

WAREHOUSING, DISTRIBUTION & LOGISTICS TERMS AND CONDITIONS OF SERVICE

1. **Structure of the Agreement.** Customer desires to receive certain warehousing, distribution and/or logistics services provided by SCS as identified in that certain Master Services Agreement (the “MSA”) by and between Customer and SCS and as further specified in the service schedules referencing the MSA (the “Services”). Each Schedule may have attached one or more statements of work (“SOWs”) and exhibits. Capitalized terms not otherwise defined herein have the meaning ascribed to them in the MSA.

2. **Fees, Charges and Expenses.**

2.1 Fees, Charges and Expenses. Customer shall pay to SCS all fees, charges and expenses (“Fees”) as specified in this Agreement, with no right of set-off for any claim filed against SCS. SCS shall invoice Customer in accordance with the terms set forth in the applicable Schedule or SOW. If Customer in good faith disputes an amount set forth on an invoice, Customer shall pay the undisputed amount, and Customer shall promptly notify SCS of such dispute and work in good faith with SCS to promptly resolve the disputed amount. Once the Parties have resolved the dispute, Customer shall promptly pay all previously disputed and resolved amounts for which Customer is responsible. SCS shall bill all Fees in U. S. dollars, and Customer shall pay all invoiced amounts in U. S. dollars, unless otherwise provided in a Schedule. Except as set forth in an Incorporated Document, the Fees set forth therein may be adjusted at any time by written agreement of the Parties.

2.2 Late Payments. If Customer fails to make a payment of the undisputed Fees when due, Customer shall pay to SCS a late payment charge, which is equal to one and one-half percent (1.5%) of the unpaid amount of such undisputed Fees. SCS shall charge Customer a late payment fee for any month where Customer fails to make a payment of the undisputed Fees when due.

2.3 Taxes. Customer shall pay all applicable taxes and shall defend and indemnify SCS and its affiliates from and against all sales, use, personal property, or other taxes (including any penalties, fines or interest thereon), except for taxes on revenue earned by SCS, imposed by any federal, state or local government or taxing authority with respect to the Services performed by SCS under this Agreement.

2.4 Changes in Operating Parameters or Conditions. Customer acknowledges and agrees that SCS calculated the Fees based on and in reliance upon certain key assumptions or design criteria supplied to SCS by or on behalf of Customer (“Operating Parameters”). Such assumptions may be set forth in the applicable Incorporated Documents. In the event a change in any Operating Parameter (i.e., a change that is encountered over the course of time and is anticipated to be ongoing) or a “Changed Condition” (as defined below) occurs, which (i) increases the obligations or costs of SCS or adversely affects the ability of SCS to perform the Services, or (ii) decreases the Fees to which SCS would otherwise be entitled under the Agreement had the change not occurred, SCS shall provide written notice of the same to Customer. SCS’s shall specify in its notice in reasonable detail the impact of the change in Operating Parameters or the Changed Condition on the Services and the corresponding change to the then current Fees (the “Notification”). “Changed Condition” means (a) the enactment or promulgation of any new law, regulation or charge or any change to any existing law, regulation or charge occurring after the Effective Date, or (b) a change to any permit, license, lease agreement, consent or approval required to perform the Services in accordance with the terms of the Agreement and occurring after the Effective Date.

In the event Customer objects to any changes to SCS’s proposed Fees pursuant to this Section 2.4, Customer shall provide written notice of such objection to SCS within ten business days of the Notification. If Customer does not provide such written notice, then the Parties shall amend the applicable Incorporated Document accordingly to reflect such change in Fees in accordance with Section 16.2 (Amendments; Waiver; Severability).

If Customer objects in writing to any changes in proposed Fees, the Parties shall use their good faith efforts to negotiate and reach agreement regarding the proposed Fees within ten business days after receipt of Customer’s written notice of objection to the proposed Fees. Notwithstanding anything in the Agreement to the contrary, if the Parties are unable to reach agreement within the ten business day period described in the preceding sentence, then both Parties shall escalate the matter to their respective senior officers who will use their good faith efforts to negotiate and reach agreement regarding the proposed Fees within the subsequent ten business day period. If the Parties reach agreement with respect to the proposed Fees during the cumulative 20 business-day period described above, such proposed Fees will be in effect as of the date of the Notification. Customer shall pay SCS such Fees, and the Parties shall amend the applicable Incorporated Document accordingly to reflect such change in Fees in accordance with Section 16.2 (Amendments; Waiver; Severability). If the Parties are not able to reach agreement with respect to the proposed Fees, during the cumulative 20 business day period described above, then SCS may terminate the impacted Schedule or SOW upon written notice to Customer, and Customer shall pay all Fees due and outstanding through the date of termination and any termination costs set forth in an Incorporated Document. SCS will not be liable for failure to meet performance commitments due to a Changed Condition or a change in an Operating Parameter, unless SCS specifically agrees in writing to the contrary.

2.5 SSAE 16 Reporting. Customer may request that SCS provide a Statement on Standards for Attestation Engagements 16 (“SSAE 16”) audit report that addresses SCS’s internal controls related to Services. Prior to the commencement of any work by SCS with respect to an SSAE audit report, SCS and Customer will agree in writing on a scope of work and the Fees to be paid to SCS in connection with the SSAE audit report. Customer acknowledges that any such SSAE 16 audit report provided to Customer will contain Confidential Information of SCS. Customer shall treat any SSAE 16 audit report provided to Customer by SCS as Confidential Information of SCS in accordance with the terms of this Agreement. Customer agrees that SCS may conduct the SSAE 16 audit report process through an external auditor. SCS shall remediate any exceptions to the extent that they arise from SCS’s failure to comply with its contractual requirements; however, SCS does not provide any assurance that any SSAE audit 16 report requested by Customer will be unqualified during any reporting period. Customer shall make all requests in writing for the preparation of a SSAE 16 audit report, which requests must be received by SCS 90 days prior to March 15 of the year for which such report is requested. SCS will prepare no more than one report in any 12 month period.

3. Indemnification.

3.1 General Indemnification. Each Party (“Indemnitor”) shall defend and indemnify the other Party and any affiliated and controlling entities of such Party, and the directors, employees, officers and agents of each of them (in each case “Indemnitee”) from and against all third party liabilities, claims, suits, demands, actions, fines, damages, losses, costs and expenses (including reasonable attorneys’ fees) (“Claims”) for bodily injury to or death of any person or damage to or loss of improvements to real property or tangible personal property to the extent caused by or resulting from such Party’s negligent acts or omissions or willful misconduct, except to the extent caused by the Indemnitee. Notwithstanding the foregoing or anything in the Agreement to the contrary, SCS shall have no indemnification obligation under this Section 3.1 or under the Agreement arising out of or in connection with Customer’s goods, packages or property for which the Services are provided (collectively the “Goods”), the liability for which is governed by Section 5 hereunder.

3.2 Third Party Claims. Customer shall defend and indemnify SCS and its Indemnitees from and against any third party Claim (including any Claim brought by Customer’s customers) arising out of or in connection with the design, manufacture, packaging, marketing, use or sale of the Goods or Services or Customer’s instructions regarding such Goods or Services.

3.3 Indemnification Procedures. With respect to a Claim for which indemnification is sought under this Section 3, the Indemnitee shall provide Indemnitor with a) prompt written notice, b) tender of the defense or settlement, and c) full cooperation in the defense. Failure to give prompt written notice of a Claim will not affect the Indemnitee’s right to indemnification unless the failure materially and adversely affects the rights, remedies or liability of the Indemnitor. If the Indemnitor fails to honor a timely request for indemnification and has a binding legal obligation to do so, the Indemnitee is entitled to all costs (including reasonable attorneys’ fees) incurred in the enforcement of its indemnification rights. The Indemnitor will not make a compromise or settlement of a Claim without the Indemnitee’s consent unless all of the following apply: (i) there is no finding or admission of any violation of law or any violation of any person’s rights by Indemnitee, (ii) there is no effect on any other Claim by or against Indemnitee, (iii) the sole relief is monetary damages that are paid by the Indemnitor, and (iv) the compromise or settlement contains an unconditional requirement to provide by the claimant or the plaintiff to the Indemnitee a release from all liability in respect of such Claim. The Indemnitee will have no liability for any compromise or settlement made without its consent.

4. Title to Goods. Unless otherwise specified in a Schedule, title to Goods will remain with Customer. Notwithstanding anything herein to the contrary, nothing in this Agreement may be deemed to waive or otherwise limit any lien rights that SCS may have under applicable law with respect to the Goods.

5. Limitation of Liability.

5.1 Limitation of Liability. With respect to loss or damage to Goods, SCS’s limitation of liability is set forth in the applicable Incorporated Document. SCS will have no liability for lost or damaged Goods (i) caused by any defects in the packaging or manufacture of such Goods; (ii) attributable to carriers’ (contract or otherwise); (iii) delivered to SCS in a damaged condition; (iv) attributable to concealed damage; (v) data entry errors; (vi) a result of the negligence or intentional misconduct of Customer or any of its employees, agents or subcontractors (other than SCS); (vii) caused by a Force Majeure Event; or (viii) such other reasons set forth in an Incorporated Document.

Customer and SCS agree that they have negotiated a reasonable limit of liability based on the value of the Goods and the Parties’ respective business interests and rates charged. Customer waives all rights of subrogation on behalf of its insurers for any loss or damage in excess of the liability limits set forth herein, or if applicable, such different limits of liability specified in an Incorporated Document. Notwithstanding the foregoing, SCS will not be liable for delay, loss or damage of any kind, which occurs while Goods are in the care, custody or control of a third party unless otherwise provided in SCS’ transportation documents or an Incorporated Document. Customer shall bring all claims against the third party in connection with acts of such third party. SCS will reasonably cooperate with Customer regarding such claims.

5.2 Filing of Claims. Unless otherwise set forth in a Service Schedule or otherwise expressly required by applicable statute, international convention or other mandatory national law, Customer must file in writing all claims against SCS for a potential or actual loss or damage to Goods within 60 days from the event giving rise to the claims, or such claims are deemed waived, except that the claims filing requirements set forth in a bill of lading, air waybill, ocean waybill, or other transportation document issued in conjunction with the Services will apply for claims arising from loss or damage to Goods. Within two years from the event giving rise to the claim file, Customer must file suit for any litigation brought by Customer against SCS under this Agreement, or such claims are deemed waived. No settlement will be made on any claim made by Customer until Customer has paid all outstanding Fees.

6. Exclusions. IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY PURELY ECONOMIC LOSSES, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, USE, INCOME, BUSINESS OPPORTUNITIES, COSTS OF ALTERNATIVE MEANS OF TRANSPORT, MERCHANTABILITY, OR CUSTOMER GOODWILL, OR FOR ANY SPECIAL, PUNITIVE, CONSEQUENTIAL OR INDIRECT DAMAGES, IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PROVIDED HEREUNDER WHETHER OR NOT A PARTY HAS BEEN ADVISED OF SUCH LOSSES OR DAMAGES OR WHETHER PLED UNDER TORT, CONTRACT OR ANY OTHER LEGAL THEORY. SCS WILL HAVE NO LIABILITY TO CUSTOMER IN CONNECTION WITH THIS AGREEMENT EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT. THIS EXCLUSION APPLIES TO DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO, PERSONAL INJURY OR PROPERTY DAMAGE, WHETHER OR NOT RELATED TO THE GOODS BEING STORED OR TRANSPORTED.

7. Confidentiality. As used herein, the term “Confidential Information” means the terms of this Agreement and any Incorporated Document and any information relating to the business, technology, operations and financial condition of a Party that a reasonable person would consider confidential or proprietary to the disclosing party based on the nature of the information or the circumstances regarding its disclosure. The Party receiving such Confidential Information will not disclose such Confidential Information to any third party except as permitted herein and shall not use such Confidential Information for any purpose except as necessary to perform its obligations under this Agreement. The receiving Party shall exercise the same degree of care to avoid disclosure of such Confidential Information as it employs with respect to its own Confidential Information, but not less than reasonable care. The obligations under this Section 7 will remain in effect for a period of two years from the date of its disclosure, except with respect to (i) the terms of this Agreement, which such obligations will remain in effect for the term of this Agreement and for a period of two years after the expiration or termination of this Agreement; and (ii) Confidential Information that rises to the level of a trade secret (as defined under applicable law), which such obligations will remain in effect for the greater of (A) two years from the time of its disclosure, or (B) for as long as such information remains a “trade secret” as determined by applicable law. The obligations under this Section 7 will not apply to such information that: (a) is now or hereafter becomes publicly available without violation of this Agreement; (b) was known to the recipient prior to the time of disclosure without obligation to preserve confidentiality; (c) was received by the recipient from a third party without obligation to preserve confidentiality; (d) was independently developed by the recipient; (e) is authorized to be disclosed by the disclosing Party; or (f) (1) is contained on the exterior of a package, including information contained in plain text or bar code form on shipping labels, or (2) package level detail or smart label information, including but not limited to, consignee’s full name, complete delivery address, package weight and zone, and package labeling that contains Maxicode, postal barcode, current routing code, appropriate service level icon, a 1Z tracking number bar code and address details related thereto and delivery information (collectively, “Shipping Information”). In the event that disclosure of Confidential Information is required by law, regulation or legal or judicial process or pursuant to a request from a governmental authority, the receiving Party shall notify, to the extent such notice is permitted by law, the disclosing Party of the obligation to make such disclosure sufficiently in advance of the disclosure to allow the disclosing Party a reasonable opportunity to object. In the event of required disclosure, the receiving Party shall disclose only the particular Confidential Information directly required to be disclosed. If recipient, based on the written opinion of its legal counsel, is required to disclose any Confidential Information in connection with a security filing or other regulatory filing requirement, the recipient shall give the disclosing party 30 days written notice to enable the Parties to discuss the matter. The Parties shall use commercially reasonable efforts to come to agreement regarding, which Confidential Information may be disclosed hereunder by recipient in connection with a security filing or other regulatory filing requirement.

8. Force Majeure. If and to the extent that either Party may be precluded or delayed from performance hereunder by (a) acts of war, acts of public enemies, terrorist attacks, insurrections, third party theft, riots, sabotage, earthquakes, floods, acts of God, embargoes, authority of laws, labor disputes (including strikes, lockouts job actions, or boycotts) or (b) fires, air conditions, explosives, failure of electrical power, heat, light, air conditioning or communications equipment (provided that the events described in clause (b) are not due to such Party’s fault or negligence of the Party claiming relief under this Section 8) or (c) other events beyond its control (each a “Force Majeure Event”), such performance will be excused to the extent and for the time necessitated by such Force Majeure Event. This provision does not apply to monetary amounts owed by either Party to the other. SCS is not liable for any loss or damage to Goods caused by a Force Majeure Event, and Customer will have the risk of loss for such loss or damage and the responsibility to insure against the same. If SCS takes

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steps outside the ordinary course of business to protect Goods due to a Force Majeure Event, Customer shall pay the storage or other similar charges associated with SCS's efforts.

9. Insurance. Each Party shall maintain commercial general liability insurance including premises or operations, broad form property damage, independent contractors, and contractual liability covering its obligations hereunder for bodily injury and property damage, with a combined single limit of not less than \$1,000,000 each occurrence. In addition, SCS shall maintain workers' compensation insurance in statutory amounts covering SCS and its employees, and employer's liability insurance, and Customer shall maintain, during the term of this Agreement, product liability insurance in an amount not less than \$2,000,000 on a per occurrence basis. Each Party shall carry the insurance required herein with insurance companies licensed to do business in the state(s) where operations are maintained. All policies will provide that such coverage under these policies will not be canceled or materially changed without at least 30 days prior written notice to the other Party.

10. Independent Contractor. SCS is an independent contractor under this Agreement. Each Party shall comply with all payroll tax withholdings, social security, unemployment and related employer obligations applicable to it. Except as set forth in a duly authorized Power of Attorney, neither Party will hold itself out as an agent of or in a joint venture with the other Party, and neither Party will have authority to act on behalf of the other Party.

11. Subcontractors. SCS may subcontract all or portions of the Services to its parent, affiliates or third party service providers. SCS may disclose to its parent, affiliates or third party service providers any Customer Confidential Information and Shipping Information necessary to perform the Services. If SCS provides customs brokerage Services in connection with this Agreement, Customer hereby authorizes and appoints SCS (including its successors and assigns) to share records referenced in 19 C.F.R., Parts 111 and 163, including any documents, data or information pertaining to the business of Customer, with its parent and any or all of its affiliates.

12. Hazardous Materials, Dangerous Goods and Other Regulated Goods. Unless SCS expressly agrees in a Schedule to handle Hazardous, Dangerous or Regulated Goods (as defined below), SCS will not handle, receive, accept, ship, carry, dispose of, transport, store, or arrange for the handling, disposal, storage or transportation of: (i) any type of hazardous materials, dangerous goods, or Goods containing hazardous materials or dangerous goods regulated under Title 49 of the Code of Federal Regulations ("49 CFR") or the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air, and the International Air Transport Association (IATA) Dangerous Goods Regulations, or (ii) any type of Goods, which may be regulated by a governmental body, entity or agency, including but not limited to those Goods, which are regulated by the United States Food and Drug Administration, the United States Department of Agriculture, the United States Drug Enforcement Administration, the United States Bureau of Alcohol, Tobacco, Firearms and Explosives, and analogous regulatory agencies in countries in which the Services are provided (collectively, "Hazardous, Dangerous or Regulated Goods"). Customer covenants and warrants that it will not itself or through others offer, present or otherwise tender any Hazardous, Dangerous or Regulated Goods to SCS, its affiliates, assignees, agents or subcontractors under this Agreement, except as provided in an applicable Schedule. Customer further covenants and warrants that it will not itself or through others offer, present or otherwise tender any "Hazardous Waste", as defined under Title 40 of the Code of Federal Regulations, to SCS, its affiliates, assignees, agents or subcontractors under this Agreement, as SCS will not handle, receive, accept, ship, carry, dispose of, transport, store, or arrange for the handling, disposal, storage or transportation of Hazardous Waste. Notwithstanding the foregoing, SCS may take any reasonable action, which is not against any applicable law, that SCS, in its sole discretion, deems appropriate or necessary in relation to any actual or suspected Hazardous, Dangerous or Regulated Goods or Hazardous Waste. Customer hereby fully and completely releases and forever discharges SCS and its Indemnitees from and against all Claims arising out of or caused by (a) Customer's failure to notify SCS in writing 60 days in advance of Customer or others offering, presenting or otherwise tendering to SCS Hazardous, Dangerous or Regulated Goods; or (b) SCS's reasonable actions, which are not against any applicable law, in connection with actual or suspected Hazardous, Dangerous or Regulated Goods or Hazardous Waste not addressed in a Schedule hereto in connection with such Goods. Customer shall defend and indemnify SCS and its Indemnitees from and against all Claims related to or arising out of (1) any SCS action taken in relation to such actual or suspected Hazardous, Dangerous or Regulated Goods or Hazardous Waste, except to the extent that any such Claim results from SCS's negligence, willful misconduct or that of its employees, subcontractors, or agents, (2) Customer's noncompliance with applicable laws and regulations, or (3) the breach of any covenant of Customer contained in or made pursuant to this Section.

13. Dispute Resolution Process. The Parties agree to utilize the dispute resolution process to resolve any dispute, claim or question between them (“Dispute”) with respect to this Agreement as expeditiously as possible. The Parties shall keep confidential and shall not disclose to any person, except as may be required by law, all aspects of the Dispute and the Dispute resolution process. Except as otherwise set forth in this MSA or in an Incorporated Document, the Parties shall follow the dispute resolution process described in this Section 13 to resolve all Disputes. One Party shall give written notice to the other Party of the Dispute and request commencement of the Dispute resolution process. Then, the project managers from each Party shall meet within five business days to negotiate and use commercially reasonable efforts to promptly reach a resolution of the Dispute. If the Dispute is not resolved by the project managers within such five five-day period, either Party may give notice to the other Party that the Dispute must be escalated to the senior officers of each Party, who will meet within ten business days to negotiate and use commercially reasonable efforts to resolve the Dispute. In the event the senior officers are unable to resolve the Dispute within 60 days (unless the Parties mutually agree to extend their discussions) either Party may pursue any remedies that may be available at law or in equity.

14. Warranties. CUSTOMER REPRESENTS THAT THIS AGREEMENT IS NOT A MATERIAL AGREEMENT AND IS NOT OTHERWISE SUBJECT TO DISCLOSURE TO ANY GOVERNMENTAL AUTHORITY. ANY WARRANTIES OF THE PARTIES EXPRESSLY SET FORTH IN THIS AGREEMENT ARE THE SOLE WARRANTIES MADE BY THE PARTIES AND ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, OF TITLE OR NONINFRINGEMENT, OF FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. IN ANY JURISDICTION, WHICH DOES NOT ALLOW THE EXCLUSION OR LIMITATION OF IMPLIED WARRANTIES, ANY IMPLIED WARRANTIES, TO THE MAXIMUM EXTENT PERMITTED BY THE APPLICABLE LAWS OF ANY SUCH JURISDICTION, ARE LIMITED TO THE TERM OF THIS AGREEMENT.

15. Import and Export Laws.

15.1 The Parties acknowledge and agree that all activities hereunder, including the export, reexport, import, transshipment, transfer, release, delivery, or pickup of all Goods, as well as any software and technology provided to SCS by Customer or on behalf of Customer (“Software and Technology”), are subject to all applicable U.S. and non-U.S. laws, including any statutes, executive orders, regulations, governmental agency decisions, judicial decisions, or any other written decrees that have the force and effect of law in the country in question (collectively defined as “Laws” for purposes of this Section 15) governing the import and export of Goods, Software, and Technology, including, but not limited to, laws concerning exports and economic sanctions, and customs Laws, (collectively, “Import and Export Laws”).

15.2 Customer agrees:

- (i) to act as the importer, exporter, or other principal party (as the case may be) under all Import and Export Laws;
- (ii) that Customer is responsible for complying with all Import and Export Laws applicable to the export, reexport, import, transshipment, transfer, or release of any Goods, Software, and Technology from any country;
- (iii) that Customer is solely responsible for (a) properly classifying under the Import and Export Laws all Goods, Software, and Technology; (b) obtaining any required licenses and other authorizations for export, reexport, import, transshipment, transfer, or release; (c) correctly completing and filing with any government, as appropriate, all documents required under the Import and Export Laws; and (d) ensuring that all export-related documents, including shipping and sales documents, generated in connection with the Services performed pursuant to this Agreement conform to and are maintained in accordance with the Import and Export Laws;
- (iv) that Customer is solely responsible for providing accurate written instructions to SCS and the carrier in advance of any export, reexport, import, transshipment, transfer, release, delivery, pickup, or other activity in relation to any Goods, Software, and Technology, which instructions will be in compliance with all Import and Export Laws and will set forth all information required for SCS to comply with those Laws in connection with that export, reexport, transshipment, transfer, release, delivery, pickup, or other activity; and

(v) that, notwithstanding any other provision in this Agreement to the contrary, Customer shall indemnify, defend, and hold harmless SCS and its Indemnitees from and against all Claims or investigations arising out of or in connection with: (a) Customer's breach of this Section; (b) SCS's or the carrier's compliance with Customer's instructions in the export, reexport, import, transshipment, transfer, release, delivery, pickup, or other activity in relation to any Goods, Software, and Technology; or (c) error on the part of any government official, including any person employed by, representing, or acting on behalf of any government agency in the United States or any other country, in connection with the export, reexport, import, transshipment, transfer, release, delivery, pickup, or other activity in relation to any Goods, Software, and Technology.

16. General Provisions.

16.1 Assignment; Third Party Beneficiaries. The rights and obligations under this Agreement may not be transferred or assigned to a third party by either Party without the prior written consent of the other Party; *provided however*, SCS may transfer or assign all or part of its rights and/or obligations of this Agreement to one or more of its parent or affiliates. Under no circumstances may Customer resell any of the Services to any third party without the express written consent of SCS. There are no third party beneficiaries under this Agreement, except that SCS's affiliates that perform Services are third party beneficiaries of SCS's rights, remedies and benefits under this Agreement.

16.2 Amendments; Waiver; Severability. This Agreement can only be modified or amended by a written instrument signed by the Parties. A waiver of any right by either Party will not constitute a waiver of such right on any subsequent occasion. Acceptance by SCS of the amounts (or lesser amounts) payable under this Agreement is not to be deemed a waiver of any default. If any provision of this Agreement is determined to be invalid, such invalidity will not affect the validity of the remaining portions of this Agreement.

16.3 Survival. The rights and obligations of this Agreement, which by their nature are intended to survive expiration or termination will survive, including but not limited to: Sections 3, 4, 5, 6, 7, 12, 13, 14, 15 and 16.

16.4 Controlling Law. The laws of the State of Georgia, without regard to conflicts of law provisions, govern all matters relating to this Agreement.

16.5 No Use of Trademarks. Neither Party may use the other Party's or its affiliates' name, logo, trademarks, service marks or trade names without the other Party's prior written consent; *provided however*, SCS may disclose Customer's name as a reference to any current or prospective customer.

16.6 Non-Solicitation of Personnel. During the term of this Agreement and for two years after its expiration or termination, neither Party may actively solicit the employment of any employee of the other Party, which employee was engaged in the performance of this Agreement. Notwithstanding the foregoing, neither Party may be precluded from conducting general recruiting activities, such as participating in job fairs or publishing advertisements for general circulation. If the soliciting Party violates this Section 16.6, then such Party shall pay to the other Party an amount equal to one year's salary for any solicited employee as liquidated damages. The amount of annual salary will be the annual salary in effect at the date the employee was solicited. The Parties agree that such amount is a reasonable estimate of the damages to be suffered by the aggrieved Party in such an event, which damages would be difficult to ascertain, and that such amount is not intended to be a penalty.

16.7 Intellectual Property Rights. Customer and SCS acknowledge that the other has certain intellectual property rights that may be revealed or provided to the other Party in accordance with this Agreement. Each Party acknowledges that this Agreement does not grant any right or title of ownership in their respective intellectual property rights to the other unless specifically provided in this Agreement. Any intellectual property remains the originator's property unless otherwise provided herein.

16.8 No Breach of Other Agreements. Customer and SCS each respectively represent and warrant that its execution of this Agreement does not violate any applicable law or breach any other agreement to which it is a Party or is otherwise bound.