



Contract Number

21-385

SAP Number

4400016947

Sheriff/Coroner/Public Administrator

Department Contract Representative
Telephone Number

John Ades, Captain
909-387-0640

Contractor

Translogic Corporation, dba
Swisslog Healthcare

Contractor Representative

Steve Hood, Business
Development Director

Telephone Number

(503) 704-7799

Contract Term

5/19/2021 – 5/18/2026

Original Contract Amount

\$37,452.66

Amendment Amount

Total Contract Amount

\$37,452.66

Cost Center

4420001000

Briefly describe the general nature of the contract:

Contract with Translogic Corporation, dba Swisslog Healthcare for the provision of 400 replacement canisters, and associated training, in the amount of \$37,452.66 for failing, or aged canisters throughout the Sheriff/Coroner/Public Administrator's Type II Detention Facilities.

FOR COUNTY USE ONLY

Approved as to Legal Form

Richard D. Luczak, Deputy County Counsel

Date 5/13/2021

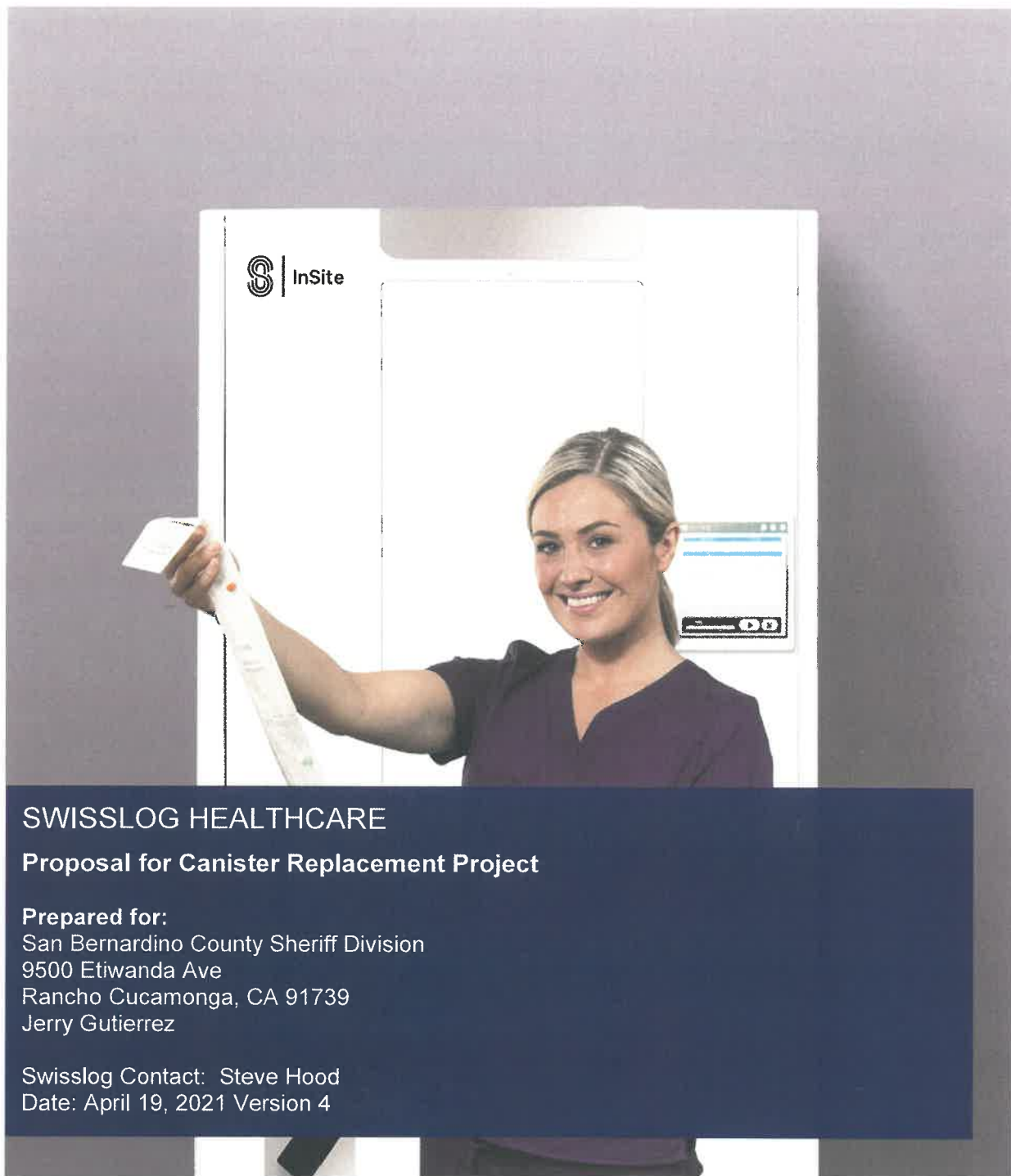
Reviewed for Contract Compliance

Date

Reviewed/Approved by Department

John Ades, Captain

Date 5/13/2021



SWISSLOG HEALTHCARE

Proposal for Canister Replacement Project

Prepared for:

San Bernardino County Sheriff Division
9500 Etiwanda Ave
Rancho Cucamonga, CA 91739
Jerry Gutierrez

Swisslog Contact: Steve Hood

Date: April 19, 2021 Version 4

THIS PROPOSAL MAY CONTAIN PROPRIETARY SWISSLOG HEALTHCARE INFORMATION, INCLUDING PATENTED DESIGNS, COPYRIGHTED MATERIAL AND TRADE SECRETS. THIS INFORMATION IS INTENDED SOLELY FOR THE CUSTOMER'S USE IN NEGOTIATING WITH SWISSLOG HEALTHCARE AND EVALUATING THIS PROJECT.

Swisslog conducts ongoing product improvements, therefore technology designs may change without notice or obligation. InSite is a registered trademark of Swisslog AG. Swisslog systems may be covered by one or more patents. See [swisslog.com/patents](https://www.swisslog.com/patents) for details.



Sales Proposal - Definition & Purpose

This sales proposal (hereinafter referred to as “Proposal”) provides details on the Recommended Solution including product and pricing details. It also highlights key considerations, such as our execution processes, implementation processes, and roles and responsibilities. This Proposal is a legally binding document and signatures by both parties are required in order to move forward with implementation and planning.

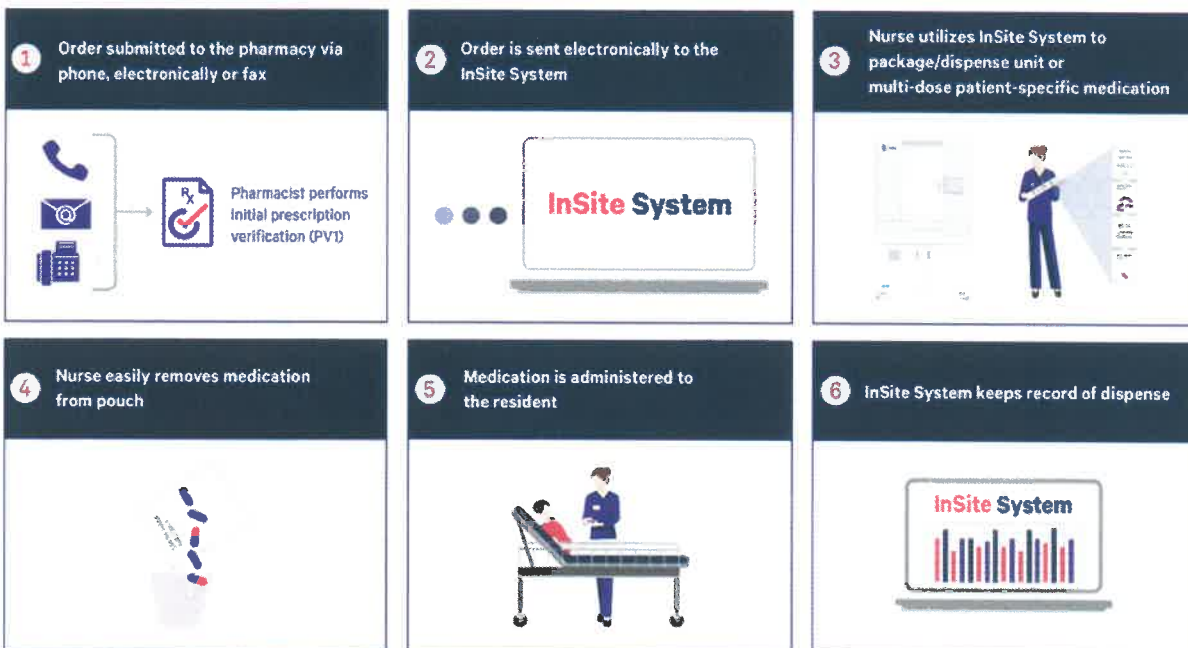
Partnering with Swisslog Healthcare

At Swisslog, we strive to lead change for better care. At the core of this vision is a focus on improving workflows and reducing the time clinicians spend doing routine and repetitive tasks – enabling more time to care for patients and residents. In addition to long-term care automation, our solutions and services extend across the continuum of care, including transport, medication and supply chain automation for hospitals and health systems.

Headquartered in Buchs, Switzerland, Swisslog Healthcare has been delivering best-in-class automation solutions for more than 100 years. We are a global organization with 2,500 talented employees in more than 20 countries on four continents and customers in more than 50 countries.

Transforming Medication Management for Long-Term Care

Swisslog Healthcare, a market leader in pharmacy automation solutions, is transforming medication management for long-term care facilities and pharmacies. Our InSite system enables secure, automated medication dispensing on location at long-term care facilities to deliver pharmacist-approved, on-demand medication 24/7/365. The InSite packaging system is graphically shown below:



Recommended Solutions

Swisslog Healthcare proposes to Arrowhead Medical Center - Outpatient Pharmacy the solution(s) listed below in Table 1 which are described and detailed throughout this Proposal to be implemented in accordance with the agreed upon project plan and Master Purchase and Services Agreement.

Arrowhead Regional Medical Center's Outpatient Pharmacy currently services four facilities for the County Sheriff Division and one (soon to be two) facilities for the County Probation Medical Services Division and has been a long-time customer of Talyst/Swisslog. In recent months, Swisslog has been investigating issues brought forth by the facility regarding the performance of the in-facility packager units. In response to this, not only has Swisslog dispatched service technicians to the site but also recently sent two members of the Long Term Care Operation's team to visit the facility. In all cases, a consistent finding was that the canisters and canister population has become what Swisslog refers to as compromised. A compromised canister population means that canisters have been modified or repurposed to accommodate NDC changes within the formulary but more importantly, the canisters being used are not certified for the medication they are dispensing. A picture of one of the canisters illustrating this issue is shown below.



As can be seen in this picture, the division block being used in this canister is too deep allowing pills to stack on top of each other and not line up one on top of another. Furthermore, the canister brush is too high and would intersect the 2nd pill about a 3rd of the way up its length. When canisters are modified or repurposed, situations like what is shown in the picture manifest themselves into issues such as double pill drops, pill jams, broken pills, and motor base burn outs. Each of these actions requires intervention of some sort on behalf of the staff to rectify the condition with effects the overall efficiency of the staff and medication dispensing system. Furthermore, these issues cause the facility to lose faith in the operation of the packager even though it is operating in a perfectly normal way. Ultimately, decreased customer satisfaction results.

With longer term customers, canister reuse and modification is commonplace due to staff turnover and a lack of defined standard operating procedures. Over time it impacts the entire canister population to the point where no canister can be trusted/ensured that the current build has not been tampered with.

Swisslog has spent considerable time and money in our canister lab in Denver certifying a specific canister build for each NDC. Once issued, that build should only be used for that specific NDC. If NDC's change then Swisslog should be consulted regarding the proper canister build to use.



Ultimately one solution to a compromised canister population is to completely remove the canisters currently being used and to replace them with new certified canisters configured specifically for the formulary and velocity necessary to meet the needs of the facility.

In order to keep the project at the most economical level, the following conditions/assumptions are required:

- The project assumes a total of 2,000 canisters will ultimately be replaced. This project however includes a total of 720 canisters. The reason for this is that a certain number of canisters are required with the purchase of new machines. As such we have assumed the following canisters will be available for this full canister replacement:
 - 320 canisters for the end of life unit replacement at Glenn Hellen
 - 320 canisters for the end of life unit replacement at Central Detention Center
 - 320 canisters for the end of life unit replacement at High Desert Detention Center
 - 320 canisters from the already purchased unit at the Central Valley Juvenile Detention Center
- In order to implement this project, and to have the canisters all available, Swisslog will need to receive a purchase order for the Glenn Hellen and Central Detention Center unit replacements.
- The physical canister swap needs to take place all at once and not over a period of time as to not mix in new canisters with the compromised canister population. Swisslog has included some time on site to assist with this however the bulk of the work will be done in cooperation with the pharmacy staff.
- There needs to be new operating procedures put in place and adhered to by the pharmacy to prohibit the tampering, modification, and usage of canisters that are certified for one NDC for a different NDC. Without this agreement the investment in this project is meaningless as the canister population will eventually return to the state that it is today.

Below please find the scope items and pricing for this canister replacement project



Table 1. Canister Replacement Project

Quantity	Product	One-Time Price
1 Lot	Canisters <ul style="list-style-type: none"> Provide a total of 400 of the 720 canisters needed, in conjunctions with 960 canisters (to be purchased along with the replacement units at Glenn Hellen, Central Detention Center, and High Desert Detention) and 320 canisters already purchased with the replacement unit at the Central Valley Juvenile Detention Center. The remaining 320 canisters are part of separate proposal addressed directly to the probation department. Provide consulting services as necessary to analyze the total In-Site formulary and quantity usage to recommend and specify the correct number of canisters necessary for proper operation of the units. 	\$27,542.03
	Freight	\$428.04
	Labor <ul style="list-style-type: none"> Provide up to 22 manhours of labor (inclusive of travel) to both retrain the pharmacy staff on the proper usage of the canister management equipment as well as assist in the swap out of old canisters with the new canisters. 	\$6,708.32
	Tax	\$2,774.27
Total Canister Replacement Project Including Tax		\$37,452.66

Terms and Conditions

- 1) Master Purchases Agreement - This Proposal shall be incorporated and subject to the terms and conditions of the Master Purchase and Services Agreement located at [Swisslog Purchase and Service Master v5](#). Both documents shall become legally binding between the organizations upon customer signing the proposal. Terms and conditions contained in this proposal supersede any PO terms and conditions provided by the customer.
- 2) Payment terms
 - a) For all equipment and software solutions:
 - 30% down payment due at time of Purchase Order issuance
 - 70% upon completion of the replacement activities (not including any non-used canisters that become part of the allotment as described in Item 6 below)



- 3) Taxes – Unless otherwise noted on this proposal, Sales and use taxes are excluded. Should Swisslog Healthcare be required to pay sales, use or any other taxes as a result of this proposal, the customer agrees to reimburse for same. If pharmacy or facility qualifies as Tax Exempt, a current copy of the certificate must be included with the Purchase Order.
- 4) Proposal Validity - This proposal is valid for 90 days from the date on page one.
- 5) Form of Contract - To ensure a timely transition to implementation, the Client agrees to perform one of the following options:
 - Execute this proposal and submit a Purchase Order (PO) no later than ten (10) days from date of execution. **The Purchase Order must clearly and expressly reference this proposal, state the total price for included in Table 1 and state the total price and term for the Facility and Pharmacy Support and Maintenance option selected.**
 - In the case where a Client is not set up to issue a PO, the Client shall execute this agreement. The signed agreement shall serve as Swisslog's authorization to bill against in lieu of a PO.

In either case, the Client shall indicate to Swisslog their intention to issue a PO by filling in the appropriate check box in the Acceptance section of this proposal on page 10.
- 6) Canisters - Included in this proposal is a total quantity of canisters shown in Table 1. Swisslog will work with the Customer to define the total number of upfront canisters needed for go-live. The remaining canisters must be ordered within nine (9) months of the packager go-live date at which time the allotment shall expire. This allows some flexibility for the customer to finalize their formulary and the opportunity to modify it over a 9-month period. Any canisters ordered by the customer that exceed the remaining allotment or that are ordered after the 9-month period will be purchased at the prices listed in Table 5. Furthermore, Swisslog will warrant canisters provided to the customer for a period of 45 days. Medications found to either not work properly with the Swisslog provided canister or medications that have undergone a size change from the manufacturer that are within the 45-day warranty period will be credited and Swisslog will work with the Customer to find a suitable replacement. No credit or replacement will be offered under the same conditions when the canisters are beyond the 45-day warranty period. Furthermore, canister order cancellations will be accepted up to the time when the canisters are shipped to the Client. Canister order cancellations that occur after the canisters are shipped will not be accepted.
- 7) Access - Customer will provide Swisslog Healthcare with all assistance reasonably requested for purposes of providing support, including without limitation, adequate access to the applicable physical location of the System during or after Customer's business hours, as well as high-speed remote access at all times.
- 8) System Supervision - Customer will be solely responsible for (i) providing appropriate supervision and management of the use of the System by its personnel and agents and (ii) the implementation of any backup facilities and/or plans for all computer programs and data in the event of errors or malfunction of the System. Support for browser and Internet connections are Customer's responsibility.



Customer Acceptance

By executing this proposal, the Customer agrees to the terms and conditions within the proposal. The customer shall provide a PO consistent with Item 5 in the Terms and Conditions section of this proposal. If a PO cannot be provided, then the customer shall indicate so by checking the appropriate box below and this signed agreement shall serve as the basis used to bill against.

Please check the appropriate box below:

<input type="checkbox"/> Yes	A Purchase Order will be provided that is consistent with the requirements listed in Item 5 of the Terms and Conditions listed within this proposal
<input type="checkbox"/> No	A Purchase Order will not be provided, and this executed proposal shall be used as a basis to bill against.

Due to the COVID-19 pandemic, pursuant to the Uniform Electronic Transaction Act (Cal. Civ. Code §§ 1633.1 to 1633.17), and the San Bernardino County Board of Supervisors Resolution No. 2020-030, the parties have agreed to the use of electronic, facsimile, and/or digital signatures in the execution of this Contract and any of its subsequent amendments.

Translogic Corporation dba Swisslog Healthcare


Authorized Signature

Jennie McQuade

Print Name

Secretary


Title

April 19, 2021

Date

County of San Bernardino

Client


Authorized Signature

Curt Hagman

Print Name

Chairman, Board of Supervisors

Title

MAY 18 2021

Date

Purchase order

Swisslog Healthcare
11325 Main Street
Broomfield, CO 80020
USA



Swisslog Healthcare Master Purchase and Service Agreement

Version 5.0

Master Purchase and Service 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 Healthcare") and San Bernardino County Sheriff/Coroner/Public Administrator Department ("Customer"). Each of the foregoing may be referred to herein as a "Party," or collectively as "Parties." Customer agrees to purchase and Swisslog Healthcare agrees to furnish Hardware, Subscription orders, 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 amendments 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.

2 Master Purchase and Service Agreement – 5.0

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

"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.

"Application Software" means the software, as described in the Proposal, designed to perform a group of coordinated functions, tasks, or activities for the benefit of the Customer.

"Beneficial Use" of the System, as defined within the section, occurs when the System has been used by Customer for a period of 30 days of successful operational use.

"Corrective Maintenance" means Services, as defined within the section, which are ordered by Customer under a Proposal, or ordered directly by Customer, and made available by Swisslog Healthcare, 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 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 Healthcare from time to time.

“Embedded Software” means software that is embedded in the hardware, which is written specifically to control the particular hardware that it runs on.

“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 Healthcare instructions, for a period of thirty (30) days and the Hardware and/or Software has performed to specifications for 98% of such period.

“Hardware” means a physical product or component that is manufactured or refined for sale or lease as defined by the Proposal.

“Hardware Subscription” means the continued use of Hardware, Software, Software Updates and Services for a recurring payment, as described in the Proposal and pursuant to the conditions of this Agreement.

“Lease” An agreement, as defined herein and the Proposal, between Customer and Swisslog Healthcare by which Swisslog Healthcare shall transmit Hardware to the Customer, for a limited period, subject to various conditions, in exchange for fees, but which Swisslog Healthcare retains ownership rights.

“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 Hardware, Software, Subscription and Service to be provided hereunder that is entered into between Customer and Swisslog Healthcare or any Affiliates, including any addenda and supplements thereto. By accepting a Proposal, Customer and Swisslog Healthcare agree to be bound by the terms of this Agreement as if it were an original Party hereto.

“Preventive Maintenance” or “Maintenance Service” means services ordered by Customer under a Proposal, or ordered directly by Customer, and made available by Swisslog Healthcare, pursuant to the conditions of this Agreement.

“Services” means a task(s) or duty that is ordered by Customer under a Proposal and made available by Swisslog Healthcare pursuant to the conditions of this Agreement.

“Software” means the part of the Hardware or application, which consists of encoded information or computer instructions that causes the Hardware or application to perform a task.

“Software License” means the license ordered by Customer under a Proposal and made available by Swisslog Healthcare, pursuant to the conditions of this Agreement.

“Software Subscription” means the continued use of the Application Software and Software Updates for a recurring payment, as described in the Proposal and pursuant to the conditions of this Agreement.

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

“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 Healthcare pursuant to the conditions of this Agreement.

“Subscription” means the continued use, Lease or support of Application Software, Hardware or Services, pursuant to the Proposal and conditions of this Agreement, based on a recurring fee.

“Software Update” means a revision or minor improvement to Embedded 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 Embedded Software, provided by Swisslog Healthcare (often designated as a X.0 release), which improves the functionality or adds functional capabilities to the Software that is not included in a Software Update.

“System” means Swisslog Healthcare Hardware and Embedded Software interacting together to create a functioning product as described in the Proposal.

“Typical usage” means the average use and/or production of the installed System, as defined by System type and referenced in the Proposal.

3. **Term.** This Agreement shall become effective as of the Effective Date and shall continue for the initial term indicated in the Proposal unless sooner terminated pursuant to this Agreement. If an initial term date is not on the Proposal a term shall be 2 years and shall begin once Customer has received benefit of this Agreement (normally defined as Final Acceptance). Any Service terms shall be effective once the Customer has obtained either Final Acceptance or Beneficial Use, whichever shall be obtained first.
4. **Termination.**
 - a. For cause. A Party may terminate this Agreement for cause (i) upon 30 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 60 days written notice to the other Party, or as otherwise stated in the Proposal. In the event

Customer should terminate Services prior to the agreed-upon term, in addition to any other rights that Swisslog Healthcare may have, and regardless of the cause of termination or suspension, Customer shall pay cancellation fees as established in the Proposal. If no cancellation fees are established in the Proposal, then the Customer shall pay Swisslog Healthcare any outstanding Service fees already incurred in the then-current calendar year (if any.) In the event Customer should terminate a Lease, prior to the end of the term, Customer shall be responsible for the balance of the unpaid Lease, or subject to any cancellation fees specified in the Proposal. In the event Customer should terminate a Subscription, prior to the end of the term, Customer shall be responsible for the balance of the unpaid term or subject to any cancellation fees specified in the Proposal. If Customer should terminate a System order prior to Final Acceptance, in addition to any other rights that Swisslog Healthcare may have, and regardless of the cause of termination or suspension, Customer shall pay Swisslog Healthcare 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.

Agreement, shall survive termination,

5. **Payment.** Customer will pay all fees specified in the Proposal or agreed upon herein. Fees are based on Lease or Subscription terms and Hardware, Service, Application Software or System's purchased through the Proposal or ordered outside of the Proposal. Payment terms are net 60 (sixty) days upon receipt of invoice. Customer acknowledges payment by credit card is accepted up to \$15,000 and partial payments are acceptable. Unless otherwise specified in this Agreement, all fees will be invoiced ninety (90) days in advance and all invoices issued under this Agreement are payable in the currency sold. The lower of the prime rate of interest plus one and of half percent (1.5%) per month or the rate allowed by law shall 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

irrespective of the reason. If a purchase order is submitted to Swisslog Healthcare annually, Customer remains responsible for payments for the full term, as noted herein or in the Proposal.

- a. **Hardware purchase fees.** Charges as specified in the Proposal, or pursuant to this Agreement, shall be invoiced and due within 60 (sixty) days from the receipt of the invoice. Payments not received within 60 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. Except as provided in this Agreement, no deductions or offsets of any kind from the payment due shall be permitted without the prior written consent of Swisslog Healthcare. Notwithstanding the foregoing or anything in this Agreement to the contrary, if the delivery or installation of the Hardware is delayed by the Customer, then the entire purchase price of the System shall become due and payable 60 days from the date that the first piece of Hardware is ready for shipment to the Customer. If requested by the Customer, Swisslog Healthcare 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. **Swisslog will obtain prior written approval for any costs associated with a request by Customer for customized work.**
Hardware Lease Fees. Charges, as specified in the Proposal, shall be invoiced on an annual basis and due within 60 days from the receipt of the invoice. Customer will be responsible for payment of the full Lease term.
- b. **Service fees.** In no event later than the expiration of the Contract, charges as specified in the Proposal, or pursuant to this Agreement, shall be invoiced on an annual basis and due within 60 days from the receipt 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 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 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 Healthcare 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 Maintenance fees.** Charges as specified in the Proposal, or pursuant to this Agreement, shall be invoiced on an annual basis, and ninety (90) days in advance of invoice due date. Invoices shall be due within 60 days from the receipt of the invoice or as described in the Proposal. 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 Upgrades, including any other appropriate charges, which shall entitle Customer to receive the then most current Update or Upgrade to the Software.
- d. **Hardware Subscription and Software Subscription fees.** Recurring charges, as specified in the Proposal, and pursuant to this Agreement, shall be invoiced on an annual basis and due within 60 days from the receipt of the invoice. Customer will be responsible for payment of the prorated Subscription term.
- e. **Other charges.** Pursuant to this Agreement or as ordered or directed by Customer, Customer may be charged additional fees. Such fees shall be invoiced during the month in which they have been incurred and due within 60 days from the receipt of the invoice. Proposal pricing is based on the number of sites, or Subscriptions, at the time of the proposal, if such number of sites, or requested Subscriptions, changes pricing is subject to change.

6. **Default.** If any amount owing by Customer under this Agreement or any other agreement is 90 or more days overdue, Swisslog Healthcare may, without limiting Swisslog Healthcare's other rights and remedies,

accelerate Customer unpaid fee obligations. Such obligations become immediately due and payable and Swisslog Healthcare may suspend or revoke Services,

Subscription obligations and any Software license rights, 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 or Subscription obligations. If Customer fails to pay Swisslog Healthcare for Hardware, or fails to make Hardware Lease or Hardware Subscription payments; (1) Swisslog Healthcare 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 Healthcare 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 Healthcare remedies at law or in equity, or

(4) revoke Customer's Software License or Customer's Embedded Software rights. Swisslog Healthcare shall not be liable for any consequences, claims, expenses, damages, fines or penalties which may result from removal or suspension of any Hardware, Software, Subscriptions or Services due to Customer's non-payment.

7. **Taxes.** Unless a Customer has received a tax exemption, Customer shall pay (or reimburse Swisslog Healthcare) all taxes (exclusive of Swisslog Healthcare 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.** Any Hardware installed or Software Deployed will be done in a workmanlike manner. The Parties acknowledge and agree that collaboration and teamwork during installation or deployment is critical to the future success of both Parties and they will work together to accomplish the same. Swisslog employees and agents shall, while on Customer premises, comply with all rules and regulations of the premises, including security requirements. Swisslog shall repair, or cause to be repaired, at its own cost, all damages to Customer vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Swisslog or its employees or agents. Such repairs shall be made immediately after Swisslog becomes aware of such damage, but in no event later than sixty (60) days after the occurrence. If Swisslog fails to make timely repairs, Customer may make any necessary repairs. Swisslog, as determined by Customer, shall repay all costs incurred by Customer for such repairs, by cash payment upon demand, or Customer may deduct such

costs from any amounts due to Swisslog from Customer.

9. **Shipment, Title and Risk of Loss.** Swisslog Healthcare shall deliver the Hardware FOB destination. Swisslog Healthcare agrees to pay all freight, packing and other administrative and transportation charges related to said delivery. Swisslog Healthcare 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 Healthcare 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 Healthcare. 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 Healthcare, with the exception of Hardware which is under a Lease arrangement.

Customer at Swisslog Healthcare's time and material rates. Services specifically excludes services and parts related to pans, barcode scanners, universal power

10. Preventive and Corrective Hardware Maintenance.

Swisslog Healthcare 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 Healthcare's standard rate, on a time and materials basis. The listing for all wear-and-tear pharmacy products and qualifying Preventive Maintenance parts may be found at <https://www.swisslog-healthcare.com/pharmacyautomationmasterscheduleb> On-site system Maintenance Service and monitoring is to be coordinated between the field service engineer and the Customer. Swisslog will obtain Customer's approval of any additional charges before performing the work.

- 11. Service Limitations.** Unless otherwise agreed in writing, Swisslog Healthcare will be under no obligation to provide any Service hereunder due to errors, malfunctions or defects arising from: (i) Customer abuse, neglect or misuse; (ii) Customer's use of unauthorized parts or failure to maintain the System in accordance with the Documentation; (iii) unauthorized installation, configuration, relocation or re-installation of the System by anyone other than Swisslog Healthcare; (iv) unauthorized modifications, enhancements or additions made by anyone other than Swisslog Healthcare, (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. paper, carriers or canisters) or software not provided by Swisslog Healthcare hereunder specifically for use therewith (unless previously approved in writing by Swisslog Healthcare); or (ix) failure of Customer to install and use Software Updates provided by Swisslog Healthcare. Any Service or parts provided by Swisslog Healthcare with respect to any of the foregoing exclusions or for any other cause that is not attributable to Swisslog Healthcare will be billed to



supply/battery back-up system, and services and parts which Swisslog Healthcare considers, in its discretion, as rebuilds and refreshes (catastrophic failures, broken arm, tracks, shelves, chain damage, etc.) of the System that the manufacturer or Swisslog Healthcare 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.

and

- 12. Emergency Services.** If emergency Services are offered in the Proposal, emergency service hours are used to address and resolve a System Event. Emergency service allotments and unused emergency service hours are forfeited at the time of Agreement expiration. At Swisslog Healthcare's sole discretion, if it is determined the error was not an Event, or was caused by the Customer's wrongdoing, or was a result of noncompliance or requires repair or replacement outside the scope of the Proposal, such service and fees are subject to Swisslog Healthcare's time and material rate listed in the Proposal.

- 13. Storage of Maintenance Tools and Relocation of Equipment.** 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 Healthcare'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 Healthcare, except that upon installation of parts into Customer-owned equipment, title to such parts shall pass to Customer. If Customer requests the System (which may include Software) to be relocated and re-installed at a new installation site (provided such new installation site meets the applicable site requirements and any and all permits have been obtained by Customer regarding such installation site), Customer will pay for such relocation and re- installation at the Proposal rates. Customer will be solely responsible for, and Swisslog Healthcare will have no liability or obligation with respect to, restoring the site and the premises after the removal or relocation of any System.

- 14. Lease Terms.** If included in the Proposal, Swisslog Healthcare will provide Hardware pursuant to a Lease model pursuant to the following conditions; (a) Customer shall be responsible for using Hardware only at authorized locations, in compliance with Documentation provided and any other reasonable policies and conditions, as updated from time to time, (b) Customer will be solely responsible for loss or damage to the Hardware, maintaining appropriate



adequate insurance against loss, theft, damage or destruction and (c) upon the expiration of a Hardware Subscription or Lease term, or termination pursuant to this Agreement, Customer shall surrender the Hardware in good condition and working order, ordinary wear and tear excepted, as determined by Swisslog Healthcare. If such Hardware is not returned in good condition Customer shall be responsible for full replacements costs. Any additional terms of such Lease may be further described in the Proposal.

15. Software Maintenance. If included in the Proposal, Swisslog Healthcare will provide Software Maintenance services to include the following:

- a. Support and Response Time. Swisslog Healthcare shall provide 24x7x365 live technical telephone support with trained representatives.
- b. Service. Swisslog Healthcare will provide consultation, assistance, and advice relating to support of the Software.
- c. Software Updates. Swisslog Healthcare shall make available to Customer, who is Current with its account, Software Updates on existing software versions, as part of this Agreement.
- d. Software Upgrades. Swisslog Healthcare shall make available to Customer's, who are Current with its account, annual Software Upgrades, to the latest Software version as made available by Swisslog Healthcare 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 Healthcare. Customer's decision not to update or upgrade relieves Swisslog Healthcare of its responsibilities for any System issues the update or upgrade was intended to address. In such event, Swisslog Healthcare shall continue the maintenance for whatever version of the Software or System that is installed at Customer's site, subject to Swisslog Healthcare's, or any third-party, right to end of life or at its discretion. During Software Updates or Software Upgrades, the System may experience temporary downtime. Swisslog Healthcare 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 Healthcare. Swisslog Healthcare 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 Healthcare agrees to provide Customer with at least 90 days prior written notice before discontinuing maintenance for any Software or portion thereof.

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

- 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 Healthcare'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 Healthcare. Support of Software to accommodate third-party vendors may be billed at standard Swisslog Healthcare 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 Healthcare Software) due to a Swisslog Healthcare's Update, Upgrade or Software Error Correction; or
- k. If Customer's Proposal includes transport automation Hardware and Customer does not comply with Network Communications Deployment Guide located at <https://www.swisslog-healthcare.com/deploymentguide>

17. 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 Healthcare.

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

18. Software License. For Swisslog Healthcare owned Software, Swisslog Healthcare retains ownership and grants a license to Customer, subject to the terms and conditions of this Agreement. Swisslog Healthcare grants to Customer a perpetual, non-exclusive, nontransferable, limited license as provided herein, without the right to sublicense, to use the Embedded Software. If applicable, and provided the consideration set forth herein or in the Proposal, is paid, Swisslog Healthcare grants to Customer, during the term of this Agreement, a non-exclusive, nontransferable, revocable, limited and terminable license, without the right to sublicense, to use the Application Software provided under the Proposal.

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. Third-Party Software or Hardware. For non-Swisslog Healthcare owned Software, Swisslog Healthcare 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. If for some reason Swisslog Healthcare fails to have access to such Software, Customer's access may be restricted, or performance suspended. 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 Healthcare's Support. Any related terms and conditions for the Hardware and warranties shall be considered part of this Agreement, with no added rights.

21. Interfaces and Connections. During the implementation meeting the Parties shall agree upon specific data points and data connections for connecting the System or any individual component to Customer's network. Any additional connections to the System shall be approved by Swisslog Healthcare, in writing. As described in the Proposal, interfaces shall be installed as part of the installation so long as Customer provides data to Swisslog Healthcare in accordance with Swisslog Healthcare interface specifications. Customer is solely responsible for coordinating with other vendors to provide Swisslog Healthcare with interfaces complying with Swisslog Healthcare provided interface specifications for the interfaces selected and given to Swisslog Healthcare.



Customer must confirm that its system meets Swisslog Healthcare's interface specifications and provide samples to Swisslog Healthcare. Customer is solely responsible for any other vendor fees associated with implementation. If Swisslog Healthcare agrees to perform such work, configuration for custom interfaces, any additional interface development work, or an additional interface or change to an interface of a new vendor, will be per a separate Proposal and the Customer will incur additional charges at the current rates.

22. System Final Acceptance. Final Acceptance shall occur once Customer has operated the Hardware and/or Software, in accordance with Swisslog Healthcare instructions, for a period of five (5) days and the Hardware and/or Software has performed to specifications for ninety eight percent (98%) of such period. 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 Healthcare product provides Beneficial Use to the Customer for a period of 5 days. Final Acceptance shall not be unreasonably delayed.

23. 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 Healthcare will assist with the configuration of replaced hardware as long as valid backups have been maintained.

24. Return of Hardware. Due to its custom nature, no System may be returned to Swisslog Healthcare. Consumable and normal wear and tear parts, as defined by Swisslog Healthcare, may be returned for full credit if a return goods authorization form is obtained and returned to Swisslog Healthcare within 30 days of Customer's initial receipt of such items. Customer is responsible for all return shipping expenses.

25. Delays and Adequate Assurance. Swisslog Healthcare 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 Healthcare's reasonable control. Swisslog Healthcare may require or demand payment or adequate assurances of performance from Customer.

26. 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 Healthcare, pursuant to this Agreement and upon receipt of an itemized invoice, in accordance with the following schedule.

Labor - Normal Swisslog Healthcare business hours	\$190.00
Overtime - After-hours weekdays and Saturdays	\$281.00
Double-time - Sundays & Holidays (defined by Swisslog Healthcare)	\$325.00
Engineering Support & Development hours	\$350.00
Software Support hours	\$249.00
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 Healthcare normal business hours are 8:00 AM to 5:00 PM (local time of Customer), Monday through Friday, excluding Swisslog Healthcare observed holidays, which include the following: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Friday after Thanksgiving, Christmas Day, and New Year's Eve. On-site Maintenance Services and monitoring shall be limited to 8 hours per normal business hours/days, unless otherwise agreed to in writing by Swisslog Healthcare service management. All Service visits will be invoiced for a minimum of 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 is over 100 miles.

27. Rescheduling and Remobilization. Should the Customer cancel a scheduled on-site Service or Maintenance visit within 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. Prior to a penalty being assessed, Swisslog must provide written documentation to Customer of any mobilization costs that have been incurred. Customer's cancelled visit may be rescheduled according to Swisslog Healthcare's convenience.

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



and cleanup.

- 29. Hazardous Materials.** Except as otherwise agreed by Swisslog Healthcare 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



Healthcare 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 Healthcare 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.

30. Warranties. The following warranties shall apply to this Agreement for purchased Hardware:

- 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 HEALTHCARE, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE. SWISSLOG HEALTHCARE 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 Healthcare manufactured Hardware will function, perform and conform in accordance with the included terms of then current Swisslog Healthcare Documentation and specifications, under normal Service. Swisslog Healthcare's sole obligation to Customer shall be limited to the repair or replacement, at Swisslog Healthcare's option, of defective Hardware provided that written notice of failure is received by Swisslog Healthcare within 1 year from date of the occurrence of either Beneficial Use or Final Acceptance, whichever occurred earlier.

c. Exceptions to Hardware Warranty.

Swisslog Healthcare'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, in writing, to Swisslog Healthcare within 30 days after discovery; (iv) the Customer fails to purchase or stay Current with its support agreement; (v) the Customer uses consumables that are not provided directly by Swisslog Healthcare; (vi) the defect was discovered by Customer prior to Final Acceptance and the Customer did not notify Swisslog Healthcare 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 Healthcare, in writing, within 1 year from date of either Final Acceptance or Beneficial Use; or (ix) unauthorized modifications, enhancements or additions made by unauthorized Swisslog Healthcare personnel. Upon receipt of a claim report, Swisslog Healthcare may either ask Customer for a sample of the defect or schedule an inspection of the defective System.

- 31. Indemnification.** Swisslog agrees to indemnify, defend (with counsel reasonably approved by Customer) and hold harmless the Customer and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the Customer on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. Swisslog's indemnification obligation applies to the Customer's "active" as well as "passive" negligence but does not apply to the Customer's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782".

- 32. 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 OF THE CONTRACT, 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.

The Parties acknowledge and agree that the limited warranty, exclusive remedies and limited liability set forth in this Agreement are fundamental elements of the basis of the bargain between Swisslog Healthcare and Customer, and that Swisslog Healthcare would not be able to provide the Products on an economic basis without such limitations. No action, regardless of form, arising out of or in relation to any Services may be brought more than 4 years after the completion of the Services to which the action relates.

33. 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 Healthcare and/or its supplier(s). Customer will not remove, obscure or alter any proprietary notices placed on or within any Product.

34. Remedies for Infringement. If the System, Software or Services, or any portion thereof are enjoined under any award or settlement, Swisslog Healthcare, 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 Healthcare 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 Healthcare, if any, prorated over the Agreement term from the delivery date. In electing the remedies set forth in (a.) through (c.) above, Swisslog Healthcare shall consult with and obtain the consent of Customer, which consent shall not be unreasonably withheld.

Notwithstanding the foregoing, Swisslog Healthcare shall not be liable for any claim of infringement resulting from Swisslog Healthcare's compliance with any design, specification or instruction of Customer, modification of the System or Software by Customer without Swisslog Healthcare'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 Healthcare. Systems for purposes of this indemnity do not include any third-party products, whether or not supplied by either party. The foregoing states Swisslog Healthcare's entire liability and Customer's exclusive remedy for infringement of intellectual property rights.

35. Force Majeure. Neither Party shall be liable nor deemed to be in default for any delay or failure in performance of any of its obligations under this Agreement to the extent and for such periods of time as such delay or failure to perform results directly or indirectly from any act of God, war (declared or undeclared), action of any governmental authority, terrorism, riot, revolution, explosion, sabotage, nuclear incident, natural disaster, inclement weather, lightning, earthquake, fire, flood, storm, sinkhole, epidemic, pandemic, vandalism, strike or other work interruption or any similar or dissimilar cause beyond the reasonable control of either Party ("Excusable Delay"). The Party so affected will give prompt notice to the other Party of an Excusable Delay, in each case specifying to the extent practicable the estimated duration of such Excusable Delay, and shall take whatever reasonable steps are necessary to relieve the effect of such Excusable Delay. Without limiting the generality of the foregoing, the Parties confirm that they are aware of the current COVID-19 pandemic. While the Parties acknowledge that such pandemic may have negative effects on the timely performance of Swisslog's contractual obligations and/or result in increased costs for Swisslog, at the time of entering into this Agreement, the details and severity of any such effects remain unknown and/or unquantifiable. If COVID-19, directly or indirectly, results in a delay and/or increased costs of Swisslog's contractual performance, the Parties shall agree in good faith upon an equitable adjustment of agreed delivery dates and applicable performance schedules, and/or an equitable adjustment of the contract price. The right to terminate



this Agreement for convenience shall remain unaffected.

to disclose such Confidential Information to any third-

- 36. Independent Contractor.** The Parties intend that Swisslog Healthcare, 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 Healthcare 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.
- 37. Non-solicitation.** If allowed by applicable law, during the term of this Agreement and thereafter at all times through the one-year anniversary date that Swisslog Healthcare 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.
- 38. 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

Party, as required by law, 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. For clarification purposes, a Customer name is not confidential and may be used by Swisslog Healthcare in external communications.

Health Information," known as the "Privacy Rule" and

- 39. 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



"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 Healthcare 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 Healthcare will provide services to or perform functions on behalf of Customer that require Customer to disclose patient Protected Health Information to Swisslog Healthcare, Swisslog Healthcare agrees to enter into a Business Associate Agreement with Customer.

- 40. Protection of Customer Data.** Except as otherwise provided, Swisslog Healthcare 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 Healthcare 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 Healthcare 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 Healthcare 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 permits in writing. SWISSLOG HEALTHCARE 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 Healthcare.

- 41. 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 Healthcare 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 Healthcare agrees that until the

expiration of 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 Healthcare that are necessary to certify the nature and extent of the costs incurred by Customer in purchasing such System and Services. If Swisslog Healthcare 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 Healthcare will cause such subcontract to contain a clause to the effect that, until the expiration of 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 Healthcare 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.

- 42. Exclusion List.** Swisslog Healthcare 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://oig.hhs.gov/fraud/exclusions.html> 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 Healthcare 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 Healthcare will immediately notify Customer of any change in the status of the representations and warranty set forth in this section.
- 43. 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 Healthcare 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 Healthcare to make payments directly to such persons or organizations.

- 44. 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.
- 45. 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.
- 46. Notices.** Notices permitted or required to be given hereunder shall be deemed sufficient if in writing and will be 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 Healthcare 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.
- 47. Severability and Non-waiver.** 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. The failure of a Party in any one or more instances to insist upon strict performance of any of the terms and conditions of this Agreement shall not be construed as a waiver or relinquishment, to any extent, of the right to assert or rely upon any such terms or conditions on any future occasion.

- 48. 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 persona, generally and unconditionally with respect to any action, suit, or proceeding brought by it or against it by the other Party.
- 49. Insurance.** Each Party agrees to carry an appropriate amount of insurance to cover the risks associated with this Agreement as delineated in Customer's Purchase Order.
- 50. Conflicting Terms.** This Agreement is the entire agreement between Customer and Swisslog Healthcare 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) this Agreement, (2) the applicable Proposal, and (3) the Documentation..
- 51. Authority.** By executing the Proposal or this Agreement, Customer is providing Swisslog



Healthcare 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 within a reasonable period of time from date of execution of the Proposal. Swisslog Healthcare will not process Customer's order until such purchase order is received and failure to do so may delay installation.

Swisslog Healthcare - North America

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