

**TERMS & CONDITIONS**

1. **GOODS AND SERVICES:** Service Provider agrees to provide the goods (“Goods”) and/or services (“Services”) set forth in any and all Statements of Work (“SOWs”) attached to this Agreement as Exhibits incident with its execution, or subsequently executed between the Parties and referencing this Agreement. Such SOWs shall, upon execution, be attached hereto and become fully enforceable parts and subject to the terms of this Agreement. Descriptions, fees, billing schedules, and other details for Goods and/or Services will be set forth in the SOW if not set forth in the Agreement. If any reasonable and customary services, functions or responsibilities not specifically described in herein, any SOW, any purchase order issued hereunder or any amendments or addenda hereto or thereto are inherent sub tasks and related or provided incident to the Services, they shall be deemed to be implied by and included within the scope of the Services to the same extent and in the same manner as if specifically described herein or any SOW or purchase order issued hereunder. In the event of disagreement between the Parties regarding design, development or implementation, the Parties shall work together in good faith to resolve such disagreement, however CHOP’s decision on the matter shall be final.
2. **GENERAL REPRESENTATIONS AND WARRANTIES:** Service Provider warrants that all Goods shall conform to the specifications of this Agreement and shall be merchantable, free from defects (including defects in design and fit), free of all liens and encumbrances, suitable and approved by any applicable regulatory authorities for the intended purposes, and consistent with generally accepted industry standards. Service Provider warrants that all Services shall conform to the specifications of this Agreement and shall be provided in a diligent, professional and workmanlike manner and performed according to the highest professional standards. Service Provider further warrants that the Goods and/or Services and Service Provider’s performance hereunder, shall comply with all applicable laws, rules and regulations and shall not infringe or otherwise violate any intellectual property, proprietary, or contractual right of any third party. In the event of a breach of these warranties, Service Provider shall, at CHOP’s option, promptly repair, re-perform or refund all payments received for non-conforming Goods (that CHOP returns) or Services. The foregoing warranties and remedies are in addition to, and shall not limit any warranties, buyer protection or other rights or remedies as may be available at law, in equity under other programs or offers of Service Provider, or under this Agreement. Service Provider further represents and warrants that it has the authority to execute this Agreement, deliver and perform its obligations hereunder, having acquired all required consents; and is duly organized or formed and validly existing and in good standing under the laws of its incorporation or formation and in any jurisdiction in which Service Provider operates.
3. **PRICING:** No minimum order quantity or dollar amount of spend shall apply. Service Provider represents and warrants that the price(s) for the Goods or Services stated herein are no less favorable than those extended to any other customer (whether government or commercial) for the same or similar goods or services in similar quantities. Service Provider agrees to meet or beat any price CHOP learns of and/or receives from other Service Providers that can be documented for the same good(s) and/or service(s) during the period of this Agreement. In the event Service Provider reduces its price(s) for such Goods or Services during the Term, Service Provider shall reduce the prices stated herein to reflect the same. Service Provider further represents and warrants that the prices stated herein are complete, and that no additional charges of any type, including but not limited to shipping costs, shall be added without CHOP’s express written consent. Prices shall remain firm for the Term. With respect to price increases for subsequent extensions of the Term, to the extent that price increases are permitted by this Agreement, Service Provider will provide CHOP with at least six (6) months’ prior written notice of such increases. Price increases shall be limited to the lesser of three (3) percent or The Consumer Price Index for all Urban Consumers (CPI-U); US City Average; All items, not seasonally adjusted, 1982-1984=100 reference base.
4. **FAIR MARKET VALUE; NO INDUCEMENTS:** Each Party represents that the compensation provided under this Agreement represents the fair market value of the Goods and Services to be performed, has been negotiated in an arm's-length transaction, and has not been determined in any manner with regard to any implicit or explicit agreement to provide favorable procurement decisions with regard to the Goods or Services, or to the value or volume of any business or referrals generated between the Parties.
5. **SERVICE PROVIDER PERSONNEL:** Each individual involved in performing any Service under this Agreement will be subject to CHOP’s review and approval. CHOP may at any time for any or no reason, notify Service Provider that CHOP will no longer accept Services performed by any one or more of Service Provider’s employees or agents. In the event of such notification, Service Provider shall promptly remove the individual(s) in question from the CHOP account. CHOP shall have no obligation to disclose to Service Provider the reasons for any such notice. Such removal shall not terminate this Agreement and Service Provider shall continue to perform hereunder as it did prior to such removal.
6. **TIMELY PERFORMANCE:** Time is of the essence such that CHOP shall have an unrestricted right to reject the Goods or Services with no further obligation to Service Provider if Service Provider fails to meet the delivery date and conditions specified

by CHOP.

7. **DELIVERY:** Delivery is to be made only to the destination stated on the applicable purchase order (the "Purchase Order"). Delivery shall be made both in full quantities and on the date and at the time specified on the Purchase Order, strictly in accordance with CHOP's delivery schedule. Goods delivered in excess of the quantity specified may at CHOP's option be returned to Service Provider at Service Provider's expense. If CHOP has paid up front for the Goods or Services in question and CHOP elects for a refund per the prior sentence, Service Provider agrees to make such refund within thirty (30) days. Unless otherwise specified on the Purchase Order, no deliveries shall be made in advance of CHOP's delivery schedule. When Service Provider has reason to believe that deliveries will be delayed, Service Provider shall immediately provide CHOP written notice setting forth the cause and expected length of the anticipated delay. If Service Provider's deliveries fail to meet CHOP's delivery schedule, CHOP, without limiting its other remedies, may direct expedited shipping, in which case Service Provider shall bear the incremental shipping cost. Access for deliveries by vehicles to departments at the main hospital or off-site locations is limited. It is the responsibility of the Service Provider to ensure that they have the ability to deliver good(s) and/or service(s) without inconvenience or additional effort by CHOP. All Service Provider and Service Provider employee or agent vehicles shall be subject to CHOP parking restrictions, which shall be established with authorized CHOP personnel before work begins.
8. **RISK OF LOSS:** Notwithstanding anything to the contrary contained in this Agreement, Service Provider shall bear the risk of loss of, or damage to, all Goods until they are accepted by CHOP as set forth below in Section 13 (Final Inspection and Acceptance) of this Agreement.
9. **FREIGHT:** CHOP shall not be charged for returns, boxing, packing, crating, or storage. Goods shall be suitably packed to secure the lowest transportation cost that is appropriate given the nature of the Goods, and to conform with shippers' and carriers' requirements. All shipments shall be made "F.O.B. destination". If combined shipping weight exceeds 150 pounds, Service Provider must call TRIOSE at 866-241-2268, extension 204 prior to shipping, to receive routing instructions. All shipments (packing slips, labels, other shipping documents) must reference CHOP's Purchase Order number.
10. **HAZARDOUS AND REGULATED MATERIAL:** Service Provider shall package, label, transport and ship hazardous materials, items containing hazardous materials, and any other regulated materials in accordance with all applicable federal, state, and local laws, rules, ordinances and regulations, and shall furnish to CHOP any appropriate documentation or Material Safety Data Sheets prior to each shipment of same. Prior to each shipment of any hazardous or regulated materials, Service Provider shall notify CHOP of the nature of such shipment by such means of communication as will allow for the proper preparation for acceptance of the delivery and shall identify same on all shipping documents. Service Provider shall be solely responsible for notifying carriers and other handlers of any risks inherent in any such shipments.
11. **FINAL INSPECTION AND ACCEPTANCE:** All Goods and Services shall be subject to CHOP's final inspection and acceptance, notwithstanding any prior payment or preliminary inspection on the part of CHOP. CHOP shall provide written notice of its final acceptance of the Goods and/or the completion of the Services (including any required installation of the Goods) (the "Final Acceptance"). While Final Acceptance is pending, CHOP may return to Service Provider any non-conforming Goods and/or require Service Provider to correct or replace such non-conforming Goods or Services, in each case at no cost to CHOP. In the event CHOP does not require any such correction or replacement, Service Provider shall, within thirty (30) days of CHOP's notice of the return in question, refund all payments received for non-conforming Goods (that CHOP returns) or Services. Such remedies shall not limit any other rights or remedies CHOP may have at law, in equity or under this Agreement. CHOP is not required to accept partial or incomplete delivery. Acceptance of any part of the Goods and/or Services shall neither bind CHOP to accept any future delivery nor deprive CHOP of any right CHOP may have to return Goods already accepted.
12. **PAYMENTS AND INVOICES:** CHOP's standard payment terms for undisputed amounts are Net forty-five (45) days (no discount) from the invoice date unless otherwise specified on the Purchase Order. Service Provider may have the option to receive special payment terms via ePayables using a unique credit card number that Service Provider uses to settle approved invoices. CHOP will not be liable for late payment charges. All applicable taxes from which CHOP is not otherwise exempt must be itemized on the invoice. Any discount or rebate with respect to the Goods or Services that is subject to 42 CFR 1001.952(h) shall be fully and accurately reported, or the existence of such discount or rebate shall be disclosed to the extent its value is not known at the time of sale, on all applicable invoices submitted to CHOP in accordance with 42 CFR 1001.952(h)(2). All invoices should be sent to the following centralized address: The Children's Hospital of Philadelphia, PO Box 2015, Secaucus, NJ 07096-2015; or emailed to: chop.apinvoice@ipsservices.com. Invoices for Goods or Services not received or performed will be rejected. Refunds CHOP elects for returned Goods and rejected Services shall be made within thirty (30) days of the date of CHOP's written notice to Service Provider electing such refund. The Purchase Order number must appear on all invoices. Invoices received without a valid Purchase Order will be rejected.

CHOP may withhold payment on any invoiced amounts reasonably disputed in good faith. Such nonpayment shall not constitute a breach of this Agreement and the Parties shall work together in good faith to resolve the dispute in a timely manner. Service Provider shall continue performing its obligations hereunder notwithstanding such dispute and/or nonpayment.

13. **TERMINATION:**

- a. CHOP may terminate this Agreement at any time, in whole or in part, by providing written notice to Service Provider. Upon receiving notice of termination, Service Provider shall immediately cease all performance hereunder and shall cause its suppliers and subcontractors (if any) to stop all work in connection with this Agreement. If such termination is for CHOP's convenience, CHOP, after deducting any amount(s) previously paid, shall pay an equitable amount for all Goods provided or Services rendered by Service Provider, up to the time of termination, excluding Service Provider's lost profits. Under no circumstances shall Service Provider be entitled to recover more than the price of the Goods or Services actually received or performed, as stated in this Agreement. Upon receiving notice of CHOP's termination, Service Provider shall use its best efforts to reduce or mitigate any costs incurred in connection with the Goods or Services.
- b. Either Party may, without prejudice to any other rights or remedies provided at law, in equity or under this Agreement, by written notice to the other Party, terminate this Agreement in whole or in part under any of the following circumstances:
  - i. If the non-terminating Party ceases to do business in the normal course, files for bankruptcy, becomes insolvent, makes an assignment for the benefit of creditors, is in receivership or is the subject of any proceeding relating to liquidation or insolvency which is not dismissed within ninety (90) days; or
  - ii. If the non-terminating Party fails to perform any of the terms of this Agreement and fails to cure such failure within thirty (30) days after receiving written notice from the terminating Party.

In the event CHOP terminates this Agreement pursuant to this subsection 15(b), Service Provider shall also be obligated to pay any direct damages, including but not limited to all additional costs that CHOP may incur in finding replacement Goods and/or Services, as well as any consequential and incidental damages incurred by CHOP. In the event Service Provider terminates this Agreement pursuant to this subsection 15(b), CHOP shall not be liable for consequential and incidental damages incurred by Service Provider and in no circumstances shall CHOP's liability in any disputes arising under this Agreement exceed the price of the Goods or Services as stated herein.

- c. Upon termination of this Agreement, CHOP, in addition to any other rights or remedies available to it at law, in equity, or under this Agreement, may require Service Provider to transfer title to and deliver to CHOP, in the manner and to the extent directed by CHOP, any completed or partially completed Goods as well as any Services, deliverables, plans, drawings, data, samples, results, or other materials that Service Provider has specifically produced or acquired for the performance of this Agreement ("Performance Materials"). Payment for such Goods or Performance Materials shall be at the price specified in this Agreement, prorated, or as otherwise agreed upon in writing by the Parties.
14. **FORCE MAJEURE:** Except with respect to defaults of Service Provider's subcontractors and in connection with any service level agreements associated with software or software-as-a-service, neither Party shall be liable to the other Party for failure to perform hereunder, to the extent that such failure arises out of causes beyond the control and without the fault or negligence of the non-performing Party and despite the best efforts of such non-performing Party. Such causes include acts of God, acts of a government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes or freight embargoes.
15. **CHOP PROPERTY:** All materials, data, samples, tools, equipment and other property either furnished by CHOP to Service Provider or paid for by CHOP ("CHOP Property") are, and shall remain, the property of CHOP, but Service Provider shall assume all risks of and be entirely responsible for any losses or damages arising from its use of CHOP Property. Service Provider shall not use any CHOP Property or allow it to be used in any way other than in direct performance of Service Provider's obligations under this Agreement. Upon completion or termination of this Agreement, Service Provider shall promptly, in accordance with CHOP's instructions, return all CHOP Property in the condition in which Service Provider received it, or destroy such CHOP Property and certify the completion of such destruction in writing to CHOP.
16. **INDEPENDENT CONTRACTOR:** In performing hereunder, Service Provider and its employees, agents, subcontractors and representatives are independent contractors and not employees or agents of CHOP. All persons furnished or retained by Service Provider in connection with this Agreement are so furnished or retained as Service Provider's employees or agents. Nothing in this Agreement or in the course of business between Service Provider and CHOP pursuant hereto shall be deemed to create a partnership, joint venture, association, employment or any other relationship other than that of independent contractor with respect to each other. Service Provider shall not transact business, enter into agreements, or otherwise legally bind, or make representations, warranties or commitments on behalf of CHOP unless expressly authorized in writing by an authorized employee of CHOP. Neither Service Provider nor its employees, agents, subcontractors or representatives shall be entitled to benefits provided by CHOP to its employees, including but not limited to fringe benefits, worker's compensation, health and unemployment insurance, and pension plans. CHOP shall not pay or withhold federal, state, or local income or other payroll taxes on behalf of Service Provider or its employees, agents, subcontractors or representatives. Service Provider agrees to report and pay all applicable taxes.
17. **INDEMNIFICATION:** Service Provider shall defend, indemnify and hold harmless CHOP, its subsidiaries, affiliates, attorneys,

parents, officers, employees, trustees, medical and research staffs, directors, members, contractors, agents and representatives, successors and assigns (“CHOP Indemnitees”) from and against any and all actions, claims, demands (including pre-litigation demands), damages, liabilities, expenses, losses of every nature and kind, including but not limited to attorneys’ fees and costs, (collectively, “Claims”) sustained or alleged to have been sustained, or asserted in connection with or arising out of: a) the performance (or failure to perform) hereunder of Service Provider, its agents, employees, subcontractors and consultants, even in the event CHOP is alleged or found to be partially negligent; b) Service Provider’s failure to comply with the insurance provisions of this Agreement; c) death, bodily injury or property damage to or caused by any Service Provider Releasers (as such term is defined below) while onsite at CHOP’s premises; d) any breach of this Agreement; e) any data breach involving CHOP Confidential Information or protected health information, f) the failure of any installed software or software-as-a-service provided to CHOP incident to this Agreement to perform consistent with documentation or user guides provided by Service Provider; g) product liability claims brought against CHOP in connection with any Goods sold or licensed to CHOP hereunder; h) acts or omissions of negligence, willful misconduct or fraud of, or violations of applicable law by, Service Provider, its agents, employees, subcontractors and consultants; and (i) allegations that the Goods, Services, or any work product or component thereof furnished by Service Provider infringe or otherwise violate the intellectual property rights of any third party.

If any Claims alleging infringement of intellectual property rights, including but not limited to Claims of patent or copyright infringement or misappropriation of trade secrets, are brought against any CHOP Indemnitee(s) in connection with CHOP’s use of the Goods or Services, Service Provider shall procure for CHOP the right to continue to use such Goods or Services or replace or modify such Goods or Services such that the alleged infringement is removed; provided, however, that such alleged infringement does not arise solely from CHOP’s alteration or modification of the Goods or Services.

18. **RELEASE OF CLAIMS:** Service Provider on behalf of itself and its present and former officers, directors, employees, agents, attorneys and representatives, successors and assigns (“Service Provider Releasers”) performing Services and furnishing Goods hereunder, hereby knowingly and voluntarily releases, waives, acquits and forever discharges, to the fullest extent permitted by law, the CHOP Indemnitees from any and all Claims, in any jurisdiction, known or unknown, suspected or claimed, fixed or contingent, specifically mentioned herein or not, that Service Provider Releasers have or may have or claim to have now, or that may hereafter arise, related to the furnishing of Goods or provision of Services from this Agreement, including, but not limited to, any and all liability, loss, damages and expenses arising directly or indirectly from, or connected with the death, bodily injury or property damage to or caused by Service Provider representatives while onsite at CHOP’s premises.
19. **INSURANCE:** Service Provider shall maintain and keep in force at Service Provider’s expense the following minimum insurance coverage during the Term and for three (3) years thereafter:

Worker’s Compensation	Statutory
Employer’s Liability	\$1,000,000
Commercial General Liability, to include: Contractual, Premises Operations, Products and Completed Operations, Independent Contractors/Vendors and Personal Injury; Bodily Injury and Property Damage	
General Each Occurrence	\$3,000,000
Aggregate	\$5,000,000
Product Liability Each Occurrence	\$5,000,000
Product Liability Aggregate	\$10,000,000
Automobile Liability	
Combined Single Limit	\$1,000,000
Errors and Omissions/Professional Liability	
Each Occurrence	\$3,000,000
Aggregate	\$5,000,000
Cyber Liability, to include privacy and data security breaches of Service Provider’s own or a third party’s information (including regulatory fines and penalties, investigations, notification as well as credit monitoring for affected individuals)	\$10,000,000
Excess/Umbrella Coverage	
Each Occurrence	\$5,000,000
Aggregate	\$5,000,000

CHOP may require Service Provider to secure such other forms of insurance in such policy amounts as CHOP may reasonably require from time to time.

All policies shall be underwritten by a carrier rated at least “A-” in Best’s Key Rating Guide. “The Children’s Hospital of Philadelphia, including its officers, employees and agents” shall be named as additional insureds on all policies specified above other than professional liability, worker’s compensation, excess/umbrella (if such policy covers professional liability) and employer’s liability. Certificate(s) evidencing the above insurance coverages—with a statement that CHOP is an additional insured as indicated above and that the insurance afforded is primary insurance as to any other valid and collectible insurance in force shall be sent to CHOP’s Risk Management and Insurance Department at the following email address: [CertificateofInsurance@chop.edu](mailto:CertificateofInsurance@chop.edu), before Service Provider’s performance begins. Renewal certificates shall be provided annually until three (3) years after termination of this Agreement and upon request. Service Provider agrees that Service Provider, Service Provider’s insurers and anyone claiming by, through, under, on or in Service Provider’s behalf shall have no claim, right of action, or right of subrogation against CHOP and CHOP’s Indemnitees.

Service Provider shall be solely responsible for payment of premiums, deductibles and retentions for all of the required insurance. Should any of the required insurance policies be cancelled or materially changed, Service Provider shall provide prior written notice to CHOP’s Risk Management and Insurance Department.

Service Provider shall not be relieved of any liability or other obligations hereunder by reason of its failure to obtain or maintain insurance in sufficient amounts, duration or types.

20. **INTELLECTUAL PROPERTY:** Service Provider agrees that any and all Work Product (as defined below) shall be the sole and exclusive property of CHOP. Service Provider hereby irrevocably assigns, sells, transfers and conveys to CHOP all right, title and interest worldwide in and to any deliverable, material or document authored, or produced, by or on behalf of Service Provider in connection with or arising out of this Agreement or the Services contemplated hereby, and to any ideas, strategies, plans, concepts, processes, discoveries, developments, formulae, information, prototypes, inventions, materials, improvements, designs, artwork, content, software programs, other copyrightable works, and any other work or work product created, conceived, reduced to practice or developed by Service Provider (whether alone or jointly with others) for CHOP in connection with or arising out of this Agreement or the Services, including all copyrights, patents, trademarks, trade secrets, and other intellectual property rights therein, including, without limitation, use and derivative use thereof, patent and copyright right, and any and all trade secrets, whether or not embodied in any material or documentation (but not including Service Provider know-how and methodologies, and improvements thereto to the extent developed independently from the services contemplated by this Agreement and without integrating, incorporating, referencing or otherwise using CHOP Confidential Information) owned or licensed by Service Provider (the “**Work Product**”). Service Provider retains no rights to use the Work Product and agrees not to challenge the validity of CHOP’s ownership of the Work Product. Service Provider agrees to execute, at CHOP’s request, all lawful documents and other instruments necessary or desirable to confirm such assignment in and to CHOP. Service Provider also agrees that all works of authorship comprising Work Product pursuant to this Agreement shall constitute “works made for hire,” as defined in the Copyright Act, 17 U.S.C. § 101, et seq., with all rights of authorship and ownership fully vested in CHOP. If for any reason at any time in the future the Work Product or any part, portion or component thereof is deemed not to be a work made for hire, this Agreement shall serve as a full and irrevocable assignment to CHOP of all right, title, and interest in the Work Product, for the full duration of copyright and for all renewals and extensions of copyright that may be obtained under the laws now or hereafter in force and effect in the United States of America, and any other country or countries. The rights conveyed in this Agreement are without limitation as to media or technology now known or hereafter invented, time, or territory worldwide. CHOP and its successors or assigns may freely adapt, modify, use or not use or translate the Work Product, and may assign or transfer rights under this Agreement without notice to Service Provider. Service Provider expressly waives any so-called “moral right” or right of attribution, and agrees to execute any further documents as may be required to effectuate this Agreement, and Service Provider hereby irrevocably appoints CHOP as attorney in fact (coupled with an interest) to execute any such documents in the event Service Provider’s signature cannot be obtained within five (5) business days after request therefor. .

Any Work Product resulting or derived from the Services and developed, created, conceived, or made following the expiration or termination of this Agreement shall conclusively be presumed to be the property of CHOP and shall be the sole and exclusive property of CHOP. Service Provider acknowledges and agrees that it retains no rights whatsoever in the Work Product including, without limitation, any right to make derivative works and any other rights incident to copyright ownership. CHOP shall have the sole right to register and hold copyrights, trademark registrations, patents, or whatever protection CHOP may deem appropriate for the Work Product. All discoveries, deliverables and Work Product shall be promptly disclosed and delivered to CHOP and shall be deemed the Confidential Information of CHOP under this Agreement. Upon the expiration or termination of this Agreement, for any reason, Service Provider shall promptly turn over, provide or return to CHOP all Work Product (and all copies thereof, in whatever form) or, upon written direction of CHOP, destroy all of the foregoing. By entering into, or performing the Service or providing the Goods contemplated by, this Agreement, Service Provider represents and warrants that the Goods and/or Services hereby ordered and the sale, lease, or use of it will not infringe or otherwise violate any United States or foreign patents, copyrights, trademarks, or other intellectual property rights of any third party.

21. **DEFEND TRADE SECRETS ACT NOTICE:** Service Provider agrees that it has read and understands the provision set forth below and will provide written notice of it to each individual performing Services hereunder:
- “Notwithstanding anything to the contrary contained in this Agreement, pursuant to the Defend Trade Secrets Act of 2016, no individual will be held criminally or civilly liable under federal or state trade secret law for disclosure of a trade secret (as defined in the Economic Espionage Act of 1996) that is: a) made in confidence to a federal, state or local government official, either directly or indirectly, or to an attorney, and made solely for the purpose of reporting or investigating a suspected violation of law; or b) made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal so that it is not made public. An individual who pursues a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceedings, if the individual files any document containing the trade secret under seal, and does not disclose the trade secret except as permitted by court order.”
22. **SOFTWARE:** With respect to any software provided under this Agreement, Service Provider grants to CHOP a worldwide, royalty-free, perpetual license to make back-up copies of such software and to copy, modify and otherwise appropriate such software for CHOP’s internal and non-commercial purposes. Service Provider hereby represents and warrants that the software (including all updates, enhancements, upgrades or modifications to the software subsequently supplied by Service Provider) is and will be (a) free from defects that will materially affect its performance; (b) compatible with and will function in CHOP’s information technology environment and hardware and in its operating system as configured in accordance with Service Provider’s hardware recommendations and specifications as amended by Service Provider from time to time within its reasonable discretion; and (c) free from infection by malicious software including without limitation viruses, worms, Trojan horses or other programs, applications or anything else manifesting harmful, contaminating, disabling or destructive properties. Additionally, Service Provider represents and warrants that software does not contain any backdoor or concealed access devices, “locks” or other programs or devices, that upon the occurrence of a specified event or with the passage of time will render the software inoperable; and that the software is conformant in all material respects to and operational in accordance with the specifications for the software.
23. **ACCESS TO, AND SECURITY OF, CHOP NETWORK:** If Service Provider will be accessing CHOP’s computer network, then: (a) Service Provider will provide security administration support to CHOP for Service Provider’s functions, including developing new security classes specific to roles and adding, changing or deactivating Service Provider employee access levels. Service Provider will adhere to all CHOP security related policies and standard service levels. Service Provider will be responsible for the timely removal and termination of user access when access for an individual is no longer appropriate. (b) Service Provider shall be granted limited access to the CHOP information services environment, including CHOP’s network, whether remote or on site, for the exclusive purpose of undertaking the transactions and Services provided for in this Agreement. Service Provider covenants and agrees that (i) Service Provider will not gain or attempt to gain access to CHOP information services functions or modalities other than to the extent necessary to render specific Services hereunder, and (ii) Service Provider will not allow any Service Provider employee or agent to gain access to the CHOP network who does not require such access to render Services. Any such attempted access or any access or procedures by Service Provider performed outside of those explicitly approved will be considered unauthorized access to CHOP’s environment and network and a material breach of this Agreement. Service Provider hereby agrees to terminate the access of any employee or agent to CHOP’s network promptly upon the conclusion of such person’s completion of its portion of Services under this Agreement. (c) Service Provider is responsible for following CHOP policies and procedures for access to the CHOP environment and network and for security, change control and system documentation while connected to the CHOP environment, network and related systems, including but not limited to making no change to the configuration of system on the CHOP network without explicit CHOP approval and providing appropriate documentation of any approved changes. (d) Service Provider is responsible for protecting the authentication method of any of Service Provider’s employees or agents to the CHOP environment and network and preventing any misuse of the ID and access method provided by CHOP to Service Provider. Service Provider is required to operate its network in a secure manner and is responsible for any loss resulting from access to CHOP from or through the Service Provider network. Service Provider is required to ensure that the resources that support this Agreement connect to the CHOP network through a CHOP-supplied, secured broadband connection. Service Provider is responsible for any loss resulting from use of unsecured connection methods. For vendor-managed systems, Service Provider is responsible for maintaining system patching levels consistent with CHOP policies and procedures. (e) Without prior written approval from CHOP, Service Provider shall not install any information services program or software on the CHOP information services network or in the CHOP information services environment, or any portion or component thereof, including hardware or software and Service Provider shall not alter, modify the CHOP information services network or the CHOP information services environment, or any portion or component thereof, including hardware or software.
24. **CONFIDENTIAL INFORMATION:** Confidential Information shall include any and all information, including, without limitation, any data, materials or samples, disclosed or otherwise provided by CHOP (or its designee) to Service Provider, regardless of the format in which such information is shared (oral, written, electronic, hard copy or otherwise) and regardless of whether or not such information is designated as confidential and/or information that a reasonable person would consider confidential based on the nature of such information and the circumstances of disclosure, and includes but is not limited to any CHOP information Service Provider receives from any third party and/or learned by Service Provider during any visit to CHOP



facilities. The terms of this Agreement are hereby also deemed Confidential Information.

Service Provider shall not:

- (a) disclose Confidential Information to any third party absent CHOP's prior written consent, or to anyone inside Service Provider's organization who does not have a need to know such information in order to perform Services hereunder;
- (b) use Confidential Information or allow it to be used in any way other than for purposes of Service Provider's performance under this Agreement; or
- (c) use Confidential Information for its own benefit or the benefit of others (other than CHOP).

Service Provider shall protect Confidential Information by using the same degree of care, but no less than the utmost degree of care, as Service Provider uses to protect its own Confidential Information. Service Provider agrees to return all Confidential Information or destroy such Confidential Information (as elected by CHOP in writing) and certify the completion of such destruction in writing to CHOP at the request of CHOP and in any case immediately upon the termination of this Agreement or any other agreement into which the Parties may enter.

Service Provider agrees to notify CHOP in writing within twenty-four (24) hours of suspecting or discovering any unauthorized disclosure of Confidential Information, and shall cooperate with CHOP in the investigation of such suspected or actual disclosure. In addition, with respect to any use and/or disclosure of Confidential Information not explicitly permitted under this Agreement, Service Provider shall report to CHOP's Office of General Counsel located at 2716 South Street, Philadelphia, PA 19146, (with a copy to [legal@email.chop.edu](mailto:legal@email.chop.edu)) immediately, but no later than one (1) day of Service Provider's discovery of such incident. The report shall specify at a minimum: a) the nature of the incident; b) the specific Confidential Information that was involved; c) the Party responsible for making the unauthorized access, use or disclosure; d) what, if any actions Service Provider has taken or will take to limit the extent of the incident, mitigate the damage resulting therefrom and prevent additional incidents; e) when such corrective measures will be taken; and f) any other information CHOP reasonably requests.

In the event that Service Provider, any of its affiliates or their respective officers, directors, employees or agents become legally compelled to disclose any Confidential Information of CHOP pursuant to a subpoena, court order or similar process, Service Provider shall, unless legally prohibited, provide CHOP with prompt written notice thereof so that CHOP may seek a protective order or other appropriate remedies or waive compliance with the terms of this Agreement. In the event that such protective order or other remedies are not obtained, or that CHOP waives compliance with the provisions hereof, Service Provider agrees to furnish only that portion of the Confidential Information which is legally required to be furnished and to use best efforts to obtain assurance that confidential treatment will be accorded such Confidential Information. Confidential Information disclosed pursuant to this Section shall otherwise remain subject to the terms and conditions of this Agreement.

- 25. **OFFSHORE DATA:** Service Provider shall ensure that CHOP data and Confidential Information provided to Service Provider hereunder are not stored outside of the United States of America ("U.S.") or accessed directly or indirectly from outside the U.S. under any circumstances, including but not limited to storage with third party cloud computing service providers, absent the prior written consent of CHOP's Chief Information Security Officer.
- 26. **USE OF NAME OR MARKS:** Service Provider shall not use CHOP's name, logo, trademarks or other identifying phrases in any way absent the prior written approval of CHOP's Chief Marketing Officer for each instance of use. Requests for such use shall be made to CHOP's Office of General Counsel at [legal@email.chop.edu](mailto:legal@email.chop.edu).
- 27. **FETAL TISSUE:** To the extent that this Agreement involves the procurement or use of fetal tissue, Service Provider represents and warrants that:
  - (a) the donor of such fetal tissue provided full and complete written consent for such donation and, if the fetal tissue was derived from an abortion, such consent was given after the decision to obtain an abortion had already been made;
  - (b) the donor of the fetal tissue did not designate the recipient of that tissue;
  - (c) no person who provided information to the donor employed the possibility of the use of aborted fetal tissue as an inducement to undergo such abortion; and
  - (d) no consideration was made of any kind to any donor of fetal tissue; and
  - (e) Service Provider has documented whether such fetal tissue was procured as a result of still birth, miscarriage, ectopic pregnancy, abortion or other means.
- 28. **CONFLICTS AND ETHICAL STANDARDS OF CONDUCT:** Service Provider represents and warrants that there exist no conflicts of interest between Service Provider and CHOP or its employees. Service Provider further represents and warrants that it has not entered into and will not do so during the Term, any agreement that would create a conflict with Service Provider's obligations hereunder. Service Provider hereby represents and warrants that it has neither received nor given gifts or gratuities to any member of the CHOP community, nor participated in any other unethical conduct in connection with this Agreement. To the

extent that Service Provider can no longer make the representations and warranties contained in this Section, Service Provider shall notify CHOP immediately in writing. If, at any time, CHOP determines that Service Provider is in violation of any representation under this Section, CHOP may terminate this Agreement upon written notice to Service Provider, and CHOP shall have no further obligation to Service Provider.

29. **EQUAL OPPORTUNITY EMPLOYER: CHOP is an Equal Opportunity Employer. If applicable, CHOP and Service Provider shall abide by the requirements of 41 CFR 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified protected veterans or individuals with disabilities, prohibit discrimination against all individuals based on their race, color, religion, gender identity, sex, sexual orientation or national origin, and require that covered prime contractors, subcontractors and Service Provider to take affirmative action to employ and advance in employment individuals without regard to race, color, religion, gender identity, sex, sexual orientation, national origin, veteran status or disability.** Service Provider warrants that it will not discriminate in the performance of this Agreement or employment against any person because of age, race, color, religion, national or ethnic origin, sex, sexual orientation, gender identity, marital status, veteran status, or disability. Service Provider also warrants that it will comply with all applicable executive orders, and federal, state, and local laws, regulations, and rules, relating to nondiscrimination, equal employment opportunity, and affirmative action.
30. **APPLICABLE LAW/VENUE:** All disputes between the Parties shall be governed by the laws of the Commonwealth of Pennsylvania (and/or, where appropriate, federal law in the cases involving patents and other intellectual property) notwithstanding any of that state's laws to the contrary, and without regard to principles of conflict of laws. The Parties further expressly agree that the exclusive venue and jurisdiction for the resolution of any such disputes shall be the state and federal courts located in Philadelphia, Pennsylvania. The Parties hereby submit themselves to venue in Philadelphia County and to the exclusive jurisdiction of such courts for such purposes. EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING HEREUNDER AND ANY CLAIM OF INCONVENIENT FORUM.
31. **COMPLIANCE WITH LAWS AND POLICIES:** Service Provider shall comply with applicable: (a) foreign, federal, state, and local laws, regulations, executive orders and amendments thereto, including, but not limited to, import and export controls and restrictions, Occupational Safety and Health Act ("OSHA"), Nuclear Regulatory Commission ("NRC") and Centers for Disease Control ("CDC") regulations, Medicare and Medicaid billing and referral regulations, and the Pennsylvania Department of Health and Pennsylvania Department of Public Welfare regulations; (b) accreditation standards such as those set forth by The Joint Commission; (c) requirements imposed under any city, state, federal, foundation or other award, contract, funding, reimbursement, payments policy, or grant; and (d) CHOP's policies and procedures including, without limitation, its anti-discrimination and sexual harassment policies as well as those available at <http://www.chop.edu/service/vendor-access/policies-and-procedures/>. Service Provider represents and warrants that: (e) the Goods are in compliance with Sections 5 and 12 of the Federal Trade Commission Act, and are properly labeled as to content as required by Federal Trade Commission Trade Practice Rules; (f) the Goods are not adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as amended, or within the meaning of any applicable state or municipal law or are not Goods which may not under the provisions of Sections 405 or 505 of said Act be introduced into interstate commerce; and (g) the Goods are not manufactured or sold in violation of the Occupational Safety and Health Act of 1970, as amended.
32. **SUPPLIER DIVERSITY AND ACCESSIBILITY:** CHOP encourages the utilization of diverse and local suppliers, utilizing the local workforce, which include minority-owned, woman-owned, protected veteran-owned, and other businesses. For purposes of this Section, the terms "minority," "minority-owned business," and "women-owned business" shall have the meanings set forth in 12 U.S.C. 5452(g). As part of this Agreement, Service Provider shall use its best efforts to support both diversity and the local economy. If requested by CHOP, Service Provider shall provide reporting that describes its level of supplier spend with local and diversity suppliers.

CHOP is also committed to ensuring that all of our information, services and activities offered in-house or through our supplier partners are accessible to everyone regardless of technology or ability. CHOP aims to meet or exceed all applicable standards, including the Web Content Accessibility Guidelines (WCAG 2.0) Level AA and will periodically conduct accessibility audits to ensure compliance or to identify opportunities for improvement. The contents of this Section do not relieve Service Provider of any other obligations under this Agreement

33. **CORPORATE COMPLIANCE:** CHOP has established a comprehensive corporate compliance program (the "Program") to detect and prevent fraud, waste and abuse in Federal health care programs, including the Medicare and Medicaid Programs, as well as under the False Claims Act, 31 U.S.C. §§3729-3733 and related state laws. The Program can be accessed at: <https://www.chop.edu/about-us/ethics-and-compliance> and Service Provider, its employees and agents are required to comply with the Program in connection with the provision of Goods or Services.
34. **SALES AND EXCISE TAX EXEMPTIONS:** CHOP is an organization exempt from Federal income taxes under Section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from state and local taxes as an organization of purely public charity in the Commonwealth of Pennsylvania. Service Provider shall take all steps necessary to ensure that these exemptions are utilized



to the maximum benefit of CHOP. Service Provider shall not charge CHOP any tax for which an exemption is applicable.

35. **ASSIGNMENTS AND SUBCONTRACTING:** Service Provider shall not assign, subcontract, delegate or otherwise transfer any of its rights or obligations under this Agreement or the Agreement itself to any third party, by operation of law or otherwise, including, without limitation, pursuant to a Change of Control (defined below), without the prior written consent of CHOP. To the extent that Service Provider assigns, delegates, or subcontracts any or all of its rights or obligations hereunder, Service Provider shall require of such assignee, delegates, or subcontractor(s) written agreements at least as restrictive and protective of CHOP and CHOP Confidential Information as those set forth herein, and Service Provider shall be fully responsible for the acts or failures to act of such assignees or subcontractors. For purposes of this Agreement, the term “Change of Control” shall mean (a) the acquisition, directly or indirectly, of the beneficial ownership of a majority of the combined voting power of the outstanding securities of Service Provider by any “person” (as such term is defined in Section 3(a)(9) of the Securities Exchange Act of 1934, as amended) or group through one or a series of related transactions, including, without limitation, pursuant to a merger, consolidation, sale or other transfer of shares of stock (other than a transaction in which the stockholders of Service Provider prior to such transaction are the holders of a majority of the combined voting power of the outstanding securities of the surviving entity) or (b) the sale or disposition by Service Provider of all, or substantially all, of Service Provider’s assets.
36. **RECALLS:** In the event of a recall or Food and Drug Administration-initiated action with respect to any Goods (or a component of same) supplied to CHOP hereunder, Service Provider shall immediately notify CHOP in writing. In such event and notwithstanding anything to the contrary contained in this Agreement, CHOP shall have the right, in its sole discretion, to return any Goods CHOP believes should be the subject of a refund from Service Provider; Service Provider will, in turn, arrange for return of such Goods at its sole expense and shall provide such refund to CHOP within thirty (30) days of receiving CHOP’s notice of refund.
37. **BOOKS AND RECORDS ACCESS:** To the extent this Agreement is subject to Section 1861(v)(1)(I) of the Social Security Act, Service Provider agrees to make available upon written request of the Secretary of Health and Human Services or the United States Comptroller General or any of their duly authorized representatives, this Agreement, and any books, documents, and records of Service Provider that are necessary to certify the nature and extent of costs incurred by CHOP under this Agreement, until the expiration of four (4) years after the acceptance of the Goods or the termination of this Agreement by CHOP, whichever is later. Service Provider agrees that if Service Provider carries out any of the duties or obligations contemplated by this Agreement through a contract or subcontract with a value of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period, such contract or subcontract shall require this same access to the books, documents, and records of such contractor or subcontractor.
38. **CHOP AUDIT:** Service Provider shall keep, at its own expense, accurate, true and complete books and records with respect to the Goods and/or Services provided under this Agreement, the costs, expense and other charges billed to CHOP, and compliance with any applicable quality or service levels. Such books and records shall be kept at Service Provider’s principal place of business and shall be made available to CHOP or its third party designated auditor and their representatives, subject to such third party executing a non-disclosure agreement with respect to the use and disclosure of such records, for examination, audit, inspection, transcription and copying so as to allow CHOP to verify all invoices, charges and expenses paid by CHOP. CHOP shall provide Service Provider with reasonable written notice of any audit and CHOP shall be solely responsible for the costs of such audit unless it shall be determined that Service Provider is liable for more than \$5,000 in erroneous or miscalculated billing, in which case Service Provider shall reimburse CHOP for the actual cost of the audit. In any event, Service Provider shall reimburse CHOP within thirty (30) days of such audit for any fees CHOP paid that were not owed. Service Provider shall retain all records in accordance with the terms of the Service Provider record retention policy of which Service Provider shall provide CHOP a copy and shall cooperate with CHOP on all investigations and audits.
39. **HIPAA COMPLIANCE:** To the extent applicable, the Parties shall abide by all state and federal regulations concerning the confidentiality of patient medical records, including, without limitation, the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. § 1320d-d8 (“HIPAA”); and the requirements of any regulation promulgated thereunder including, without limitation, the federal privacy and security regulations and standards as contained in 45 C.F.R. Section 142. The Parties agree to execute additional mutually agreed upon documents as required under HIPAA rules and regulations to assure the safeguarding of protected health information. In the event such documentation is not agreed upon and executed, either Party may terminate this Agreement without penalty by providing written notice to the other Party.
40. **SANCTIONED PERSONS:** Service Provider represents and warrants that it and any of its agents, employees, officers, and representatives providing Services under this Agreement have not been: (a) sanctioned by or excluded from participation in any state or federal healthcare program and are not sanctioned or debarred under any federal or state law or regulation; (b) listed in the current Cumulative Sanction List of the Office of Inspector General for the United States Department of Health and Human Services for currently sanctioned or excluded individuals or entities; (c) listed on the General Services Administration’s List of Parties Excluded from Federal Programs; (d) listed on the United States Department of Treasury, Office of Foreign Assets Control’s Specially Designated Nationals and Blocked Persons List; and (e) convicted of a criminal offense related to health care. Service Provider shall immediately notify CHOP in the event that Service Provider is no longer able to make such representations and warranties. Without limiting any other rights and remedies CHOP may have under this Agreement, at law, or in equity, CHOP

may upon written notice, terminate this Agreement, without penalty, in the event that CHOP has determined that Service Provider is in breach of this provision.

41. **NO CONSTRUCTION AGAINST DRAFTER:** Each Party acknowledges that it has fully reviewed this Agreement and that all of the terms and conditions contained herein have been fully negotiated by the Parties. Having acknowledged the foregoing, the Parties agree that any principle of construction or rule of law that provides that, in the event of any inconsistency or ambiguity, an agreement shall be construed against the drafter of the agreement shall have no application to this Agreement or any other agreement executed between the Parties.
42. **OWNER/INVESTOR PHYSICIANS:** If Service Provider is not a publicly traded entity, Service Provider represents and warrants that it does not have as owners or investors any physicians (as such term is defined by 42 C.F.R. Section 411.351) who are in a position to refer patients or business to CHOP or otherwise benefit from procurements by CHOP under this Agreement; or such physician's compensation and all payments from Service Provider to such physicians is commensurate with the value of their respective ownership interests and will not vary or be based in whole or in part on the volume or value of any business or referrals to CHOP from such physician or the volume or value of Goods or Services procured by CHOP under this Agreement.
43. **DISCOUNTS & WARRANTIES:** If this Agreement involves warranties under 42 C.F.R. Section 1001.952(g) or discounts or rebates under 42 C.F.R. Section 1001.952(h) (the Anti-Kickback Statute discount safe harbor regulations) or other applicable laws and regulations, in addition to the invoicing requirements set forth in Section 14 (Payments and Invoices) of this Agreement, Service Provider must (i) promptly provide reasonable written notice to CHOP of CHOP's obligation to report such warranties, discounts or rebates and provide to CHOP any information required under 42 C.F.R. Section 1001.052(g) or 42 CFR 1001.952(h), as applicable, and (ii) fully and accurately reflect in cost reports or other submissions to federal healthcare programs all such discounts and upon request by CHOP, the Secretary of Health and Human Services or a state agency, make available information concerning such discounts.
44. **SERVICE PROVIDER REGISTRATION REQUIRED:** Throughout the term of the Agreement, Service Provider shall undertake licensure (if applicable) and credential verification, training, occupational health screenings, background checks, and drug screens on all employees, representatives and/or contractors who are reasonably likely to render services at CHOP locations. Service Provider shall be registered and in compliance with CHOP's Vendor Access Program (<http://www.chop.edu/supplier-relations-and-access-program/vendor-access-program>). Service Provider shall only utilize employees and/or contractors at CHOP locations who are cleared and up to date under CHOP's Vendor Access Program, and Service Provider is responsible for the associated annual credentialing fees. To the extent that CHOP policy changes in this regard, Service Provider agrees to comply with such policy changes within sixty (60) days of being notified thereof by CHOP.
45. **MISCELLANEOUS PROVISIONS:** Service Provider's commencement of Services or shipment of Goods constitutes Service Provider's acceptance of this Agreement. This Agreement may be modified only pursuant to a written instrument signed by authorized representatives of both Parties. The invalidity in whole or in part of any provision of this Agreement shall not affect the validity of other provisions. To the extent that Service Provider utilizes terms and conditions of its own in its business, irrespective of whether or not those terms are set forth in any invoice or other Service Provider document provided to CHOP or available on Service Provider's website in "click-through" format or otherwise, such terms and conditions shall not apply to CHOP. Any conflict between/among this Agreement and any other agreement between the Parties shall be resolved according to the following order of precedence: Business Associate Agreement, any amendment to this Agreement, this Agreement, the Data Security Addendum (if applicable), any SOW executed hereunder, and any applicable CHOP Purchase Order. A Party's failure to exercise any right, power or privilege under this Agreement shall not be construed as a waiver of that Party's present or future right to do so. The headings in this Agreement have been inserted solely for convenient reference and shall be of no legal effect.
46. **NOTICES:** Any notices provided pursuant to this Agreement shall be in writing and sent by certified or registered mail, return receipt requested, postage prepaid, by Express mail or by personal hand delivery **AND** via email to Service Provider or CHOP at the addresses listed below:

**For CHOP:**

The Children's Hospital of Philadelphia  
Attn: Services and Logistics Business Manager  
Services and Logistics Center  
Room 2611  
6400 Market Street  
Millbourne, PA 19082

**With a copy to:**

[supplychain@chop.edu](mailto:supplychain@chop.edu)

47. **SURVIVAL:** This Section 47 and Sections 2-28, 30, 31, 34, 36-46 and 48 hereunder shall survive any termination of this Agreement.
48. **ENTIRE AGREEMENT:** This Agreement shall constitute the entire agreement between the Parties as to the subject matter contemplated hereby and supersedes all prior representations, inducements, promises or agreements, whether oral or written, with the exception of any confidentiality or Business Associate Agreements executed between the Parties as to the subject matter herein.