swisslog

Member of the KUKA Group

SWISSLOG HEALTHCARE

Transport Automation

Master Agreement – Version 2.0

Transport Automation Master Terms and Conditions

1. **Agreement.** These Master Terms and Conditions, dated as written in the applicable proposal ("Effective Date"), are entered into between Translogic Corporation d/b/a Swisslog Healthcare ("Swisslog") and facility as written in the proposal ("Customer"). Each of the foregoing may be referred to herein as a "Party," or collectively as "Parties." Customer agrees to purchase and Swisslog agrees to furnish Hardware, Software and/or Services, as defined in Section 2 herein, according to the provisions of the proposal, incorporated here by reference ("Proposal"), subject to the following terms and conditions. These Master Terms and Conditions, together with the Proposal and all schedules, exhibits, riders, attachments, supplements hereto, is collectively referred to herein as the "Agreement."

2. **Definition.** Capitalized terms used in this Agreement have the meanings set forth below or as provided within the body of this Agreement. All defined terms in this Agreement in the singular form will be construed to include the plural and vice versa.

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

    "Applicable Law" means all federal, state, county and municipal laws, ordinances, regulations and orders pertaining to the performance and provision of its Service, or any other deliverables under this Agreement, as they exist now and as they may be amended from time to time.

    "Beneficial Use" of the System, as defined within the section, occurs when the System has been used by Customer for a period of five (5) days.

    "Corrective Maintenance" means Services, as defined within the section, 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" 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 Customer's account being paid and in compliance with Sections 5 and 6 of this Agreement.

    "Documentation" means any manuals, implementation plans, notes, instructions and/or guidelines for Hardware, Software, and/or Services which is presented to Customer, or as updated by Swisslog from time to time.

    "Event" means Customer is experiencing a downtime event with its System, 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 (5) 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 the Proposal.

    "Network" means an aggregation of devices, any of which may perform the functions of computation, data storage, and/or data communications, and which 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 or Service to be provided hereunder that is entered into between Customer and Swisslog or any Affiliates, including any addenda and supplements thereto. By accepting a Swisslog Proposal, Customer and Swisslog agree to be bound by the terms of this Agreement as if it were an original party hereto.

    "Preventive Maintenance" or **"Maintenance Service"** means a task that is 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 or duty that is ordered by Customer under a Proposal and made available by Swisslog pursuant to the conditions of this Agreement.

    "Software" means the part of the System, as defined within the section, 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 to maintain an operative status.

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

"System" means Swisslog Hardware and Software interacting together to create a functioning product as described 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 the System, Software and/or Service as of the Effective Date and shall continue for the initial term indicated in the Proposal unless sooner terminated pursuant to Section 4 of this Agreement. If an initial term date is not on the Proposal for Service or Software a term date shall be two (2) years and shall begin upon Final Acceptance date. A term will automatically renew for an additional one year, unless Customer gives Swisslog notice of non-renewal, in writing, at least thirty (30) days before the end of the relevant term. At its discretion, Swisslog may impose a price increase not to exceed 7% of the pricing for the applicable Service or Software license, not to account for promotional or one-time pricing. If Customer chooses not to renew, Customer agrees to pay Swisslog for Service rendered at the prevailing time and materials rate.

4. **Termination.**
   a. For cause. A Party may terminate this Agreement for cause (i) upon 60 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.
   b. For convenience. A party may terminate this Agreement for convenience upon 90 days written notice to the other Party. In the event Customer should terminate Services prior to the agreed-upon term, in addition to any other rights that Swisslog may have, and regardless of the cause of termination or suspension, Customer shall pay Swisslog according to the Service fees unpaid and outstanding through the then-current calendar year (if any.) If Customer should terminate a System order prior to Final Acceptance, in addition to any other rights that Swisslog may have, and regardless of the cause of termination or suspension, Customer shall pay Swisslog any expenses incurred and reimbursable travel expenses incurred in the performance of this Agreement, including work in progress or any portion of installation or services completed or in progress up to and including the date at which termination or suspension of work takes effect, regardless of whether such installation has been completed, and all payments due through the date of termination, including, but not limited to payments due for Hardware ordered and/or received.

5. **Payment.** Customer will pay all fees specified in Proposal or herein. Except as otherwise specified herein or in a Proposal, (i) fees are based on Service, Software or Systems 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 one point five percent (1.5%) 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, or as a result of Customer's desire to terminate this Agreement, shall survive termination, irrespective of the reason.
   a. 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.

b. Service fees. Charges as specified in the Proposal, or pursuant to this Agreement, shall be invoiced on an annual basis 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 Proposal are set forth on the basis of a twelve (12) month calendar year regardless of whether Proposal or 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 twelve (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 this Agreement. 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.

c. Software License and Software Maintenance fee. Charges as specified in the Proposal, or pursuant to this Agreement, shall be invoiced on an annual basis and due within 30 days from the date of the invoice. 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. If Customer chooses not to renew Software Maintenance and later elects to renew such support, Customer shall be required to pay the then prevailing re-activation fee and also pay for any software updates, or other appropriate charges, which shall entitle Customer to receive the then most current update to the Software.

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

6. **Suspension of Service and Acceleration.** If any amount owing by Customer under this Agreement or any other agreement for Services is ninety (90) or more days overdue, Swisslog may, without limiting Swisslog's other rights and remedies, accelerate Customer unpaid fee obligations. Such obligations become immediately due and payable and Swisslog may suspend Service 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 Service. If Customer fails to pay Swisslog for Hardware provided, (1) Swisslog may elect, at its option and discretion, to take

possession of such Hardware and lease or sell such Hardware, and (2) Customer hereby gives Swisslog permission to access the applicable installation site to de-install, remove, and repossess such Hardware, and (3) Such repossession and removal shall be without prejudice to any other Swisslog remedies at law or in equity

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. In the event that the Customer has received a tax exemption, a copy of Customer's tax exemption certificate shall be provided upon request.

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 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 destination. Swisslog agrees to pay all freight, 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 clean, safe and temperature controlled area for receiving said shipment. Swisslog shall select, at its discretion, the types and amount of crating. 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.

10. **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 will be billed at Swisslog's standard rate, on a time and materials basis. On-site system Maintenance Service and monitoring is to be coordinated between the field service engineer and the Customer.

11. **Service Limitations**. Swisslog will be under no obligation to provide any Service hereunder due to errors, malfunctions or defects arising from: (i) abuse, neglect or misuse; (ii) use of unauthorized parts or failure to maintain the System in accordance with the Documentation; (iii) installation, configuration, relocation or re-installation of the System by anyone other than Swisslog; (iv) unauthorized modifications, enhancements or additions

made by anyone other than Swisslog, (v) causes other than ordinary use under normal conditions, including without limitation, accident, fire or water damage, neglect, air conditioning failure or humidity control failure; (vi) Customer errors made by personnel or Customer agents; (vii) failure by Customer to put in place and maintain the physical, IT, electrical and environmental requirements; (viii) use of the System with any equipment, accessories, components, consumables (e.g. carriers) or software not provided by Swisslog hereunder specifically for use therewith (unless previously approved in writing by Swisslog); or (ix) failure of Customer to install and use software updates provided by Swisslog. Any Service or parts provided by Swisslog with respect to any of the foregoing exclusions or for any other cause that is not attributable to Swisslog will be billed to Customer at Swisslog's time and material rates. Services specifically excludes services and parts related to universal power supply/battery back-up system, and services and parts which Swisslog considers, in its discretion, as rebuilds and refreshes (catastrophic failures etc.,) of the System that the manufacturer or Swisslog deems, in either of its sole discretion, at the end of its useful life. Once a System has been identified as end of life, Services for such System shall not be included in any future renewal service period unless specifically designated and provided for in writing.

12. **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.

13. **Storage of Maintenance Tools.** Customer shall provide, free of charge and with ready access, reasonable storage space for maintenance tools and spare parts, working space, heat, light, ventilation, electric current, and outlets for the use of Swisslog's 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.

14. **Software Maintenance.** If included in the Proposal, Swisslog will provide Software Maintenance services to include the following:
    a. Support and Response Time. Swisslog shall provide 24x7x365 live technical telephone support with trained representatives.
    b. Service. Swisslog will provide consultation, assistance, and advice relating to support of the Software.
    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. At a cost to the Customer, Swisslog shall make available to Customer's, who are Current with their account, annual Software Upgrades, to the latest Software version, as made available by Swisslog throughout the term

of this Agreement. In order to obtain such Software Upgrade 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 or System that is installed at Customer's site, subject to Swisslog's, or any third party's, right to end of life or at its discretion. During Software Updates or Software Upgrades, the System may experience temporary downtime. Swisslog will notify Customer of pending Software Updates and Software Upgrades, and schedule installation at Customer's convenience.
    f. 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.
    g. 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.

15. **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, please see and comply with the information found at the following link, http://www.swisslog.com/nexusdeploy :
    a. On site visits for routine Software issues or Software Updates or Upgrades, which 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's 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 third-party 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 vendors 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 for purposes outside the ordinary use for which the System 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 third-party vendor software (not to include Swisslog Software) due to a Swisslog's Update, Upgrade or Software Error Correction.

16. **Customer Responsibilities during Software Maintenance Term.** Customer shall maintain the installation site throughout the term of maintenance in accordance with the specifications established by Swisslog.

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

b. With all Software releases, Customer is responsible for complying with Swisslog's minimum IT specifications and compatibility requirements, as received from Swisslog.

17. **Software License.** For Swisslog owned Software, Swisslog retains ownership and grants a license to Customer, subject to the terms and conditions of this Agreement. Swisslog grants to Customer a perpetual, non-exclusive, nontransferable, limited license 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 the Software provided under the Proposal, and not directly integrated with the Hardware.

18. **Third Party Software.** For non-Swisslog owned Software, Swisslog grants to Customer, a limited, non-exclusive, non-transferable, non-assignable term license, without any right to sublicense, to use the Software and the

Documentation to operate the Software for Customer's internal purposes only. Customer must agree to, and comply with, these third party licenses in order to use such third party software. It is the Customer's responsibility to install anti-virus and security software and maintain the operating system, anti-virus and security software patches and updates. Customer may install applications for the administration of such patches and updates but any operational issues that might arise as a result of the use of any software, patches or updates installed by Customer are Customer's sole responsibility and not included as part of Swisslog's Support.

19. **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 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; or (b) any software or information that can be harmful to any computer system.

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

21. **System 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 (5) days and the Hardware and/or Software has performed to specifications. For the avoidance of doubt, the Hardware and/or Software will be deemed to be performing its essential functions even if the Hardware and/or 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 five (5) days. Final Acceptance shall not be unreasonably delayed.

22. **Hardware Replacement.** Unless otherwise agreed upon, replacement of System computers, printers, bar code readers, touch screen monitors and standard monitors after the initial warranty term are the responsibility of the Customer. Subject to the terms of this Agreement, Swisslog will assist with the configuration of replaced hardware as long as valid backups have been maintained.

23. **Return of Hardware.** Due to its custom nature, no System may be returned to Swisslog.

24. **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.

25. **Standard Business Hours and Rates.** For Services not covered under this Agreement, or for Services which 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	$185.00
Overtime - After-hours weekdays and Saturdays	$275.00
Overtime - Sundays & Holidays (defined by Swisslog)	
	$317.00
Mileage	$0.99/mile
Other Travel Related Expense	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 Maintenance Services and monitoring shall be limited to eight (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 one hundred (100) miles. Rates are subject to change.

26. **Rescheduling & Remobilization.** Should the Customer cancel a scheduled on site Service or Maintenance visit within two (2) days of the scheduled date of visit, a penalty of $500.00 per scheduled technician plus all associated reasonable mobilization costs (airfare, hotel, mileage etc.) will be assessed. Costumer's cancelled visit may be rescheduled according to Swisslog's convenience.

27. **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.

28. **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 in any area where System is installed, 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.

29. **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 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 WILL NOT EXCEED THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT.

    b. **Hardware Warranty.** Swisslog manufactured Hardware will function, perform and conform in accordance with the included terms of then current Swisslog Documentation and specifications, under normal service. Swisslog's sole obligation to Customer shall be limited to the repair or replacement, at Swisslog's 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 non Swisslog manufactured items will be subject to the vendor's warranty.

    c. **Exceptions to Hardware Warranty.** Swisslog's 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 damage 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 (30) days after discovery; (iv) the Customer fails to purchase or stay Current with its support agreement; (v) the Customer uses consumables such as carriers that are not provided directly by Swisslog; (vi) the defect was discovered by Customer prior to Final Acceptance and the Customer did not notify Swisslog of any such defect; (vii) the defect is caused or limited by abuse, neglect, misuse, carelessness, unauthorized relocation of the Hardware, fire or decomposition by chemical or galvanic action; or (viii) Customer fails to notify Swisslog, in writing, within one (1) year from date of either Final Acceptance or Beneficial Use; or (iv) unauthorized modifications, enhancements or additions made by unauthorized Swisslog personnel. 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.

30. **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.

31. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL EITHER 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 PERCENT (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.

32. **Intellectual Property Rights.** All right, title and interest in and to the intellectual property rights in or to any of the Hardware or Software, and any modifications, enhancements and derivative works thereof, including but not limited to, patents, copyrights, trademarks, know-how and proprietary industrial drawings, will remain the sole property of Swisslog and/or its supplier(s). Customer will not remove, obscure or alter any proprietary notices placed on or within any Product.

33. **Remedies for Infringement**. If the System, Software or Services, or any portion thereof are enjoined under any award or settlement, Swisslog, at its option and expense, will:

   a. procure the right to continue using the System or Services;

   b. replace the System or Services or infringing portion thereof with a non-infringing product or service; or

   c. modify the System or Services so they become non-infringing.

If the remedies set forth in (a) through (c) are not possible on commercially reasonable terms, Swisslog may terminate the License for the allegedly infringing System, Software or Services, and upon receipt of the System, Software or Services, return the fees paid by Customer to Swisslog, if any, prorated over the Agreement term from the delivery date. In electing the remedies set forth in (a) through (c) above, Swisslog shall consult with and obtain the consent of Customer, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, Swisslog shall not be liable for any claim of infringement resulting from Swisslog's compliance with any design, specification or instruction of Customer, modification of the System or Software by Customer without Swisslog's approval, use of Equipment in a manner not according to specifications or documentation, or use of Equipment with software or hardware products not supplied by Swisslog. Systems for purposes of this indemnity do not include any third-party products, whether or not supplied by either party. The foregoing states Swisslog's entire liability and Customer's exclusive remedy for infringement of intellectual property rights.

34. **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 (hereinafter, "Force Majeure"). 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, shortages, epidemics, fire, flood, earthquake, lightning, and explosion.

    a. 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 in 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.

    b. Should the period of Force Majeure continue for more than six (6) 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 claiming Force Majeure.

35. **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.

36. **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, neither Party shall, directly or indirectly, recruit, solicit or cause to be recruited or solicited any employees or independent contracting consultants subject to written agreements, of the other Party for the purpose of hiring them or inducing them to leave their employment. Any such solicitation or recruitment will entitle the solicited Party to any and all indirect and direct costs and expenses associated with such solicitation. Notwithstanding the foregoing, a Party is not prohibited from offering employment to any person: (a) with whom it has had contact regarding possible employment prior to the Effective Date; (b) who responds to a general solicitation or advertisement that is not specifically directed only to employees of the other Party; or (c) who is referred by a search firm, employment agency or other similar entity provided that such entity has not been specifically instructed to solicit the employees of the other Party.

37. **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 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. 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. Confidential Information will not include information which the receiving Party is able to demonstrate: (i) is or becomes available to the general public in a manner other than as a result of an unauthorized disclosure by the receiving Party; (ii) is already in the possession of the receiving Party prior to disclosure by the disclosing Party and was not subject to an obligation of confidentiality owed to the disclosing Party at the time such information came into the possession of the receiving Party; (iii) becomes available to the receiving Party on a non-confidential basis from a third party who has a right to make such disclosure and is not in violation of confidentiality obligations with the disclosing Party; and/or (iv) is independently developed by the receiving Party without use of, access to, and/or reference to the disclosing Party's Confidential Information. Either Party may disclose Confidential Information of the other Party to the extent required by law, court, and/or other governmental order, rule, and/or regulation, provided that the Party receiving such request: (i) gives the other Party

written notice of the compelled disclosure (to the extent legally permitted); (ii) gives the other Party reasonable assistance, if such Party wishes to contest the disclosure; and (iii) only discloses the portions of the Confidential Information that are necessary in order to comply with such request.

38. **Confidential Health Information.** The parties recognize that Customer may be a covered entity under 45 C.F.R. 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. In the event the parties enter into an arrangement under this Agreement whereby Swisslog will provide services to or perform functions on behalf of Customer that require Customer to disclose patient Protected Health Information to Swisslog, Swisslog agrees to enter into a Business Associate Agreement with Customer.

39. **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 except as set forth below. If for some reason Customer Data is accessed or stored, Swisslog will maintain reasonable 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. Except as set forth above, Customer acknowledges and agrees that information used and stored within the Software and System are not the responsibility or liability of Swisslog.

40. **Health and Human Services Audit.** Should the provisions of section 952 of the Omnibus Reconciliation Act of 1980 [42 U.S.C. 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.

41. **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://exclusions.oig.hhs.gov/ and https://www.precheck.com/blog/gsa-epls-exclusion-database-changing-sam]; (ii) has not been convicted of a criminal offense related to the provision of healthcare items or services; and (iii) has not yet been excluded, debarred, or otherwise declared ineligible to participate in the federal healthcare programs or any state healthcare programs as defined in 42 U.S.C. Section 1320a-7b(f) (collectively, "Debarred"), and agrees not to engage, assign or contract with any individual whom Swisslog knows or should have known, after reasonable inquiry, has been convicted of a criminal offense related to health care or is currently listed by a federal or state agency as Debarred. Swisslog will immediately notify Customer of any change in the status of the representations and warranty set forth in this section.

42. **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, which cannot be unreasonable withheld; 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.

43. **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. Customer 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. Customer 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.

44. **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.

45. **Notices.** Notices permitted or required to be given hereunder shall be deemed sufficient if in writing and will deemed to have been properly served if sent by hand delivery, or if sent recognized overnight courier, or given by registered or certified air mail, postage prepaid, return receipt requested, addressed to Swisslog and Customer at the addresses as written in the Proposal, or as updated by either Party through formal notification. Notices so given shall be effective as of the date stamped on the receipt.

46. **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.

47. **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 personam, generally and unconditionally with respect to any action, suit, or proceeding brought by it or against it by the other Party.

48. **Insurance.** Each Party agrees to carry an appropriate amount of insurance to cover the risks associated with this Agreement.

49. **Conflicting Terms.** This Agreement is the entire agreement between Customer and Swisslog regarding Customer's Services or System 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 of 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) the applicable Proposal, (2) any executed agreement entered into between Customer and Swisslog related to the applicable Proposal, (3) this Agreement, and (4) the Documentation.

50. **Authority.** By executing the Proposal or this Agreement, 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 purchase order no later than ten (10) days from date of execution of the Proposal. Swisslog will not process Customer's order until such purchase order is received and failure to do so may delay installation.