swisslog

Member of the KUKA Group

SWISSLOG HEALTHCARE

Pharmacy Automation

Master Agreement

PHARMACY AUTOMATION TERMS AND CONDITIONS

1. **Agreement**. The facility and its Affiliate(s) ("Customer") agree to purchase and Translogic Corporation d/b/a Swisslog Healthcare ("Swisslog") agrees to furnish Hardware, Software and/or or Services according to the provisions of the Proposal (hereinafter referred to as "Proposal") presented to Customer and incorporated hereto, subject to all the following terms and conditions herein. The Proposal and these Terms and Conditions are collectively referred to as the "Agreement."

2. **Definitions.** Capitalized terms used in this Agreement have the meanings set forth below or as provided within the body of this Agreement.

    "**Affiliate**" means any entity that directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

    "**Agreement**" means this Pharmacy Automation Master Agreement and executed Proposal.

    "**Beneficial Use**" of the system is defined when the Swisslog system has been used by the Customer for a period of 5 days.

    "**Corrective Maintenance**" means Services that are ordered by Customer under a Proposal, or ordered directly by Customer, and made available by Swisslog, pursuant to the conditions of this Agreement.

    "**Customer" or "Customer(s)**" means the hospital, nonprofit, company or other legal entity accepting this Agreement, and Affiliates of that company or entity.

    "**Customer Data**" means electronic data and information collected and stored by Customer.

    "**Current**" means in payment compliance with Sections 5 and 6 of this Agreement.

    "**Documentation**" means any manuals, notes, instructions and/or guidelines presented to the Customer as updated from time to time.

    "**Event**" means the Customer is experiencing a downtime event with their Swisslog System(s), as further defined by the Proposal.

    "**Final Acceptance**" shall occur once Customer has operated the Hardware and/or Software, in accordance with Swisslog instructions, for a period of five days and the Hardware and /or Software has performed to specifications for 98% of such period.

    "**Hardware**" means a physical component that is manufactured or refined for sale as defined by Swisslog Customer Proposal.

    "**Network**" means an aggregation of devices, any of which may perform the functions of computation, data storage, and/or data communications, and are interconnected by cable or wireless communications means so as to permit the passage of machine-readable information among two or more such devices. Network includes, without limitation, any publicly accessible communications, systems capable of data and/or voice communications; which systems may be generally known as the internet, the worldwide web, or other designation.

    "**Proposal**" means an ordering document specifying the System, Subscription or Services to be provided hereunder that is entered into between Customer and Swisslog or any Affiliates, including any addenda and supplements thereto. By entering into a Proposal, a Customer agrees to be bound by the terms of this Agreement as if it were an original party hereto.

    "**Preventive Maintenance or Maintenance**" means Services that are ordered by Customer under a Proposal, or ordered directly by Customer, and made available by Swisslog, pursuant to the conditions of this Agreement.

    "**Services**" means a task(s) or duty that is ordered by Customer under a Proposal and made available by Swisslog.

    "**Software**" means the part of the system that consists of encoded information or computer instructions ordered by Customer under a Proposal, or included for the operation of any Hardware and/or System ordered by Customer under a Proposal.

    "**Software Error**" means an instance of failure of the Software to be operative as further defined by Swisslog.

    "**Software Error Correction**" means either a modification or addition to the Software that, when made or added to the Software, corrects a Software Error.

    "**Software Maintenance**" means Services that are ordered by Customer under a Proposal and made available by Swisslog pursuant to the conditions of this Agreement.

    "**Software Update**" means a revision to Software on the same platform or providing Software Error Correction(s) to maintain an operative status.

    "**Software Upgrade**" means a new version or release of the Software, provided by Swisslog, that improves the functionality or adds functional capabilities to the Software that is not included in a Software update**.**

    "**Subscription**" means the continued use and support of specific Swisslog System(s), Hardware or Services ordered by the customer, under a Proposal pursuant to the conditions of this Agreement.

    "**System**" means Swisslog Hardware and Software interacting together to create a functioning product as described in the Proposal.

    "**Typical usage**" means the average use and or production of the installed Swisslog System, as defined by System type and referenced in the Proposal.

    "**User**" means an individual who is authorized by Customer to use the System or Service, for whom Customer has ordered the System or Service, and to whom Customer (or Swisslog at Customer request) may have supplied a user identification and password. Users may include, for example, Customer employees, consultants, contractors and agents, and third parties with which Customer transact business.

3. **Term**. This Agreement shall become effective for System(s), Subscription(s), and/or Service(s) as of the date indicated on

the accepted Proposal and shall continue for the initial term indicated in the Proposal unless sooner terminated pursuant to this Agreement. If an initial term date is not on the Proposal for Maintenance services a term date shall be one (1) year from start date. If an initial term date is not on the Proposal for a Subscription the term shall be three (3) years from start date and start date shall be upon Final Acceptance. If no Service start date is provided for in the Proposal, the term shall begin on implementation date. Except as otherwise specified in a Proposal, Subscriptions will automatically renew for an additional one year, unless Customer gives Swisslog notice of non-renewal in writing at least 30 days before the end of the relevant Subscription term. At its discretion, Swisslog may impose a price increase upon an automatic renewal. Any such pricing increase will not exceed 7% of the pricing for the applicable Service in the immediately prior Subscription term, unless the pricing in the prior term was designated in the relevant Proposal as promotional or one-time.

4. **Termination**. A party may terminate this Agreement for cause (i) upon 45 days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

5. **Payment**. Customer will pay all fees specified in Proposals or herein. Except as otherwise specified herein or in a Proposal, (i) fees are based on Services, Subscription, Software or System(s) purchased through the Proposal or ordered outside of the Proposal, and (ii) payment obligations are non-cancelable and fees paid are non-refundable. Payment terms are net 30 days upon date of invoice. Customer acknowledges payment by credit card is not accepted. Unless otherwise specified in this Agreement, all fees will be invoiced in advance and all invoices issued under this Agreement are payable in the currency sold. The prime rate of interest plus 1.5% percent per month shall automatically be charged on all amounts, including additional charges, not paid by Customer when due hereunder. Customer's obligation to pay all charges which shall have accrued hereunder prior to termination of this Agreement shall survive termination, irrespective of the reason.

   a. Subscriptions fees. Unless otherwise provided in the applicable Proposal, Subscription(s) purchased; (a) are Services, Hardware and/or System(s) purchased as a Subscription, (b) cannot be decreased during the relevant Subscription term, and (c) may be increased at the beginning of each Subscription renewal term, as set forth in Section 3. Additional Subscriptions may be added during a Subscription term at the pricing described in Customer's new Proposal. Any additional Subscription(s) may be proposed as a full term (36 months) or prorated, for the portion of the new Subscription term, to align terms with an already existing Subscription. Proposal pricing is based on the number of sites at the time of the proposal, if such number of sites changes pricing is subject to change.

   b. System fees. Charges as specified in the Proposal, or pursuant to this Agreement, shall be invoiced and due within 30 days from the date of the Invoice. Payments not received within 30 days after the occurrence of either Beneficial Use or Final Acceptance, whichever occurs earlier, shall bear interest at the higher of 1.5% per month or the maximum rate allowed by Applicable Law. Acceptance of payment made after the payment is due shall not constitute a waiver of rights to interest payments and shall in no circumstances be considered as an agreement to provide extended credit. No deductions or offsets of any kind from the payment due shall be permitted without the prior written consent of Swisslog. Notwithstanding the foregoing or anything in this Agreement to the contrary, if the delivery or installation of the Hardware is delayed by the Customer, or by any cause beyond the control of Swisslog, then the entire purchase price of the System shall become due and payable sixty (60) days from the date that the first piece of Hardware is ready for shipment to the Customer and the Customer shall reimburse Swisslog for any costs and or expenses arising from such delay. If requested by the Customer, Swisslog agrees to complete any work associated with the Hardware at a later date provided that Customer pays any increased costs or expenses associated with the System at the time the Customer makes such request.

   c. Service fees. Charges as specified in the Proposal, or pursuant to this Agreement, shall be invoiced and due within 30 days from the date of the Invoice. Charges due for a fractional part of a calendar month shall be computed at the rate of one-thirtieth (1/30th) of the monthly rate for each day. Except as otherwise specified in this Agreement, any Service hours or parts allowances in the Swisslog Proposal are set forth on the basis of a 12-month year regardless of whether Proposal/Agreement has a multi-year term. Except as provided within this Agreement, Customer acknowledges that any unused hours and/or parts allowances expire without refund or recourse at the end of each 12-month calendar year and shall not accumulate or carry forward in any manner. It is the Customer's responsibility to track service hours and parts allowance usage. Upon request of the Customer, Swisslog shall provide copies of all invoices dated within the term of the Agreement.

   d. Other charges. Pursuant to this Agreement and/or as ordered or directed by Customer, Customer may be charged other fees for Services or System use. Such fees shall be invoiced during the month in which they have been incurred and due within 30 days from the date of the invoice.

6. **Suspension of Service and Acceleration**. If any amount owed by Customer under this Agreement or any other agreement for Services is **90** or more days overdue, Swisslog may, without limiting its other rights and remedies, accelerate Customer unpaid fee obligations. Such obligations become

immediately due and payable and Swisslog may suspend Services to Customer until such amounts are paid in full. Once Customer is considered overdue (90 days) the Customer is not Current with its account and not eligible for continued Subscription Services.

7. **Taxes.** Unless a Customer has received a tax exemption, Customer shall pay (or reimburse Swisslog) all taxes (exclusive of Swisslog net income taxes), however designated, or amounts legally levied in lieu thereof, based on or measured by the charges set forth in this Agreement, now or imposed under the authority of any federal, state or local taxing jurisdiction.

8. **Hardware Installation and Software Deployment Cooperation**. For any Hardware installed by Swisslog, installation will be done in a workmanlike manner. The parties acknowledge and agree that collaboration and teamwork to improve and install the Hardware is critical to the future success of both parties and they will work together to accomplish the same.

9. **Shipment, Title and Risk of Loss**. Swisslog shall deliver the Hardware FOB Origin/FCA destination. Swisslog agrees to pay all freight, insurance, packing and other administrative and transportation charges related to said delivery. Swisslog shall make all arrangements for shipping, including making partial shipments, if required. Upon delivery, Customer shall provide a clean, safe and temperature-controlled area for receiving said shipment. Swisslog shall select, at its discretion, the types and amount of crating and the carrier of any insurance. All shipments hereunder will be made to Customer at Customer's address, as made known to Swisslog. The liability of the Hardware passes to Customer once the shipment is received at Customer's address. Title to Hardware will pass to Customer upon receipt of final payment to Swisslog.

Preventive and Corrective Hardware Maintenance. Swisslog shall provide on-site Preventive and Corrective Maintenance Services according to the Proposal. Preventive Maintenance and Services are for the purpose of inspection and adjustment of the System and Hardware, as defined in the Proposal. Corrective Maintenance for failed wear-and-tear parts and Preventive Maintenance on all qualifying parts will be performed at no additional charge to Customer. Maintenance of non-qualifying parts, or work performed out of the scope of work, as defined in the Proposal, will be billed at Swisslog standard rates, on a time-and-materials basis. The list for all wear-and-tear and qualifying Preventive Maintenance parts is found at www.swisslog.com/pharmacyautomationmasterscheduleB. Swisslog does not include consumables for its Systems, these are the responsibility of the Customer to purchase. A list of these parts is available at www.swisslog.com/pharmacyautomationmasterscheduleA. On-site system Maintenance and monitoring is coordinated between the field service engineer and the Customer.

10. **Emergency Services.** Emergency service hours are used to address and resolve a system Event. Emergency service allotments and unused emergency service hours are forfeited at the time of Agreement expiration. At Swisslog sole discretion, if it is determined the Error was not an Event, or was caused by the Customer's wrongdoing or was a result

of noncompliance or incident occurring in Section 14 of this Agreement, or the System requires repair or replacement outside the scope of the Proposal, such compliance and fees are subject to this Agreement.

11. **Storage of Maintenance Tools.** Customer shall provide , free of charge and with ready access, storage space for maintenance tools and spare parts, working space, heat, light, ventilation, electric current, and outlets for the use of Swisslog maintenance personnel. Such facilities shall be within a reasonable distance from the System being maintained. Title to all maintenance tools and spare parts not contained in spare parts kit purchased by Customer shall remain with Swisslog, except that upon installation of parts into Customer-owned equipment, title to such parts shall pass to Customer.

12. **Software Maintenance**. Pursuant to a Customer's Proposal and based upon this Agreement, Swisslog shall provide Customer accessibility, maintenance and added functionality described in this Agreement with respect to Software. Software Maintenance services include the following:

    a. Support and Response Time. Swisslog shall provide 24x7x365 live technical telephone support with trained representatives.

    b. Error Reporting. If Customer requires support, Customer shall contact Swisslog technical support. Swisslog will provide consultation, assistance, and advice relating to support of the Software within the timeframes described herein.

    c. Software Updates. Swisslog shall make available to Customer (who is Current with its account) Software Updates on existing software versions, as part of this Agreement.

    d. Software Upgrades. Swisslog shall make available to Customers that are Current with their account, annual Software Upgrade(s), to the latest Software version, as made available by Swisslog throughout the term of this Agreement. In order to obtain such Upgrades, it shall be the responsibility of the Customer to initiate a request once notified of the release.

    e. Continuing Support and Downtime. Customer may decline to install a Software Update or Software Upgrade made available by Swisslog. Customer's decision not to update or upgrade relieves Swisslog of its responsibilities for any System issues the update or upgrade was intended to address. In such event, Swisslog shall continue the maintenance for whatever version of the Software that is installed at Customer's site, subject to Swisslog, or any third party's, right to end-of-life any Software, Hardware or System Swisslog deems appropriate and at its discretion. During Software Updates or Software Upgrades, the System may experience temporary downtime. Swisslog will notify Customer of pending Updates and Upgrades, and schedule installation at Customer's convenience.

    f. Optimization Dashboards. Swisslog shall provide subsequent dashboard releases, as available, as well as annual dashboard support and maintenance.

g. Modifications. Modifications to the Software may be provided at the discretion of Swisslog. Swisslog is not obligated to make any custom modification to the Software at the request of the Customer, though depending on the nature of the request, may include in future plans for Software development.

h. Notice of Maintenance Discontinuance. Swisslog agrees to provide Customer with at least twelve (12) months' prior written notice before discontinuing maintenance for any Software or portion thereof.

i. Quarterly Small Change Orders. Customer will be allowed one change order or enhancement request per quarter specifically designated as a quarterly small change order to be provided at no additional fee. To qualify, quarterly small change orders must require 8 hours of development labor or less to complete, as determined by Swisslog. Any change order or enhancement request that requires Service hours in excess of the 8 provided quarterly hours will be quoted on a time and materials basis according to then current standard Swisslog rates. Customer acknowledges that all unused hours amounting to all or part of the 8 hours, allowed per quarterly small change order request will expire without refund or recourse at the end of each quarter, and shall not include training requests, accumulate or carry forward in any manner.

14. **Maintenance Exceptions**. Swisslog shall have no obligation to perform any Maintenance Services related to the following, unless Swisslog and Customer have otherwise agreed in writing:

a. On-site visits for routine Software issues or Software Updates or Upgrades that can be conducted remotely.

b. The failure of Customer to continually maintain the Network and/or its equipment or the System in conformance with Swisslog specifications or requirements.

c. Damage or necessity of repair resulting from Customer's failure to maintain proper network security and protection.

d. Damage or increases in service time caused by Customer's failure to provide a suitable environment for the system including, but not limited to, failure to provide adequate power, air conditioning, or humidity controls.

e. Damage or impairments in the performance of the system, Customer software or vendor software, resulting from any unauthorized changes/alterations to or relocation of the system by Customer or any third party.

f. Software Updates, Upgrades or alterations required by third-party vendor except as otherwise permitted in this Agreement or authorized in writing by Swisslog. Support of Software to accommodate third party vendors may be billed at standard Swisslog rates.

g. Damage caused by use of the system or System for purposes outside the ordinary use for which it was designed or outside the uses allowed in this Agreement.

h. Damage caused by accidents or natural disasters, fire, water, flood, electrical power surge or drop, use of third party consumables, storm, explosion, burglary, vandalism, accident, abuse, strike, acts of God or of public enemy, war, riot, civil commotion or the negligence of, or improper use or misuse of, the Hardware, Software, or the System.

i. Any modifications necessary to comply with recommendations or directives of insurance companies, governmental bodies, or any other regulatory authorities.

j. Damage to any of Customer's software or vendor software (not to include Swisslog Software) due to a Swisslog Update, Upgrade or Error Correction.

k. Interruption of Customer's business operations due to discontinuation of third party hardware or software.

15. **Customer Responsibilities during Software Maintenance Term**. Customer shall maintain the installation site throughout the term of maintenance service identified herein with accordance to the specifications established by Swisslog.

a. If Customer discovers any suspected Error, Customer shall analyze the suspected Error to determine if it is the result of Customer's misuse or misunderstanding of the Software before seeking Swisslog assistance.

b. With all software releases, Customer is responsible for complying with Swisslog minimum IT specifications and compatibility requirements.

16. **Software License**. Swisslog retains ownership of all Software and will grant a license to Customer, subject to the terms and conditions of this Agreement (including the payment obligations hereunder.) Swisslog grants to Customer a perpetual, non-exclusive, nontransferable, revocable, limited license, terminable as provided herein, without the right to sublicense, to use the Software integrated with the Hardware. If applicable, and provided the additional consideration set forth herein is paid, Swisslog grants to Customer, during the term of this Agreement, a non-exclusive, nontransferable, revocable, limited license, terminable as provided herein, without the right to sublicense, to use Software associated with Service or Maintenance solutions, provided under the Proposal, and not directly integrated with the Hardware.

17. **Software Use**. Subject to the terms and conditions of this Agreement:

a. Customer agrees to use the Software only for business purposes that are permitted by (i) the terms and conditions of this Agreement; and (ii) any applicable law or regulation in the relevant jurisdictions (including any laws administered by the US Office of Foreign Asset Control).

b. Customer agrees not to reproduce, duplicate, copy, modify, sell, trade, resell, license, sublicense, distribute, transmit, display, or disseminate any portion of the Software.

c. Customer agrees not to access, disassemble, or reverse-engineer the Software for any reason including but not

limited to building a product or software similar or competitive in features, ideas, functions, or graphics to the Software.

d. Customer is solely responsible for the actions, conduct, user data, and data content ("Customer Data") of all parties Customer allows to use the Software. Customer shall not use the Software to post or transmit:(a) information or material that is unlawful, obscene, or otherwise objectionable; (b) any advertisements, solicitations, or other unsolicited commercial or non-commercial communication except as otherwise expressly permitted by Swisslog; or (c) any software or information that can be harmful to any computer system.

18. **Connections.** Connecting the System or any individual component, without Swisslog prior approval is prohibited. If Equipment, Hardware or Software with connections interface with the normal functioning of the Equipment in a manner that increases Swisslog cost of maintaining the Equipment or creates a safety hazard, Customer agrees to remove such connections promptly upon notice from Swisslog.

19. **Hardware Replacement**. Unless otherwise agreed upon, replacement and Upgrade of system computers, printers, barcode readers, touch screen monitors and standard monitors after the initial warranty term are the Customer's responsibility. Swisslog will assist with the configuration of replaced hardware as a part of this Agreement as long as valid backups, where needed, have been maintained.

20. **System and Software Final Acceptance**. Final Acceptance shall occur once Customer has operated the Hardware and/or Software, in accordance with Swisslog instructions, for a period of five days and the Hardware/Software has performed to specifications for 98% of such period. For the avoidance of doubt, the Hardware/Software will be deemed to be performing its essential functions even if the Hardware/Software is not operable due to scheduled maintenance or user induced errors. Final Acceptance shall also occur if the Swisslog product provides Beneficial Use to the Customer for a period of 5 days.

21. **Return of Hardware.** Due to their custom nature, no System(s) may be returned to Swisslog. Consumable and normal wear parts (as defined herein) may be returned for full credit if a return goods authorization form is obtained and returned to Swisslog within thirty (30) days of Customer's initial receipt of such items. Customer is responsible for all return shipping expense.

22. **Delays and Adequate Assurance**. Swisslog shall not be liable for costs or delays occasioned by non-receipt of timely, complete or accurate information from the Customer, delays in drawing approval, changes and/or interruptions resulting from acts or omissions of the Customer, improper site preparation, or any other causes beyond Swisslog reasonable control. Swisslog may require or demand payment or adequate assurances of performance from Customer. In the event that assurance of performance is demanded by Swisslog, the Customer shall deliver to Swisslog within five (5) days thereafter a sufficient bond in an amount three times the value of the performance remaining to be

performed by the Customer, conditioned to indemnify Swisslog for any loss Swisslog may sustain by the failure of the Client to perform its obligations under this Agreement.

23. **Standard Business Hours and Rates.** For Services not covered under this Agreement, or for Services that exceed the scope of work within the Proposal, the Customer agrees to pay Swisslog, pursuant to Section 5 and upon receipt of an itemized invoice, in accordance with the following schedule:

Labor – Normal Swisslog business hours	$161.00
Overtime – After-hours weekdays and Saturdays	$239.00
Overtime – Sundays & Holidays (defined by Swisslog)	$317.00
Mileage	$0.99/mile
Other Travel Related Expenses	Actual Cost

A Customer's invoice will reflect any discount stated under the Proposal and is subject to the Customer's account being Current. Swisslog normal business hours are 8:00 AM to 5:00 PM (local time of Customer), Monday through Friday, excluding Swisslog observed holidays. On-site system Maintenance and monitoring shall be limited to 8 hours per normal business hours/days, unless otherwise agreed to in writing by Swisslog service management.

All Service visits will be invoiced for a minimum of four (4) hours (portal-to-portal) plus expenses, per visit. Time is calculated from door to door. Off hours are prorated at time-and-a-half, holidays at double time. Travel-related costs for driving are included in the agreement. Pricing subject to additional mileage fees if over 100 miles. Rates are subject to change.

24. **Rescheduling & Remobilization**. Should the Customer cancel a scheduled on site Service or Maintenance visit within two days of the scheduled date of visit a penalty of $500.00 per scheduled technician plus all associated mobilization costs (airfare, hotel, mileage etc.) will be assessed. Customer's cancelled visit may be rescheduled at Swisslog convenience.

25. **Biohazard Cleanup:** Swisslog employees are not certified in biohazardous waste handling and cannot perform biohazard waste cleanup. Swisslog will default to each individual facility's expert when it comes to biohazard transport, handling and cleanup.

26. **Hazardous Materials**. Except as otherwise agreed by Swisslog in writing, Customer is responsible for all hazardous materials, however defined from time to time by applicable law, located in any area where the System is to be installed. Swisslog will not assume responsibility or any costs associated with any hazardous materials, including but not limited to any investigation, abatement, containment, testing, inspection or remediation of any asbestos, polychlorinated biphenyl (PCB), radioactive material, toxic mold or any other hazardous materials. In addition to any other indemnity provisions provided herein, Customer shall defend, indemnify and hold harmless Swisslog from and against all loss, liability, claims, costs, damage and economic detriment of any kind whatsoever, or expense (including attorney's fees) that arises out of or results from the discovery or existence of hazardous materials, whether or not identified in writing. Customer certifies that the work areas are safe and free of actionable levels of any and all

hazardous materials, as defined above. All arrangements and expenses required for any and all hazardous material inspections, testing, monitoring, abatement, containment, etc., will be by the Customer.

27. **Warranties.** The following warranties shall apply to this Agreement:

    a. **General Warranty.** THE WARRANTIES SET FORTH HEREIN ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, WHICH ARE HEREBY DISCLAIMED AND EXCLUDED BY SWISSLOG, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE. SWISSLOG SHALL NOT BE LIABLE FOR ANY LOSS OR DAMAGE CAUSED BY DELAY IN FURNISHING HARDWARE, A SYSTEM(S) AND SERVICES OR ANY OTHER PERFORMANCE UNDER OR PURSUANT TO THIS AGREEMENT. CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF ANY AND ALL WARRANTIES AND FOR SWISSLOG LIABILITY OF ANY KIND (INCLUDING LIABILITY FOR NEGLIGENCE) UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT WILL SWISSLOG AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED TWENTY FIVE (25%) OF THE TOTAL AMOUNT RECEIVED BY SWISSLOG FROM CUSTOMER UNDER THIS AGREEMENT. IN NO EVENT SHALL SWISSLOG BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL LOSSES OR DAMAGES, EVEN IF SWISSLOG SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. SWISSLOG TOTAL LIABILITY UNDER THIS AGREEMENT FOR ANY REASON SHALL NOT EXCEED TWENTY FIVE (25%) OF THE TOTAL AMOUNT RECEIVED BY SWISSLOG FROM CUSTOMER UNDER THIS AGREEMENT.

    b. **Hardware Warranty.** Swisslog manufactured Hardware will function, perform and conform in accordance with the included terms of then current Swisslog documentation and specifications to this Agreement, under normal service. Swisslog sole obligation to Customer shall be limited to the repair or replacement, at Swisslog option, of defective Hardware provided that written notice of failure is received by Swisslog within one (1) year from date of the occurrence of either Beneficial Use or Final Acceptance, whichever occurred earlier. Any items not manufactured by Swisslog items will be subject to the vendor's warranty.

    c. **Exceptions to Hardware Warranty.** Swisslog warranty of any Hardware is of no effect if (i) the Hardware is not stored, operated or handled in accordance with the Documentation or written instructions provided to Customer, (ii) the defect of the Hardware resulted from damages occurring after delivery and prior to Final Acceptance of the Hardware, (iii) the defect of the Hardware has not been reported to Swisslog within thirty days after its occurrence, (iv) the Customer fails to purchase or stay Current with its account (v) the

Customer uses consumables that are not provided directly by Swisslog or (vi) the defect should have been discovered by Customer prior to Final Acceptance and the Customer did not notify Swisslog of any such defect, (vii) Swisslog determines such defects are not due to, or limited by, abuse, carelessness, fire or decomposition by chemical or galvanic action and (viii) Customer failed to notify Swisslog, in writing, and within one (1) year from date of either Final Acceptance or Beneficial Use of any warranty claim or such claim shall be null and void. Upon receipt of a claim report, Swisslog may either ask Customer for a sample of the defect or schedule an inspection of the defective the System.

    d. **Software Warranty.** Notwithstanding anything else in this Agreement to the contrary, Swisslog hereby warrants to Customer that Swisslog is the owner of the Software and has the right to grant to Customer the license to use the Software and Documentation in the manner and for the purposes set forth in this Agreement without violating any rights of a third party.

28. **Indemnification.**

    a. **General Mutual Indemnification.** Each party to the Agreement shall be responsible for and indemnify, defend, and hold harmless the other from liability of third parties arising out of injuries or damages to third parties or property of third parties as a result of this Agreement, caused by the negligent acts or omissions of the other party, its employees, agents and sub-contractors. If this indemnification provision is in contradiction to any local or jurisdictional law, it shall be replaced by a reasonable indemnification provision in accordance with the jurisdiction of Customer's county.

    b. **Software Indemnity.** Notwithstanding anything else in this Agreement to the contrary, Swisslog indemnifies, defends, and holds Customer harmless from and against any claims, actions, or demands alleging that the Software infringes any patent, copyright, or other intellectual property right of a third party. If use of the Software is permanently enjoined for any reason, Customer's sole remedy hereunder and at Swisslog's option, and in its sole discretion, Swisslog may (a) modify the Software so as to avoid infringement; (b) procure the right for Customer to continue to use the Software and Documentation; or (c) terminate this Agreement and refund to Customer any Subscription Fees paid, within the last 12 months, to Swisslog under this Agreement. Should any claim subject to software indemnity be made against Swisslog or Customer, the party against whom the claim is made agrees to provide the other party with prompt written notice of the claim. Swisslog will control the defense and settlement of any claim under this Section. If requested, Customer agrees to cooperate and provide reasonable assistance in the defense and settlement of such claim.

29. **LIMITATION OF LIABILITY.** NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE 12 MONTHS

PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED TWENTY FIVE (25%) OF THE TOTAL AGREEMENT AMOUNT PAID BY CUSTOMER. THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. HOWEVER, THE ABOVE LIMITATIONS WILL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT. IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

30. **Force Majeure**. Force Majeure shall mean any event or condition, not existing as of the date of signature of this Agreement, not reasonably foreseeable as of such date and not within the control of either party, which prevents in whole or in material part of the performance by one of the parties of its obligations hereunder or which renders the performance of such obligations so difficult or costly as to make such performance commercially unreasonable. Without limiting the foregoing, the following shall constitute events or conditions of Force Majeure: acts of state or governmental actions, riots, disturbances, war, strikes, lockouts, slowdowns, prolonged shortage of energy, Swisslog material shortages, epidemics, fire, flood, earthquake, lightning, and explosion.

Upon giving notice to the other party, a party affected by an event of Force Majeure shall be released without any liability on its part from the performance of its obligations under this Agreement, except for the obligation to pay any amounts incurred, due and owing hereunder, but only to the extent and only for the period that is performance of such obligations is prevented the event of Force Majeure. The party claiming Force Majeure shall promptly notify the other party of the termination of such event. During the period that the performance by one of the parties of its obligations under this Agreement has been suspended by reason of any event of Force Majeure, the other party may likewise suspend the performance of all of its obligations hereunder to the extent that such suspension is commercially reasonable.

Should the period of Force Majeure continue for more than nine consecutive months, either party may terminate this Agreement without liability to the other party, except for payments due to such date, upon giving written notice to the other party.

31. **Security Interest.** Swisslog retains a security interest in the System(s) (and replacements) and all proceeds and products thereof until the full purchase price therefor (including taxes and any additional charges) has been paid in full. Customer agrees, without further consideration, at any time to do or cause to be done, executed and delivered, all such further acts and instrument as Swisslog may reasonably request in order to perfect and protect Swisslog security interest in the System(s), including, without limitation, a financing statement appropriate for filing. Customer's failure to pay any amount when due, shall give Swisslog the right to repossess and remove the System(s). Such repossession and removal shall be without prejudice to any other Swisslog remedies at law or in equity.

32. **Independent Contractor**. The parties intend that Swisslog, in performing services specified in this agreement, shall act as an independent contractor and shall have complete control of the work and the manner in which it is performed. Swisslog is not to be considered an agent or employee of Customer and is not entitled to participate in any pension plans, or in bonus, stock, or similar benefits that Customer provides for its employees.

33. **Non-Solicitation**. During the term of this Agreement and thereafter at all times through the one year anniversary date that Swisslog last invoiced Customer for services, Customer shall not, directly or indirectly, recruit, solicit or cause to be recruited or solicited any employees or independent contracting consultants subject to written agreements, of Swisslog for the purpose of hiring them or inducing them to leave their employment. Any such solicitation or recruitment will entitle Swisslog to any and all indirect and direct costs and expenses associated with such solicitation.

34. **Confidentiality and Non-Disclosure**. It is expressly understood the parties may be exposed to or receive certain confidential information. "Confidential Information" means all non-public information, whether or not explicitly marked or identified as such, and whether written, oral, recorded on tapes, disks or in any other media or format about the other party, including without limitation, information that the party designates confidential or which, under the circumstances surrounding disclosure or receipt, ought to be treated as confidential. Confidential Information includes, without limitation, pricing and merchandising strategies, order handling, processes and procedures, and information relating to the Services, System, Hardware or Subscription's intellectual property, trade secrets, plans, drawings, specifications, know-how, manuals and/or technology including usernames, passwords, and any other security information used to access the Systems. Except as stated herein, the parties agree both during and after the termination of this Agreement, to hold the Confidential Information in the strictest confidence, not to disclose such Confidential Information to any third Party and to use the same solely for the purposes for which it was provided by the party. Further, the parties shall not modify, reverse-engineer, or decompile the Hardware or Software or the System or Confidential Information nor create derivative works based on the Hardware or Software or the System or Confidential Information. The parties shall not use Confidential Information for any purpose other than in furtherance of this Agreement and the activities described herein. Each party agrees that in the event of a breach or threatened breach of this section (Confidentiality and Non-Disclosure), the other party may suffer irreparable harm for which it may have no adequate monetary remedy, and may be entitled to

injunctive and other equitable relief for such breach, in addition to and not in limitation of any other legal or equitable remedies to which it would otherwise be entitled. Customer agrees that Customer shall be liable for any failure on the part of any such Representative, employee or third party to comply with these Terms and Conditions to the same extent as if such Representative, employee or third party had been parties hereto to use the Confidential Information solely in accordance with the terms of these Terms and Conditions; and to protect the Confidential Information from unauthorized disclosure or use.

35. **Confidential Health Information**. The parties recognize that Customer may be a covered entity under 45 CFR Parts 160, 162, and 164, (the "Standards for Privacy of Individually Identifiable Health Information," known as the "Privacy Rule" and "Security Standards for the Protection of Electronic Protected Health Information," known as the "Security Rule") promulgated under the Administrative Simplification Section of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and as applicable, under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) ("ARRA") and its applicable regulations. The parties further acknowledge that Swisslog may be a "business associate" as that term is used and defined in the Privacy Rule and in ARRA.

36. **Protection of Customer Data**. Except as otherwise provided, Swisslog does not own any Customer Data. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership of all User Data, and Swisslog shall not be responsible or liable for the deletion, correction, destruction, damage, loss, failure or misuse of any Customer Data. If for some reason Customer Data is accessed or stored, we will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Customer Data by Swisslog personnel except (a) to provide the Services and prevent or address service or technical problems, (b) as compelled by law, or (c) as Customer expressly permit in writing. SWISSLOG DOES NOT GUARANTEE THAT THE SYSTEM WILL NOT BE THE SUBJECT OF A SECURITY BREACH AND MAKES NO WARRANTY THAT INFORMATION STORED IN ANY SYSTEM WILL BE COMPLETELY SECURE. Customer acknowledges and agrees that information used and stored within the Software and Systems is not the responsibility or liability of Swisslog.

37. **Health and Human Services Audit**. Should the provisions of section 952 of the Omnibus Reconciliation Act of 1980 [42 USC 1395X (V) (1)] (the "Act") apply to this Agreement, then Swisslog agrees to abide by the terms of the Act and its interpretative regulations including, but not limited to, maintenance of records concerning services and costs incurred under said agreement. Pursuant to the foregoing, Swisslog agrees that until the expiration of four (4) years after the furnishing of any goods and services pursuant to this Agreement, it will make available, upon written request of the Secretary of Health and Human Services or the

Comptroller General of the United States or any of their duly authorized representatives, copies of this Agreement and any books, documents, records, and other data of Swisslog that are necessary to certify the nature and extent of the costs incurred by Customer in purchasing such System and Services. If Swisslog carries out any of its duties under this Agreement through a subcontract with a related organization involving a value or cost of ten thousand dollars ($10,000) or more over a twelve-month period, Swisslog will cause such subcontract to contain a clause to the effect that, until the expiration of four (4) years after the furnishing of any good or service pursuant to said contract, the related organization will make available upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States or any of their duly authorized representatives, copies of this Agreement and any books, documents, records, and other data of said related organization that are necessary to certify the nature and extent of costs incurred by Customer for such System or Services. Swisslog shall give Customer notice immediately upon receipt of any request from the Secretary of Health and Human Services or the Comptroller General of the United States or any of their duly authorized representatives for disclosure of such information.

38. **Exclusion List**. Swisslog represents and warrants to Customer that it (i) is not currently sanctioned by the Health and Human Services Office of the Inspector General as set forth on the Cumulative Sanctions Report, or excluded by the General Services Administration as set forth on the List of Excluded Providers [see http://olg.hhs.gov/fraud/exclusions.html and http://epls.arnet.gov/]; and (ii) has not been convicted of a criminal offense related to the provision of healthcare items or services but has not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs or any state healthcare programs. Swisslog will immediately notify Customer of any change in the status of the representations and warranty set forth in this section.

39. **Assignment.** Neither party shall have the right to assign or otherwise transfer its right and obligations under this Agreement except with the written consent of the other party; provided, that a successor in interest by merger, operation of law, assignment or purchase, or otherwise of the entire business of either party shall acquire all interest of such party hereunder and provided further that Swisslog shall be entitled to assign all or part of the payments from Customer under this Agreement to any person or organization in its own right or as agent for trustee and Customer agrees to comply with any instructions from Swisslog to make payments directly to such persons or organizations. Any prohibited assignment shall be null and void.

40. **Export Control.** The Software, the Documentation, and all underlying information or technology may not be exported or re-exported into any country to which the US has embargoed goods, or to anyone on the US Treasury Department's list of Specially Designated Nationals or the US

Commerce Department's Table of Deny Orders. Client shall not export the Software or Documentation or any underlying information or technology to any facility in violation of these or other applicable laws and regulations. Client represents and warrants that it is not a national or resident of, or located in or under the control of, any country subject to such export controls. The Software and Documentation are provided with Restricted Rights, as defined herein and by reference to the applicable regulations set forth in this section. Use, duplication, or disclosure by the US Government is subject to restrictions as set forth in the Commercial Computer Software - Restricted Rights clause at FAR 52.227-19, of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, or subparagraph (d) of the Commercial Computer Software – Licensing at NASA FAR supplement 16-52.227-86, or their equivalent, as applicable.

41. **Amendments.** This Agreement shall not be deemed or construed to be modified, amended, rescinded, canceled or waived, in whole or in part, except by written amendment signed by the parties hereto.

42. **Notices.** Notices permitted or required to be given hereunder shall be deemed sufficient if given by registered or certified air mail, postage prepaid, return receipt requested, addressed to the respective addresses or the parties as written in the Proposal or as updated by either Party though formal notification. Notices so given shall be effective as of the date stamped on the receipt.

43. **Severability.** In the event that any of the terms of this Agreement are in conflict with any rule of laws, regulations, provisions or otherwise unenforceable under the laws or regulations of any government or subdivision thereof, such terms shall be deemed stricken from this Agreement, but such invalidity or unenforceability shall not invalidate any of the other terms of this Agreement and this Agreement such continue in force, unless the invalidity or unenforceability of any such provisions hereof does substantial violence to, or where the invalid or unenforceable provisions comprise an integral part of, or are otherwise inseparable from, the remainder of this Agreement.

44. **Choice of Law and Venue.** This Agreement and Proposal shall be governed by, and construed in accordance with, the laws of the state in which Customer is located. Each party irrevocably agrees that any claim brought by it in any way arising out of this Agreement or Proposal must be brought solely and exclusively in state or federal courts located in the state in which Customer is located and each party irrevocably accepts and submits to the sole and exclusive jurisdiction of each of the aforesaid courts in person, generally and unconditionally with respect to any action, suit, or proceeding brought by it or against it by the other party.

45. **Insurance.** Customer agrees to carry an appropriate amount of insurance to cover the risks associated with this Agreement.

46. **Conflicting Terms.** This Agreement is the entire agreement between Customer and Swisslog regarding Customer's Services, Subscriptions or System(s) and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No addendum, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. The parties agree that any term or condition stated in Customer purchase order or in any other Customer order documentation (excluding the Proposal) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) any executed agreement entered into between Customer and Swisslog related to the applicable proposal, (2) the applicable Proposal, (3) this Agreement, and (4) the Documentation.

47. **Authority.** By executing the Proposal, Customer is providing Swisslog with a guarantee they have signing authority for all facilities referenced on the Proposal. To ensure a timely transition to implementation Customer agrees to submit a PO no later than ten (10) days from date of execution of the Proposal. Swisslog will not process Customer's order until such PO is received and failure to do so may delay installation.

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