

## MASTER SUBCONTRACT AGREEMENT

1. PARTIES. This Master Subcontract Agreement (the "Subcontract" or "Agreement") is executed on this \_\_\_\_ day of \_\_\_\_\_, 2017 between \_\_\_\_\_ ("Subcontractor") a corporation incorporated under the laws of \_\_\_\_\_ and Translogic Corporation (doing business as Swisslog Healthcare Solutions), a corporation incorporated under the laws of Delaware ("Contractor"), in connection with various projects during the term of the Master Subcontract Agreement, as Contractor may award in its sole judgment.
2. RECITALS AND PURPOSE.
  - A. Owner/Prime Contractor (hereinafter referred to as "Prime Contractor"): **To be determined by separate statement of work**
  - B. Project: **To be determined by separate statement of work**
  - C. Location: **To be determined by separate statement of work**
  - D. Work: **To be determined by separate statement of work**
  - E. The Subcontractor agrees to perform a portion of the Work required to be performed by the Contractor on the Project pursuant to the aforesaid construction contract;

Accordingly, in consideration of the mutual promises set forth in this Agreement, the parties covenant and agree to the terms and conditions set forth in the following paragraphs.

3. SCOPE OF WORK/CONTRACT DOCUMENTS.
  - A. Subcontractor agrees to furnish all supervision, labor, tools, equipment, and supplies necessary to perform and complete the work (the "Work") as described in the Statement of Work (the "SOW") in connection with the construction of the project (the "Project") for the Prime Contractor in accordance with the terms and provisions of the draft or final executed contract between the Prime Contractor and the Contractor including all the general and special conditions, drawings, specifications, and other documents forming or by reference made a part of the contract between Contractor and Prime Contractor (the "Contract"), all of which shall be considered part of this Subcontract and Subcontractor agrees to be bound to Contractor and Prime Contractor by the terms and provisions of the Contract. Subcontractor must comply with all applicable Prime Contract Provisions including but not limited to those incorporated with the Statement of Work.
  - B. The performance of the Work and materials used by the Subcontractor shall be satisfactory to the Contractor and the Prime Contractor. All incidental Work reasonably necessary to complete this Subcontract shall be done by the Subcontractor.
  - C. All communications with respect to the SOW to be performed under the Subcontract between Subcontractor and architect, engineer, Prime Contractor, or other party associated with the Project shall be transmitted through Contractor.
4. PAYMENT.
  - A. Contractor agrees to pay Subcontractor for the performance of the Work, as described in the Project SOW. Such amount as DETERMINED BY THE SOW is subject to additions and deductions for changes agreed upon or determined, as provided in this Agreement. Partial payments will be made to Subcontractor each month in an amount equal to 90% of the value, computed on the basis of the price

set forth in the SOW, of the quantity, as estimated by the architect or engineer, of the Work performed under and pursuant to this Agreement, less the aggregate of previous payments, but such partial payments shall not become due to Subcontractor until ten (10) days after Contractor receives payment for such Work from Prime Contractor. If Contractor receives payment from Prime Contractor for less than the full value of Work performed, the amount due to Subcontractor on account of such items shall be proportionately reduced. No partial payment to Subcontractor shall operate as approval or acceptance of the Work done pursuant to this Agreement. Upon complete performance of the Subcontract by Subcontractor and final approval and acceptance of Subcontractor's Work by Prime Contractor, Contractor will make final payment to Subcontractor of the balance due under this Subcontract within forty-five (45) days after full payment for such Work and materials has been received by Contractor from Prime Contractor. Notwithstanding the foregoing, the Subcontractor shall not be paid if all bills for labor, supplies, materials or other costs shall not have been paid by the Subcontractor in full. If requested by the Contractor, the Subcontractor shall submit receipted invoices as evidence of payment of all such accounts in full.

- B. If at any time prior to final payment under this Agreement Prime Contractor reduces the amount of retainer withheld from Contractor, Contractor may, in his or her sole discretion, with the consent of Subcontractor's surety, reduce accordingly the retained percentage withheld from Subcontractor.
  - C. Contractor may deduct from any amount due or to become due to Subcontractor any sums or sums owed by Subcontractor to Contractor. In the event of any breach by Subcontractor of any provision or obligation of this Subcontract Agreement, or in the event of the assertion by other parties of any claim or lien against Contractor or the premises arising out of Subcontractor's performance of this Agreement, Contractor shall have the right to retain out of any payments due or to become due to Subcontractor an amount sufficient (as determined by the Contractor in its sole discretion) to completely protect Contractor from any and all loss, damages, or expenses resulting from such event, until the situation has been remedied or adjusted by Subcontractor to the satisfaction of Contractor.
  - D. The Contractor may withhold any progress payment, in whole or in part, from the Subcontractor on account of the failure of the Subcontractor to comply fully with any requirements of this Agreement, or because of any delay on the part of the Subcontractor. The Subcontractor shall furnish to the Contractor any and all affidavits required by the Contract relating to the SOW.
5. INSPECTION. The Contractor shall have the right to inspect the Work or materials in the Subcontractor's shop or places other than the site of the project. The Subcontractor shall, on written notice from the Contractor or Prime Contractor, remove all materials, that the Contractor or Prime Contractor shall determine to be unsound or unsatisfactory. The Subcontractor acknowledges that neither inspections nor the presence on the premises of supervisory personnel shall relieve the Subcontractor from its absolute responsibility to perform the Work in accordance with the requirements of this Agreement or the SOW.
6. CHANGE ORDERS.
- A. Contractor may at any time by written order of Contractor's authorized representative, and without notice to Subcontractor's sureties, make changes in, additions to, and omissions from the SOW, related to Work to be performed and materials to be furnished, and Subcontractor shall promptly proceed with the performance of this Subcontract as so changed. Prior to the commencement of such change or revised SOW, the Subcontractor shall within three (3) days of written notice submit to the Contractor in writing any request it seeks to make for adjustment in the SOW Amount or time for performance consistent with the requirements of the Contract. Failure to submit a request for additional time or compensation arising out of change or revised SOW within three (3) days from written notice shall

constitute a representation by Subcontractor that no additional time or compensation for the change or revision is being sought, and shall constitute a waiver and release of any such request.

- B. In the event the Contractor requests the Subcontractor to review a proposed modification to the Contract Documents which may affect the Subcontractor's Work, the Subcontractor shall respond in writing within seven (7) calendar days after receipt of such request, or such other reasonable time period as the Contractor may require, stating the effect of the proposed modification upon its performance, including details of cost and time thereof. Failure of the Subcontractor to timely respond shall constitute its acceptance of the Contractor's determination as to the effect, if any, of the proposed modification or change upon the Subcontractor.
- C. If such changes shall increase or decrease the amount of the SOW, or the time required for its performance, or the cost of the Work to the Subcontractor, the SOW Amount shall be adjusted, upon the allowance by the Contract, in accordance with the following method:
  - 1) Estimated direct productive labor costs, including applicable insurance and taxes, but exclusive of the premium portion of any overtime unless overtime is required to complete the work; plus
  - 2) Estimated net cost of direct materials and equipment rentals; plus
  - 3) Profit at 10% of (1) plus (2); plus
  - 4) Overhead at 5% of (1) plus (2).

For the avoidance of doubt, Subcontractor waives any claim against Contractor for compensation or equitable adjustment for such claims, changed conditions, or extra work, except to the extent that any such claim is allowed to Contractor by Prime Contractor as provided in the Contract Documents.

- D. Should the parties be unable to agree as to the value, or time for performance, of Work to be added or omitted, the Subcontractor shall proceed under the written order of the Contractor, from which order the stated value, or time for performance, of the Work shall be omitted. The Subcontractor shall prepare and submit to the Contractor a proposal describing the estimated quantities, cost, and time for performance involved. The Subcontractor shall submit that proposal to Contractor within the appropriate time period established in the Contract between the Prime Contractor and the Contractor, so as to permit Contractor sufficient time to review the proposal and forward it to the Prime Contractor for consideration. If no time period is set forth in the Contract, then Subcontractor shall submit its proposal to Contractor within seven (7) calendar days of being required to perform the additional Work. The Subcontractor shall keep accurate, detailed and itemized records of the costs of any such change and shall report such costs to the Contractor in the form and manner prescribed by the Contractor. The Subcontractor shall, if requested, furnish each day to the Contractor, certified copies of all time sheets, receiving and inspection reports, and all other basic documents required by the Contractor to provide evidence of the expenditures of the Subcontractor as a result of such change. The Subcontractor's application to the Contractor for payment for the additional Work shall be accompanied by certified copies of all pertinent payrolls, invoices, and vouchers relating to the additional Work. In the event the Contractor and Subcontractor remain at issue as to the value, or time for performance, or such Work, the Contractor may refer the dispute to the Architect or Prime Contractor's Representative, whose decision shall be binding.
- E. Unauthorized Changes in the Work: Subcontractor shall not make any changes in the Work that would in any way cause or allow the work to deviate from the established Scope as provided in the Contract Documents without first obtaining a written Change Order from the Contractor. If Subcontractor makes

any changes in the Work without receiving such documentation, Subcontractor agrees that it will not be paid for that changed work even if it received verbal direction or any form of direction written or otherwise from Owner or any other person or entity. In addition, Subcontractor shall be liable for any and all losses, costs, expenses, damages and liability of any nature whatsoever associated with or in any arising out of such unauthorized change in the Work.

## 7. PROSECUTION OF WORK.

- A. Subcontractor shall furnish all labor, supervision, tools, equipment, and supplies necessary for the performance of this Subcontract in a proper, efficient, and workmanlike manner. Subcontractor shall prosecute the Work undertaken in a prompt and diligent manner whenever such Work or any part of it becomes available, or at such other time or times as Contractor may direct, and so as to promote the general progress of the entire construction and shall not, by delay or otherwise, interfere with or hinder the Work of Contractor or any other Subcontractor. Any materials that are to be furnished by Subcontractor under and pursuant to this Agreement shall be furnished in sufficient time to enable Subcontractor to perform and complete his or her Work within the time or times provided for in this Agreement. Subcontractor agrees to promptly reimburse Contractor for any and all liquidated damages that may be assessed against and collected from Contractor that are attributable to or caused by Subcontractor's failure to perform the Work required by this Agreement within the time fixed or in the manner provided for in this Agreement, and also agrees to promptly pay to Contractor such other or additional damages as Contractor may sustain by reason of such delay by Subcontractor. The payment of such damages shall not release Subcontractor from its obligation to otherwise fully perform this Subcontract Agreement. Upon written request by Contractor, Subcontractor shall furnish to Contractor such evidence as Contractor may require relating to Subcontractor's ability to fully perform this Subcontract in the manner and within the time specified in this Agreement.
- B. Noncompliance by Subcontractor. If Subcontractor fails to comply or becomes disabled from complying with the provisions of this Agreement as to character or time of performance and the failure is not corrected within five (5) days after written request by Contractor to Subcontractor, Contractor, by Subcontract or otherwise, may take over without prejudice to any other right or remedy and complete the performance of this Subcontract at the expense of Subcontractor or without taking over the Work, may furnish the necessary materials and employ the workers necessary to remedy the situation at the expense of the Subcontractor. If Contractor takes over the Work pursuant to this paragraph of this section it is specifically agreed that Contractor may take possession of the premises and of all materials, tools, and equipment of Subcontractor at the site for the purpose of completing the Work covered by this Agreement.
- C. Without in any way limiting the generality of the foregoing, it is agreed that Subcontractor shall be considered as disabled from so complying with the requirements of this Agreement whenever a petition in bankruptcy or for the appointment of a receiver is filed against him or her.

## 8. DELAYS.

- A. If Subcontractor's performance of this Subcontract is delayed or interfered with by acts of Prime Contractor, Contractor, or other subcontractors, as determined by Contractor, Subcontractor may request an extension of the time for the performance of this Agreement, as provided below, but shall not be entitled to any increase in the Subcontract price or to damages or additional compensation as a consequence of such delays or interference, except to the extent that the Contract entitles Contractor to compensation for such delays and then only to the extent of any amount that Contractor may, on behalf of Subcontractor, recover from Prime Contractor for such delays.

- B. Written request for extension. No allowance for an extension of time, for any cause whatever, shall be claimed by, or made to, Subcontractor, unless Subcontractor shall have made written request upon Contractor for such extensions within 24 hours after the cause of such extension occurred or, if the Contract between Contractor and Prime Contractor provides for a shorter period, within sufficient time to permit Contractor to give notice to Prime Contractor within the time allowed by the Contract for such notice.
- C. No allowance of an extension of time shall, in any event, be made to Subcontractor for delay by Subcontractor in preparing drawings or in securing approval of the architect or engineer for such drawings when such drawings are not properly prepared or when Subcontractor, by the exercise of reasonable diligence and judgment, could have anticipated and avoided the delay.
9. LABOR. Subcontractor, in connection with all Work covered by this Agreement, shall comply with and be bound by any labor agreements executed by Contractor or on Contractor's behalf to the extent that the provisions of such agreements apply to subcontractors. Failure at any time to comply with any of the provisions of such agreements will, at the option of Contractor, be cause for immediate termination of this Subcontract for default, and Contractor shall have all the rights contained in Section Six (6) of this Agreement with regard to such termination. If, by reason of strikes, picketing, or disputes of any nature between Subcontractor and any individual, group, or organization, Subcontractor shall continue to provide a workforce that complies with the standards set out in the Contract. If subcontractor is unable to supply enough properly skilled workers or proper materials to execute the Work defined in this Agreement, then Contractor may terminate this Agreement for default and proceed in accordance with this Agreement.
10. INSURANCE. Subcontractor shall provide and maintain workers' compensation and employer's liability insurance for the protection of his or her employees, as required by law of an employer. Subcontractor shall also provide and maintain in full force and effect during the term of this Subcontract insurance policies with terms of coverage satisfactory to Contractor (including but not limited to insurance covering the operation of automobiles, trucks, and other vehicles) with an insurance provider(s) satisfactory to Contractor, protecting Subcontractor, Prime Contractor, Owner and Contractor against all liabilities including, without limitation, liability from damages because of injuries, including death, suffered by persons other than employees of Subcontractor and liability from damages to property, arising from and growing out of Subcontractor's operations in connection with the performance of this Subcontract. Such insurance coverage shall be in those amounts as initially stated in the attached **Exhibit A** and as required by the Contractor from time to time as described within the SOW. Written proof, satisfactory to Contractor of compliance with requirements of this section, shall be furnished to Contractor before any Work is performed under this Agreement. Such proof of insurance shall provide for thirty (30) days' written notice to Contractor prior to cancellation or modification of any insurance referred to in such proof. Contractor, Prime Contractor and all Contractor's affiliates as stipulated by Contractor shall be included as "Additional Insured" with a full and complete waiver of subrogation under the Subcontractor's commercial general Liability, commercial automobile liability, professional liability, employer's liability and umbrella policies. Additionally, all such policies shall be endorsed to be primary and non-contributory with any insurance maintained by Contractor or the Contractor's affiliates.

If required by the Prime Contract and the Project is subject to an Owner Controlled Insurance Program ("OCIP"), or the Prime Contract is subject to a Contractor Controlled Insurance Programs ("CCIP"), notwithstanding anything in this Agreement to the contrary, the Subcontractor will take any and all steps necessary to enroll and participate in such program and shall comply with the obligations contained in the OCIP or CCIP manual or SOW. Failure to participate in these required programs or to complete the enrollment process in a timely manner will be considered to be a material breach of this Agreement.

Participation shall continue through the full completion of the Project and shall include completed operations coverage for a period of 10 years thereafter.

11. CONFIDENTIALITY. Certain information furnished or disclosed by Contractor or Subcontractor (the "Disclosing Party") to the other (the "Receiving Party") in connection with the performance of their respective obligations under this Agreement may contain or reflect confidential information with respect to Contractor or Subcontractor. "Confidential Information," for the purposes of this Agreement, shall include all information disclosed by the Disclosing Party to the Receiving Party under this Agreement and clearly marked or otherwise clearly designated as "confidential" or information disclosed by the Disclosing Party that is or should reasonably be understood by the Receiving Party to be confidential. The Disclosing Party's Confidential Information shall not include any information that: (a) is or becomes part of the public domain through no act or omission of the other party; or (b) the Receiving Party can demonstrate was in its lawful possession prior to the disclosure and had not been obtained by it either directly or indirectly from the Disclosing Party; (c) the Receiving Party can demonstrate was independently developed by the Receiving Party without access to the party's Confidential Information; or (d) the Receiving Party can demonstrate was received from a third party without breach of any confidentiality obligation.

The Receiving Party agrees, for the term of this Agreement and three (3) years after its expiration or termination, to hold the Disclosing Party's Confidential Information in strict confidence, not to disclose such Confidential Information to third parties not authorized by the Disclosing Party to receive such Confidential Information, and not to use such Confidential Information for any purpose except to perform its obligations under this Agreement. The Receiving Party agrees to take reasonable steps to protect the Disclosing Party's Confidential Information and to ensure that such Confidential Information is not disclosed, distributed, or used in violation of the provisions of this Agreement. The foregoing prohibition on disclosure of Confidential Information shall not apply to the extent certain Confidential Information is required to be disclosed by the Receiving Party as a matter of law or by order of a court, provided that: (i) the Receiving Party uses reasonable efforts to provide the Disclosing Party with prior notice of such obligation to disclose to allow the Disclosing Party to obtain a protective order from such disclosure; and (ii) the Receiving Party only disclosing that portion of Confidential Information which it reasonably believes, based on the advice of counsel, is required to be disclosed.

Each party acknowledges that a breach or threatened breach of this Section 11 could cause irreparable harm to the non-breaching party, the extent of which would be difficult to ascertain. Accordingly, each party agrees that, in addition to any other remedies to which a party may be legally entitled, the non-breaching party shall have the right to seek immediate injunctive or other equitable relief in the event of a breach of this Section 11 by the other party or any of its employees or agents.

12. INDEMNIFICATION. Subcontractor specifically obligates himself, herself, or itself to Contractor in the following respects:
- A. Infringement of patent rights. Subcontractor shall indemnify Contractor and Prime Contractor from any and all claims, suits, liabilities, expenses, or damages for any alleged or actual infringement or violation of any patent or patent rights, arising in connection with this Agreement and anything done under and pursuant to this Agreement.
  - B. Injuries. Subcontractor shall indemnify Contractor and Prime Contractor against any and all claims, suits, or liabilities for injuries to property, injuries to persons including death, and from any other claims, suits, or liability on account of any act or omission of Subcontractor, or any of his or her officers, agents, or employees.

- C. Payments and Liens. Subcontractor shall pay for all Work and labor performed under this Subcontract and shall satisfy Contractor of the same whenever demand is made, and shall indemnify Contractor and Prime Contractor against any and all claims, suits, or liens for such labor by others than Subcontractor. All material placed on the premises by the Subcontractor shall be owned unconditionally by the Subcontractor and shall be free of all liens and similar encumbrances of any third party. The Subcontractor agrees to remove immediately any liens or encumbrance which, because of any act or default of the Subcontractor, is filed against the premises; and to indemnify and save the Contractor and Prime Contractor harmless against all resulting loss and expenses, including attorneys' fees.
- D. Compliance with licenses, regulations and laws. Subcontractor shall obtain and pay for all permits, licenses, and official inspections made necessary to conduct Subcontractors Work, and shall comply with all laws, ordinances, and regulations applicable to Subcontractor Work and the conduct of such Work. Subcontractor agrees to indemnify Contractor for, of, and from any and all loss, including but not limited to any fines, penalties, and corrective measures Contractor may sustain by reason of Subcontractor's failure to comply with laws, rules, directives, ordinances, and regulations in connection with performance of this Agreement. For the avoidance of doubt, the Subcontractor shall comply with all regulations, directives, ordinances, and laws relating to the Project or the conduct thereof.
- 1) Contractor will comply with all applicable rules contained in the Immigration Reform and Control Act (IRCA) and is responsible for verifying the employment eligibility of each employee to assure that each employee is legally authorized to accept and maintain employment in the United States.
  - 2) Contractor shall not: (i) hire any person less than eighteen (18) years of age to perform Services under this Contract; or (ii) discriminate with respect to terms and/or conditions of employment on the basis of race, sex, national origin, age, physical or mental disability, or any other basis prohibited by applicable law.
  - 3) **EEO. The parties hereby incorporate the requirements of 41 C.F.R. § 60-1.4(a) and 29 C.F.R. § 471, Appendix A to Subpart A, if applicable. This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741.5(a), if applicable. These regulations prohibit discrimination against qualified protected veterans and qualified individuals with disabilities, and require affirmative action by covered prime contractors and subcontractors to employ, and advance in employment, qualified protected veterans and qualified individuals with disabilities.**
- E. Warranties and guarantees. Subcontractor warrants and guarantees the Work covered by this Subcontract and agrees to make good, at his, her or its own expense, any defect in the Work that may occur or develop prior to Contractor's release from responsibility to Prime Contractor for such Work. The Subcontractor shall maintain the premises free from accumulation of waste materials and rubbish resulting from the execution of the Work and at the completion thereof shall clean the premises in a manner satisfactory to the Contractor and the Prime Contractor.
- F. Responsibility toward Contractor. Subcontractor assumes toward Contractor all the obligations and responsibilities that Contractor assumes toward Prime Contractor, as set forth in the Contract, general and special conditions, drawings, specifications, and other documents referred to above, insofar as applicable, generally or specifically, to the Work to be performed under this Agreement.
- G. Breach by Subcontractor. Subcontractor shall indemnify Contractor and Prime Contractor against any and all loss, damages, cost, expenses, and attorneys' fees suffered or incurred on account of any breach of the obligations and covenants and any other provision or covenant of this Subcontract.

- H. General Indemnity. In addition to any of the forgoing obligations, the Subcontractor shall, at all times, indemnify and save harmless the Contractor and the Prime Contractor from and against any and all claims and demands whatsoever, including costs, litigation expenses, counsel fees, and liabilities incurred in connection therewith, caused in whole or in part by the acts or omissions of the Subcontractor, its sub-subcontractors, materialmen, or any other person directly or indirectly employed by them, or any of them, while engaged in the performance of this Project or his/her Work, or any activity associated therewith or relative thereto, and shall further indemnify the Contractor and Prime Contractor against any such claims allegedly caused in part, whether or not it be the fact, by reason of negligent instructions or directions given or purportedly given by any of the Prime Contractor's or Contractor's representatives with respect to the performance of the project or any aspect thereof.
13. **POSSESSION**. Whenever it may be useful or necessary for Contractor to do so, Contractor shall be permitted to occupy and/or use any portion of the Work that has been either partially or fully completed by Subcontractor before final inspection and acceptance of such Work by Prime Contractor, but such use and/or occupation shall not relieve Subcontractor of his, her or its guarantee of such Work nor of his, her or its obligation to make good at his, her or its own expense any defect in Work that may occur or develop prior to Contractor's release from responsibility to Prime Contractor.
14. **OTHER CONTRACTS**. The Work provided for in this Subcontract may constitute only a part of the Work being performed for Prime Contractor by Contractor and other subcontractors. Subcontractor, therefore, agrees to perform the Work called for in this Subcontract in such a manner that he, she or it will not injure, damage, or delay any other Work performed by Contractor or any other subcontractor, and agrees to pay Contractor for any damages or delay that may be caused to such other Work by Subcontractor or by his, her or its agents or employees.
15. **INDEPENDENT CONTRACTORS**. This Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between Contractor and Subcontractor. Neither Contractor nor Subcontractor will have the power to bind the other or incur obligations on the other's behalf without the other's prior written consent, except as otherwise expressly provided herein. Subcontractor specifically agrees that he or she is or will become, prior to the start of the Work under this Agreement, an independent Contractor and an employing unit subject as an employer to all applicable unemployment compensation statutes so as to relieve Contractor of any responsibility of liability for treating Subcontractor's employees as employees of Contractor for the purposes of keeping records, making reports, and payment of unemployment compensation taxes or contributions. Subcontractor agrees to indemnify Contractor and reimburse Contractor for any and all expense or liabilities incurred under such statutes in connection with employees of Subcontractor, including a sum equal to benefits paid to those who were Subcontractor's employees, where such benefit payments are charged to Contractor under any merit plan or to his or her individual reserve account pursuant to any applicable unemployment compensation statute.
16. **COMPLIANCE**.
- A. Subcontractor agrees that Subcontractor will keep and have available all necessary records and make all payments, reports, collections and deductions, and otherwise do any and all things so as to fully comply with all federal, state, and local laws, ordinances, and regulations in regard to any of the following matters, to the extent that they affect or involve Subcontractor's performance of this Subcontract, so as to fully relieve Contractor from and protect Contractor against any and all responsibility or liability for or in regard to these matters:



- 1) the hire, tenure, or conditions of employees and their hours of Work and rates of and the payment of their wages; and
  - 2) the keeping of records, making of reports, and the payment, collection, and deduction of federal, state, and local taxes and contributions.
17. SAFETY. Subcontractor agrees, in performance of this Agreement and at no additional cost to Contractor, to observe and comply with all applicable federal, state, and local safety rules and regulations including but not limited to any particular rules, policies, or regulations promulgated by the Prime Contractor or the Facility.
18. PROTECTION OF WORK. Subcontractor shall be responsible for the protection of his, her or its Work until final completion and acceptance of such Work by Prime Contractor and Contractor will make good or replace, at no expense to Contractor or Prime Contractor, any damage to such Work that occurs prior to such final acceptance.
19. ASSIGNMENT. The Subcontractor shall not assign this Agreement, or any of the payments to become due hereunder, nor shall the Subcontractor sublet, delegate or subcontract any part of the Work, except with the written consent of the Contractor. Notwithstanding the foregoing, the Contractor may assign this Agreement to any third party without the consent of the Subcontractor.
20. EXCLUSIVITY. During the term of this Agreement, and for a period of six (6) months from the final completion date of the last Project Subcontractor worked on for Contractor, Subcontractor shall not provide, market, sell or otherwise promote any services, labor or materials that may, in any manner, be competitive with or substantially similar to the Work, as it relates to pneumatic tubes system(s), performed by the Subcontractor under this Agreement. The provisions of this section shall survive the termination of this Agreement.
21. TIME IS OF THE ESSENCE. **It is specifically declared and agreed that time is of the essence of this Agreement** The Subcontractor has examined the site on which the Work is to be performed and is fully familiar with the physical condition.
22. TERMINATION.
- A. In the event the Prime Contractor elects to cease or postpone the Project, the Contractor may terminate this Agreement by written notice to the Subcontractor. Such termination shall be effective in the manner specified in the notice and shall be without prejudice to any claims that the Prime Contractor or the Contractor may have against the Subcontractor. On receipt of such notice, the Subcontractor, unless the notice directs otherwise, shall immediately discontinue Work and the placing of orders for, resources, and supplies in connection with the performance of the Work, and shall, if requested, make every reasonable effort to procure cancellation of existing orders and sub-subcontracts upon terms satisfactory to the Contractor and Prime Contractor, and shall therefore do only such Work as may be necessary to preserve and protect Work already in progress and to protect materials, plant, or equipment on the site or in transit thereto.
  - B. In the event the Subcontractor should, at any time after notice, refuse to replace defective Work, fail to prosecute the Work with diligence, or violate any condition of this Agreement, or should the Subcontractor make a general assignment for the benefit of its creditors, or should a receiver of any property of the Subcontractor be appointed, or should a petition be filed, either by or against the Subcontractor, in any bankruptcy or insolvency proceedings, the Contractor may terminate this Agreement, and enter the premises and take possession of all tools, machinery, equipment, and

appliances which may be owned by or be in the possession of the Subcontractor and which are at the site and required for the completion of the Work, and may exercise all options, privileges, and rights with respect thereto, and may complete, or employ any other person or persons to complete, the Work at the Subcontractor's expense.

- C. In the event that the Subcontractor shall correct the situation that has caused the notice of cancellation to be given by the Contractor as above provided for, within the period of fifteen (15) days from the date of receipt of such notice, the cause of cancellation shall be deemed waived, and this Agreement shall continue in effect in the same manner as though such cause of cancellation had not existed, the Contractor, however, reserving its right to damages for breach of any provision of this Agreement.
  - D. In the event of the termination of the engagement of the Subcontractor, as provided above, the Subcontractor shall prepare a statement of cost to that date, plus all obligations incurred in the interests of the Work but not yet due. The net amount of such statement shall become due and payable when approved by the Contractor and Prime Contractor after completion of the remainder of the Work by the Contractor or its agents. Should the expense so incurred by the Contractor in completing the Work exceed the difference between the Subcontract price and the total amount paid to the Subcontractor, the Subcontractor shall pay such excess to the Contractor.
23. SURETY BOND. The Subcontractor shall, at the Contractor's option, furnish an approved bond from a surety company designated by the Contractor or the Prime Contractor for the performance of this Agreement and/or a lien bond in those amounts requested by Contractor or the Prime Contractor.
24. EXHIBITS. All exhibits, change orders, attachments, SOW's referred to or in this Agreement are, by reference, incorporated in this Agreement for all purposes.
25. PARAGRAPH CAPTIONS. The captions of the paragraphs are set forth only for convenience and reference, and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.
26. ADDITIONAL DOCUMENTS OR ACTION. The parties agree to execute any additional documents and to take any additional action necessary to carry out this Agreement.
27. INTEGRATION AND AMENDMENT. This Agreement represents the entire Agreement between the parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the parties. The Contractor has not made and does not make any representations with respect to any matter or thing affecting or related to the subject matter of this Agreement, except as herein specifically set forth, and the Subcontractor hereby expressly acknowledges that no such representations have been made.
28. WAIVER OF BREACH. The waiver by any party to this Agreement of a breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.
29. LEGAL FEES. If any party breaches this Agreement, the breaching party shall pay all of the non-breaching party's reasonable legal fees and costs in enforcing this Agreement whether or not legal proceedings are instituted.
30. ELECTRONIC TRANSMISSION AND STORAGE. The parties intend for this Agreement to be bound by the Uniform Electronic Transaction Act (1999) ("UETA") or similar legislation. This Agreement may be executed by the exchange of faxed executed copies, certified electronic signatures, copies delivered by

electronic mail in Adobe Portable Document Format or similar format, or any other acceptable means under the UETA. Any signature transmitted by such means for the purpose of executing this Agreement is deemed an original signature for purposes of this Agreement. The Agreement shall be retained as an electronic record, equivalent to any original record. Duly authorized representatives of the parties executed this Agreement.

- 31. **BINDING EFFECT.** This Agreement shall inure to the benefit of, and be binding upon, the parties, and their respective legal representatives, successors, and assigns; provided, however, that nothing contained in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise specifically authorized in this Agreement.
- 32. **GOVERNING LAW.** This Contract and the legal relations among the parties hereto shall be governed by and construed in accordance with the laws of the State of Colorado (without regard to its choice of law rules). Any and all actions arising between the parties in respect of this Agreement shall be brought in the State of Colorado. The parties submit to the jurisdiction of, and do hereby agree to voluntarily appear in such courts.
- 33. **COUNTERPARTS.** This Agreement may be executed in several counterparts and, as so executed, shall constitute one Agreement, binding on all the parties even though all the parties have not signed the same counterpart. Any counterpart of this Agreement which has attached to it separate signature pages, which altogether contain the signatures of all the parties, shall be deemed a fully executed instrument for all purposes.
- 34. **SEVERABILITY.** If any provision of this Agreement is declared to be invalid, void or unenforceable by an arbitrator or court of competent jurisdiction, such provision shall be deemed to be severable, and all other provisions of this Agreement shall remain fully enforceable, and this Agreement shall be interpreted in all respects as if such provision were omitted.

IN WITNESS WHEREOF, the parties to this Agreement have executed it as of the date first above written.

**TRANSLAGIC CORPORATION d/b/a SWISSLOG**  
**HEALTHCARE SOLUTIONS**

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**EXHIBIT A**  
**Blanket Certificate Insurance Requirements**

**GENERAL LIABILITY INSURANCE.** Subcontractor shall carry Commercial General Liability providing insurance for bodily injury liability and property damage liability on an occurrence basis for the limits of liability indicated below and including coverage for:

The limits of liability shall not be less than \$1,000,000 each occurrence (combined single limit for bodily injury and property damage)

**PROFESSIONAL LIABILITY INSURANCE** covering negligent acts, errors, omissions, malpractice, as applicable, potentially arising from or pertaining to any Work to be performed by Sub-contractor, its employees, agents or subcontractors (*if applicable to specific project*); policy limits shall not be less than \$1,000,000 per claim / aggregate.

**AUTOMOBILE LIABILITY INSURANCE.** Sub-contractor shall carry automobile liability insurance, including coverage for all owned, hired and non-owned automobiles. The limits of liability shall be not less than \$1,000,000 combined single limit each accident for bodily injury and property damage.

**WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE.** Workers' Compensation insurance shall be provided as required by any applicable law or regulation. Employer's Liability insurance shall be provided in amounts not less than:

- \$1,000,000 each accident for bodily injury by accident
- \$1,000,000 policy limit for bodily injury by disease
- \$1,000,000 each employee for bodily injury by disease

**UMBRELLA LIABILITY INSURANCE.** Umbrella/Liability insurance, including coverage for bodily injury, personal injury and property damage liability, with minimum limits of \$2,000,000 per occurrence and annual general aggregate. Such insurance shall be on an umbrella basis excess over and no less broad than the underlying Employer's, Commercial General and Automobile liability coverage required and with coverage that "drops down" for exhausted aggregate limits.

CERTIFICATE HOLDER:  
Translogic Corporation  
10825 East 47<sup>th</sup> Avenue  
Denver, Colorado 80239

ADDITIONAL INSURED(S):  
Translogic Corporation  
[General Contractor – if applicable]  
[Owner – if applicable]

DESCRIPTION:

*Blanket Certificate– All Projects*

Contractor and all Contractor's affiliates as stipulated by Contractor shall, to the extent of Subcontractor's indemnity obligations contained herein, be included as Additional Insured under the Subcontractor's Commercial General Liability, Commercial Auto Liability, and Umbrella Policy. Waiver of Subrogation under General Liability, Commercial Auto Liability, Employers Liability, Umbrella Policy.