

CHILDREN'S HEALTHCARE OF ATLANTA, INC.,

TERMS AND CONDITIONS

I. GENERAL TERMS AND CONDITIONS

1. Warranties.

(a) Warranty of Equipment. Supplier warrants that the Equipment provided hereunder is (i) of clear title, free of any liens and encumbrances and (ii) free from defects in material and workmanship and will conform to its written specifications for a warranty period commencing on installation of the Equipment and continuing for the longer of twelve (12) months or the Supplier's standard warranty period. Supplier further warrants that the Equipment is merchantable and will conform to any express warranties made by affirmation, promise, description or sample. Buyer will notify Supplier of any known or reported defect constituting a breach of the foregoing warranties. Supplier will provide Buyer, at no additional charge to Buyer, a toll free customer support telephone number available twenty-four hours per day, seven days per week to report problems with or defects in the Equipment and will make every commercially reasonable effort to immediately respond to any reports of problems with any of the Equipment.

(b) Software Warranty. In the event any Equipment are accompanied by or embedded with software, Supplier warrants that the software: (i) is free from defects in material and workmanship and will substantially conform to its written descriptions and any technical specifications and (ii) does not contain any virus, worm, timer or clock that would erase data or programming or otherwise cause the software to become inoperable. Supplier further agrees to provide Buyer, at no additional charge, any and all routine changes, updates and maintenance services intended to provide general improvements to the performance of the Equipment or as may be required for compliance with applicable government regulations.

(c) Additional Warranties. Supplier further warrants to Buyer, as follows: (i) any technical support or service will be performed in accordance with industry practices, in a professional manner by properly trained and suitably skilled personnel, and (ii) Supplier is a corporation duly organized and in good standing under the laws of the jurisdiction of its incorporation, with full corporate power and authority to conduct its business in the manner contemplated by this Agreement.

2. Insurance. Supplier will provide all insurance necessary to protect itself, its employees, directors and officers from liability in forms and limits acceptable to Buyer as set forth herein.

(a) For purchases other than capital equipment, this coverage will include, but not be limited to, worker's compensation in statutory limits and general liability with a minimum limit of One Million Dollars (\$1,000,000) per occurrence and in the annual aggregate.

(b) For capital equipment purchases, this coverage will include, but not be limited to, worker's compensation in statutory limits with employer's liability coverage with minimum limits of Five Hundred Thousand (\$500,000) and general liability with a minimum limit of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the annual aggregate. The general liability insurance shall include coverage for contractual liability, products-completed operations, personal injury, advertising injury, property damage and bodily injury (including death). Supplier shall also carry excess umbrella insurance coverage in minimum amounts of Five Million Dollars (\$5,000,000). Supplier shall also carry automobile liability in an amount not less than \$1,000,000 per occurrence for bodily injury and property damage, including owned, hired and non-owned vehicle coverage. Supplier will name Buyer as an additional insured for ongoing and completed operations on its general liability, excess umbrella, and automobile liability (if applicable) insurance policies as it pertains to the work done/service provided/product delivered to the Buyer and shall provide a 30-day notice of cancellation or non-renewal of coverage to Buyer. Such insurance must be primary as to any other valid and collectible insurance. Supplier will carry property insurance with full replacement cost, for any property owned or used by Supplier on Children's premises.

(c) A certificate of insurance will be provided to Buyer upon request in acceptable limits and by a carrier with an AM Best rating of A-VII or higher. This Section will survive the termination or expiration of this Agreement.

3. This Agreement will be interpreted and construed by the laws of the State of Georgia. Supplier will abide by all applicable state, local and federal laws, regulations, and rules and by any applicable Joint Commission (the "Joint Commission") standards (including the requirement for proof of competency for any Supplier representative providing training on equipment used in patient care and its requirement for proof of immunization for any Supplier representative that will assist or have access to patient care area), and abide by all applicable licensing requirements. Notwithstanding the foregoing, Supplier will not act in opposition to

Buyer's policies and procedures while on Buyer's premises.

4. For delayed or multi-shipment purchases, term of this Agreement may be noted on the Quote/Order Form or on the front copy of the purchase order, if applicable. This Agreement may be modified by mutual consent, provided any and all modifications are in writing and signed by authorized representatives of both parties.
5. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, the legality, validity and enforceability of the remaining provisions shall not be affected thereby.
6. Under this Agreement the relationship of the parties will be that of independent contractor. Neither party shall exercise control over the method, manner or means, by which the other performs its duties.
7. This Agreement can be terminated by Buyer without cause by giving thirty (30) days prior written notice to Supplier.
8. Supplier hereby grants to Buyer a limited, nonexclusive, royalty-free license and/or sublicense to use any software and its accompanying documentation delivered with or embedded in the Equipment purchased, unless the parties mutually agree to enter into a separate License Agreement. Any charge for the license is included in the purchase price set forth on the Purchase Order.
9. Supplier agrees to indemnify and hold harmless Buyer, as well as its officers, directors, employees, agents, their successors or assignees from any claim, damage, loss, expense, liability, action or cause of action (including reasonable attorney's fees) which Buyer, as well as its officers, directors, employees, agents, their successors or assignees may or might sustain, pay or suffer by reason of any act, omission, or negligence of Supplier, agents or employees arising under this Agreement. This clause will survive the termination of this Agreement.
10. This Agreement cannot be assigned without written approval of both parties.
11. These terms and conditions are made a part of this purchase order between Supplier and Buyer by reference. The Supplier agrees to abide by these terms and conditions and agrees that this purchase order is a binding agreement.
12. Supplier agrees to immediately notify Buyer of (i) any unexpected access to patient health information or (ii) if it anticipates it will have access to patient health information and agrees to enter into a Business Associate Agreement.
13. Supplier agrees there is no requirement to refer patients to Buyer.
14. Buyer is prohibited by federal regulation from employing or contracting with individuals or entities that have been excluded, debarred or suspended from participation in state or federally funded health care programs. Supplier warrants that it is not on any of the four (4) government watch lists, which includes the HHS OIG List of Excluded Individuals and Entities (LEIE), the United States General Service Administration list of parties excluded from Federal Procurement & Non-procurement Programs (EPLS), the Office of Foreign Assets Control Specially Designated Nationals (SDN) list, and the U.S. Food and Drug Administration (FDA) debarment list, and is not on any individual state exclusion list. Supplier also warrants that on a monthly basis it queries its officers and directors, and its employees, agents and subcontractors providing goods or services under this Agreement, against the above lists to ensure that none appear on such list. Supplier will not at any time permit a person or entity that is excluded from such participation to perform any services under this Agreement and will notify Buyer immediately if it becomes aware that it, its officers or directors, or its employees, agents or subcontractors providing goods or services under this Agreement, have been added to one of the above lists.
15. This Agreement shall immediately terminate should Supplier, its employees, officers, directors, agents or subcontractors become debarred, suspended or excluded from participation in any federally funded healthcare program.
16. The Supplier agrees that if it is ultimately determined that this Agreement is a subcontract for services, the value of which is ten thousand dollars (\$10,000) or more during a twelve (12) month period within the meaning of Section 952 of the Omnibus Budget Reconciliation Act of 1980 (Public Law 96-499), and 42 C.F.R. Part 20, then the Supplier, until expiration of four (4) years after the furnishing of services pursuant to this Agreement, the Supplier shall make available, upon written request, to the Secretary of Health and Human Services or upon request to the Comptroller General or any of their duly authorized representatives, this Agreement and the books, documents and records that are necessary to evaluate the nature and extent of the costs of rendering the Services to Buyer under this Agreement. This Agreement shall not be construed as authorizing the release of any books, documents or records of the Supplier which do not relate to the furnishings of Services to Buyer under this Agreement. If the Supplier provides any services through a sub-contract with a related organization, the sub-

contract shall contain an Access to Records clause similar to this one, if required by the laws referenced above.

17. The Supplier agrees to abide by all Buyers' confidentiality policies related to the use and sharing of Buyer's information. In addition, Supplier will execute all appropriate confidentiality agreements as requested by Buyer.
18. Supplier shall comply (when applicable) with the requirements of the Deficit Reduction Act of 2005 ("DRA") which requires implementation of a compliance policy designed to prevent and detect fraud and abuse. Supplier agrees to comply with Buyer's Fraud and Abuse policy implemented in compliance with the DRA. Supplier agrees to remain in compliance of Buyer's fraud and abuse policy.
19. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make previously owed payments to the other party hereunder) when and to the extent such failure or delay is caused by or results from acts beyond the impacted party's ("Impacted Party") reasonable control, including, without limitation, the following force majeure events ("Force Majeure Event(s)") that frustrate the purpose of this Agreement: (a) acts of God; (b) flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or other industrial disturbances; (i) epidemic, pandemic or similar influenza or bacterial infection (which is defined by the United States Center for Disease Control as virulent human influenza or infection that may cause global outbreak, or pandemic, or serious illness); (j) emergency state; (k) shortage of adequate medical supplies and equipment; (l) shortage of power or transportation facilities; and (m) other similar events beyond the reasonable control of the Impacted Party.

The Impacted Party shall provide the other party with written notice of a Force Majeure Event within five (5) days after the Impacted Party, acting in good faith and using reasonable diligence, reasonably determines that a Force Majeure Event will impact its operations to the extent that its performance under this Agreement will be delayed or frustrated, including with such notice the Impacted Party's reasonable estimate of the duration of the Force Majeure Event and the expected time of performance by the Impacted Party, if any. The Impacted Party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized and shall resume its performance under the Agreement as soon as reasonably practicable after the removal of the cause of the Force Majeure Event. In addition to such other rights and remedies as may be available to Buyer, if Supplier is the Impacted Party, Buyer shall have the right to immediately terminate this Agreement by providing written notice thereof to Supplier if any Force Majeure Event continues, or is expected to continue, for more than thirty (30) days.

20. THESE TERMS SHALL SUPERSEDE ANY AND ALL PRIOR TERMS AND CONDITIONS. ANY TERMS SET FORTH IN SUPPLIER'S INVOICE OR POLICY OR ANY OTHER SUPPLIER-PROVIDED AGREEMENT, INCLUDING SUPPLIER'S PRICE QUOTATION OR PROPOSAL, THAT ADD TO, VARY FROM, OR CONFLICT WITH THESE TERMS ARE HEREBY REJECTED AND SHALL NOT APPLY. BUYER RESERVES THE RIGHT TO MODIFY THESE TERMS FROM TIME TO TIME UPON WRITTEN NOTIFICATION TO SUPPLIER BY U.S. MAIL, OR ELECTRONIC MAIL OR BY POSTING ANY CHANGES ON BUYER'S WEBSITE (www.choa.org/vendor). ANY AND ALL MODIFICATIONS TO THESE TERMS SHALL BE EFFECTIVE FOR ALL PURCHASES AFTER THE EFFECTIVE DATE SET FORTH THEREIN. THESE TERMS CONTAIN THE ENTIRE UNDERSTANDING BETWEEN THE PARTIES; PROVIDED, HOWEVER, IN THE EVENT OF ANY CONFLICT BETWEEN THESE TERMS AND CONDITIONS AND ANY OTHER MUTUALLY AGREED UPON AGREEMENT BETWEEN THE PARTIES, THE PROVISIONS OF SUCH OTHER MUTUALLY AGREED UPON AGREEMENT SHALL APPLY.

II. OPERATIONAL TERMS AND CONDITIONS

1. Equipment will be delivered, F.O.B. Destination (shipment, handling, insurance pre-paid and absorbed by Supplier) no later than the delivery date indicated on the Purchase Order. Title and risk of loss or damage to items shall remain with Supplier until delivered to the installation site and Buyer has inspected the delivered components and determined that the shipment is complete and the components undamaged. The Equipment shall be packaged appropriately, and all cartons shall be clearly stamped with Buyer's Purchase Order Number. Buyer must be able to identify easily all items of the Equipment contained within each carton.

Supplier shall provide Buyer with two (2) copies of operator and service instruction manuals (which shall include electrical and mechanical schematics, and parts and current price lists).

2. If this order is for medical Equipment, the Supplier must comply with the following medical Equipment

conditions and specifications. These conditions are intended to ensure that the Buyer and Supplier both understand the Supplier's responsibility to provide necessary information and permit the user to deliver quality health care in a safe, efficient and cost-effective manner. These conditions of sale are part of the request for quotation, purchase order or release.

- a. The equipment shall pass an electrical leakage test. American National Standard for safe current limit for clinical equipment, ANSI AAMI SCL 12-788.
 - b. The equipment shall be supplied with a standard N.E.M.A. or UL approved 3-wire power line cord with a Hospital grade plug.
 - c. The equipment shall pass all specification tests as advertised by the manufacturer of the equipment. All tests will be performed in the biomedical electronics laboratory of the Buyer by the Buyer's bio-medical electronics laboratory staff and must meet all OSHA, NFPA 76B, National and State code requirements.
 - d. Buyer shall have a sixty (60) day trial period in which to determine whether the equipment is entirely satisfactory, the trial period to run from the date of installation of equipment. The equipment must prove entirely satisfactory to the Buyer or the Buyer shall repack the equipment in the same condition as received, ordinary wear and tear accepted, and return to Supplier at Supplier's expense.
 - e. Supplier must furnish copies of operational manuals, copies of schematic drawings, maintenance service manuals, and parts lists. This material to precede or to be delivered with equipment. Supplier shall provide the necessary servicing and training on the equipment.
 - f. If applicable, the Supplier complies with FDA 510(k) and Good Manufacturing Practice (GMP)/Quality System requirements.
3. Supplier will not ship prior to any specified date, unless otherwise notified. If prices are higher than specified, Supplier will not ship but shall advise Buyer first.
 4. It is agreed that goods ordered shall comply with all laws relative thereto and applicable Joint Commission standards and that Supplier will defend and save harmless the Buyer from loss cost of damage by reason of actual or alleged infringements of letters patents concerning same.
 5. Goods rejected on account of inferior quality of workmanship will be returned to Supplier with charge for transportation both ways being the responsibility of the Supplier. Goods will not to be replaced except upon receipt of replacement purchase order issued by Buyer.
 6. Goods are not accepted until inspection has been made by the Buyer notwithstanding prior payment to obtain cash discount or to confirm price. Goods may be rejected and returned if inspection shows they are not strictly in accordance with specifications accompanying this order. If impractical to make inspection at time of receipt of goods, this clause will apply whenever goods are unpacked. If inspection discloses defective goods, it is agreed that Buyer may cancel any un-shipped portion of order.
 7. Buyer assumes NO RESPONSIBILITY for damage in shipment concealed or otherwise on goods covered by this order. The risk of loss shall remain with the Supplier until the goods are accepted by the Buyer.
 8. Orders not shipped on dates specified may be cancelled by Buyer. In case order calls for partial shipment, balance may be cancelled or suspended upon notice, suspended shipment may be later taken out if on or before last shipment date specified.
 9. Buyer will not accept over-shipments except when Buyer has been notified as to the quantity before shipping and Buyer's permission has been received. If these conditions are not acceptable, please advise Buyer upon receipt of this order, and before shipment is made.
 10. An itemized invoice is required for payment; invoice must agree with price and terms of this order. Discount is to be computed for receipt of each shipment or the correct invoice whichever is later, unless otherwise stated in order.
 11. No charges allowed for boxing, crating or packaging. Freight charges will be deducted unless otherwise agreed to in writing.
 12. Buyer represents that it is a tax-exempt corporation under Section 501(c)(3) of the Internal Revenue Code of the United States, as amended, and under applicable laws of the State of Georgia. Supplier shall take all action required to cause Buyer's purchase of the Equipment to be treated as tax-exempt transactions, and in no event shall Buyer be responsible for any sales, use, property, gross receipts, or similar taxes levied against any party to this Agreement.
 13. It is the responsibility of Supplier to immediately remove any and all litter or trash associated with the

installation of Equipment.

14. It is understood that Seller shall include the correct PO number on all invoices. Failure to put the correct PO number on the invoice may result in delayed payment. Such delayed payment will not cause any monetary or credit worthy harm to Buyer. In addition, failure of Supplier to provide an invoice to the correct address and with the correct PO within one (1) year of receipt of an item or service will result in the requirement for payment to be null and void.
15. The Supplier agrees that its Equipment will be made and perform in a manner that meets the quality standards of Buyer. If it is determined that the Equipment must be changed due to quality concerns of Buyer, the Supplier will not hold Buyer in breach of any agreement except that Buyer agrees to pay for any Equipment utilized prior to the determination of quality issues. Supplier warrants that Supplier's product or products do not infringe on any other party's rights.
16. The Supplier will be paid within thirty (30) days of receipt of an undisputed invoice. As a condition precedent to any payment by Buyer, Supplier shall furnish to Buyer waivers and releases and such other supporting information and instruments as requested by Buyer.
17. Supplier shall coordinate delivery and installation with Buyer's General Contractor and comply with all site safety requirements (as such requirements may be amended from time to time), including but not limited to safety training and orientation, background checks, drug screening, photo RFID badging, dock deliveries, rigging, and transporting of all Supplier equipment, safety provisions, dust control, wall protection, and floor protection. Supplier will be permitted to use existing freight elevator(s) only.
18. Supplier shall protect existing building components, including but not limited to floors, walls, doors, and doorframes, during the process of making deliveries to and within the building. Any damages to the building or property, including but not limited to damage to freight elevators or finished surfaces, resulting from the performance of any delivery or installation services by Supplier will be repaired to Buyer's satisfaction and at the Supplier's sole expense, except such as may be directly due to the negligence of Buyer or other suppliers.