

Effective Hospital Supply Chain Contracting

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- **Pre-contracting issues** to address before entering into a significant (e.g., mission critical product/service or high dollar investment) vendor contract –
 - Request for Proposal
 - Due Diligence
 - Budgeting

- A request for proposal (RFP) is a request sent to a vendor or group of vendors for specific responses regarding how their company, products, and services can meet the customer's unique requirements.
- An RFP generally includes a **complete description of products, functionality and services** and related **pricing/costs**, as well as **performance standards**.

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- Prior to entering into a vendor contract, decision-makers must:
 - Identify customer's **current use and future need** of product/service.
 - Identify **sensitivity of data** to be disclosed.
 - Create a thorough **budget of funds** to be allocated to the contract.
 - Perform **background checks** on potential vendors.
 - **Screen all vendors/consultants** on the OIG, GSA/SAM, and Ohio Medicaid Exclusion lists to rule out excluded parties.

General Contract Considerations

- Carefully **review** the contract for business and legal terms: **READ THE CONTRACT!**
“The devil is in the detail.”
- **Do not let vendors pressure you** into signing a contract that has not been reviewed or that does not reflect your understanding of the transaction.
- Do not agree to **unilateral** provisions favorable to the vendor, including unilateral indemnity and limitation of liability provisions.
- Do not agree to be bound by “**incorporated**” terms and conditions that have not been reviewed or that are subject to unilateral amendment by the vendor or third parties (e.g., website terms and conditions).
- Identify **missing terms (e.g., performance standards, data security, compliance)**.

Standard Terms and Conditions: Parties

- Identify the parties to the contract by appropriate **legal names**.
- Consider defining “Customer” to include **affiliates**.
 - What customer affiliate entities will be using the products/services?
 - Provide flexibility to add and subtract affiliates.

Standard Terms and Conditions: Products/Services

- **Identify with specificity** all products, licenses, and services to be covered by the supply contract.
- Verify correct **volumes/quantities**.
- Review any **restrictions** on ownership/use (e.g., number of concurrent users).

Standard Terms and Conditions: Delivery

- Insist on **delivery terms** that are favorable to the customer – e.g., FOB Destination vs. FOB Carrier.
- Delivery terms impact timing of payment, transfer of title, and risk of loss.
- Obtain vendor commitment for **delivery times/dates**.
- Do not agree to one-sided penalties on the customer for **delivery postponement**.
- Do not allow vendors to disclaim responsibility for vendor's delay.

Standard Terms and Conditions: Installation

- The contract should identify –
 - **when** installation (or other performance) will occur
 - **what installation services** will be provided by the vendor
 - Necessary **training** to be provided by the vendor
- Installation services should be defined in terms of providing **all services needed by customer for customer to utilize the Products** to meet customer's needs.
- Installation services should **not be limited to a set number of days or hours** with customer responsible for paying additional fees if installation exceeds limit.
- Consider requiring the vendor to **“dedicate” a qualified team** of personnel throughout completion of the installation.

Standard Terms and Conditions: Training

Preferred Training Provisions:

- *Upon completion of training, the Customer will be able to fully operate/use the Product.*
- *All documentation and training will be accurate and current.*
- *Customer's attendees will receive copies of all documentation used during the course.*
- *Distribution of training materials several days before classes begin so attendees will be familiar with the material.*
- *Permission for Customer to videotape and audiotape training sessions to educate other employees.*
- *Additional training will be available at a mutually agreed-upon time if the Customer desires to purchase extra training.*

Standard Terms and Conditions: Licensed Products (Software)

- **Licensors** (Vendors) prefer –
 - Non-exclusive license
 - Reserves to the licensor the right to license the same software to other licensees
 - Non-transferable (licensor consent required and additional fees charged)
 - Revocable
 - Limited time period
 - Limited geographic area
 - Limited number of concurrent users, computers, or locations

Standard Terms and Conditions: Licensed Products, cont'd

- **Licensees (Customers)** prefer –
 - Exclusive License if customized software
 - Transferable to a successor in interest without consent or additional fee
 - Perpetual
 - Ability to use software on backup and replacement computers
 - Unlimited number (or volume benchmarks) of concurrent users, computers, and locations
 - **Limit the licensor's audit rights** as to number of audits per year, look-back period, and licensee responsibility for audit costs

Standard Terms and Conditions: Licensed Products, cont'd

Scope of License – Sample Compromise Language:

Subject to the terms and conditions of this Agreement, Vendor shall grant to Customer a non-exclusive, perpetual, non-transferable (other than to a successor in interest to substantially all of Customer's assets) license for the Authorized Users to access and use the functionality of the Products for Customer's [and Customer's affiliates'] internal operations.

Standard Terms and Conditions: Product Maintenance and Support

- Maintenance agreements may be crucial for ongoing use of products, especially products incorporating software.
- Maintenance agreements should require the vendor to support the products with the latest **updates and upgrades**, especially updates required to comply with changes in law (e.g., HIPAA), without additional charge to customer.
- Traditionally, software maintenance is **priced at 15-25%** of the original, discounted license fee.

Standard Terms and Conditions: Maintenance and Support, cont'd

Customer Preferred Maintenance Provisions:

- *Commitment from Vendor to support and maintain the Product for **minimum of 5 years**.*
- *Maintenance obligations extend to the **last two versions** of the software.*
- *Specific performance standards for problem **response and resolution times**.*
- *Articulation of the **Customer's remedies** if the Vendor fails to support the Product (e.g., provision of source code).*
- *Service Level Agreement, such as an **uptime warranty**, with provision for credits against support fees for unscheduled downtime.*

Standard Terms and Conditions: Fees/Payment of Fees

- All Fees **must be identified** by product and service in a specific amount – Do **not** agree to pay vendor’s “then current fees and charges” for a product or service.
- Fees typically include –
 - **One-time fixed** Purchase/License fees
 - **Per Use/Transaction/Volume-Based** fees
 - **Annual** fees (e.g., subscription/support)
 - **Time and Materials** fees
 - **Travel and Out of Pocket** expenses

Standard Terms and Conditions: Payment of Fees, cont'd

- **Payment structure** often varies based on the type of products/services involved.
- Customer wants to **tie payment of fees to** product acceptance and vendor **performance (e.g., product delivery or milestone achievement)**.
- All fees should be **agreed upon** in advance.
- Time and material fees should have a not-to-exceed **ceiling**.
- Avoid contract language that permits **unbudgeted add-on** fees and expenses.

Standard Terms and Conditions: Payment of Fees, cont'd

What **Customers** want –

- **Milestone** Payment Structure
 - Achievement of milestones will trigger progress payment: signing of the contract, delivery, training, installation, testing, and acceptance of the product.
 - Provides customer with greater leverage in the event of disputes with vendor.
- **Time and Materials** payments should be based upon an agreed hourly rate.
- **Time and Materials** payments and **travel and out-of-pocket expenses** should be **capped** in the aggregate.
- Avoid fees payment triggers based upon the **passage of time** (e.g., 90 days after Effective Date).

Standard Terms and Conditions: Payment of Fees, cont'd

What **Customers** want, cont'd –

- **Travel and out-of-pocket expenses** must be approved in advance by customer.
- **Refund option** in the event that products/services are not accepted within a set period of time.
- **Maintain aggregate payments within Budget**/Eliminate provisions that allow for unbudgeted add-on fees.
- Lock in recurring fees for **renewal periods** (e.g., annual increases not to exceed 3% over fees stated in contract).

Standard Terms and Conditions: Payment of Fees, cont'd

Milestone Payment – Sample Structure:

- For **Equipment**: 50% upon ordering the Equipment and 50% upon completion of installation and acceptance testing.
- For **Software**: 25% upon signing contract; 25% upon installation; 25% upon first productive use; and 25% after 45 days of productive use without material error.

Standard Terms and Conditions: Payment of Fees, cont'd

Vendor Requested Fee Based upon **Passage of Time**:

“Payment will be due upon the earlier of first productive use or 90 days after contract execution.”

Customer Response:

- Payment **timelines must be reasonable** and in line with anticipated performance.
- Payment **timelines must be extended** for any period of performance delay attributed to the vendor or defect in the product/service.

Standard Terms and Conditions: Payment of Fees, cont'd

Financing Option

- **Financing Leases are loans** and are secured with “hell or high water” repayment language.
- Lessor may be related to, but generally is not, the vendor.
- Payment will be required even if products do not work.
- Customer generally receives **no warranties** and has **no remedies** against the lessor. Remedies need to be built into a separate agreement with the vendor of the product being financed.
- Carefully review all financing documents and eliminate unreasonable terms.
- **Do not finance ongoing services**, such as support, over the life of a multiple year contract.

Late Payment Fees

- Provide for a reasonable **period of time** for customer **to make payment** (e.g., 30 days from date of invoice receipt).
- Limit interest payment to **undisputed** late payments.
- Limit **interest rate** on late payments to 1.0% per month or less.
- Never agree to pay **collection costs and attorneys' fees** on late payments.

Standard Terms and Conditions: Taxes

- Vendors will want to pass through taxes to customer.
- Customer should identify if **tax-exempt status** is applicable.
- Customer should **exclude from taxes** passed through to customer, taxes on:
 - Vendor's net income
 - Vendor's gross receipts (e.g., formerly Ohio CAT)
 - Vendor's status as an employer

Standard Terms and Conditions: Representations & Warranties

Vendor Representations and Warranties –

- **Valid Title/Right to Grant License** including the title/license to any third-party products.
- Products will **operate as described** in current **documentation and vendor RFP responses** (but not necessarily uninterrupted or entirely error-free).
- Products/services will meet certain **performance standards** (e.g., uptime/response time) stated in agreement.
 - Customer should seek a minimum warranty period of **one year** for performance standards.
 - Performance standards should be extended during any paid support period.

Standard Terms and Conditions: Representations & Warranties, cont'd

Vendor Representations and Warranties, cont'd

- **Non-infringement** of any patent, trademark, copyright, trade secret or other proprietary right of any third party.
- Sample Language:

The Products and/or Services and/or Customer's use of any Products and/or Services as permitted herein, do not and shall not infringe upon or misappropriate any patent, trademark, copyright, trade secret or other proprietary right of any third party, and there is currently no actual or threatened suit against Vendor by any such third party based upon an alleged violation of such right.

Vendor Representations and Warranties, cont'd

- Pass-through of **third-party warranties** and indemnities
- Sample Language:

Vendor shall pass through to Customer all product and third-party end-user warranties and indemnities. To the extent Vendor is not permitted to so pass through, Vendor agrees to enforce such warranties and indemnities on behalf of Customer.

Vendor Representations and Warranties, cont'd

- **System Warranty:** Customer wants a warranty that the system as a whole will operate on an integrated basis within the parameters of certain service levels.
 - Lessens problems that may arise when each individual component works properly, but when combined, the resulting performance is sub-par; makes one vendor responsible for system integration.

Standard Terms and Conditions: Representations & Warranties, cont'd

Vendor Representations and Warranties, cont'd

- **Services Warranty** for Installation, Maintenance and Support
 - Customer wants services to be performed in a professional manner by qualified personnel in accordance with industry standards and in compliance with state and federal law.
- **Documentation/RFP Warranty**
 - Documentation accurately describes functional and operational characteristics of products and the products will perform in accordance with Vendor responses to RFP. Vendor will not remove functionality of the Products during any period in which such functionality is being used by Customer.

Standard Terms and Conditions: Representations & Warranties, cont'd

Other Vendor Warranties to consider –

- Vendor represents that **products will integrate/interface** with customer's information systems.
- Any **enhancements to the products will be compatible** with customer's existing version of the product.
- Vendor is committed to enhancing the products in the future and vendor is **not planning to discontinue** the development, marketing, maintenance, or support of the products. (Beware of product “sunset” provisions.)
- Vendor warrants that the System is appropriately sized to permit customer to operate the System without the purchase of additional equipment or software for a period of 24 months (“**Configuration Warranty**”).

Standard Terms and Conditions: Representations & Warranties, cont'd

Other Vendor Warranties to consider, cont'd

- Products and services **comply with applicable state and federal laws** and regulatory requirements.
- Products will be **defect-free** in design, materials and workmanship.
- Transaction times using the products will meet certain **response time standards**.
- **No pending or threatened litigation** against the vendor of which the vendor has knowledge.
- **No “change of ownership/control”** with respect to the vendor is being considered, planned, or pending.

Standard Terms and Conditions: Disclaimers

- Most agreements will also contain a warranty disclaimer, such as:

*Other than as expressly set forth above, **Vendor does not make any express or implied warranties**, conditions, or representations to Customer, with respect to the products or services provided hereunder or otherwise regarding this Agreement. Any implied warranty of merchantability, non-infringement, or fitness for a particular purpose are expressly excluded and disclaimed.*
- Customer should never agree that products and services are accepted “**AS IS**” or without warranty if the customer is paying for the products/services.

Standard Terms and Conditions: Customer Responsibilities

- Customer may be required to provide resources for product/service implementation.
 - **Physical environment**
 - Local Area and Wide Area **Networks**
 - **Qualified Personnel** to work with Vendor
- Customer should carefully review the **allocation of responsibilities** between vendor and customer.
- Customer should review any **vendor required specifications** applicable to customer.

Standard Terms and Conditions: Insurance

- Customer should consider requiring the vendor to maintain the following types of insurance, with **commercially reasonable monetary limits**, depending on the nature of the contract:
 - Workers' Compensation
 - Commercial General Liability
 - Errors and Omissions/Professional Liability
 - Cyber/Data Breach
 - Commercial Motor Vehicle

Standard Terms and Conditions: Indemnification

- Indemnification clauses are a common method to **allocate risk**.
 - Addresses the liability of the **Indemnifying Party** to the other party (“**Indemnified Party**”) for **damages and defense costs** incurred by the Indemnified Party as the result of the acts and omissions of the Indemnifying Party.
 - Indemnification may cover all claims or only claims brought by third parties .
 - Customers should not agree to unilateral indemnity obligations. Indemnity language should be entirely mutual.
 - Refuse to provide customer indemnity for claims related to customer’s use of the vendor’s products and services in the absence of customer negligence.

Standard Terms and Conditions: Indemnification, cont'd

General Indemnification –Sample Language:

Each party (“Indemnifying Party”) shall agree to indemnify, hold harmless and defend the other party and its officers, directors, shareholders, members, employees, agents and representatives (“Indemnified Party”) from and against any claim directly or indirectly arising out of or related to: (a) any injury to or death of person, or damage to or loss of tangible property, directly or indirectly arising out of or related to the gross negligence and/or willful misconduct of the Indemnifying Party, its employees, agents or subcontractors; (b) any breach by the Indemnifying Party, its employees, agents or subcontractors of its confidentiality obligations hereunder, provided that the Indemnified Party (i) promptly notifies Indemnifying Party of such action, (ii) gives Indemnifying Party full authority, information and assistance to defend such action, and (iii) gives Indemnifying Party control of the defense of such action.

Standard Terms and Conditions: Limitation of Liability

- Limitations of liabilities may focus **only on limiting the vendor's liability**. Customers should **make all liability limitations mutual**, as to both vendor and customer liability.
- Vendors will typically state that their **liability is limited to a set amount** (often, payment amounts received from the customer during a limited period of time, e.g., the 12-month period preceding the claim).
- Customers should negotiate a ceiling on damages that is high enough to **provide adequate compensation** for customer's potential losses.

Standard Terms and Conditions: Disclaimer of Liability

- Vendors often “**disclaim**” (as contrasted to limiting the amount) **any and all liability** for lost profits, lost data, and indirect, incidental, consequential, and punitive damages. Disclaimer means **zero damages** for liability will be available.
- Any disclaimer of liability **must be entirely mutual**.
- Customer should negotiate **exceptions** to both the Limitation of Liability and Disclaimer of Liability for –
 - Indemnity obligations
 - Breach of Confidentiality (including HIPAA violations)
 - Personal injury and property damage

Standard Terms and Conditions: Limitation/Disclaimer of Liability, cont'd

Limitation of Liability/Disclaimer – Sample Language:

Each party's liability to the other party for any losses or damages, in contract, tort or otherwise, arising out of the subject matter of this agreement shall be limited to those actual and direct damages which are reasonably incurred by the party and shall not exceed the fees paid in the aggregate by Customer. Neither party will be liable for special, punitive, indirect, incidental, exemplary or consequential damages or loss of data, lost profits, loss of goodwill in any way arising from or relating to this agreement, the products or services, even if such party has been notified of the possibility of such damages occurring. The limitations and disclaimers of this section shall not apply to either party's indemnity obligations, to damages caused by either party's breach of its confidentiality obligations (including obligations under the parties' HIPAA business associate agreement), and to personal injury and property damage caused by the negligent and reckless acts of either party or its employees or contractors.

Standard Terms and Conditions: Confidentiality

- The agreement should contain a provision requiring that each party protects the other party's confidential information.
- The agreement should define "Confidential Information."
- Confidential Information should be defined to include protected health information and personally identifiable information.
- Confidentiality protections should be mutual.
- Exceptions to confidentiality protections should include disclosures required to comply with law.

Standard Terms and Conditions: Confidentiality, cont'd

Confidentiality – Sample Language, cont'd

- *Access to and use of any Confidential Information shall be **restricted to those employees and persons within each party's organization with a need to use the information to fulfill the purpose of the agreement.***
- *Both parties shall **inform such employees and persons** of the confidential nature of the Confidential Information.*
- *Both parties' **consultants and subcontractors** may be included within the meaning of "persons within its organization," provided that such consultants and subcontractors have executed a **non-disclosure or confidentiality agreement** with provisions no less stringent than those applicable to each party under the agreement.*
- *Under no circumstance shall Confidential Information be transmitted, accessed from, or stored **outside of the United States.***

Standard Terms and Conditions: Data Security

Data Security – Sample Language:

*Vendor will provide for data security in conformance with industry standards, and will **maintain a formal, comprehensive, data security program** that includes reasonable security procedures and practices that are appropriate to the nature of the Customer data and are reasonably designed to (a) **ensure the security, confidentiality and integrity** of Customer data; (b) **protect against threats or hazards** to the security, confidentiality or integrity of Customer data; (c) **prevent unauthorized access, use, destruction, modification and disclosure** of Customer data; (d) **provide for prompt notice** to Customer of any unauthorized access, use, destruction, modification, or disclosure to any Customer data; and (e) comply with all applicable state and federal law.*

Standard Terms and Conditions: HIPAA

- To the extent the vendor will act as a “business associate” and have access to protected health information, a HIPAA provision is necessary. HITECH expanded the definition of Business Associate to include entities that provide data storage services.
- HIPAA – Sample Language:

*To the extent required by HIPAA and regulations related to privacy and security promulgated thereunder, and notwithstanding anything to the contrary herein, Vendor will maintain the confidentiality of Protected Health Information (“PHI”) made available to or obtained by Vendor as a result of this agreement and will comply with applicable requirements of HIPAA and its regulations, including, without limitation, **the Business Associate Addendum**, the form of which is attached to this agreement and incorporated therein by reference.*

Standard Terms and Conditions: Term/Termination

- All agreements should have a term defined in a reasonable number of months or years.
- **Extended terms** (e.g. 5 years or longer) without the option for voluntary termination are not recommended in contracts that obligate customer to substantial ongoing payments.
- Customer should have the **unilateral right to lock in a term of support and to terminate support without cause** if customer makes a substantial initial investment in a product/system.

Recommended **Early Termination** Provisions –

- Termination for **breach** with notice and cure period (30-60 days)
- **Without cause** termination upon reasonable notice (30-90 days)
- Immediate termination if vendor or vendor employees/contractors are **excluded** from federal programs

Consider termination **conversion assistance** provisions.

Provide for **return of customer data** regardless of the cause for termination and designate format in which customer data will be returned.

Standard Terms and Conditions: Third Party/Website Terms

- Customer should **never** agree to be bound by third party terms or website terms that have not been reviewed and that are subject to unilateral change by the vendor or third party.
- If vendor refuses to delete the website terms provision, propose the following alternative language:

Customer shall not be bound by or subject to any terms and conditions which impose jurisdiction, indemnity or financial liability upon Customer unless such terms and conditions are attached to this Agreement and approved in writing by Customer.

Standard Terms and Conditions: Choice of Law/Venue/Dispute Resolution

- Customer should insist that legal disputes will be **governed by the law** of the state in which the customer is located.
- Customer should insist that legal proceedings will be **conducted in the legal jurisdiction** in which the customer is located. Silence on choice of law/venue is an acceptable fallback position.
- Jurisdiction/venue in another state should be considered a deal breaker.
- Avoid mandatory **arbitration clauses**. State and federal courts may be preferable to either arbitration or mediation. Mediation may be preferable to arbitration.

Standard Terms and Conditions: Compliance with Law

Compliance with Law – Sample Language:

*Vendor, at all times during the term of this Agreement and at its own expense, shall **comply with all federal, state, and local laws**, rules and regulations applicable to Vendor and its performance under this Agreement, and shall **maintain in force any licenses and permits required for Vendor's performance** under this Agreement. Vendor certifies that as of the Effective Date, Vendor, its employees, agents, and subcontractors performing services under this Agreement are **not excluded, suspended and/or debarred** from doing business with state and/or federal government programs. Vendor agrees that any and all **employees, agents, or subcontractors** performing services under this Agreement **have been cleared** of exclusion or debarment from the following websites, prior to performing any service for Customer:*

* <http://www.oig.hhs.gov/exclusions>

* <http://www.sam.gov>

Standard Terms and Conditions: Compliance with Law, cont'd

Compliance with Law – **Stark Act (No Physician Referrals)** – Sample Language:

Customer's compliance policy restricts entering into relationships with vendors owned or controlled by physicians or that have certain compensation relationships with physicians. Unless specifically included on a Schedule attached hereto, Vendor warrants and represents that (a) it is not owned or controlled by any physician who refers to the Customer; (b) it shall not offer ownership or control to any such physician; (c) it does not compensate such physicians based on entering this Agreement or the volume or value of purchases made under this Agreement; and (d) it does not otherwise have a compensation arrangement with any such physician that does not comply with an exception set forth in 42 CFR 411.357. Vendor's representations and warranties under this section are continuous, and Vendor must immediately inform Customer of any breach of this section or representations or warranties under this section, including the specific physician(s) and arrangement(s) involved in the breach. Customer may terminate this Agreement immediately for cause upon Vendor's breach of this section or representations or warranties under this section.

Standard Terms and Conditions: Independent Contractors

Relationship of Parties – Sample Language:

*This Agreement is not intended to and is not to be construed to create any relationship between the parties other than that of independent parties contracting with each other solely for the purpose of effecting the provisions of this Agreement. Neither party shall hold itself out as the other's agent for any purpose and shall have **no authority to bind** the other to any obligation. Each party agrees to **assume complete responsibility for itself and its own employees** with regard to federal or state employer's liability, workers' compensation, social security, income tax withholding and unemployment insurance, occupational safety and health administration requirements, and all other federal, state and local laws.*

Standard Terms and Conditions: No Assignment

No Assignment – Sample Language:

*This Agreement **may not be assigned by either party** except by prior written agreement of the other party, which shall not be unreasonably withheld. Notwithstanding the foregoing, either party may assign this Agreement or delegate any rights or obligations to a **successor in interest** to substantially all of its assets or to any **affiliated entity** that is controlled by or under common control with such party and that is equally qualified and able to perform any delegated obligations.*

Standard Terms and Conditions: Entire Agreement/Amendment

Entire Agreement/Amendment – Sample Language:

*This Agreement constitutes the **entire understanding** of the parties and supersedes all prior representations and understandings, whether oral or written, with respect to the Agreement. **No document or website term of either party or any third party shall bind the other party unless signed by the other party.** Any changes, **amendments**, or alterations will not be effective unless mutually agreed upon in writing signed by authorized representatives of both parties.*

Standard Terms and Conditions: Notice

- Notice must be in writing.
- Specify acceptable methods – e.g., certified mail, overnight delivery, email.
- Notice should be effective upon receipt.
- Notice should identify the party/office to receive the notice. Include email address.
- Consider requiring a copy be provided to Customer’s General Counsel.

Standard Terms and Conditions: Force Majeure

- **Excused performance** provisions must be entirely mutual, i.e., do not agree that the customer's obligation to pay is ineligible for excused performance.
- Force Majeure – Sample Language:

*Either Party shall be excused from performance if inability to perform is due to a cause or causes beyond such Party's reasonable control, including without limitation, acts of God, fire, explosion, vandalism, acts of terrorism, cable cuts caused by a third party, adverse weather conditions, labor strikes and governmental action ("Force Majeure"). If such inability to perform continues for sixty days or longer, the **other Party may terminate** the affected Services. **Customer shall be excused from paying any recurring charges (or portions thereof) with respect to outage periods caused by Vendor's Force Majeure.***

Standard Terms and Conditions: Survival

Survival – Sample Language:

The terms and conditions of this Agreement will survive the expiration or termination of this Agreement as to the liabilities arising prior to the date of termination, to the extent necessary for their enforcement, and for the realization of the benefit thereof by the Party in whose favor they operate (e.g. confidentiality and indemnity).

Standard Terms and Conditions: Medicare Access to Records

Medicare Access to Records – Sample Language:

If applicable, until the expiration of four (4) years after the furnishing of any service pursuant to this Agreement, Vendor shall maintain and make available upon the request of the Secretary of Health and Human Services, or the Comptroller General of the United States, or any of their duly authorized representatives, or other governmental payers, intermediaries and carriers, copies of this Agreement and any books, documents, records, and other data that are necessary to certify the nature and extent of costs incurred hereunder. If Vendor carries out any of its duties under this Agreement through a subcontract with a related organization involving a value or cost of Ten Thousand Dollars (\$10,000.00) or more over a twelve (12) month period, such subcontract shall contain a clause to the effect of the preceding sentence.

42 USC 1395x(v)(1)(I)

Standard Terms and Conditions: Group Purchasing Organization (GPO)

Group Purchasing Organization (GPO) – Sample Language:

The contract between the parties may be superseded, at Customer's option, if Vendor enters into a similar agreement with a GPO in which Customer participates. During the term of this Agreement, if Vendor enters into an agreement with such a GPO, whether this Agreement remains in effect or is superseded by the GPO agreement, any goods and services covered under the GPO agreement will be reported to the GPO to ensure Customer earns cooperative credit, rebates, incentives, and other value associated with the GPO contract.

Thank You

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