequent Notice and (ii) effective when delivered (a) personally, (b) by a nationally recognized overnight delivery service, (c) by registered or certified mail, postage prepaid or (d) by email provided that delivery can be confirmed.
- 10.13. Relationship of the Parties. Supplier is an independent contractor, and no Party is, nor will be, considered an agent of the other Party. Nothing in the Agreement or any PO will establish a relationship of partners or joint venture between Supplier and Customer. No Party has authorization to enter into any contracts, assume any obligations or make any warranties or representations on behalf of the other Party. 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. Nothing in the Agreement will be construed to establish a relationship of co-partner or joint ventures among the Parties to the Agreement or Parties to a PO.
- 10.14. Remedies Cumulative. The rights and remedies under the Agreement are not exclusive and are in addition to any other rights and remedies provided by law.
- 10.15. Right to Inspect. Upon fifteen (15) business days' Notice from Customer, Supplier will (i) provide Customer's internal auditors (or Customer identified independent auditors that have agreed to reasonable confidentiality provisions) with access to, and the right to make copies of, records and related materials (invoices and time and expense records) reasonably required to verify the accuracy of invoices and (ii) cooperate with the inspection. If an audit reveals a variance in excess of 2% of the amount of the total invoices reviewed, Supplier will reimburse Customer for all reasonable costs and expenses incurred in conducting such audit, in addition to the Parties compensating each other for any discrepancies.
- 10.16. Severability. If any part of the Agreement is invalid, illegal, or unenforceable, the remaining parts will remain in effect.
- 10.17. Subcontractors. Supplier will not subcontract or delegate any Services without Customer's prior written consent, and Supplier will remain responsible for Supplier subcontractor's (at any tier) acts, omissions, and performance.
- 10.18. Offshore Restrictions. Unless agreed by Customer in writing, Supplier (and any Supplier

subcontractor) will not: (i) 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; or (ii) perform Services outside the United States, Puerto Rico, or the U.S. Territories.

- 10.19. Survival. The provisions of the Agreement which by their nature are intended to survive the termination or expiration of the Agreement shall continue as valid and enforceable obligations of the Parties, despite any such termination or expiration, including without limitation the following sections: Indemnification, Confidentiality, Limitation of Liability, Term and Termination, General Provisions, and Insurance Requirements.

Addendum A - Additional Terms and Conditions for the Procurement of IT Technology and Services

If Supplier provides Cloud Services, Software, Implementation Services, and IT training, professional or consulting Services, IT equipment or hardware (referred to in the Terms and Conditions and this Addendum A as Products), and/or Online Content (collectively "IT Technology and Services"), this Addendum A shall apply, in addition to all of the terms set forth in the Terms and Conditions (unless otherwise stated in this Addendum A). If there is a conflict between the terms of this Addendum A and the Terms and Conditions, the terms of this Addendum A will override and control.

A1. DEFINITIONS

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

"Authorized User" means an employee, consultant, provider, contractor, or other agent of Customer or KP Affiliates (and if the IT Technology and Services will be accessible to Customer patients or members, the patients and members of a Customer and their authorized representatives and family members) authorized to access and use the IT Technology and Services on behalf of Customer or KP Affiliates.

"Acceptance Period" means thirty (30) days from the date the Customer's production use of the IT Technology and Services commences, unless otherwise specified in the Agreement.

"Cloud Services" means Supplier hosted software, platform and/or infrastructure available for Customer's use through remote access service, including software applications, mobile applications, platform, infrastructure, content, hosting, management, support and maintenance services, together with all relevant Documentation, Updates and workarounds, corrections, modifications, and improvements provided by Supplier in accordance with the Agreement. The Cloud Services are a "Service" within the meaning of the Terms and Conditions and the terms applicable to Services in the Terms and Conditions and this Addendum also apply to Cloud Services.

"Confidential Information" means in addition to the "Confidential Information" definition in Section 1.4 above, "Confidential Information" of Customer is further deemed to include any and all Customer and KP Affiliates, or its licensors, contractors, and subcontractors' Confidential Information (including KP Data and Personal Information), systems, software, guidelines, workflows, models, policies, algorithms, inputs, and prompts, protocols, guidelines, patents, copyrights, trade secrets, materials, Documentation, Deliverables, intellectual property, and content that is disclosed to or accessed by Supplier under the Agreement, and any and all modifications, enhancements or derivative works to and of the foregoing created by either party, and all Intellectual Property Rights therein.

"Deliverables" means any and all reports, designs, analyses, recommendations, configurations, Specifications, work plans, deliverables, data, information, outputs, content, and other similar materials, prepared, developed, or generated for or by Customer or KP Affiliates as part of the IT Technology and Services, and any modifications, enhancements, or derivative works thereto created by either Party, and all Intellectual Property Rights therein.

"Documentation" means all reference, technical and user manuals and guides, set-up instructions, Specifications and other explanatory materials of any type provided by Supplier describing the IT Technology and Services, Software, or Product, including hardware and equipment.

“Implementation Services” means the Services Supplier will provide to Customer to facilitate Customer’s implementation and use of the Cloud Services or Software, including: (i) configuring and implementing the Services and Supplier Infrastructure, (ii) cooperating with Customer in testing, importing and processing any KP Data or other content necessary to enable provision of the IT Technology and Services, (iii) performing other set-up and implementation or installation services required for Customer to commence production use of the IT Technology and Services, and (iv) any other services specified in an applicable SOW. Services do not include software development or customization.

“KP Data” means all data (including Personal Information), materials, and information (i) entered into the IT Technology and Services by Authorized Users, Customer, or KP Affiliates, (ii) otherwise provided to Supplier by Authorized Users, KP, the IT Technology and Services, Customer, or KP Affiliates in connection with the IT Technology and Services, and (iii) generated by Authorized Users, KP, Customer, KP Affiliates, the IT Technology and Services, or Supplier as part of the IT Technology and Services, including, without limitation, modifications or enhancements to, or derivative works of, such data and information created by either Party. 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 remote access such as the Internet or mobile application.

“Personal Information” or “PII” means personally identifiable information, data or records relating to or concerning any patient, member, plan participant, employee, or contractor of KP Affiliates, including PHI, employee records and, if applicable, Cardholder Data as defined under the Payment Card Industry Requirements data security standards.

“PHI” means member records and other Protected Health Information under HIPAA.

“Services” means in addition to the “Services” definition in Section 1.23 above in the Terms and Conditions, “Services” in this Addendum will be deemed to include Implementation Services, training, and IT professional or consulting Services.

“Service Levels” means the levels of performance Supplier is required to provide for the Cloud Services, as set forth in Addendum B - Service Level Agreement below, Documentation and/or Agreement.

“Specifications” means the features, functions, performance requirements, interface specifications and other technical or functional specifications applicable to the IT Technology and Services that are identified in the Agreement, the applicable SOW, 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 Services.

“Transition Assistance” means Supplier providing (i) assistance reasonably required for an orderly and efficient transition of the IT Technology and Services to a KP Affiliate or to a successor vendor while maintaining the continuity of IT Technology and Service and (ii) ensuring that all KP Confidential Information is, at the direction of Customer, either promptly returned to Customer in a format reasonably requested by Customer and/or destroyed.

“Transition Period” means the time period commencing on the date requested by Customer and continuing at the same level and quality as identified in the Agreement for a period requested by Customer, up to three (3) months from the end of the Term.

“Updates” mean any modifications, Error corrections, bug fixes, new releases, patches, updates, improvements, new versions, new releases, changes or additions and upgrades to the Cloud Services or Software (and any related Documentation) provided or otherwise made available by Supplier to its supported customers of the Cloud Services or Software, including Customer. “Updates” do not include new Supplier products containing substantially different features and functionality that are not a substitute for, or a successor to, the Cloud Services or Software.

A2. CLOUD AND IMPLEMENTATION SERVICES

A2.1 Provision of Cloud Services and Implementation Services. Supplier shall provide the Cloud Services and Implementation Services (if applicable) in accordance with the Agreement 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 Services. Supplier will provide Customer and its Authorized Users with access via the public Internet to the Cloud Services, 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 Services for the benefit of the KP Affiliates, (ii) modify, publish, transmit, create derivative works of Online Content for the benefit of the KP Affiliates; 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 will provide Implementation Services for Software as described in the Terms and Conditions and Agreement.

A2.2 Maintenance and Support for Cloud Services and Software. As part of the IT Technology and Cloud Services, Supplier will: (a) provide maintenance and support including: (i) causing the IT Technology and Cloud Services to operate according to the Specifications and correcting reported Errors, (ii) performing preventive maintenance on the Supplier Infrastructure, and (iii) promptly responding to questions regarding use of the IT Technology and Cloud Services; (b) maintain and provide periodic Updates to the IT Technology and Cloud Services, including providing all Updates to Customer that Supplier makes available to its other IT Technology and Services customers; and (c) apply periodic Updates to the Supplier Infrastructure, as applicable, and as necessary to provide the IT Technology and Services. Without Customer's prior written consent, no Update will (i) reduce the features and functionality or the scope of the IT Technology and Services or (ii) change Customer's or any Authorized User's systems, processes, or manner of access to the IT Technology and Services. If Supplier acquires some or all components of the IT Technology and Services and associated Supplier Infrastructure from third parties, Supplier will 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 IT Technology and Services to Customer.

A2.3 Protection against Malicious Code and Disabling Devices. Supplier will not knowingly introduce any (a) malware, viruses, worms, Trojan horses, spyware and other computer instructions, devices or techniques than can or were designed to threaten, infect, assault, vandalize, defraud, disrupt damage, disable, alter, inhibit or shut down the Cloud Services, Software, or Customer's environment; or (b) computer instructions, code or other disabling devices intended to limit the use of the Cloud Services or Software to particular computers, servers or processors/CPUs. Supplier will utilize industry standard anti-malware and advanced threat detection capabilities to aid in the detection and response to malware.

A2.4 Restrictions on Use of Cloud Services and Software. Except for use by Authorized Users as permitted herein, Customer may not (i) sell, assign, sublicense or otherwise transfer the Cloud Services or Software to third parties outside of any KP Affiliates, (ii) resell the Cloud Services or Software to third parties outside of any KP Affiliates; (iii) use the Cloud Services or Software to provide or perform service bureau processing, or hosting services for any third party outside of any KP Affiliates; or (iv) use the Cloud Services or Software 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 being explicitly authorized by Customer in writing, Supplier will not: (i) implant any "cookies", tracking technologies, or pixels on any computer, application, or website of Customer or its Authorized Users, (ii) track the internet usage or other computer usage of Customer, KP Affiliates, or its Authorized Users, (iii) use any KP Data, KP Confidential Information or other data or information of Customer, KP Affiliates or Authorized Users to directly or indirectly market products or services to Customer KP Affiliates, or Authorized Users, and (iv) transfer or sell any lists of Authorized Users or employees, contractors, members or patients of any KP Affiliate to any third party.

A2.6 Implementation Services. If Implementation Services are required in the Agreement, Supplier shall provide such Implementation Services on the terms of the Terms and Conditions, this Addendum A, and the terms and schedule set forth in the Agreement. The performance of any software development or customization services is outside the scope of the Agreement.

A2.7 Acceptance Testing. If Acceptance Testing is provided in the Agreement, Customer shall perform initial acceptance testing of the Implementation Services, Cloud Services and/or Software during the Acceptance Period. At the end of the Acceptance Period, Customer shall in writing either inform Supplier

that Implementation Services, Cloud Services and/or Software are accepted or identify in reasonable detail why the Implementation Services, Cloud Services and/or Software 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 Implementation Services, Cloud Services and/or Software continue to fail to meet the Specifications, Customer may, at its option, either (i) by written notice to Supplier, terminate the Agreement and receive a refund of any fees paid, (ii) extend the time for Supplier to address Customer's concerns; or (iii) by written notice to Supplier, accept the Implementation Services, Cloud Services and/or Software as delivered. Customer's acceptance of the Implementation Services, Cloud Services and/or Software will not limit the obligations of Supplier under the warranty or Service Level provisions of the Agreement.

A2.8 Additional Invoicing Requirements. In addition to the invoicing and payment requirements in the Terms and Conditions, unless otherwise set forth in the Agreement Supplier will not invoice Customer for the IT Technology and Services until: (i) the Implementation Services, including the keys and any other materials needed for Authorized Users to access and use the Cloud Services have been delivered, (ii) Customer has commenced production usage of the Cloud Services or Software, and (iii) Customer has provided Supplier with written Acceptance of the Implementation Services, Cloud Services, and/or Software. Supplier invoices must comply with the Invoice and Accounts Payable Requirements posted on KP's Supplier Information website: <http://supplier.kp.org/formsreqs/index.html>. For one-time Fees, Supplier must invoice within thirty (30) days after the Customer has accepted the Service or the payment milestone has been met. For recurring Fees, Supplier must invoice within thirty (30) days after the last day of the applicable recurring period. Customer is not obligated to pay any invoice received more than 90 days late.

A3. KP DATA

A3.1 Data and Confidential Information Usage and Restrictions. Supplier will store KP Data and Customer's Confidential Information separately from, and will not commingle or combine KP Data and Customer's Confidential Information, with, data and information of Supplier, or any affiliates, contractors, subcontractors, or any other customers of Supplier. Notwithstanding any other terms within (i) the Agreement or Terms and Conditions, or (ii) the Business Associate Agreement (if any), Supplier is prohibited from de-identifying, re-identifying, selling, distributing, commercially exploiting, aggregating, data mining, analyzing, benchmarking, using to train, fine-tune, or ground, the IT Technology and Services or any other products, services, models or algorithms, or otherwise use or disclose any KP Confidential Information and KP Data (including any anonymized, de-identified, re-identified, or aggregated KP Confidential Information or KP Data) for any purpose other than to provide the IT Technology and Services to Customer under the Agreement.

A3.2 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 IT Technology and Services. 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.

A3.3 Disposition of KP Data upon Expiration or Termination. Without limiting Section 7.1 (Confidentiality) of the Terms and Conditions, within thirty (30) business days of any termination or expiration of the Agreement or any Transition Period (whichever occurs later), unless earlier requested by Customer in writing, Supplier will (i) provide Customer with (a) all KP Confidential Information and KP Data and Deliverables, (b) any transactions in process that are in the possession or under the control of Supplier or Supplier's subcontractors, in a form and format reasonably requested by Customer, and (ii) then destroy the same within thirty (30) days after such termination or expiration and provide Customer with written certification of the destruction.

A4. PROPRIETARY RIGHTS

A4.1 Proprietary Rights. Supplier and its licensors own and shall retain all Intellectual Property Rights in and to the Cloud Services, Software, and Services (excluding KP Data and Customer's Confidential Information and Deliverables) and Documentation and the Supplier Infrastructure ("Supplier Pre-Existing

Material”). Customer and its licensors own and shall retain all Intellectual Property Rights in and to the KP Data, Customer’s Confidential Information and Deliverables. Any rights, title and interests, not expressly granted under the Agreement are expressly reserved and not waived by Customer and KP Affiliates.

A4.2 Rights in Deliverables. As among KP Affiliates, Customer and Supplier, Customer owns all Deliverables and all Intellectual Property Rights therein. To the extent that any rights in any Deliverables do not vest in Customer, Supplier hereby irrevocably assigns in perpetuity to Customer: (i) all worldwide right, title, and interest in and to such Deliverables, exclusive of any Intellectual Property Rights of the Supplier Pre-Existing Material or third party materials contained therein, and (ii) all claims, demands and rights of action, both statutory and based upon common law, together with the right to prosecute such claims, demands and rights of action in Customer’s own name. Except with the prior written consent of Customer, Supplier will not disclose, use, license, sell or otherwise transfer all or any part of any Deliverables to any third party. If Supplier includes any Supplier Pre-Existing Material in any Deliverables, Supplier grants to Customer a nonexclusive, worldwide, irrevocable, fully paid, perpetual license and right to use, modify, access, perform, execute, display, reproduce, distribute, enhance, and create derivative works of such Supplier Pre-Existing Material in conjunction with Customer’s and KP Affiliates’ use of such Deliverables. Deliverables are Customer’s Confidential Information.

A5. INDEMNITY

Section 8.1 (General Indemnity by Supplier) of the Terms and Conditions is replaced in full with the following: Supplier will defend, indemnify and hold each KP Indemnified Party harmless from and against all KP Losses brought by a third party against any KP Indemnified Party and arising from Supplier’s, Supplier’s Personnel, and Supplier’s employees’, affiliates’, contractors’, subcontractors’ or agents’: (i) violation of Law, (ii) negligent acts or omissions, and willful misconduct or (iii) breach of obligations or terms under the Agreement or a SOW, including the KP Data Security Requirements set forth in Section 10.9.20 above, and, if applicable, the Business Associate Agreement set forth in Section 10.9.2 above and any Offshore Services Addendum. This indemnity obligation will not extend to any portion of such KP Losses attributable to acts or omissions of any KP Indemnified Party.

A6. REPRESENTATIONS AND WARRANTIES

In addition to and without limiting the representations and warranties set forth in Section 4.1 (Supplier Warranties) of the Terms and Conditions, Supplier represents and warrants that Supplier has and has obtained all of the rights and permissions to provide the IT Technology and Services and Deliverables.

A7. LIMITATION OF LIABILITY

Section 9.2 (Exceptions) of the Terms and Conditions is replaced in full with the following: “The limitation of liability in subsection 9.1 will not apply to: (i) confidentiality obligations; (ii) indemnification obligations; (iii) Data and Confidential Information Usage and Restrictions in Section A3.1 above; (iv) Data Security Requirements set forth in Section 10.9.20 above, and any Offshore Services Addendum; (v) any related Business Associate Agreement set forth in Section 10.9.2 above; (vi) gross negligence, recklessness, willful misconduct, fraud or violation of Law, and (vii) breach of Section A4 (Proprietary Rights) above, the representation and warranty set forth in Section A6 (Representations and Warranties) above, and Section 4.1.3 of the Terms and Conditions.

A8. TRANSITION ASSISTANCE

If Transition Assistance is required in the Agreement, upon Customer’s request, with thirty (30) days prior written Notice, Supplier will (i) provide to Customer or Customer’s designee Transition Assistance for the Transition Period. Customer will pay the same Fees for the Transition Assistance as at the time of Notice.

A9. OFFSHORE SERVICES

Supplier is strictly prohibited from (i) performing Services or Cloud Services outside of the United States, or (ii) using, transferring, hosting, copying, storing, accessing, processing, or maintaining any Personal Information outside the United States, except if and to the extent set forth in any Offshore Services Addendum approved by Customer (“Offshore Services Addendum”) and will require subcontractors, or other service providers at any tier to also adhere to this requirement. With Customer’s prior written approval, Supplier may maintain back-up copies of PII at a single offsite data storage location within the United States,

provided that Supplier has an appropriate written agreement with the data storage vendor consistent with and no less protective than the requirements of the Agreement.

Addendum B – Service Level Agreement

B1. DEFINITIONS

Service Level Agreement is applicable and forms a part of the Agreement(s) under which Supplier provides Software or Cloud Services to Customer, unless the Parties have agreed in writing to use other terms and conditions. Capitalized terms used but not otherwise defined in this Service Level Agreement shall have the meanings provided in the Agreement. The following definitions shall apply for purposes of this Service Level Agreement only.

“Agreement” means the written agreement, or Purchase Order, Statement of Work, or the like which incorporates this Service Level Agreement.

“Availability” means the percentage of time each month, exclusive of Scheduled Maintenance, that the Cloud Service is available to all Authorized Users on a continuous and Error-free basis, 24 hours a day, 7 days per week, 365 days per year.

“Average Latency” means the actual average Latency per day as measured by Supplier from behind the Supplier’s firewall and reported monthly to Customer.

“Error” means any disruption, malfunction or failure of the Cloud Services or Software.

“Error Correction” means a permanent solution, fix, repair, patch, bypass or other correction provided by Supplier in order to correct an Error.

“Latency” means the amount of time it takes for the Cloud Services to process and correctly display a requested page object to an Authorized User of the Cloud Services.

“Major Release” means an Update that adds substantial additional functionality, features, and value to the Software or Cloud Services.

“Minor Release” means all Updates to the Software or Cloud Services other than Major Releases, including those that support new releases of operating systems and devices.

“Scheduled Maintenance” means no more than 4 hours per month between the hours of 12:00 AM to 5:00 AM Pacific Time during which the Cloud Services are not available, provided that Supplier has given Customer not less than 72 hours advance notice of the time period of such unavailability in writing.

“Severity Level 1 Error” means an Error that renders the Cloud Services or Software inoperative or causes a complete failure of the Cloud Services or Software.

“Severity Level 2 Error” means an Error that substantially degrades the performance of the Cloud Services or Software, or materially restricts Customer’s or any Authorized User’s use of the Cloud Services or Software (for example, if important features are unavailable with no acceptable Work Around).

“Severity Level 3 Error” means an Error that causes only a non-material impact on Customer’s or any Authorized User’s use of the Cloud Services or Software.

“Supplier” means a vendor, contractor or supplier providing Services under the Agreement.

“Workaround” means a temporary solution, fix, repair, patch, bypass or other correction provided by Supplier in order to temporarily correct an Error until an Error Correction is provided.

B2. AVAILABILITY AND USER EXPERIENCE. The following service levels apply to Cloud Services.

i. Availability.

(a) Service Level. Supplier commits that the Cloud Services will be provided at a monthly Availability of 99.99% or greater.

(b) Credits.

Availability Percentage	Percentage of Monthly Invoice Credit
100% - 99.99%	0%
99.98% - 99.6%	2%
99.5% - 99.3%	4%
99.2% - 99.0%	6%
98.9% - 90.0%	50%
Below 90%	100%

ii. User Experience - Latency

(a) Service Level. Navigation and query and display of results within the Service will occur with a daily Average Latency of 3 seconds or less 24 hours per day, 7 days per week, 365 days per year, excluding Scheduled Maintenance, unless specified otherwise in an applicable Cloud Services Addendum

(b) Credits.

Average Latency	Percentage of Monthly Invoice Credit
Greater than 3 Seconds to 5 Seconds	5%
6 Seconds to 7 Seconds	10%
8 Seconds to 9 Seconds	50%
10 Seconds or more	100%

B3. SUPPORT. The following service level applies to Software and Cloud Services.

i. Service Level. Supplier shall acknowledge all issues reported by Customer and correct any Error in the Cloud Services or Software reported by Customer or otherwise known to Supplier in accordance with the priority level reasonably assigned by Customer to such Error as follows:

Error	Response Time/Communications	Supplier Action to Resolve
Severity Level 1	15-30 minutes -Verbal acknowledgment of receipt of Error report and identification of individual assigned to resolve Error. Supplier shall provide Customer with periodic reports (no less frequently than once every fifteen (15) minutes) on the status of the Error and Error Correction.	Immediately and continuously work (24 x 7 x 365) until Error Correction or Workaround achieved. Escalate if not corrected within 24 hours. If a Workaround is provided for a Severity 1 Error, Supplier will use continuous work efforts (24 x 7 x 365) to provide an Error Correction unless otherwise agreed by Customer in writing.
Severity Level 2	15-30 minutes -Verbal acknowledgment of receipt of Error report and identification of individual assigned to resolve Error. Supplier shall provide Customer with periodic reports (no less frequently than once every sixty (60) minutes) on the status of the Error and Error Correction.	Immediately and continuously work 24x7 until Error Correction or acceptable Workaround is achieved. Escalate if no Error Correction or acceptable Workaround provided within 24 hours. If acceptable Workaround provided, continue work during business hours to provide Error Correction unless otherwise agreed by Customer in writing.
Severity Level 3	24 hours -Verbal acknowledgment of receipt of Error report and identification of individual assigned to resolve Error. Supplier shall provide Customer with periodic reports (no less frequently than once each day) on the status of the Error and Error Correction.	Error Correction or Workaround provided within 1 week. Error Correction provided in next release of Application if Workaround initially provided to address problem.

ii. Credits.

Resolution Time Failures	Percentage of Monthly Invoice Credit
Severity Level 1 Errors	15%
Severity Level 2 Errors	10%
Severity Level 3 Errors	5%

iii. Supported Versions. Supplier will provide Support for the then current Major Release of the Software and the two prior Major Releases, or for two (2) years after Supplier discontinues licensing/distributing a Major Release, whichever is longer. Supplier will provide the same level of support and Error correction services for all supported versions of the Software or Cloud Services.

iv. Updates and Error Correction. Supplier will notify Customer of all Errors in the Software, Cloud Services or Documentation of which Supplier becomes aware and will provide available information bulletins and access to any Internet data files or information relating to such Errors. Support includes provision of all available Updates to the Software or Cloud Services at no additional charge to Customer.

v. Technical Support Contacts. Customer may designate support contacts (which may include Customer contractors) who may communicate with Supplier's support organization regarding support issues. Customer may change its support contacts from time to time upon notice to Supplier. Supplier will provide Customer's support contacts with any user IDs, passwords, access procedures, and other such information to enable the support contacts to access Supplier's telephone and electronic support systems.

vi. Web-based Support. Supplier will provide Customer with access to any on-line support information and tools it makes available to other supported customers. This will include access to any available Supplier knowledge database, on-line technical library or on-line Documentation.

vii. Telephone and Web Support Services. Supplier will provide telephone and email technical support services during the hours of 6:00 AM. U.S. Eastern time to 8:00 PM. U.S. Pacific time, Monday through Friday and will provide telephone assistance on a 24 hour per day/7 day per week basis for Severity level 1 Errors. Supplier will provide Customer a toll-free number to Supplier's technical support center. Supplier will, upon request of Customer, provide support contacts for escalation of support issues.

viii. Support Exclusions. Supplier will have no obligation to provide support with respect to: (i) Software used on any computer system running other than the specified operating system software listed in the applicable Agreement or in the Documentation; and (ii) Errors resulting from any unauthorized modification of the Software made by Customer provided that such Errors do not occur in the unmodified Software.

B4. GENERAL

i. Credits. In the event the Supplier fails to adhere to any of the above service levels, Customer will be credited with an amount equal to the indicated percentage(s) of the monthly amount of Fees indicated above on the next invoice for Fees submitted by Supplier. If no further invoices are due under an applicable Agreement, the full amount of any credit(s) due shall be paid to the Customer within thirty (30) days after the month in which the applicable non-adherence occurred. For continuing Errors Customer shall receive credit for each month in which Supplier fails to provide an acceptable Workaround or Error Correction.

ii. Reporting. No later than ten (10) business days after the end of a calendar month, Supplier shall provide a monthly report to Customer showing the status of Supplier's adherence to the above service levels and setting forth the credits, if any, due to Customer. Notwithstanding anything to the contrary in the Agreement, any credits issued under this Service Level Agreement are cumulative and shall be in addition to any other rights or remedies Customer may have under the Agreement or at law or in equity.

iii. Repeated Service Level Failure. If Supplier fails to adhere to any service level in any two (2) consecutive calendar months, Customer may terminate the applicable Agreement, regardless of any term remaining, without liability for penalties or damages associated with such termination, and upon thirty (30) days prior written notice. In such event Supplier shall refund any prepaid Fees for periods after termination.

U.S. FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA) TERMS

Addendum C - 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 funded or reimbursed by FEMA and shall remain in effect until KP Affiliate 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. All undefined terms have the meanings in 2 C.F.R. Part 200.

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' 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' 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' 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 acknowledge that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Supplier' 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.