

Procurement Purchase Order Terms and Conditions

These Purchase Order Terms and Conditions, and any CHEO supplementary Purchase Order Terms and Conditions (if applicable), attached to or referenced in the main body of the Purchase Order are the full agreement between CHEO and the Supplier named on the Purchase Order.

1. Goods and/or Services

CHEO agrees to engage Supplier to provide the goods and/or services described in this Purchase Order and the Supplier has agreed to perform and provide such services (collectively the "Services").

2. Term

Except as otherwise provided on the Purchase Order, CHEO agrees to engage Supplier to provide the goods and/or services for a Term commencing on issue date of the Purchase Order and ending upon delivery and acceptance of goods and/or completion of the services.

3. Fee

The total amount of this Purchase Order, including the initial Term and any subsequent optional terms will not exceed the value of this Purchase Order.

Unless otherwise expressly stated in the Purchase Order, all prices specified herein shall be fixed and in Canadian dollars and shall include all charges and expenses of the Supplier, as well as freight and insurance to destination including packing, boxing, cartage and any and all applicable taxes, fees and duties of federal, provincial and local government except any applicable harmonized sales tax which may be shown as extra. Undisputed invoices are payable by CHEO within 30 days of receipt subject to satisfactory completion of performance by Supplier of its obligations. The time specified for payment of invoices, or for accepting any payment of discounts offered, shall run only from the date that undisputed invoices are furnished to CHEO, or satisfactory receipt of the goods / work by CHEO, whichever shall be the latter. CHEO may withhold payment subject to a reasonable period to conduct inspection (with respect to goods); and, with respect to equipment, software, deliverables and work, successful testing, in accordance with Section 16 (Acceptance Testing). CHEO shall be entitled to obtain copies of, or to audit, any supporting documentation with respect to invoiced charges. Where a Purchase Order indicates that CHEO shall also be responsible for expenses, then CHEO shall reimburse Supplier for reasonable expenses as actually incurred, provided: (a) such expenses must be pre-approved by CHEO; (b) Supplier shall not include in such expenses any administrative markup; (c) Supplier shall provide copies of receipts; and (d) such expenses must comply with CHEO's Travel/Expense Policy (request copy from CHEO if required) as of the date of issuance of the Purchase Order; for greater clarity, in accordance with such policy, and in conformance with the Ontario Government's Broader Public Sector Expenses Directive, meals, hospitality and incidentals are prohibited from being reimbursable expenses, and shall accordingly not be subject to reimbursement under this CHEO Order.

4. Invoices

Invoices must be submitted to CHEO's Accounts Payable department via email to payables@cheo.on.ca. The Purchase Order number must appear in all correspondence, invoices, shipping papers and packages.

Personal information contained in invoices and related documentation submitted to CHEO is collected in accordance with the Freedom of Information and Protection of Privacy Act for purposes related to CHEO's procurement, financial administration, and payment processes. CHEO may use authorized third-party service providers to process invoice information on its behalf. Suppliers must ensure that any personal information submitted to CHEO is limited to what is necessary for these purposes and that they have the authority to disclose it. Questions regarding this collection may be directed to the CHEO Privacy Office at privacy@cheo.on.ca or 613-737-7600 (x3646).

5. Independent Contractor

Supplier's relationship with CHEO as created by this Purchase Order is that of an independent contractor for the purposes of the Income Tax Act (Canada) and any similar provincial taxing legislation. It is intended that Supplier shall have general control and direction over the way its services are to be provided to CHEO under this Purchase Order.

Nothing contained in Terms and Conditions shall be regarded or construed as creating any relationship (whether by way of employer/employee, agency, joint venture, association, or partnership) between the parties other than as an independent contractor as set forth herein.

Supplier may not assign the work procured under this Purchase Order, in whole or in part, or use others for the provision of any goods or services without the prior written consent of CHEO.

6. Supplier's Power to Contract

The Supplier represents and warrants that it has the full right and power and all necessary licenses, authorizations, and qualifications to enter into and perform its obligations under this Purchase Order and that it is not a party to any agreement with another person which would in any way interfere with the rights of CHEO under this Purchase Order.

7. Conflict of Interest

Supplier, including its employees, agents and subcontractors, shall not engage in any activity which creates a Conflict of Interest in respect of the procurement hereunder, and shall promptly notify CHEO of any actual, potential or apparent conflict of interest that arises during performance. A "Conflict of Interest" means a situation in which financial or other personal considerations have the potential to compromise or bias professional judgment and objectivity. An apparent Conflict of Interest is one in which a reasonable person would think that the professional's judgment is likely to be compromised. A Conflict of Interest also includes any unlawful, unethical or fraudulent activity, or any violation by Supplier or its personnel of Supplier's code of business/ethical conduct. Supplier shall adhere to commonly accepted norms of ethical business practices, including establishing and ensuring adherence to, precautions to prevent its employees, agents and subcontractors from providing or offering gifts or hospitality of greater than nominal value to any person acting on behalf of or employed by CHEO.

8. Compliance

Supplier represents that it is not a 'U.S. business' as that term is defined by the Ontario Government Procurement Restriction Policy, as issued under the authority of the Management Board of Cabinet Act, 1990, and the Broader Public Sector Accountability Act, 2010.

This Purchase Order shall be governed by and construed in accordance with the Laws of the Province of Ontario and the applicable Laws of Canada.

Supplier shall comply with all applicable federal, provincial, and municipal laws, rules and regulations arising out of or connected with the performance of the Services under this Purchase Order by Supplier or its employees.

Any legal action or proceeding commenced by either party arising out of this Purchase Order shall be brought in a court of competent jurisdiction in the Province of Ontario and each party shall submit to and accept the exclusive jurisdiction of such court for the purpose of such suit, legal action or proceeding.

Supplier shall be responsible for all Unemployment Insurance Contributions, Canada Pension Plan contributions, Income Tax and Workers' Compensation payments relating to or arising out of the fees paid to Supplier under this Purchase Order for the goods provided and/or the services performed by Supplier or its employees. Payments relating to any of the above shall be the responsibility of Supplier and shall be forwarded by Supplier as appropriate, directly to the government agencies involved. Proof of compliance with this requirement shall be available to CHEO upon request.

If any taxing authority, for whatever reason, seeks from CHEO any Unemployment Insurance Contributions, Canada Pension Plan contributions, Income Taxes or Workers' Compensation payments, Supplier agrees to indemnify CHEO and any of its directors, officers, and employees, for the full amount of any such contributions or payments (including any applicable interest and penalties thereon).

By accepting this Purchase Order, the Supplier attests that the goods and/or services provided by the Supplier under this Purchase Order are not the result of, and in no way involve, forced labour or child labour (as such terms are defined in *Canada's Fighting against Forced Labour and Child Labour in Supply Chains Act*).

9. Accessibility for Ontarians with Disabilities Act (AODA)

In the provision of goods and/or services procured under this Purchase Order, the Supplier shall comply with all applicable accessibility requirements under the *Accessibility for Ontarians with Disabilities Act, 2005*, S.O. 2005, c. 11 (the "AODA"), and all regulations made under the AODA, including the Integrated Accessibility Standards Regulation, O. Reg. 191/11 (the "IASR"), as amended from time to time.

Without limiting the generality of the foregoing, the Supplier agrees that:

- (a) All goods and/or services provided under this Purchase Order shall be provided in a manner that complies with AODA and IASR and that respects the dignity and independence of persons with disabilities.
- (b) Where information or communication materials are required to be provided to the public or to CHEO, such materials shall be provided in accessible formats and with communication supports upon request, in accordance with the AODA and IASR.
- (c) The Supplier shall ensure that its employees, agents, subcontractors, and any other persons involved in delivering the goods and/or services under this Purchase Order receive appropriate accessibility training as required under the AODA and IASR.
- (d) The Supplier shall notify CHEO promptly of any accessibility barriers identified in connection with the provision of the procured goods and/or services and shall cooperate with CHEO to remedy such barriers in a timely manner.
- (e) Failure to comply with this section shall constitute a material breach of this Purchase Order.

10. Key Personnel

Supplier is required to supply an adequate number of properly trained personnel, to fulfill all Supplier obligations under this Purchase Order.

If the Supplier's proposal identified any key personnel that CHEO relied upon in the evaluation of the proposal and the subsequent issuance of this Purchase Order, Supplier will not remove any key personnel from the provision of the Services, or materially reduce the responsibilities of any personnel in relation to the provision of the Services except with the prior written consent of CHEO (which consent shall not be unreasonably withheld).

11. Confidential Information

Supplier acknowledges that certain of the material and information made available to Supplier by CHEO in the provision of the goods and/or the performance of the Services (the "Confidential Information") will be of a confidential nature. Supplier recognizes that the Confidential Information is the sole and exclusive property of CHEO, and Supplier shall use its best efforts and exercise diligence to protect and maintain confidentiality of the Confidential Information. Supplier shall not, directly, or indirectly, use the Confidential Information for its own benefit, or disclose to another any Confidential Information, whether acquired, learned, obtained, or developed by Supplier alone or in conjunction with others, except as such disclosure or use may be required in connection with the performance of the Services or as may be consented to in writing by CHEO.

The Confidential Information is and shall remain the sole and exclusive property of CHEO regardless of whether such information was generated by Supplier or by others, and Supplier agrees that upon termination of this Purchase Order it shall deliver promptly to CHEO all such tangible parts of the Confidential Information including records, data, notes, reports, proposals, CHEO lists, correspondence, materials, marketing or sales information, computer programs, equipment, or other documents or property which are in the possession or under the control of the Supplier.

Supplier must ensure the return or, at CHEO's direction, destruction of all CHEO's Confidential Information in its or its Personnel's possession upon expiration of this Purchase Order or otherwise upon CHEO's request. No Confidential Information may be kept by Supplier or any Supplier Personnel except as is necessary to enable them to comply with their reasonable document retention policies and provided such Confidential Information is not normally accessible to any individuals in the normal course of business and is destroyed in the normal course of business in accordance with such retention policies.

To the extent Supplier may disclose any of its confidential information to CHEO, CHEO shall treat the Supplier's confidential information as proprietary and confidential using no less than a reasonable degree of care.

Each of the foregoing obligations of Supplier in this clause shall also apply to any confidential information of customers, joint venture parties, Consultants, and other entities, of any nature whatsoever, with which CHEO or any associate or affiliate of CHEO has business relations.

Notwithstanding the foregoing provisions of this clause, Supplier shall not be liable for the disclosure or use of any of the Confidential Information to the extent that:

- (a) the Confidential Information is or becomes available to the public from a source other than Supplier and through no fault of the Supplier; or
- (b) the Confidential Information is lawfully obtained by Supplier from a third party or a source outside of this Purchase Order.

Supplier shall maintain compliance with all applicable laws relating to privacy, confidentiality, and the collection, storage, and dissemination of personal information in the delivery of the Services, including, but not limited to the *Personal Health Information Protection Act, 2004* (PHIPA) and the Regulation and any other legislation in force from time to time that is applicable to a Party that contains provisions relating to the protection of personal information, including without limitation personal health information.

The covenants and agreements contained in this clause shall survive the termination of this Purchase Order.

12. Personal Health Information.

To the extent that Supplier collects, discloses, accesses, or otherwise processes Personal Health Information ("PHI") under this Purchase order, the parties agree that such activities shall be governed by and comply with the provisions set out in Schedule A – Information Practices. The obligations in Schedule C are hereby incorporated into this Purchase Order by reference and shall apply in full to all PHI handled pursuant to this Purchase Order.

13. Delivery and Performance

Where a delivery/performance date or schedule is specified in this Purchase Order, timely delivery/performance is of the essence, and the Supplier shall be responsible for ensuring that such delivery is made and shall advise CHEO immediately of any anticipated delays and the reasons, therefore. Except for software, title to goods transfers to CHEO upon delivery. All goods will be delivered free of encumbrances; Supplier shall not register any encumbrances on any CHEO property; and Supplier shall ensure prompt removal of any encumbrances that arise by operation of statute registered on any CHEO property which relates to the performance of any work by Supplier or its subcontractors/agents.

14. Shipment

In the case of tangible goods, Supplier shall suitably pack, mark and ship in accordance with any instructions from CHEO and the requirements of common carriers in a manner to secure the lowest transportation cost, and no additional charge shall be made by the Supplier therefore unless otherwise stated herein. Supplier shall be liable for any difference in freight charges or damage to the goods resulting directly or indirectly from any failure by the Supplier to comply with this section. Risk of loss shall not pass to CHEO prior to receipt of applicable goods at CHEO's facilities.

15. Inspection and Rejection

CHEO shall have the right to conduct an inspection within a reasonable time after delivery of goods at CHEO's facilities, and/or completion of the work, as applicable, and if, in CHEO's reasonable discretion, any goods are deemed to be damaged, incomplete, or not in conformance with their documentation/required specifications or fit for their intended purpose; or work is deemed to be incomplete or deficient; such goods/work shall be subject to rejection by CHEO. The making or failure to make any inspection to, or payment for, or acceptance of goods or work, shall in no way impair CHEO's right to reject non-conforming goods/work, or to avail itself of any other remedies to which CHEO may be entitled.

16. Acceptance Testing

Where goods consist of equipment, software and/or deliverables (e.g., work), then following delivery and completion of installation/implementation (including training if applicable), CHEO shall have a 30 day period (or such other period as is specified on the Purchase Order) to perform acceptance tests in order to confirm that the goods operate without errors and in conformance to their documentation and any mutually agreed to documented requirements. If CHEO identifies any deficiencies during such acceptance test to Supplier, then Supplier shall promptly correct such deficiencies and allow CHEO a reasonable period to confirm such corrections. If Supplier is unable or unwilling to correct such deficiencies within a reasonable period then CHEO may, at its option, return the goods/work, cancel the acquisition and Supplier shall refund all amounts paid by CHEO pursuant to the Purchase Order in respect of the rejected goods/work and any other dependent goods/work whose value is diminished.

17. Ownership / Licensing

Ownership of any documents, including specifications or drawings, supplied by CHEO, or any documents or work product produced by the Supplier upon request of CHEO, including all associated intellectual property rights therein, shall always rest with CHEO. To the extent Supplier acquires any such rights, Supplier assigns and shall assign to CHEO; and shall take any future steps reasonably required to affect such assignment from Supplier, its employees, agents and subcontractors. Where a good or service includes provision to CHEO of software and/or other pre-existing Supplier materials, Supplier hereby grants a perpetual, irrevocable (subject to payment of applicable license fees), non-exclusive license to use such software and other pre-existing Supplier materials for its normal and intended purposes subject to any use limitations specified in the Purchase Order. For further certainty, any third-party proprietary information (expressly including any information concerning interfaces and/or file formats) to which Supplier is provided access by CHEO, or as contained in any CHEO provided materials, may not be used by Supplier except as required to perform the work for CHEO. Where any deliverables include new software created in the performance of the work, Supplier shall supply CHEO with the software in both object code and documented source code form, and any license to pre-existing components embedded in such deliverable shall include the right to modify such software. Where goods constitute pre-existing software: (a) Supplier shall retain copyright and all other intellectual rights in its preexisting software, with CHEO only receiving a license as provided for herein; (b) Ownership of any patches, updates or enhancements created by Supplier as part of its normal development and not based on specific CHEO provided requirements, and any bug fixes and maintenance updates developed to correct defects or errors in the software, shall be licensed to CHEO as part of the software license set out in this provision and ownership of such bug fixes and maintenance updates shall not be transferred to CHEO; (c) CHEO shall not reverse engineer, disassemble or modify any such pre-existing software that is provided in object code form only. Each party agrees to comply with applicable export control laws and regulations, including Canadian export control requirements that apply to U.S. origin goods and technology.

18. Warranty / Guarantee

Supplier represents, warrants and covenants that (a) the goods and/or work shall conform to the description and applicable specifications, drawings, samples, including description furnished or specified by CHEO, specified/referenced in this Purchase Order or RFP (where applicable), and/or required by applicable law or standards, shall be of good merchantable quality, of good material and workmanship, free from defect in manufacturing or design, and fit and sufficient for the purposes intended, and free and clear of all liens and encumbrances, and that the Supplier has absolute title and hereby conveys such title; (b) work shall be performed in a professional manner by properly trained and experienced personnel and in accordance with industry standards and best practices and documented requirements; and (c) documentation provided by Supplier shall accurately and comprehensively describe the installation, configuration, operation, (user level) maintenance, performance and functionality of the goods and shall be sufficient to permit a technically competent person to effectively install, use and maintain (user level maintenance) the goods. Supplier shall promptly remedy any deficiency. The foregoing is in addition to any warranty or service guarantee given by the Supplier to CHEO or implied by law.

Except as otherwise provided in the Purchase Order, any supply of goods or performance of work shall include the provision of warranty services to correct defects (including non-conformance with documented requirements) in the goods or work. Such warranty services shall be provided by Supplier for a period of 12 months from acceptance. Thereafter, should CHEO desire to acquire, at its option and without any obligation herein to so acquire, additional warranty services, under a separate signed, written contract with the Supplier, Supplier shall offer such warranty services (in respect of goods, which may include software), for additional one year periods for at least 7 years following purchase (and thereafter for at least one year following written notice of Supplier of its intention to discontinue offering), at an annual fee which shall not exceed the annual fee for the initial chargeable annual term plus the general CPI+ 2%; but in any event which shall not exceed the year over year increase in the list price for the applicable goods; and upon terms that are no less favourable to CHEO than those set out herein. Such warranty services shall include: (a) the provision of updates as provided by Supplier to its purchasers of the goods who are receiving warranty services; (b) the provision of technical support and defect correction, including prompt provision of reasonable workarounds, and the availability of replacement parts and consumables/disposables to acquire, as applicable; and (c) in the case of equipment, performance of preventative maintenance on the equipment at a frequency as recommended by Supplier. Where the goods include software, then as part of such warranty services, Supplier shall ensure that all software components are promptly updated to address any known critical issues or security vulnerabilities, and that such software remains compatible with such updates of any third-party components such as operating systems that the software must interact with. If required by Supplier, CHEO agrees to apply software updates within 12 months of receipt so long as such updates do not adversely affect CHEO's use and are provided at no additional charge. During the life of any goods constituting equipment (or software operating on equipment), Supplier shall notify CHEO of any safety alerts. Supplier will not remove any component of the goods (such as storage media) containing any PHI from Supplier's facilities unless such information is permanently and destructively erased prior to removal. Any remote access by Supplier during implementation or provision of warranty services shall be performed in compliance with CHEO's Remote Access Policy (as advised by CHEO from time-to-time) as of the date of issuance of the Purchase Order.

19. Medical Devices

Where any goods constitute a "medical device" or are otherwise regulated by Health Canada: (a) prior to delivery Supplier shall obtain, and shall maintain throughout the useful life of the goods, any required Health Canada licenses in respect of the good and all updates and upgrades provided to CHEO; and (b) unless otherwise agreed by CHEO in writing, all updates and patches shall be applied by Supplier.

20. Publicity

Use of CHEO's name by the Supplier in any way which could be interpreted as constituting a testimonial, advertising, marketing or solicitation of business without the prior written consent of CHEO's Corporate Communications department is expressly forbidden.

21. Dispute Resolution

In the event of any dispute or disagreement between the parties with respect to the interpretation of any provision of this Purchase Order, the performance of the parties under the Purchase Order, or any other matter that is in dispute between the parties related to the Purchase Order, upon the written request of either party, CHEO and the Supplier will meet for the purpose of resolving such dispute. If the dispute

cannot be settled within ten (10) days of its being referred thereto, it shall at the request of either party be referred to senior officials of Supplier and of CHEO. Such group shall have ten (10) days to resolve the dispute from when the dispute is referred to it.

The parties will discuss the problem and negotiate in good faith without the necessity of any formal proceedings related thereto. No formal proceedings for the resolution of such dispute may commence until such time as one of the implicated parties concludes reasonably and in good faith that applicable resolution through continued negotiation of the matter in issue does not appear likely.

22. Performance notwithstanding Dispute

Subject to the provisions of this Purchase Order, each party shall continue the performance of its obligations during the resolution of any dispute or agreement, including payment of undisputed amounts then due.

23. Arbitration of Disputes

Any dispute that has proceeded to be resolved without resolution may be submitted to arbitration of either party. The dispute shall be submitted to arbitration by a notice (the "Arbitration Notice") transmitted by personal delivery to the other party in the manner set forth in the notice provisions of this Purchase Order. The date on which the Arbitration Notice is delivered is the notice date (the "Notice Date"). Subject to the provisions hereinafter set forth, the arbitration will be conducted and determined in accordance with the Arbitration Act 1991 (Ontario), as amended from time to time. The procedure mandated by the Arbitration Act 1991 (Ontario) shall be modified as follows:

- The arbitration will be conducted in the City of Ottawa by a single arbitrator with suitable expertise to be agreed upon by the parties. If the parties cannot agree on the arbitrator within ten (10) business days of the Notice Date, the parties agree to accept an arbitrator appointed by the President of ADR Institute of Ontario presiding at the Notice Date.
- The rules to be applied for arbitration shall be the rules of the *Arbitration Act 1991* (Ontario). The arbitrator shall commence the arbitration hearing within forty-five (45) business days of the appointment of the arbitrator, and the arbitration shall be completed within thirty (30) days of the date that it commences. The arbitrator shall render a decision within ten (10) days after the arbitration is completed.
- Upon failure, refusal, or inability of the arbitrator to act, his or her successor shall be appointed in the same manner as provided his or her original appointment.
- The arbitrator shall render his/her decision in writing with counterpart copies to both parties. The costs of the arbitration, including the fees and expenses of counsel, expert and witness fees, and costs of the arbitrator shall be in the discretion of the arbitrator, who shall have the power to make any award which is just in the circumstances, and
- The determination arising out of the arbitration process including a determination of the arbitrator as to his/her jurisdiction to determine a matter in dispute shall be final and binding on the parties to the arbitration and no appeal shall be taken from any determination. The parties agree that the arbitrator shall not have the right to amend, change or vary any of the terms or conditions of this Purchase Order.

24. Matters Excluded from Arbitration

The following matters shall be excluded from arbitration:

- Claims for contribution or indemnity by a party against the other party brought in the same court as the court in which the suit against the party is brought; and
- A decision by either party to terminate this Purchase Order.

25. Injunctive Relief

Notwithstanding the provisions, each party shall retain the right, and nothing shall prevent either party from seeking immediate injunctive relief if, in its business judgment, such relief is necessary to protect its interests prior to utilizing or completing the dispute resolution process such as, for example, a claim by a party based on the misappropriation of any of its Confidential Information.

26. Termination

In the event that Supplier or CHEO is in default of any provision of this Purchase Order, or otherwise fails to perform the Services in accordance with the terms of this Purchase Order, the non-defaulting party may immediately terminate this Purchase Order if: (a) the defaulting party has been provided with written notice of a breach of contract and has failed to cure the breach to the non-defaulting party's satisfaction within thirty (30) calendar days. Either party may terminate this Purchase Order immediately if a party is adjudged bankrupt, makes a general assignment for the benefit of creditors because of insolvency, or if a receiver or trustee in bankruptcy is appointed. In addition, either party may, at any time, without cause or reason, upon giving thirty (30) calendar days advance written notice to the other terminate this Purchase Order for convenience.

CHEO shall not be liable to Supplier for costs or damages arising from termination of the Purchase Order except as explicitly set out in this section. The total aggregate payments to Supplier under this Purchase Order, including any other payment already made, shall under no circumstances exceed the Purchase Order Value as may be amended from time to time to reflect amendments to this Purchase Order.

27. Supplier's Indemnity

Supplier will defend, at its expense, any new claim or action (whether well-founded and whether for damage to property or injury or death to humans) brought against CHEO or its officers, directors, agents, physicians, or employees (collectively, the "Indemnified Party") arising out of or related to:

- (a) claims for bodily injury, including death, and loss or damage to tangible property, and claims asserted by third parties for bodily injury, including death, and loss or damage to tangible property;
- (b) any material and uncured breach or alleged material and uncured breach by the Supplier, its directors, officers, employees, and agents, including all Supplier's Personnel, of any of its obligations, warranties, or representations in this Purchase Order; and
- (c) any willful or negligent act or omission of the Supplier, its directors, officers, employees, or agents, including all Supplier's Personnel, in the performance of this Purchase Order.

All the above to the extent the damages being claimed were caused by the Supplier. Supplier shall indemnify and hold the Indemnified Party harmless against any such claim, action, demand, cost, charge, loss and expense with respect to all resulting costs, liabilities and damages, including legal costs on a solicitor and client basis provided that CHEO promptly notifies Supplier of any claim or action in respect of which this indemnity may apply and of which CHEO has knowledge, CHEO co-operates with Supplier in the defense of any such claim or action; and CHEO provides control to Supplier in the defense or settlement of any such claim or action. No such claim or action shall be settled or compromised by Supplier without CHEO's prior written consent, such consent shall not be unreasonably withheld.

Supplier's indemnifications and liability under this Purchase Order will be unlimited with respect to:

- (a) Claims for bodily injury or death, to the extent caused by Supplier's wrongful acts or omissions; and
- (b) Claims for loss or damage to tangible property, covering the actual cost to repair or replace the damaged property, to the extent caused by Supplier's wrongful acts or omissions.

28. Liability

Neither party shall be liable to the other party for lost profits, lost opportunity, special, consequential, incidental, exemplary, or indirect costs from any cause whatsoever, even if advised of the possibility of such costs or damages. A party's indemnification obligations as set out in this Purchase Order are excluded from this limit on liability.

29. Insurance

Supplier shall provide, maintain, and pay for the insurance coverage described in this section. The duration of each policy shall be for the duration of the Term of the Purchase Order, except for professional liability insurance which shall be maintained by the Supplier for a period of not less than two (2) years following completion or termination of the Purchase Order. The Supplier shall ensure that CHEO is named as an additional insured party under the Supplier's insurance policy put in effect and maintained pursuant to this Purchase Order. Prior to the commencement of the Services, Supplier shall furnish a Certificate of Insurance to CHEO in accordance with the insurance requirements set out below:

- (a) Comprehensive general liability insurance naming CHEO as additional insureds with limits of not less than \$2,000,000 per occurrence and \$2,000,000 as an annual aggregate covering liability for personal injury or property damage and including products and completed operations, cross-liability clause, and contractual liability coverage.
- (b) Professional liability insurance (also known as errors and omissions insurance) covering the negligent acts, errors, or omissions of the Supplier, its employees, agents, or subcontractors in the performance of the Services. Such insurance shall be written on a claims-made basis with limits of liability of not less than \$2,000,000 per claim and in the aggregate, per policy period, and shall be placed with an insurer licensed to conduct business in the Province of Ontario. CHEO reserves the right to require higher limits of professional liability insurance where the Services involve clinical judgment, patient safety, diagnostic services, systems design, data integrity, or regulatory compliance.

The policy shall include coverage for breach of professional duty, negligence, errors, omissions, misrepresentation, and failure to perform professional services in accordance with applicable standards of care. The Supplier shall ensure that coverage remains in force for claims made during the policy period and any applicable extended reporting period, and shall not cancel, materially alter, or permit the insurance to lapse without providing CHEO with not less than thirty (30) days' prior written notice. Failure to maintain professional liability insurance in accordance with this Purchase Order constitutes a material breach.

The Supplier shall maintain Professional Liability (Errors and Omissions) Insurance during the term of this Purchase Order and for a period of not less than three (3) years following completion of any services provided under this Purchase Order.

- (c) Automobile liability insurance in respect of licensed vehicles with limits of not less than \$2,000,000 per occurrence and as an annual aggregate and including owned and \$1,000,000 for non-owned vehicles.
- (d) Cybersecurity and Privacy liability insurance naming CHEO as additional insureds with limits of not less than \$5,000,000 per occurrence and \$5,000,000 as an annual aggregate covering liability for incidents of security breaches, privacy breaches, breach response service, notifications, business interruption due to actual or alleged acts, errors or omissions committed by, or on behalf of the Supplier, its agents, employees, or subcontractors.

The above policies are to include a provision requiring the insurer to provide not less than thirty (30) days' notice in writing in advance of cancellation. In addition to the foregoing, Supplier shall advise CHEO promptly in the event that Supplier's insurance coverage becomes inadequate and fails to meet the minimums set out in this Purchase Order.

It shall be the sole responsibility of Supplier to determine what additional insurance coverage, if any, is necessary and advisable for its own protection and/or to fulfill its obligations under this Purchase Order. Any such additional insurance shall be provided and maintained by Supplier at its own expense.

30. Application of CHEO's Rules

All rules, regulations and policies applicable to employees of CHEO regarding their behaviour and conduct in connection with the business and affairs of CHEO that relate to infection prevention and control, patient/staff/visitor health & safety, security and parking, smoke and scent free work environments, or such other policies that are mutually agreed to shall, insofar as the same shall be required by CHEO, be applicable to Supplier and the Supplier's personnel when on CHEO's premises. Without limiting the generality of the foregoing, Supplier shall ensure that the Supplier's personnel, when on CHEO premises, shall comply with all security regulations in effect at such premises and CHEO rules, regulations, and policies. It is the responsibility of Supplier's personnel to familiarize themselves with all such policies and regulations that govern the conduct of all staff and visitors to CHEO's premises.

If any of the Supplier's personnel shall fail or refuse to abide by such rules, regulations or policies, such person(s) shall, upon written notice from CHEO, be removed by Supplier from performing any services for CHEO. In the event of such removal of the Supplier's personnel by the Supplier, no liability of any kind or nature whatsoever shall attach to CHEO. CHEO further reserves to itself the right to disallow any of the Supplier's personnel admittance to CHEO's premises where such person fails or refuses to abide by such rules, regulations, or policies. The Supplier must cooperate with CHEO in any investigation undertaken by CHEO pursuant to such policies.

31. Security Checks.

The Supplier covenants and agrees that it will not engage any employee or other person who provide Services in, at, or on any of CHEO campuses, sites, or buildings ("CHEO Site"), or who interact with CHEO personnel or patients at any CHEO Site, where such Supplier's employee or other person has been charged with or convicted of an offence the nature of which may be construed as jeopardizing the safety and well-being of CHEO patients, families or staff.

Prior to the commencement of the Services, the Supplier covenants and agrees to provide to CHEO a current (less than 6 months old) Criminal Record and Judicial Matters Check covering convictions, charges and occurrences under the Criminal Code, the Controlled Drugs and Substances Act, the Cannabis Act (Canada) and any other convictions, charges and occurrences for every employee of the Supplier or other person who are intended to provide Services in, at, or on any CHEO Site, or to interact with CHEO personnel or patients at any CHEO Site. The Supplier shall bear all costs associated with the provision of the Criminal Record and Judicial Matters Check(s) as described above, as well as any costs related to the provision of CHEO Access Cards/Badges. Note: Federal Government Clearances are not considered equivalent to and cannot be submitted in lieu of a Criminal Record and Judicial Matters Check.

The Supplier agrees to indemnify and save harmless CHEO from all claims, liabilities, expenses and penalties to which it may be subjected on account of the Supplier engaging an employee or other person to provide goods or deliver services in contravention of Section 17; or the Supplier's failure to provide a Criminal Background and Judicial Matters Check to CHEO. This indemnity shall survive the expiration or sooner termination of this Purchase Order. In addition to and notwithstanding anything else herein contained, if the Supplier engages an employee or other person to provide goods and/or perform Services in contravention of this Section 17, or fails to provide a Criminal Background and Judicial Matters Check for any employee of the Supplier or other person who may provide goods and/or services in, at, or on any CHEO Site, or who interact with CHEO personnel or patients at any CHEO Site, then CHEO will have the right to immediately terminate this Purchase Order without prejudice to any other rights which it may have in this Purchase Order, at law or in equity.

In the event that either the Criminal Background and Judicial Matters Check reveals a charge or a criminal conviction which is not acceptable to CHEO in the circumstances and in its sole and unfettered discretion, then CHEO will have the right to request that the Supplier prohibit the employee of the Supplier or other person who provides goods or performs services for the Supplier from providing Services to CHEO hereunder. Upon such request, the Supplier will forthwith affect such removal, without prejudice to any other rights which CHEO may have in this Purchase Order, at law or in equity.

The Supplier will use a third party to conduct criminal reference checks for onsite employees or others supporting this Purchase Order, which are to be submitted to CHEO at the time of Purchase Order acceptance.

32. Onsite Parking

CHEO does not provide free parking. Suppliers must pay for parking in public lots at CHEO or make alternate arrangements for paid parking through CHEO Parking Services.

33. Worker's Compensation.

Supplier shall make all payments required under the Workplace Safety and Insurance Act (Ontario), and under similar legislation in other jurisdictions, and shall indemnify and hold harmless the Indemnified Party from any failure to comply. Supplier shall provide CHEO with a certificate that Supplier is in good standing under the relevant workers' compensation legislation.

34. Severability

If any provision of this Purchase Order, or the application of such provision to any person or in any circumstance, shall be determined to be invalid, illegal, or unenforceable, the remaining provisions of this Purchase Order, and the application of such provision to any person or in any circumstance other than that to which it is held to be invalid, illegal, or unenforceable, shall not be affected thereby.

35. Time of Essence

Time shall be of the essence with respect to this Purchase Order.

36. Entire Agreement

This Purchase Order, together with all documents, drawings and specifications referred to herein, shall, when accepted by the Supplier, constitute the entire contract between the Supplier and CHEO, and shall not be altered, amended or supplemented without CHEO's prior written approval. CHEO shall not be bound by any terms or conditions in any of the Supplier's forms or documents including any shrink wrap, click-through, online agreement, user manual insert, or other contract of adhesion. Any of the Supplier's written acceptance of this Purchase Order, or the shipment of the goods, or the commencement of any work hereunder, shall constitute unqualified acceptance and no contrary or additional terms or conditions shall apply. CHEO may insist upon strict compliance with these terms and conditions despite any previous custom, practice or course of dealing to the contrary. To the extent that the subject Purchase Order incorporates by reference Supplier's quotation, proposal, policy or other documentation, then any pre-printed or standard terms or conditions contained in such documentation shall not be binding upon CHEO unless such terms or conditions are reproduced in the Purchase Order. Only an authorized signing officer of CHEO has authority to bind CHEO to any amendments of, or additional terms not included in, the Purchase Order or any other contract.

Where this Purchase Order is issued in connection with goods or work procured through an RFP process, the terms, conditions and requirements of the RFP ("RFP Terms") shall not merge upon the issuance of this Purchase Order; and the specifications / requirements set out for the goods/work in the RFP Terms are hereby incorporated into this Purchase Order; provided that any specifications/requirements expressly stated (or set out in supplementary terms and conditions referenced) on the face of this Purchase Order, shall take precedence over such specifications/requirements in the RFP Terms, but only to the extent of any inconsistencies therewith. Where a Purchase Order is issued for construction work that is indicated in the Purchase Order to be subject to CCDC2 terms, then such work shall not be subject to these Purchase Order terms and conditions and instead shall be subject to the CCDC2 terms as amended by CHEO's CCDC2 supplementary conditions.

This Purchase Order and its integrated attachment(s) constitute the entire agreement between the parties with respect to the subject matter hereof and cancels and supersedes any prior understandings and agreements between the parties hereto with respect thereto. There are no representations, warranties, forms, conditions, undertaking or collateral agreements, express, implied, or statutory between the parties other than as expressly set forth in this Purchase Order, and duly executed Schedules and Addendums hereto.

This Purchase Order may only be amended by a written document which specifically refers to the provision(s) of this Purchase Order to be amended and is signed by both parties.

37. Changes

CHEO reserves the right, upon reasonable notice prior to delivery of the subject goods or work being

procured, to make any reasonable changes to this Purchase Order including, without limitation, changes in drawings and specifications, additions or deletions from the quantities, or termination of the entire Purchase Order. If any such change causes any increase or decrease in the cost of, or the time required for, the performance of any part of this Purchase Order, an equitable adjustment shall be determined in the price or delivery date or both, and this Purchase Order shall be modified in writing accordingly. Any dispute or claim arising with respect to said change shall be asserted by the Supplier within 30 days of the notification of change from CHEO. Acceptance of goods hereunder shall not bind CHEO to accept future shipments, nor deprive CHEO of the right to return goods already received.

38. Notices

Supplier shall submit written notice to the CHEO Buyer named on the Purchase Order within ten (10) business days of any change to Supplier's name, address contact information, key personnel, organizational structure, such as merger, acquisition or change in form of business or legal standing. A change in Supplier's name and certain changes in organizational structure requires an amendment to this Purchase Order.

Notices shall be in writing and shall be delivered by email, postage-prepaid envelope, personal delivery or facsimile and shall be addressed to the CHEO Buyer named on the Purchase Order or Supplier representative.

Notices shall be deemed to have been given:

- (a) in the case of postage-prepaid envelope, five (5) Business Days after such notice is mailed; or,
- (b) in the case of personal delivery or facsimile, or email, one (1) Business Day after such notice is sent in accordance with this paragraph.

In the event of postal disruption, notices must be given by personal delivery or by facsimile or email, unless the parties expressly agree in writing to additional methods of notice. Notices may only be provided by the methods contemplated in this Section.

39. Force Majeure

Neither party will be liable for any delay or for failure to perform its obligations under the Purchase Order resulting from any cause beyond its reasonable control, including but not limited to acts of God, inclement weather, storm, earthquake, lightning, fire, explosion or flood, war, riots or civil disturbances, terrorism, acts of government, epidemics or pandemics (a "Force Majeure") provided, that the party whose performance is delayed or who is unable to perform as a result of one of the foregoing causes promptly furnishes notice to the other party and resumes performance as soon as reasonably practicable.

The party whose performance is affected by the Force Majeure will: (a) promptly notify the other party of the circumstances creating the failure or delay; (b) provide reasonably sufficient information to describe the impact of the party's failure or delay; and (c) use commercially reasonable efforts to re-commence performance whenever and to whatever extent possible without delay, including workaround plans, implementation of a disaster recovery plan or other means.

40. No Waiver

Failure of CHEO to insist upon strict performance of any of the terms and conditions hereunder, or to exercise any rights or remedies provided herein or by law, or to properly notify Supplier in the event of breach, or the acceptance of or payment for any goods hereunder, or approval of design, shall not constitute waiver by CHEO of any of its rights hereunder nor release Supplier of any warranties or obligations of this purchase order.

41. Assignment

Neither party may assign this Purchase Order or any of their rights or obligations under this Purchase Order without the other party's written consent.

42. Enurement

This Purchase Order shall be binding upon and shall enure to the benefit of each of the parties hereto and their respective employees and permitted receivers, successors, and assigns.

END OF PURCHASE ORDER TERMS AND CONDITIONS