

**TERMS AND CONDITIONS GOVERNING UPS WAREHOUSING AND
DISTRIBUTION HANDLING SERVICES (“W&H TERMS”)**

1. Definitions. “W&H Terms” shall mean these terms for Warehousing & Distribution Handling Services. The term “Goods” means the cargo tendered by or on behalf of the Customer for warehousing and/or distribution handling services to be performed by the Company pursuant to these terms, and shall include any and all packaging and/or containers not supplied by or on behalf of the Company. The term “Company” means UPS Supply Chain Solutions, Inc. and the term “Company Affiliate” shall mean any and all corporate affiliates, subsidiaries and parent companies of Company. The term “Customer” includes the consignor, shipper, depositor, consignee, receiver and retriever of the Goods as well as any person, including any corporation, company or other legal entity having any interest in the Goods, or anyone acting on behalf of any such person. The term “Parties” shall refer to Company and Customer collectively and the term “Party” shall refer to either Company or Customer. The term “Fees” means the rates, charges, fees and expenses relating to services rendered to Customer, on Customer’s account, or on Customer’s behalf.

2. Scope of W&H Terms.

2.1 Applicable Services. These W&H Terms shall apply to all warehousing and also to all distribution handling services performed by Company or a Company Affiliate. Distribution handling services shall mean cross-docking, consolidation, deconsolidation, transloading, packaging, labeling, and other similar handling activities by Company, Company Affiliates or third-party vendors. In the event a document issued by Company or a Company Affiliate – or a written agreement between Customer and Company – incorporates these W&H Terms by reference, these W&H Terms shall apply with full force and effect as if verbatim set forth in such document or agreement, except as specifically modified or otherwise conditioned in a written agreement between Customer and Company.

2.2 No Carriage Services. These W&H Terms are not intended to be and shall in no event be construed as a contract-for-carriage. Transportation services rendered by Company or a Company Affiliate in conjunction with warehousing and/or distribution handling services are done strictly in capacity as Customer's agent and property broker, as defined under 49 USC § 13102; neither Company nor any Company Affiliate shall be deemed to be a motor carrier of any type nor a freight forwarder as defined under 49 USC § 13102 for purposes of transportation services under these W&H Terms. As such, the liability of Company and Company Affiliates for transportation services shall be limited to circumstances of independent negligence in capacity as property broker and neither Company nor any Company Affiliate shall in any event be liable to Customer for the carriage of Goods arranged by Company or a Company Affiliate. Property brokerage services by Company and Company Affiliates are rendered strictly pursuant to Company’s Terms & Conditions of Service governing property brokerage services in effect at the time of shipment, which include limitations of liability and are published online at [http://ups-scs.com/tools/terms/FF_Customs_Brokerage_TC.pdf] and are incorporated herein as if set forth in full.

In the event the Company or a Company Affiliate renders carriage or freight forwarding services independently from warehousing and/or distribution handling services, such carriage or freight forwarding services shall be governed by the waybill, tariff or other contract-for-carriage governing such carriage services, including the following:

- For air and/or ground carriage services by UPS Supply Chain Solutions, Inc., the Air Freight terms and conditions in effect at the time of shipment as published online at:
[http://ups-scs.com/tools/terms/AirFreight_TandC.pdf]
- For air carriage services by United Parcel Service Co., the Service Terms in effect at the time of shipment as published online at:
[<https://www.ups.com/aircargo/contents/ServiceTerms.pdf>]
- For ocean carriage services by UPS Ocean Freight Services, Inc., the Multimodal Transport or Port to Port Shipment Conditions in effect at the time of shipment as published online at:
[http://ups-scs.com/tools/terms/NVOCC_tc.pdf]
- For small package carriage services by United Parcel Service, Inc., the tariff in effect at time of shipment as published online at:
[https://www.ups.com/media/en/terms_service_us.pdf]
- For ground carriage by UPS Ground Freight, Inc., the applicable tariff in effect at time of shipment as published online at:
[<http://l1l.upsfreight.com/shipping/rules/index.aspx>]

In the event that Company or a Company Affiliate is for any reason held liable for transportation in conjunction with warehousing and/or distribution handling services as a carrier or freight forwarder and no waybill, tariff or other contract-for-carriage terms apply, then the collective liabilities of Company and all Company Affiliates for such carriage shall be no greater than (and limited to the same extent as) Company's liability for warehousing and/or distribution handling services under these W&H Terms.

3. **Fees.**

3.1 Quotation and Calculation of Fees. Quotations of Fees given by the Company to the Customer are for informational purposes only and are subject to change without notice; no quotation shall be binding upon the Company unless and until the Company agrees to Fees in writing. Fees are subject to change and are subject to surcharges.

3.2 Calculation of Fees. Fees may be calculated on the basis of the description of the Goods furnished by the Customer, but Company may at any time, count, weigh, measure and examine contents of the Goods; in the event the Customer's description is found to be erroneous and additional freight is payable, Customer and the Goods shall be liable for any additional freight and expense incurred in weighing, measuring, and/or examining the contents of the Goods. Any error in Fees is subject to correction, and if, on correction, the Fees are higher, Company may collect the additional amount.

3.3 Payment of Fees; Late Fees. Unless otherwise agreed in formal writing, Company shall bill all Fees in USD currency and Customer shall remit payment in United States currency. If Company agrees to collect Fees from a party other than Customer, Company acts as an agent for Customer with respect to collection of charges for Customer's account; the Company assumes no risk of collection and the Customer remains obligated to pay all charges if Company is not able to collect upon request the same from any third party nominated by Customer. Each Customer is jointly and severally liable for the payment of Fees. Payment to any third party agent, representative or contractor of Customer shall not be deemed payment to Company unless actually received by Company. Customer shall pay to Company all Fees with no right of set-off for any claim filed against Company or a Company Affiliate. Customer payments not received within 30 days after the Company invoice date will cause Customer account to be considered past due and late fees of 1.5% per month will apply. If Customer in good faith disputes Fees invoiced or otherwise asserted owed by Company, Customer shall pay the undisputed amount and Customer shall promptly notify Company in writing of such dispute and work in good faith with Company to promptly resolve the disputed amount. All such disputed invoice amounts must be resolved within 60 days of the date of Customer's written notice to Company. Once the Parties have resolved the dispute, Customer shall within ten days of resolution pay to Carrier all previously disputed and resolved amounts for which Customer is responsible. If such invoice dispute is not resolved within the sixty-day time period stated above, or as the Parties may otherwise agree in writing, for any reason other than data unavailability to support resolution of the dispute, then Company shall have the right to bill Customer a charge of 1.5% per month on the disputed amount(s). Customer shall pay all applicable taxes and shall defend and indemnify Company 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 Company, imposed by any federal, state or local government or taxing authority with respect to the services performed by Company under these W&H Terms.

3.4 Contractual Lien and Right to Sell. Company shall have a general and spreading lien on any and all Goods in its possession, custody and/or control for any and all Fees, advances, claims, costs, freight charges, duties, surcharges, expenses, debts or other liabilities or money due and payable to Company or any Company Affiliate by Customer, whether or not relating to the Goods being subject to lien. Company shall have the right to sell the Goods at public or private sale not less than 30 days after having given written notice thereof to Customer and Customer shall be liable for all costs and fees incurred by Company in the lien and lien sale of the Goods. Company also reserves all other rights allowed by law to recover unpaid amounts. Company Affiliates shall be third party beneficiaries to these W&H Terms to the extent necessary to enforce this section 3.4.

3.5 Company's Right to Suspend Service and to Recover Costs of Collection. In the event payment is not made when due, Company reserves the right in its sole discretion to suspend all services and all amounts owed shall immediately become due and payable. Company will further be entitled to all costs of collection, including reasonable attorneys' fees.

3.6 Change in Operating Parameter or Condition(s). In the event of agreed Fees for prospective services, such Fees are based on and in reliance upon certain key assumptions or design criteria supplied to Company by or on behalf of Customer ("Operating Parameters"). 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 Company or adversely affects the ability of Company to perform the Services, or (ii) decreases the Fees to which Company would otherwise be entitled under the Agreement had the change not occurred, Company shall provide written notice of the same to Customer. Company 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 date of rate agreement.

In the event Customer objects to any changes to Company's proposed Fees pursuant to this Section 3.4, Customer shall provide written notice of such objection to Company within ten business days of the Notification. If Customer does not provide such written notice, then the Parties' agreement as may exist shall be deemed amended 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 Company such Fees, and the Parties shall amend the applicable agreement accordingly to reflect such change in Fees in accordance with these W&H Terms (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 Company may terminate the impacted agreement (or its applicable service schedule / statement of work) 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 the Parties' agreement as may exist. Company shall not be liable for failure to meet performance commitments due to a Changed Condition or a change in an Operating Parameter, unless Company specifically agrees in writing to the contrary.

4. Indemnification.

4.1 Indemnity Obligations. 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 these W&H Terms to the contrary, Company 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 7 hereunder.

4.2 Third-party Claims. Customer shall defend and indemnify Company and its Indemnitees from and against any third party Claim arising out of or in connection with: the design, manufacture, packaging, marketing, use or sale of the Goods or Customer's instructions regarding the Goods or Services or Customer's representations and/or descriptions of the Goods.

4.3 Indemnification Procedures. With respect to a Claim for which indemnification is sought under this Section 5, the Indemnitee shall provide Indemnitor with: prompt written notice; tender of the defense or settlement; and 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 shall 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.

5. Title to Goods. Unless otherwise agreed in formal writing, title to Goods will remain with Customer. Notwithstanding anything herein to the contrary, nothing in this Section 5 shall be deemed to waive or otherwise limit any lien rights that Company may have with respect to the Goods under applicable law and/or these W&H Terms.

6. Subcontractors. Company may at its discretion appoint Company Affiliates or third party vendor subcontractors for all or portions of the warehousing and distribution handling services performed under these W&H Terms. Company may disclose to Company Affiliates or third party vendors any Customer Confidential Information and Shipping Information reasonably necessary to perform the Services.

7. Company's Liability Limitations and Immunities for Goods.

7.1 Liability Limitation: As to warehousing and distribution handling services under these W&H Terms, and except as otherwise

agreed in writing between Company and Customer, the maximum collective liability of Company, Company Affiliates and third-party subcontractors arising out of or related to loss or damage to Goods, however caused, shall not exceed the lesser of Customer's actual damages or USD 0.50 (fifty cents) per pound of the portion of the Goods lost or damaged. As to property brokerage services, the liability of Company and Company Affiliates shall be limited to circumstances of independent negligence and to USD 50 per shipment or transaction, pursuant to Company's Terms & Conditions of Service governing property brokerage services incorporated herein by reference at Section 2.2 of these W&H Terms. Customer and Company agree that they have negotiated a reasonable limitations of liability based upon the value of the Goods, the Parties' respective business interests and rates charged. In the event of loss or damage subject to mandatory applicable law which invalidates Company's otherwise applicable maximum contractual liability hereunder, Company's liability shall be limited to the lowest amount permissible by / in accordance with such applicable law. The liability limitations herein shall not apply to any indemnity obligations of Company for personal injury or damage to property other than Goods. Customer may obtain additional protection in excess of the foregoing liability limitation, up to the actual value of the Goods, by making a written request and paying an additional charge prior to the provision of services, always subject to Company's written approval or confirmation prior to the provision of services. The knowledge of Company or any Company Affiliate of the value of Goods and/or Customer's declaration of the value of the Goods to Company or any Company Affiliate in regular course or for any other purpose, such as for Customs purposes, shall in no event constitute a declared value of the Goods for liability purposes. Customer waives all rights of subrogation on behalf of its insurers for any loss or damage in excess of Company's liability as agreed and determined under this Section 7.

7.2 Liability Immunities and Waiver: In no event shall Company be liable for an amount greater than the value of the affected portion of the Goods or for any delay, consequential, indirect, incidental, or punitive damages even if Company has been put on notice of the possibility of such damages. Company shall have no liability for loss of, or damage to, the Goods or any portion of the Goods in circumstances of: inherent defect, quality or vice of the Goods; defective packing not performed by the Company; inadequate or inaccurate information provided by customer; any event not attributable to the negligence of Company or its Affiliates or subcontractors participating in the performance of warehousing and distribution handling services; any event beyond Company's reasonable control ("force majeure" event), to include but not be limited to, natural disasters, strikes or lockouts or stoppage/restraint of labor from whatever cause, equipment failure not attributable to the fault of Company (to include electrical power, heat, light, air conditioning or communications equipment), civil unrest, acts of war or armed conflicts, acts of public authorities, or acts or threatened acts of public enemies, hijackers or assailing thieves. Customer shall reimburse Company for all efforts taken to mitigate Customer's losses under circumstances of any force majeure event, including but not limited to storage charges. Company's liability shall be predicated on a duty of reasonable care, and Company shall have no liability for any damages not directly attributable to Company's breach of such duty. Company makes no warranties, representations or guarantees, either express, implied, statutory, or otherwise, oral or written, with respect to warehousing and distribution handling services furnished under these W&H Terms, including without limitation any implied warranties of merchantability or fitness for a particular purpose.

7.3 Liability of Company Affiliates: The liability of Company under these W&H Terms shall constitute the total and collective recovery rights of Customer as against Company, Company Affiliates and Company's subcontractors participating in the performance of warehousing and distribution handling services. The liability limitations and immunities inuring to Company's benefit under these W&H Terms shall equally inure to the benefit of Company Affiliates and Company's subcontractors, each of whom shall be a third party beneficiary of these W&H Terms to the extent necessary to enforce this Section 8.

8. Claim Procedure, Time for Claim and Suit against Company and Waiver: As a condition precedent for liability, any and all claims against Company for a potential or actual loss or damage to Goods must be filed in writing within sixty (60) days from the event giving rise to the claim, or such claim is otherwise waived. Any litigation brought by Customer against Company under this Agreement must be filed within two (2) years from the event giving rise to the claim, or such claims are otherwise waived.

9. Confidentiality. As used herein, the term "Confidential Information" means the terms of any written agreement between Company and Customer incorporating these W&H Terms, agreed rates between Company and Customer and any information relating to the business, technology, operations and financial condition of either Company or Customer 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 these W&H Terms. 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. These obligations with respect to Confidential Information will remain in effect for a period of two years from the date of its disclosure, except with respect to (i) the agreed rates between Company and Customer, which such obligations will remain in effect for the term of the business relationship and for a period of two years after the termination of the business relationship; 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 as to Confidential Information will not apply to such information that: (a) is now or hereafter becomes publicly available without violation of these W&H Terms; (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.

10. 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, Company shall maintain workers' compensation insurance in statutory amounts covering Company and its employees, and employer's liability insurance. 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 which coverage shall be primary to any coverage of Company. 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.

11. Independent Contractor. Warehousing and distribution handling services are performed by Company under these W&H Terms in capacity as independent contractor. Each Party shall comply with all payroll tax withholdings, social security, unemployment and related employer obligations applicable to it.

12. Hazardous Materials, Dangerous Goods and Other Regulated Goods. Unless otherwise provided in a separate written agreement between Customer and Company, Company 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 Company, Company Affiliates, agents, servants or subcontractors. 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 Company, Company Affiliates, agents, servants or subcontractors, as Company will not handle, receive, accept, ship, carry, dispose of, transport, or store Hazardous Waste. Notwithstanding the foregoing, Company may take any reasonable action, which is not against any applicable law, that Company, 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 Company from and against all Claims arising out of or caused by: (a) Customer's failure to notify Company in writing 60 days in advance of Customer or others offering, presenting or otherwise tendering to Company Hazardous, Dangerous or Regulated Goods; or (b) Company's reasonable actions, which are not against any applicable law, in connection with actual or suspected Hazardous, Dangerous or Regulated Goods or Hazardous Waste. Customer shall defend and indemnify Company from and against all Claims related to or arising out of: (1) any Company 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 Company's willful misconduct or that of its employees, subcontractors, agents or servants; or (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. Import and Export Laws.

13.1 The Parties acknowledge and agree that all activities hereunder, including the export, re-export, import, transshipment, transfer, release, delivery, or pickup of all Goods, as well as any software and technology provided to Company 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) 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”).

13.2 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 solely responsible for complying with all Import and Export Laws applicable to the export, re-export, 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, re-export, 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 Company in advance of any export, re-export, 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 Company to comply with all Import and Export Laws in connection with that export, re-export, 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 Company from and against all Claims or investigations arising out of or in connection with: (a) Customer’s breach of this Section; (b) Compliance by Company, Company Affiliates or their respective subcontractors, agents or servants with Customer’s instructions in the export, re-export, 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, re-export, import, transshipment, transfer, release, delivery, pickup, or other activity in relation to any Goods, Software, and Technology.

14. Packaging Services.

14.1 Company Packaging Services. In the event the Parties have agreed for Company to provide packaging services and materials as part of the warehousing and/or distribution handling services, Company will purchase the customized packaging (“Custom Packaging”) and will sell to Customer such Custom Packaging for the pricing set forth as agreed.

14.2 Specifications for Custom Packaging. As part of the Packaging Services, Company shall procure packaging from manufacturers or vendors of Custom Packaging (“Custom Packaging Providers”) based on the packaging Specifications (defined below) provided by Customer. As between Company and Customer, Customer shall be responsible for developing the design, performance, technical, functional and feature requirements and operating and performance standards for the packaging (the “Specifications”) and providing the Specifications to Company.

14.3 Manufacturers’ Warranty. If Custom Packaging furnished by Company is subject to manufacturers’ warranties, Company hereby assigns such warranties to Customer and its customers to the extent permitted by applicable law and the terms of such warranties; provided however that Company shall have no obligation hereunder to seek consent to assignment from any such manufacturers.

14.4 Purchase of Packaging. Customer shall purchase from Company all Custom Packaging purchased by Company for sale to Customer under the terms of the Agreement. Upon termination or expiration of the agreement for Company to provide warehousing and/or distribution handling services, Customer shall purchase from Company all Custom Packaging that Company has purchased for or on behalf of Customer.

14.5 Inspection / Acceptance. Customer shall be responsible for inspection and acceptance testing of all Custom Packaging, and Company shall be under no obligation for, and shall not be responsible for, inspection or acceptance testing of Custom Packaging.

14.6 General Terms and Conditions. The following terms and conditions shall apply to any sale of Custom Packaging by Company hereunder:

- 14.6.1** Company has the discretion to accept or reject any order made by the Customer for the purchase of Packaging. All orders shall be subject to acceptance by Company. On Company’s acceptance of the Customer’s order for the purchase of Custom Packaging, an agreement for the sale of the Custom Packaging by Company to the Customer arises in relation to such Custom Packaging. Customer’s orders shall be deemed to be accepted by Company upon the first to occur of the following: (i)

delivery of the ordered Custom Packaging to Customer or use of the Custom Packaging for the benefit of the Customer; and (ii) Company's order of Packaging from third party packaging supplier and acceptance of Company's order for such Packaging by third party packaging supplier.

14.6.2 If the Customer fails to comply with any of its obligations under these W&H Terms, Company may cancel any accepted order in whole or in part by notice to the Customer and resell the Packaging.

14.6.3 Company may deliver Custom Packaging in installments. Each installment shall be treated as a sale under a separate agreement. If Company fails to deliver any installment, the Customer must still accept and pay for the remaining installments. If the Customer fails to pay for any installment, Company may treat the default as a breach of contract relating to each other installment.

14.6.4 Delivery of the Custom Packaging is taken to occur when: (i) the Custom Packaging is delivered to Company's premises or Customer's premises; or (ii) the Custom Packaging is used in connection with other services provided to Customer by Company under the Agreement or other agreement.

14.6.5 If delivery of the Packaging from Company's premises is requested by the Customer or required under the terms of the Agreement, the Customer must bear and pay the costs of delivery of the Packaging from Company's premises. Unless otherwise stated, the costs of delivery of Packaging are in addition to the Fees, shall be billed to Customer and shall be due and payable together with the applicable Fees. If the Customer does not collect the Packaging, or provide adequate delivery instructions, within fourteen (14) days of Company's request, Company may charge for storage at a rate determined by Company from time to time. Transfer to storage shall be considered delivery for all purposes hereunder, including invoicing and payment, and during such storage Customer shall bear all risks of loss or damage to such Custom Packaging.

14.6.6 The United Nations Convention on Contracts for the International Sale of Goods 1980 does not apply to the agreement for sale of goods between the parties.

15. General Provisions.

15.1 Assignment; Third Party Beneficiaries. The rights and obligations under these W&H Terms may not be transferred or assigned to a third party by either Party without the prior written consent of the other Party; *provided however*, Company may transfer or assign all or part of its rights and/or obligations of these W&H Terms to one or more Company Affiliates. Under no circumstances may Customer resell any of the services under these W&H Terms to any third party without the express written consent of Company. Except as expressly provided herein, there are no third party beneficiaries to these W&H Terms.

15.2 Amendments; Waiver; Severability. These W&H Terms can only be modified, amended and/or supplemented 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 Company of the amounts (or lesser amounts) payable under for services under these W&H Terms shall 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.

15.3 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 obligations for payment of Fees and indemnification, obligations relating to Confidential Information, benefits of liability limitations and lien rights over Goods.

15.4 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*, Company may disclose Customer's name as a reference to any current or prospective customer.

15.5 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 14.5, 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.

15.6 Intellectual Property Rights. Customer and Company acknowledge that the other has certain intellectual property rights that may be revealed or provided to the other Party in the course of performance and in accordance with this these W&H Terms. 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.

15.7 No Breach of Other Agreements. Customer and Company each respectively represent and warrant that their execution of this Agreement does not violate any applicable law or breach any other agreement to which they are a Party or are otherwise bound.

15.8 Recall of Goods. Customer shall promptly notify Company of any recalls or market withdrawals for which are the subject of warehousing and/or distribution handling services under these W&H Terms. Customer is responsible for determining the necessity, scope, and procedures for any recall of Goods, except where required by law or regulation. Customer shall handle all discussions and correspondence with clients and regulatory agencies regarding recalls of Goods including manufacturing defects or safety issues related to Goods. Company may support Customer with recalls of Goods at Customer's sole expense based on the ad-hoc labor rates set forth in the applicable. The Parties shall agree in writing to recall support activities.

15.9 Company Right to Limit Quantities and Right to Removal of Goods. Company reserves the right to limit quantities of Goods tendered for warehousing and/or distribution handling services. Customer must effect removal of Goods from Company's care, custody and/or control within the time specified by Company. In the event Customer fails to effect removal of Goods upon Company's notice, Company may in its discretion take any commercially reasonable action, including, but not limited to, sale, destruction or disposal of the Goods. Customer shall reimburse Company for all expenses incurred as a result of disposition of Goods not timely retrieved upon Company's notice.

16. 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 services under these W&H Terms 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. 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-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. To the extent permissible under controlling law, the parties agree that any litigation arising from services under these W&H Terms shall be determined under the laws of the state of New York, without regard to the conflicts of laws provisions therein. Any legal action shall be brought solely in the state and federal courts located in the Southern District of New York, to the exclusion of all other courts, and the Customer and Company each agree to submit to the personal jurisdiction of such Courts.

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