

CALOPTIMA - GENERAL PROVISIONS

1. **INSPECTION AND ACCEPTANCE** - All items are subject to final inspection and acceptance by CalOptima at destination notwithstanding any payment or prior installation at VENDOR's facilities. Final inspection will be made within a reasonable time after receipt of items hereunder.
2. **CHANGES** - By written notice or order, CalOptima may, from time to time, order work suspension or make changes in quantities, drawings, designs, specifications, place of delivery or delivery schedules, or methods of shipment or packaging of property and services furnished by VENDOR. If any such change causes an increase or decrease in the price of any agreement, contract or purchase order or in the time required for the performance of same, VENDOR or CalOptima shall promptly notify the other party thereof and assert its claim for adjustment within thirty (30) days after the change is ordered, and an equitable adjustment shall be made. However, nothing in this clause shall excuse VENDOR from proceeding immediately with the agreement, contract or purchase order as changed.
3. **DEFAULT AND EXCESS REPROCUREMENT LIABILITY** - CalOptima may terminate this agreement, contract or purchase order if a federal or state proceeding for the relief of debtors is undertaken by or against VENDOR, or if VENDOR makes an assignment for the benefit of creditors, or if VENDOR fails, after reasonable notice by CalOptima to cure a deficiency in performance or lack of progress thereto. CalOptima shall have such additional remedies as may be available whether or not it so terminates this agreement, contract or purchase order, including, but not limited to, the payment by VENDOR to CalOptima of expenses incurred by CalOptima in reprocurring elsewhere the same or similar items or services defaulted by VENDOR hereunder, provided such VENDOR's reprocurement expenses obligation shall be limited to the excess over the price specified herein for such items or services.
4. **INDEMNIFICATION** - VENDOR shall defend, indemnify and hold harmless CalOptima, its officers, directors, and employees from and against any and all claims (including attorneys' fees and reasonable expenses for litigation or settlement) for any loss or damages for bodily injuries, including death, or loss of property, or damage to the use of property caused by negligent acts, errors or omissions or willful misconduct by VENDOR, its officers, directors, employees, agents, subcontractors or suppliers in connection with or arising out of performance of this contract, agreement or purchase order.
5. **ASSIGNMENTS AND SUBCONTRACTORS** - Neither this agreement, contract or purchase order nor any interest herein nor claim hereunder may be assigned by VENDOR either voluntarily or by operation of law, nor may all or substantially all of this agreement be further subcontracted by VENDOR without the prior written consent of CalOptima. Lack of such consent shall not be deemed to relieve VENDOR of its obligations to comply fully with the requirements hereof.
6. **CHOICE OF LAW** – This Contract shall be governed by and construed in accordance with the laws of the State of California. In the event any party institutes legal proceedings to enforce or interpret this Contract, venue and jurisdiction shall be in any state court of competent jurisdiction sitting in Orange County, California.

7. COMPLIANCE WITH APPLICABLE LAW - VENDOR warrants that in the performance of this agreement, contract or purchase order, it shall comply with all applicable federal, state, and local laws and ordinances and all lawful orders, rules and regulations thereunder.
8. INFRINGEMENT INDEMNITY - In lieu of any other warranty by CalOptima or VENDOR against infringement, statutory, or otherwise, it is agreed that VENDOR shall defend at its expense any suit against CalOptima based on a claim that any item furnished under this agreement, contract or purchase order or the normal use or sale thereof infringes any United States Letters Patent or copyright, and shall pay costs and damages finally awarded in any such suit, provided that VENDOR is notified in writing of the suit and given authority, information, and assistance at VENDOR's expense for the defense of same. If the use or sale of said item is enjoined as a result of such suit, VENDOR, at no expense to CalOptima, shall obtain for CalOptima the right to use and sell said item, or shall substitute an equivalent item acceptable to CalOptima and extend this patent indemnity hereto.
9. TITLE AND RISK OF LOSS - Unless otherwise provided in this agreement, contract or purchase order, VENDOR shall have title to and bear the risk of any loss of or damage to the items purchased hereunder until they are delivered in conformity with this agreement, contract or purchase order at the F.O.B. point specified herein, and upon such delivery title shall pass from VENDOR and VENDOR's responsibility for loss or damage shall cease, except for loss or damage resulting from VENDOR's negligence. Passing of title upon such delivery shall not constitute acceptance of the item by CalOptima.
10. NOTICE OF LABOR DISPUTE - Whenever VENDOR has knowledge that any actual or potential labor dispute may delay this agreement, contract or purchase order, VENDOR shall immediately notify and submit all relevant information to CalOptima. VENDOR shall insert the substance of this clause in any subcontract hereunder as to which a labor dispute may delay this agreement, contract or purchase order. However, a subcontractor need give notice and information only to its next higher-tier subcontractor.
11. PROHIBITED INTERESTS -- VENDOR covenants that, for the term of this Contract, no director, member, officer, or employee of CalOptima during his/her tenure has any interest, direct or indirect, in this contract, agreement or purchase order, or the proceeds thereof.
12. TERMINATION FOR CONVENIENCE - CalOptima may terminate this agreement, contract or purchase order at any time by giving written notice to VENDOR of such termination, effective on the date of such notice. Upon receipt of said notice, VENDOR shall immediately take action not to incur any further obligations, costs, or expenses, except as may be reasonably necessary to terminate its activities. All finished or unfinished documents and other materials procured or produced by VENDOR hereunder shall, at the option of CalOptima, become CalOptima property upon the date of such termination.
13. TERMINATION FOR UNAVAILABILITY OF FUNDS -- In recognition that CalOptima is a governmental entity and its operations and budgets are determined on an annual basis, CalOptima shall have the right to terminate this agreement, contract, or purchase order if it does not receive funding from the State of California for any fiscal year. CalOptima agrees to promptly pay VENDOR all fees and other charges due and payable as of the termination date. In the event of Termination for Unavailability of Funds, and funds are received by CalOptima from the State of California within one-hundred twenty (120) days of the date of termination, then CalOptima shall promptly notify VENDOR in writing and CalOptima shall have the

right to reinstate this agreement, contract or purchase order for that period for which funds are received by CalOptima or the unexpired term of this agreement, contract or purchase order as of the date of termination, whichever period is shorter in duration. Notwithstanding the foregoing, CalOptima may only reinstate this agreement, contract or purchase order two (2) times during its term.

14. VERIFICATION OF CALOPTIMA COSTS BY GOVERNMENT -- Until the expiration of ten (10) years after the later of furnishing of any service pursuant to this agreement, contract or purchase order, or completion of any audit, or longer as required by applicable regulations, VENDOR will make available, upon written 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 the California Department of Health Services, Department of Justice, or Bureau of Medical Fraud, copies of this agreement, contract or purchase order and any financial statements, books, documents, records, patient care documentation, and other records or data of VENDOR that pertain to any aspect of services performed, reconciliation of benefit liabilities, and determination of amounts payable under this agreement, contract, or purchase order or as are otherwise necessary to certify the nature and extent of costs incurred by CalOptima for such services. This provision shall also apply to any agreement between a subcontractor and an organization related to the subcontractor by control or common ownership. VENDOR further agrees that regulating entities have the right to inspect, evaluate and audit any pertinent information, and, to facilitate the review of the items referenced herein, to make available its premises, physical facilities and equipment, records related to Medicare enrollees, and any additional relevant information that regulating entities may require. VENDOR further agrees and acknowledges that this provision will be included in any and all agreements with VENDOR'S subcontractors.
15. NO LIABILITY OF COUNTY OF ORANGE -- As required under Ordinance No. 3896 of the County of Orange, State of California, the parties hereto acknowledge and agree that the obligations of CalOptima under this Contract are solely the obligation of CalOptima, and the County of Orange, State of California, shall have no obligation or liability therefor.