

swisslog

Member of the KUKA Group



SWISSLOG HEALTHCARE CANADA

Master Subscription Agreement

Effective Date: 9/6/2017

SWISSLOG HEALTHCARE CANADA – MASTER SUBSCRIPTION TERMS AND CONDITIONS

- 1. Agreement.** The facility and its Affiliate(s) (“Customer”) agrees to purchase, and Translogic Limited (carrying on business as Swisslog Healthcare), a corporation incorporated under the laws of Ontario (“Swisslog”), agrees to furnish Hardware, Equipment and/or Services according to the provisions of the Proposal (hereinafter referred to as “Proposal”) presented to Customer and incorporated herein as Exhibit A; subject to all the following terms and conditions herein. The Proposal and these Terms and Conditions are collectively referred to 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.

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

"Agreement" means this Master Subscription Agreement and executed Proposal.

"Customer" or "Customers" means the hospital, nonprofit, company or other legal entity for which Customers are accepting this Agreement, and Affiliates of that company or entity.

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

"Current" means in compliance with Section 5 of this Agreement.

"Documentation" means any manuals presented to the Customer, online user guides or training materials, as updated from time to time.

"Equipment" means tangible mechanical, electromechanical or other device deployed by Swisslog or its agents in the operation of a customer's business or business subsystem; such as, but not limited to, the pneumatic tube system.

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

"Error Correction" means either a modification or addition to the Software that, when made or added to the Software, corrects an Error including, without limitation, bug fixes, patches and maintenance releases.

"Hardware" means the tangible devices that make up a computer system or related information network or as defined by Swisslog Healthcare's proposal to the Customer.

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

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

"Services" means services (including any Software) that are ordered by Customer under a Proposal and made available by Swisslog.

"Software" means software ordered by Customer under a Proposal.

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

"Subscription" means the continued use of Swisslog Services, Hardware and/or Equipment that Customer ordered under a Proposal pursuant to the conditions of this Agreement.

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

"Upgrade" means a new version or release of the Software, Hardware and/or Equipment. Upgrades for Software mean the new software 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 an Update.

"User" means an individual who is authorized by Customer to use Hardware, Equipment or Service, for whom Customer has ordered the Hardware, Equipment and/or Service, and to whom Customer (or Swisslog at Customer's 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 transacts business.

3. **English Language.** The parties hereto have required that this Agreement and all deeds, documents and notices relating to this Agreement be drawn up in the English language. Les parties aux présentes ont exigé que le présente contrat et tous autres contrats, documents ou avis afférents aux présentes soient rédigés en langue Anglaise.
4. **Term.** This Agreement shall become effective for Hardware, Equipment and/or Service(s) as of the service start date indicated on the accepted Proposal and shall continue for the initial term indicated in the Proposal unless sooner terminated as provided pursuant to this Agreement. If no service start is provided for in the Proposal, the term shall begin on implementation date. Except as otherwise specified in a Proposal, Subscriptions will automatically renew for an additional one year, unless Customer gives Swisslog notice of non-renewal at least 30 days before the end of the relevant Subscription term. At Swisslog discretion, Swisslog may impose a price increase upon an automatic renewal. Any such pricing increase will not exceed 7% of the pricing for the applicable Service in the immediately prior Subscription term, unless the pricing in the prior term was designated in the relevant Proposal as promotional or one-time.
5. **Termination.** A party may terminate this Agreement for cause (i) upon 45 days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
6. **Payment. Billing and Payments.** Customer will pay all fees specified in Proposals or herein. If no down payment is specified in the Proposal, Swisslog may require Customer to pay 20% of Proposal amount upon execution of applicable Proposal. Except as otherwise specified herein or in a Proposal, (i) fees are based on Services, Software, Hardware and/or Equipment purchased through the Proposal or ordered outside of the Proposal, and (ii) payment obligations are non-cancellable and fees paid are non-refundable. Payment terms are net 30 days upon date of invoice. Customer acknowledges payment by credit card is not accepted. Unless otherwise specified in this Agreement, all fees will be invoiced in advance and all invoices issued under this Agreement are payable in the currency sold. The prime rate of interest plus 1.5% percent

per month shall be charged automatically on all amounts, including additional charges, not paid by Customer when due hereunder. Customer's obligation to pay all charges that shall have accrued hereunder prior to termination of this Agreement shall survive termination, irrespective of the reason.

- a. Subscriptions fees. Unless otherwise provided in the applicable Proposal Subscription(s) purchased; (a) are Services purchased as a Subscription, (b) cannot be decreased during the relevant Subscription term, and (c) may be increased at the beginning of each Subscription renewal term, as set forth in Section 3. Additional Subscriptions may be added during a Subscription term at the pricing described in Customer's new Proposal. Any additional Subscription(s) may be proposed as a full term (12 months) or prorated, for the portion of the new Subscription term, to align terms with an already existing Subscription.

- b. Hardware and/or Equipment 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.

- c. Maintenance fees. Charges as specified in the Proposal, or pursuant to this Agreement, shall be invoiced and due within 30 days from the date of the Invoice. Charges due for a fractional part of a calendar month shall be computed at the rate of one-thirtieth (1/30th) of the monthly rate for each day.

- d. Other charges. Pursuant to this Agreement and as ordered or directed, by Customer, outside of the applicable Proposal, or as ordered by Customer's Proposal, Customer may be charged other fees for Services, Hardware and/or Equipment. Such fees shall be invoiced during the month in which they have been incurred and due within 30 days from the date of the invoice. Any Service hours or parts allowances in the Swisslog Proposal are set forth on the basis of a 12-month year regardless of whether Proposal/agreement has a multi-year term. Customer acknowledges that all unused Service hours and parts allowances expire without refund or recourse at the end of each 12-month calendar year and shall not accumulate or carry forward in any manner. It is the Customer's responsibility to track service hours and parts allowance usage. Upon request of the Customer, Swisslog shall provide copies of all invoices dated within the term of the Agreement.

7. **Suspension of Service and Acceleration.** If any amount owed by Customer under this Agreement or any other

agreement for Services is 90 or more days overdue Swisslog may, without limiting Swisslog other rights and remedies, accelerate Customer unpaid fee obligations under such Agreement or agreements so that all such obligations become immediately due and payable, and suspend Swisslog Services to Customer until such amounts are paid in full. Once Customer is considered overdue (90 days) the Customer is not Current with its account and not eligible for continued Subscription Services.

- 8. **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.
- 9. **Preventive Maintenance.** Swisslog shall provide Preventive Maintenance Services according to the Proposal. Swisslog shall have no obligation to perform any Services related to the following, unless Swisslog and Customer have otherwise agreed in writing:
 - a. The failure of Customer to continually maintain the installation site in conformance with Swisslog specifications or documentation;
 - b. Impairments in the performance of the Hardware or Equipment resulting from changes in the design of the Hardware or Equipment made by Customer or mechanical, electrical, or electronic interconnections made by Customer;
 - c. 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 by Customer;
 - d. Damage or necessity of repair resulting from unauthorized maintenance by Customer or any third party other than Swisslog or its authorized representative; or
 - e. Any modifications necessary to comply with recommendations or directives of insurance companies, governmental bodies, or any other regulatory authorities; or
 - f. Damage or repair necessitated as a result of relocation of the Equipment.

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

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

12. **Examination for Hardware and Equipment Acceptance.** If installation of Swisslog Hardware or Equipment has been performed or supervised by Swisslog, the Customer and Swisslog shall, within five (5) days of notice of completion, each appoint a representative to examine the workmanship and material and test the capacity of the equipment. Customer shall provide the necessary power and facilities. Upon decision of the representatives that the provisions of the contract have been fulfilled, Customer agrees to accept the equipment and make full payment as herein provided. Failure of the Customer to appoint such representative and/or furnish the necessary power and facilities for the examination and test shall constitute acceptance by the Customer of the equipment as complete and successful. Beneficial use of the system by the Customer shall also constitute acceptance.

13. **Future Functionality.** Customer agrees that Customer purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by Swisslog regarding future functionality or features.

14. **Standard Business Hours and Rates.** For services that are not covered under this Agreement, the Customer agrees to pay Swisslog, pursuant to Section 5 and upon receipt of an itemized invoice, in accordance with the following schedule.

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

A Customer's invoice will reflect any discount stated under the Proposal and is subject to the Customer's account being Current. Swisslog normal business hours are 8:00 AM to 5:00 PM (local time), Monday through Friday, excluding holidays. All service visits will be invoiced for a minimum of four (4) hours (door-to-door) plus expenses. Rates are subject to change.

- 15. Rescheduling & Remobilization.** Should the Customer cancel a scheduled Preventive Maintenance visit within two days of the scheduled date of visit, a penalty of \$500.00 per scheduled technician plus all associated mobilization costs (airfare, hotel, mileage etc.) will be assessed.
- 16. 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.
- 17. 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 Hardware or Equipment is to be installed. Swisslog will not assume responsibility or any costs associated with any hazardous materials, including, but not limited to, any investigation, abatement, containment, testing, inspection or remediation of any asbestos, polychlorinated biphenyl (PCB), radioactive material, toxic mold or any other hazardous materials. In addition to any other indemnity provisions provided herein, Customer shall defend, indemnify and hold harmless Swisslog from and against all loss, liability, claims, costs, damage and economic detriment of any kind whatsoever, or expense (including attorney's fees) that arises out of or results from the discovery or existence of hazardous materials, whether or not identified in writing. Customer certifies that the work areas are safe and free of actionable levels of any and all hazardous materials, as defined above. All arrangements and expenses required for any and all hazardous material inspections, testing, monitoring, abatement, containment, etc., will be made by the Customer.
- 18. Software Maintenance.** Pursuant to a Customer's Proposal and based upon Swisslog Healthcare's Subscription Agreement, Swisslog shall provide Customer the maintenance described in this Agreement with respect to Software, including providing access to latest released versions that include Updates, Upgrades and Error Corrections. Swisslog collects reported errors from a number of sources including internal evaluation and

external sources (Users). Swisslog solely determines if any reported error is software related and if so, if and when such error is corrected.

Additional Software Maintenance includes the following:

- a. Support and Response Time.** Swisslog shall provide 24x7x365 live technical telephone support with trained Swisslog representatives through its Network Operations Center (NOC) personnel.
- b. Error Reporting.** If Customer desires support, Customer shall contact Swisslog telephone support service. Swisslog will provide consultation, assistance, and advice relating to support of the Software within the timeframes described herein.
- c. Updates and Upgrades.** Swisslog shall make available to Customers (who are Current with their accounts) as part of this Agreement, Updates and Upgrades to the Software. Customer agrees not to Upgrade the Software unless Upgrade is obtained directly from Swisslog.
- d. Continuing Support.** Customer may decline to install an Update or Upgrade made available by Swisslog. Customer's decision not to update relieves Swisslog of its responsibilities for any system issues the update was intended to address. In such event, Swisslog shall continue the maintenance for whatever version of the Software that is installed at Customer's site, subject to Swisslog right to end-of-life any Software, Hardware and/or Equipment Swisslog deems appropriate and at its discretion.
- e. Compatibility.** With all Software releases Customer is responsible for complying with Swisslog minimum PC hardware specifications and compatibility requirements. Such documentation is available upon request.
- f. Modifications.** Modifications to the Software are 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 it 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.

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

a. The failure of Customer to continually maintain the Network and/or its equipment or Hardware in conformance with Supplier's specifications or requirements located at

<http://www.swisslog.com/nexusdeploy>;

b. Impairments in the performance of the Software, Customer or vendor software, resulting from changes/moves of the Network, Hardware or Equipment or Software made by mechanical, electrical, or electronic interconnections made by Customer or Customer vendors;

c. 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 or Equipment,

d. Damage or necessity of repair resulting from unauthorized maintenance by Customer or any third party other than Swisslog or its authorized representative;

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

f. Damage or repair necessitated as a result of relocation of the Hardware or Equipment.

g. Any PC or network administration, including but not limited to: regular backup, data recovery, anti-virus protection, operating system updates, defragmentation, optimization, patches, service packs.

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

20. Customer Responsibilities during Software Maintenance Subscription Term. If Customer discovers any suspected Error in the Program, Customer shall analyze the suspected Error to determine if it is the result of Customer's misuse or misunderstanding of the Software before seeking Swisslog assistance. In the event Swisslog determines that the problem reported by Customer is directly related to unauthorized alterations of the Software by Customer, then Swisslog may charge for

employee time expended at the current time and material rates, in addition to reasonable out-of-pocket expenses.

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

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

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

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

c. Customer agrees not to access, disassemble, or reverse-engineer the Software for any reason including, but not limited to, building a product or software similar or competitive in features, ideas, functions, or graphics to the Software.

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

23. 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, EQUIPMENT AND SERVICES OR ANY OTHER PERFORMANCE UNDER OR PURSUANT TO THIS AGREEMENT. CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES FOR BREACH OF ANY AND ALL WARRANTIES AND FOR SWISSLOG LIABILITY OF ANY KIND (INCLUDING LIABILITY FOR NEGLIGENCE) UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT WILL SWISSLOG AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL EXCEED TWENTY FIVE PERCENT (25%) OF THE TOTAL AMOUNT RECEIVED BY SWISSLOG FROM CUSTOMER UNDER THIS AGREEMENT. IN NO EVENT SHALL SWISSLOG BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL LOSSES OR DAMAGES, EVEN IF SWISSLOG SHALL HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. SWISSLOG TOTAL LIABILITY UNDER THIS AGREEMENT FOR ANY REASON SHALL NOT EXCEED TWENTY FIVE PERCENT (25%) OF THE TOTAL AMOUNT RECEIVED BY SWISSLOG FROM CUSTOMER UNDER THIS AGREEMENT.

b. Hardware Warranty. Hardware will function, perform and conform in accordance with the included terms of then-current Swisslog documentation and specifications to this Agreement, under normal service. Swisslog sole obligation to Customer shall be limited to the repair or replacement, at Swisslog option, of defective Hardware or Equipment, 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.

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

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

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

24. Indemnification.

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

b. Software Indemnity. Notwithstanding anything else in this Agreement to the contrary, Swisslog indemnifies, defends, and holds Customer harmless from and against any claims, actions, or demands alleging that the Software infringes any patent, copyright, or other intellectual property right of a third party. If use of the Software is permanently enjoined for any reason, Customer's sole remedy hereunder and at Swisslog option, and in its sole discretion, Swisslog may (a) modify the Software so as to avoid infringement; (b) procure the right for Customer to continue to use the Software and Documentation; or (c) terminate this Agreement and refund to Customer all Subscription fees paid Swisslog. Should any claim subject to software indemnity be made against Swisslog or Customer, the party against whom the claim is made agrees to provide the other party with

prompt written notice of the claim. Swisslog will control the defense and settlement of any claim under this Section. If requested, Customer agrees to cooperate and provide reasonable assistance in the defense and settlement of such claim.

25. LIMITATION OF LIABILITY NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL EXCEED THE AMOUNT PAID BY CUSTOMER HEREUNDER IN THE 12 MONTHS PRECEDING THE INCIDENT, PROVIDED THAT IN NO EVENT WILL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED TWENTY FIVE 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.

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

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 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 nine consecutive months, either party may terminate this Agreement without liability to the other party, except for payments due to such date, upon giving written notice to the other party.

27. 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.

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

29. 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, Hardware and/or Equipment's intellectual property, trade secrets, plans, drawings, specifications, know-how, manuals and/or technology including user names, 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 Equipment or Confidential Information nor create derivative works based on the Hardware or Software or Equipment or Confidential Information. The parties shall not use Confidential Information for any purpose other than in furtherance of this Agreement and the activities described herein. Each party agrees that in the event of a breach or threatened breach of this section (Confidentiality and Non-Disclosure), the other party may suffer irreparable harm for which it may have no adequate monetary remedy, and may be entitled to injunctive and other equitable relief for such breach, in addition to, and not in limitation of, any other legal or equitable remedies to which it would otherwise be entitled. Customer agrees that Customer shall be liable for any failure on the part of any such Representative, employee or third party to comply with these Terms and Conditions to the same extent as if such Representative, employee or third party had been parties hereto to use the Confidential Information solely in accordance with the terms of these Terms and Conditions; and to protect the Confidential Information from unauthorized disclosure or use.

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

Software and Systems are not the responsibility or liability of Swisslog.

- 31. Delays.** Swisslog shall not be liable for delays occasioned by non-receipt of timely, complete, and accurate information from the Customer, delays in drawing approval, changes, and/or interruptions resulting from acts of the Customer, or any other causes beyond its control, including problems inherent in the use of the Internet and electronic communications. In the event that delays to the Swisslog mobilization schedule are caused by Customer or by other contractors, subcontractors, or suppliers hired by Customer and working on the site, Swisslog shall be allowed an equitable adjustment in contractual schedule and an adjustment in contract price for additional costs incurred during the delay. In the event such delay occurs, a minimum cost of \$2,000.00 will be assessed for each additional trip the Swisslog technician is required to make to complete system startup. Swisslog requires no less than four (4) weeks' advance notice in writing to schedule its commissioning team for startup and training.
- 32. Assignment.** Neither party shall have the right to assign or otherwise transfer its right and obligations under this Agreement except with the written consent of the other party; provided, that a successor in interest by merger, operation of law, assignment or purchase, or otherwise of the entire business of either party shall acquire all interest of such party hereunder and provided further that Swisslog shall be entitled to assign all or part of the payments from Customer under this Agreement to any person or organization in its own right or as agent for trustee and Customer agrees to comply with any instructions from Swisslog to make payments directly to such persons or organizations. Any prohibited assignment shall be null and void.
- 33. 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.
- 34. Notices.** Notices permitted or required to be given hereunder shall be deemed sufficient if given by registered or certified air mail, postage prepaid, return receipt requested, addressed to the respective addresses or the parties as written in the Proposal or as updated by either Party though formal notification. Notices so given shall be effective as of the date stamped on the receipt.
- 35. 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 shall 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.

- 36. 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 Province of Ontario (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 Province of Ontario. The parties submit to the jurisdiction of, and do hereby agree to voluntarily appear in such courts.
- 37. Insurance.** Client agrees to carry an appropriate amount of insurance to cover the risks associated with this Agreement.
- 38. Conflicting Terms.** This Agreement is the entire agreement between Customer and Swisslog regarding Customer's use of Services and Hardware and/or Equipment and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, 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 form Customer utilizes to order services or product, is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) any executed agreement entered into between Customer and Swisslog (2) the applicable Proposal, (3) this Agreement, and (4) the Documentation.
- 39. Authority.** By executing the Proposal, Customer is providing Swisslog with a guarantee they have signing authority for all facilities referenced on the Proposal. To ensure a timely transition to implementation Customer agrees to submit a 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.