



Swisslog Healthcare Master Purchase and Service Agreement

Version 5.0

San Bernardino County, California

Master Purchase and Service Terms and Conditions

1. **Agreement.** These Master Terms and Conditions are entered into between Translogic Corporation d/b/a Swisslog Healthcare ("Swisslog Healthcare") and San Bernardino County ("Customer") as of **June 14, 2022**. 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.

"Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control of Swisslog Healthcare.

"Control," for purposes of this definition, means direct or indirect ownership or control of more than 50% of the voting interests of 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 5 days.

"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 San Bernardino County.

"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 five (5) 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 on June 14, 2022 and shall continue through June 13, 2027, unless sooner terminated pursuant to this Agreement.
4. **Termination.**
 - a. For cause. A Party may terminate this Agreement for cause (i) upon 60 days written notice to the other Party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other Party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
 - b. For convenience. A Party may terminate this Agreement for convenience upon 60 days written notice to the other Party.
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 days from the date of Customer's 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 in advance and all invoices issued under this Agreement are payable in the currency sold.
 - a. Hardware purchase fees. Charges as specified in the Proposal, or pursuant to this Agreement, shall be invoiced and due within 60 days from the date of Customer's receipt of the invoice.
 - b. Hardware Lease Fees. Charges, as specified in the Proposal, shall be invoiced on an annual basis and due within 60 days from the date of Customer's receipt of the invoice.



- c. Service fees. 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 date of Customer's 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.
 - d. Software Maintenance fees. 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 date of Customer's receipt of the invoice. Proposal pricing is based on the number of sites at the time of the Proposal, if such number of sites changes pricing is subject to change. If Customer chooses not to renew Software Maintenance and later elects to renew such support, Customer shall be required to pay the then prevailing re-activation fee and also pay for any software Updates or Upgrades, including any other appropriate charges, which shall entitle Customer to receive the then most current Update or Upgrade to the Software.
 - e. 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 date of Customer's receipt of the invoice.
 - f. 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 date of Customer's 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. **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.
 7. **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.
 8. **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.
 9. **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.

10. Service Limitations. Swisslog Healthcare will be under no obligation to provide any Service hereunder due to errors, malfunctions or defects arising from: (i) abuse, neglect or misuse; (ii) use of unauthorized parts or failure to maintain the System in accordance with the Documentation; (iii) installation, configuration, relocation or re-installation of the System by anyone other than Swisslog 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 Customer at Swisslog Healthcare's time and material rates. Services specifically excludes services and parts related to pans, barcode scanners, universal power 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.

11. 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 current time and material rate.

12. 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 current 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.

13. 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 and 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.

14. 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.

15. 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>

16. Customer Responsibilities during Software Maintenance Term. Customer shall maintain the installation site throughout the term of maintenance in



accordance with the specifications established by Swisslog 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

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

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

24. 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.

25. Standard Business Hours and Rates. For Services not covered under this Agreement, or for Services which exceed the scope of work within the Proposal, the Customer agrees to pay Swisslog 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
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. 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. Rates are subject to change.

26. 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. Customer's cancelled visit may be rescheduled according to Swisslog Healthcare's convenience.

27. 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.

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

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

- 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.

30. Indemnification.

- a. **General Mutual Indemnification.** Each Party to the Agreement shall be responsible for and indemnify, defend, and hold harmless the other from liability of third-parties arising out of injuries or damages to third-parties or property of third-parties as a result of this Agreement, caused by the negligent acts or omissions of the other Party, its employees, agents and sub-contractors. If this indemnification provision is in contradiction to any local or jurisdictional law, it shall be replaced by a reasonable indemnification provision in accordance with the jurisdiction of Customer's county.
- b. **Software Indemnity.** Notwithstanding anything else in this Agreement to the contrary, Swisslog indemnifies, defends, and holds Customer harmless from and against any claims, actions, or demands alleging that the Software infringes any patent, copyright, or other intellectual property right of a third party. If use of the Software is permanently enjoined for any reason, Customer's sole remedy hereunder and at Swisslog's option, and in its sole discretion, Swisslog may (a) modify the Software so as to avoid infringement; (b) procure the right for Customer to continue to use the Software and Documentation; or (c) terminate this Agreement and refund to Customer any Subscription Fees paid, within the last 12 months, to Swisslog under this Agreement. Should any claim subject to software indemnity be made against Swisslog or Customer, the party against whom the claim is made agrees to provide the other party with prompt written notice of the claim. Swisslog will control the defense and settlement of any claim under this Section; provided that Swisslog may not settle the claim or suit absent the written consent of Customer, which will not be unreasonably withheld, unless such settlement (a) includes a release of all claims pending against Customer, (b) contains no admission of liability or wrongdoing by Customer, and (c) imposes no obligations upon Customer other than an obligation to stop using the Hardware, Software, System or Services that are the subject of the claim. If requested, Customer agrees to cooperate and provide reasonable assistance in the defense and settlement of such claim at Swisslog's sole expense.



31. LIMITATION OF LIABILITY. EXCEPT FOR CLAIMS ARISING FROM A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, VIOLATION OF LAW, OR UNDER SWISSLOG'S INDEMNIFICATION OBLIGATIONS, NEITHER PARTY'S LIABILITY WITH RESPECT TO ANY SINGLE INCIDENT ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL EXCEED ONE HUNDRED SEVENTY FIVE THOUSAND DOLLARS (US \$175,000.00). THE ABOVE LIMITATIONS WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. HOWEVER, THE ABOVE LIMITATIONS WILL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT.

IN NO EVENT WILL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, REVENUES OR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

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

33. Remedies for Infringement. If the System, Software or Services, or any portion thereof are enjoined under any award or settlement, Swisslog 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, without incurring a material diminution in performance of function; 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.

34. 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.

35. 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.

36. 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, that is designated in writing as confidential and falls within a recognized exemption to the San Bernardino County Sunshine Ordinance, County Code of Ordinances Section 19.0101, California Government Code 54950, and California Public Records Act (Government Code Section 6250). Confidential Information includes, without limitation, merchandising strategies, order handling, processes and procedures, trade secrets, plans, drawings, specifications, know-how, manuals and/or technology including usernames, passwords, and any other security information used to access the Systems. Except as stated herein, the Parties agree both during and after the termination of this Agreement, to hold the Confidential Information in the strictest confidence, not to disclose such Confidential Information to any third-party and to use the same solely for the purposes for which it was provided by the Party. Further, the Parties shall not modify, reverse-engineer, or decompile the Hardware or Software or the System or Confidential Information nor create derivative works based on the Hardware or Software or the System or Confidential Information. Each Party agrees that in the event of a breach or threatened breach of this section (Confidentiality and Non-Disclosure), the other Party may suffer irreparable harm for which it may have no adequate monetary remedy and may be entitled to seek 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. If the receiving Party receives a subpoena, other validly issued administrative or judicial process, or public records request requesting Confidential Information of the other Party, it will, to the extent legally permissible, promptly notify the other Party and if requested by the other Party, tender to the other Party the defense of the subpoena or process. Unless the subpoena or process is timely limited, quashed or extended, the receiving Party will then be entitled to comply with the request to the extent permitted by law.

37. Confidential Health Information. The Parties recognize that Customer is a covered entity under 45 C.F.R. Parts 160, 162, and 164, (the "Standards for Privacy of Individually Identifiable Health Information," known as the "Privacy Rule" and "Security Standards for the Protection of Electronic Protected Health Information," known as the "Security Rule") promulgated under the Administrative Simplification Section of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and as applicable, under the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5) ("ARRA") and its applicable regulations. The Parties further acknowledge that Swisslog 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.

38. 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.

- 39. 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.

- 40. 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.
- 41. 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 will not be unreasonably withheld; Swisslog may assign this Agreement, in whole as part of a corporate reorganization, consolidation, merger, or sale of all of its assets, provided that Swisslog provides Customer with ten (10) days' prior written notice of such assignment, or if legally prohibited from providing prior notice, within 10 days after the effective date of the assignment, and Customer has the right to terminate this Agreement, if required by applicable law.
- 42. 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.

- 43. 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.
- 44. 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.
- 45. 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.
- 46. Choice of Law and Venue.** This Agreement and Proposal shall be governed by, and construed in accordance with, the laws of the state in which Customer is located. Each Party irrevocably agrees that any claim brought by it in any way arising out of this Agreement or Proposal must be brought solely and exclusively in state or federal courts located in the state in which Customer is located and each Party irrevocably accepts and submits to the sole and exclusive jurisdiction of each of the aforesaid courts in personam, generally and unconditionally with respect to

any action, suit, or proceeding brought by it or against it by the other Party. If any legal action is instituted to enforce any party's rights hereunder, each Party shall bear its own costs and attorney fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney fees directly arising from a third-party legal action against a Party hereto and payable under indemnification and insurance requirements.

- 47. Insurance.** Customer is an authorized self-insured public entity for purposes of General Liability and warrants that through its program of self-insurance, it has adequate coverage or resources to protect against liabilities arising out of the performance of the terms, conditions or obligations of this Agreement. Without in anyway affecting any indemnity obligations provided elsewhere in this Agreement, and in addition thereto, Swisslog agrees to secure and maintain throughout the Agreement term the types and limits of insurance in compliance with the requirements set forth in Attachment A, as attached hereto and incorporated herein.
- 48. 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 Master Purchase Agreement, (2) the applicable Proposal, (3) any executed agreement entered into between Customer and Swisslog Healthcare related to the applicable Proposal, and (4) the Documentation.
- 49. Authority.** This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request. 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 no later than 10 days 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.

IN WITNESS WHEREOF, Swisslog and Customer have each caused this Agreement to be subscribed by its respective duly authorized officers, on its behalf.



SAN BERNARDINO COUNTY

TRANSLAGIC CORPORATION D/B/A/WISSLOG
HEALTHCARE



Curt Hagman, Chairman, Board of Supervisors

Dated: _____

SIGNED AND CERTIFIED THAT A COPY OF THIS

DOCUMENT HAS BEEN DELIVERED TO THE
CHAIRMAN OF THE BOARD

Lynna Monell

Clerk of the Board of Supervisors
of the San Bernardino County

By _____

Deputy



By _____

(Authorized signature - sign in blue ink)

Name _____

(Print or type name of person signing
contract)

Title _____

(Print or Type)

Dated: _____

Address _____

11325 Main Street

Broomfield, CO 80020



ATTACHMENT A INSURANCE REQUIREMENTS

Swisslog agrees to provide insurance set forth in accordance with the requirements herein. If Swisslog uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, Swisslog agrees to amend, supplement or endorse the existing coverage to do so.

1. Without in anyway affecting any indemnity obligations provided and in addition thereto, Swisslog shall secure and maintain throughout the Agreement term the following types of insurance with limits as shown:
 - a. Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of Swisslog and all risks to such persons under this Agreement. If Swisslog has no employees, it may certify or warrant to Customer that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by Customer's Director of Risk Management. With respect to contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.
 - b. Commercial/General Liability Insurance – Swisslog shall carry General Liability Insurance covering all operations performed by or on behalf of Swisslog providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:
 - i. Premises operations and mobile equipment.
 - ii. Products and completed operations.
 - iii. Broad form property damage (including completed operations).
 - iv. Explosion, collapse and underground hazards.
 - v. Personal injury.
 - vi. Contractual liability.
 - vii. \$2,000,000 general aggregate limit.
 - c. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence. If Swisslog is transporting one or more non-employee passengers in performance of Agreement services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence. If Swisslog owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.
 - d. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.
 - e. Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits
or
Errors and Omissions Liability Insurance – Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits
 - f. Cyber Liability Insurance - Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved Customer entities and cover breach response cost as well as regulatory fines and penalties.

If insurance coverage is provided on a "claims made" policy, the "retroactive date" shall be shown and must be before the date of the start of the Agreement work. The claims made insurance shall be maintained or "tail" coverage provided for a minimum of five (5) years after Agreement completion.



2. **Additional Insured.** All policies, except for Worker's Compensation, Errors and Omissions and Professional Liability policies shall contain additional endorsements naming Customer and its officers, employees, agents and volunteers as additional named insured with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the scope of coverage for Customer to vicarious liability but shall allow coverage for Customer to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.11 85.
3. **Waiver of Subrogation Rights.** Swisslog shall require the carriers of required coverages to waive all rights of subrogation against Customer, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit Swisslog and Swisslog's employees or agents from waiving the right of subrogation prior to a loss or claim. Swisslog hereby waives all rights of subrogation against Customer.
4. **Policies Primary and Non-Contributory.** All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by Customer.
5. **Severability of Interests.** Swisslog agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between Swisslog and Customer or between Customer and any other insured or additional insured under the policy.
6. **Proof of Coverage.** Swisslog shall furnish Certificates of Insurance to Customer Department administering the Agreement evidencing the insurance coverage at the time the Agreement is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Swisslog shall maintain such insurance from the time Swisslog commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this Agreement, Swisslog shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.
7. **Acceptability of Insurance Carrier.** Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".
8. **Deductibles and Self-Insured Retention.** Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.
9. **Failure to Procure Coverage.** In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, Customer has the right but not the obligation or duty to cancel the Agreement or obtain insurance if it deems necessary and any premiums paid by Customer will be promptly reimbursed by Swisslog or Customer payments to Swisslog will be reduced to pay for Customer purchased insurance.
10. **Insurance Review.** Insurance requirements are subject to periodic review by Customer. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of Customer. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against Customer, inflation, or any other item reasonably related to Customer's risk. Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this Agreement. Swisslog agrees to execute any such amendment within thirty (30) days of receipt. Any failure, actual or alleged, on the part of Customer to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of Customer.

