



SOFTWARE AS A SERVICE AGREEMENT

This Software as a Service Agreement (this “Agreement”) is entered into between you (“Customer”), the user of the SFS Programs and Services as defined herein, and Healthcare Facilities Consulting Inc., a Nevada corporation dba Smart Facility Software (“SFS”) with offices at 90 Thompson Lane, Nashville, TN 37211 (fax: 775-737-9812; email: sales@smartfacilitysoftware.com). By placing a purchase order for the SFS Programs or Services or by using the SFS Programs or Services, you agree to be bound by the terms of this Agreement.

This agreement is made with reference to the following facts:

- A. SFS has created, and markets and licenses to healthcare facilities and other businesses, software as a service programs named ES Optimizer, CS Optimizer, and Survey Optimizer (the “SFS Programs”), which are custodial management systems;
- B. Customer desires to purchase from SFS, and SFS desires to sell to Customer, the above services on a non-exclusive basis upon the terms and conditions set forth herein; and
- C. In consideration of the mutual promises and covenants herein, the parties hereby agree as follows:

1. Services Covered by this Agreement.

1.1. Software as a Service.

1.1.1. Description of the SFS Programs. The SFS Programs provided as a service consist of system administration, system management, and system monitoring activities that SFS performs and include the right to use the programs, and support services for the SFS Programs (collectively, the “Services”). SFS Programs comprise a web-based application that SFS hosts as a Service. The application currently contains modules for staffing analysis, what-if scenarios, daily assignments, project assignments; census based scheduling, quality management, survey management, personnel, and employee training. In addition, SFS currently offers companion mobile applications at the Apple App Store. The term “SFS Programs” refers to the software products owned or distributed by SFS to which SFS grants Customer access as part of the Services, including program

documentation, and any program updates provided as part of the Services.

1.1.2. Rights Granted. For the duration of the term defined in this Agreement, Customer will have the nonexclusive, non-assignable, royalty free, limited right to use the Services solely for Customer's internal business operations and subject to the terms of the Agreement. Customer may allow its users to use the Services for this purpose and Customer is responsible for its users' compliance with the Agreement. Customer acknowledges that SFS has no delivery obligation and will not ship copies of the SFS Programs to Customer as part of the Services. Customer agrees that it does not acquire under the Agreement any license to use the SFS Programs in excess of the scope and/or duration of the Services.

1.2. Discretion of SFS. SFS shall have the right, in its sole and absolute discretion, at any time or from time to time to implement new versions of the Services or additions, features, modifications, or enhancements to the Services or any part or component contained therein, or to change the methods by which the Services are delivered, all of which may be implemented by SFS from time to time in its sole discretion. SFS shall also have the right, in its sole and absolute discretion, at any time or from time to time to stop delivering the Services, provided that SFS will not do so during the period for which fees for the services have been paid. Any such modification or alteration of any of the Services shall not create a presumption, of any kind or nature that the Services were in any way defective prior to such modification or alteration. SFS shall determine, in its sole and absolute discretion, whether, and to what extent, it shall promote, advertise, market, license, and deliver the Services, and nothing contained herein shall obligate SFS to do so. Customer agrees that Customer has not relied on the future availability of any Services, programs or updates in entering into the payment obligations in the Agreement, provided that the preceding does not relieve SFS of its obligation to deliver Services that Customer has ordered and paid for per the terms of the agreement.

1.3. Ownership and Restrictions. Customer retains all ownership and intellectual property rights in and to Customer's Data. The term "Customer's Data" refers to the data provided by Customer that resides in Customer's Services environment. SFS retains all ownership and intellectual property rights to the Services and SFS Programs.

1.3.1. Additional Restrictions. Customer may not:

1.3.1.1. remove or modify any program markings or any notice of SFS's proprietary rights;

1.3.1.2. make the programs or materials resulting from the Services available in any manner to any third party for use in the third

party's business operations;

- 1.3.1.3. modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the Services (the foregoing prohibition includes but is not limited to review of data structures or similar materials produced by programs), or access or use the Services in order to build or support, and/or assist a third party in building or supporting, products or Services competitive to SFS;
- 1.3.1.4. disclose results of any Services or program benchmark tests without SFS's prior written consent; and
- 1.3.1.5. license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the Services, SFS Programs or materials available, to any third party other than, as expressly permitted under the terms of the Agreement.

1.3.2. Additional Conditions. The rights granted to Customer under the Agreement are also conditioned on the following:

- 1.3.2.1. The rights of any user licensed to use the Services (e.g., on a "named user" basis) cannot be shared or used by more than one individual (unless such license is reassigned in its entirety to another authorized user, in which case the prior authorized user shall no longer have any right to access or use the license).
- 1.3.2.2. Except as expressly provided herein, no part of the Services may be copied, reproduced, distributed, republished, downloaded, displayed, posted or transmitted in any form or by any means, including but not limited to electronic, mechanical, photocopying, recording, or other means.
- 1.3.2.3. Customer agrees to make every reasonable effort to prevent unauthorized third parties from accessing the Services.
- 1.3.2.4. The parties agree that any processing or hosting of patient or confidential personnel data is outside the scope of this Agreement. Customer will not upload to SFS's servers any confidential personally identifiable information, including medical records, other protected health information under HIPAA, confidential employee records, or credit card data under this Agreement. Furthermore, SFS strictly prohibits the storage or inclusion of Patient Data in its systems.

2. Pricing and Compensation.

- 2.1. **Software as a Service Fee.** Customer shall pay SFS the standard SFS monthly software as a service fee set forth in Customer's purchase order for each named user that has been granted access to the SFS Programs. Any subsequent purchase orders will reflect SFS's rates then in effect.
- 2.2. **Fees and Taxes.** Customer agrees to pay for all Services as set forth herein without offset. All fees due under the Agreement are non-cancelable and the sums paid nonrefundable. Customer agrees to pay any sales, value-added or other similar taxes imposed by applicable law that SFS must pay based on the Services, except for taxes based on SFS's income.

3. Term and Termination.

- 3.1. **Term.** This Agreement shall be effective upon the date the first user is granted a password for any Customer facility, and shall continue for the period specified in Customer's purchase order. Thereafter, this Agreement may be renewed by making a new purchase order for the length of time specified in the new purchase order. Services provided under this Agreement shall be provided for the term of this Agreement. At the end of the term and any renewals, all rights to access or use the Services, including the SFS Programs, shall end.
- 3.2. **Termination.** Either party may terminate this Agreement at the scheduled expiration of the term then in effect by giving written notice at least thirty (30) days prior to the expiration date.
- 3.3. **Termination for Failure to Correct a Default.** If either SFS or Customer breaches a material term of the Agreement and fails to correct the breach within 30 days of written specification of the breach, then the breaching party is in default and the non-breaching party may terminate the Agreement. If SFS ends the Agreement as specified in the preceding sentence, Customer must pay within 30 days all amounts which have accrued prior to such end, as well as all sums remaining unpaid for the Services plus related taxes and expenses. The non-breaching party may agree in its sole discretion to extend the 30 day period for so long as the breaching party continues reasonable efforts to cure the breach. Customer agrees that if Customer is in default under the Agreement, Customer may not use the Services.

In addition, SFS may immediately suspend Customer's password, account, and access to or use of the Services (i) if Customer fail to pay SFS as required under the Agreement and does not cure within the first ten days of the 30 day cure period, or (ii) if Customer violates any provision within section 1 of this Agreement. SFS may terminate the Services hereunder if any of the foregoing is not cured within 30 days after SFS's initial notice thereof. Any suspension by SFS of the Services

under this paragraph shall not excuse Customer from Customer's obligation to make payment(s) under the Agreement.

3.4. Access to Customer Data. At Customer's request, and for a period of up to 60 days after the termination of this Agreement, SFS may, in SFS's sole discretion, permit Customer to access the Services solely to the extent necessary for Customer to retrieve a file of Customer's Data then in the Services environment. Customer agrees and acknowledges that SFS has no obligation to retain Customer's Data and that Customer's Data may be irretrievably deleted after 60 days following the termination of the Agreement.

3.5. Survival. Provisions that survive termination or expiration of the Agreement are those relating to limitation of liability, infringement indemnity, payment, and others which by their nature are intended to survive.

4. Warranty, Disclaimers and Exclusive Remedies.

4.1. Warranty. SFS warrants that the Services will perform in all material respects in accordance with the following Services policies:

Smart Facility Software offers free online and telephone (800 260 8665 Option 2) support with this Agreement during business hours of 6AM till 3PM PST Monday through Friday. Server or OS failures are handled through SFS's development department where detection and support for catastrophic failures are available 24 hours per day, 7 days per week, 365 days per year. It is intended that Customer's Access to the Services will be 24 hours per day, 7 days per week, 365 days per year. Nevertheless, it is understood that technical issues could arise. In such cases, SFS is committed to restoring Customer's access to the Services. SFS is required from time to time to conduct maintenance on its servers. Maintenance will take place after hours between 12:00 a.m. 8:00 a.m. CST. If additional downtime is required, Customer will be notified via email outlining the maintenance downtime.

If the Services provided to Customer for any given month during the Services term are not performed as warranted, Customer must provide written notice to SFS no later than five business days after the last day of that particular month.

4.2. Disclaimer. TO THE EXTENT NOT PROHIBITED BY LAW, THE ABOVE WARRANTY IS EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR COVENANTS BY SFS INCLUDING FOR HARDWARE, SYSTEMS, NETWORKS OR ENVIRONMENTS OR FOR MERCHANTABILITY, SATISFACTORY QUALITY AND FITNESS FOR A PARTICULAR PURPOSE. SFS DOES NOT GUARANTEE THAT THE SERVICES WILL BE PERFORMED

ERROR-FREE OR UNINTERRUPTED, OR THAT SFS WILL CORRECT ALL SERVICES ERRORS. CUSTOMER ACKNOWLEDGES THAT SFS DOES NOT CONTROL THE TRANSFER OF DATA OVER COMMUNICATIONS FACILITIES, INCLUDING THE INTERNET, AND THAT THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF SUCH COMMUNICATIONS FACILITIES. SFS IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

4.3. Exclusive Remedy. FOR ANY BREACH OF THE ABOVE WARRANTY, SFS WILL REMIT A SERVICES FEE CREDIT TO CUSTOMER CALCULATED AT TEN PERCENT (10%) OF NET MONTHLY FEES FOR THE APPLICABLE SERVICES FOR THE MONTH IN WHICH THE BREACH OCCURRED. THE CREDIT WILL BE PROVIDED ONLY TOWARDS ANY OUTSTANDING BALANCE FOR SERVICES OWED TO SFS, AND THE REMITTANCE OF SUCH CREDIT WILL REPRESENT CUSTOMER'S EXCLUSIVE REMEDY, AND SFS'S SOLE LIABILITY, FOR ALL BREACHES OF ANY WARRANTY SPECIFIED IN THE AGREEMENT.

4.4. Trial Use of the Services. Services acquired for trial purposes are subject to the terms and conditions of the Agreement, except that they are provided "as is" and SFS does not offer any warranty for such Services.

5. Indemnification. If a third party makes a claim against either Customer or SFS ("Recipient" which may refer to Customer or SFS depending upon which party received the Material), that any information, design, specification, instruction, software, service, data, or material ("Material") furnished by either Customer or SFS ("Provider" which may refer to Customer or SFS depending on which party provided the Material), and used by the Recipient infringes its intellectual property rights, the Provider, at its sole cost and expense, will defend the Recipient against the claim and indemnify the Recipient from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by the Provider, if the Recipient does the following: (a) notifies the Provider promptly in writing, not later than 30 days after the Recipient receives notice of the claim (or sooner if required by applicable law); (b) gives the Provider sole control of the defense and any settlement negotiations; and (c) gives the Provider the information, authority, and assistance the Provider needs to defend against or settle the claim.

If the Provider believes or it is determined that any of the Material may have violated a third party's intellectual property rights, the Provider may choose to either modify the Material to be non-infringing (while substantially preserving its utility or functionality) or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, the Provider may require

return of the applicable Material and refund any unused, prepaid fees the Recipient may have paid to the other party for such Material.

The Provider will not indemnify the Recipient if the Recipient alters the Material or uses it outside the scope of use identified in the Provider's user documentation or services policies. The Provider will not indemnify the Recipient to the extent that an infringement claim is based upon any information, design, specification, instruction, software, data, or material not furnished by the Provider. SFS will not indemnify Customer to the extent that an infringement claim is based upon the combination of any Material with any products or services not provided by SFS. SFS will not indemnify Customer for infringement caused by Customer's actions against any third party if the Services as delivered to Customer and used in accordance with the terms of the Agreement would not otherwise infringe any third party intellectual property rights. SFS will not indemnify Customer for any infringement claim that is based on: (1) a patent that Customer was made aware of prior to the date of the Agreement (pursuant to a claim, demand, or notice); or (2) Customer's actions prior to the date of the Agreement. This section provides the parties' exclusive remedy for any infringement claims or damages.

- 6. Nondisclosure.** By virtue of the Agreement, the parties may have access to information that is confidential to one another ("Confidential Information"). Each of the parties agrees to disclose only information that is required for the performance of its obligations under the Agreement. Confidential information shall be limited to the terms and pricing under the Agreement, Customer's Data residing in the Services environment, and all information clearly identified as confidential at the time of disclosure.

A party's confidential information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

Each of the parties agrees to hold each other's confidential information in confidence for a period of three years from the date of disclosure. Also, each of the parties agrees to disclose confidential information only to those employees or agents who are required to protect it against unauthorized disclosure in a manner no less protective than under the Agreement. Nothing shall prevent either party from disclosing the confidential information to a governmental entity as required by law.

- 7. Limitation of Liability.** NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF REVENUE OR PROFITS (EXCLUDING FEES UNDER THE AGREEMENT), DATA, OR DATA USE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SFS'S MAXIMUM

LIABILITY FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL IN NO EVENT EXCEED, IN THE AGGREGATE, THE TOTAL AMOUNTS ACTUALLY PAID TO SFS FOR THE SERVICES HEREUNDER IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. ANY DAMAGE AWARD IN CUSTOMER'S FAVOR AGAINST SFS SHALL BE REDUCED BY ANY REFUND OR CREDIT RECEIVED BY CUSTOMER UNDER THE AGREEMENT AND ANY SUCH REFUND AND CREDIT SHALL APPLY TOWARDS THE LIMITATION OF LIABILITY.

8. Force Majeure. Neither party hereto shall be responsible for failure or delay of performance if caused by: an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); other event outside the reasonable control of the obligated party. Each of the parties will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than 30 days, either of the parties may cancel unperformed Services upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Customer's obligation to pay for the Services.

9. Customer's Data. SFS will protect the confidentiality of Customer's Data residing in the Services environment in accordance with the following SFS Data Security Practices:

9.1. Data Center Security Policies. SFS's data center implements Information Security practices to help protect physical access to customer data and systems and to limit access to authorized personnel. This approach reflects an enterprise commitment to the ISO 27000 security framework family. A Security Awareness Policy and Program communicate security expectations to the Data Center workforce during the initial Security training at new employee orientation and are reinforced annually. Quarterly Security Awareness bulletins focus on current security issues and concerns. All visitors are required to sign in via a visitor log. Building Operations, Security, or Data Center Management review and approve visitor access and issue visitor badges, as needed, for identification purposes before access is granted to any non-Rackspace employee or unauthorized Data Center personnel.

SFS's data center servers are protected by a dedicated firewall, which is used to restrict network access to servers to communication protocols authorized by SFS. The firewall has enhanced firewall rules, which are in place to restrict access to customer data and to limit the possibility of disruptions to customer operations from unauthorized users.

Data integrity in SFS's data center servers is reinforced by RAID 10

RAID arrays with hot swappable drives to ensure continuous service without loss of data in the event of a hard drive failure.

- 9.2. **Data Center Facilities.** The Data Center features redundant HVAC (Heating Ventilation Air Conditioning) units, which provide consistent temperature within the raised floor area. HVAC systems are inspected regularly and air filters are changed periodically.

Data centers are equipped with sensors, including smoke detectors, and floor water detectors, to detect environmental hazards. The data centers are also equipped with raised flooring to protect hardware and communications equipment from water damage. Data centers are equipped with fire detection and suppression systems and fire extinguishers. Fire detection systems, sprinkler systems, and chemical fire extinguishers are inspected at least annually.

Data centers are equipped with uninterruptible power supplies (UPS) to mitigate the risk of short-term utility power failures and fluctuations. The UPS power subsystem is N+1 redundant with instantaneous failover in the event of a primary UPS failure. The UPS systems are inspected daily and inspected / serviced at least annually by a third party contractor. Data centers are equipped with diesel generators to mitigate the risk of long-term utility power failures and fluctuations. Generators are regularly tested, at least every 120 days, and maintained and serviced as needed, at least annually, by a third party contractor to provide assurance of appropriate operability in the event of an emergency.

- 9.3. **Data Center Physical Access.** Rackspace employees are required to display their identity badges at all times when onsite at the Data Center. Two-factor authentication is required to gain access to the data center facilities. Biometric authentication and proximity cards control electromechanical locks. Only authorized Rackspace personnel have access to data center facilities. Closed circuit video surveillance has been installed at all entrance points on the interior and exterior of the buildings housing data centers and is monitored by authorized Rackspace personnel. Rackspace personnel are on duty 24 hours a day, 7 days a week at all of Rackspace's data center facilities.
- 9.4. **Backup of Programs and Data Files – Managed Hosting.** SFS's Data Center Service Provider backs up data daily incremental and weekly full using backup utility software stored in a hardened environment. The servers are logically segmented, through the use of a dedicated VLAN on the network for communication to the backup servers. Backups are run after 12 Midnight and do not interrupt service.

The back-up utility software performs backups according to the predetermined schedule and tracks all tapes within the automated tape library using bar codes. Automatic testing of the tape media is performed

by the backup software at various times to verify that tape media are suitable for use. All backup failures are logged by the backup utility software. The software utility used by Smart Facility Software offers reports with the most recent backup success/failure status, including the volume of backed up information.

An automated tape library is utilized to track backup tapes. All tapes are bar coded and scanned by the library using the backup utility software. The most current full backup of each customer's data is stored on site in the tape library. Backup tapes are securely destroyed when their useful life expires. The destruction process physically destroys the media to prevent retrieval of data.

- 9.5. Changes to SFS Data Security Policies.** The SFS Data Security Practices are subject to change at SFS's discretion; however, changes to the SFS Data Security Practices will not result in a material reduction in the level of protection provided for Customer's Data during the period for which fees for the Services have been paid. SFS reserves the right to provide the Services from locations, and/or through use of subcontractors, worldwide.
- 9.6. Customer Responsibilities.** Customer agrees to provide any notices and obtain any consents related to Customer's use of the Services and SFS's provision of the Services, including those related to the collection, use, processing, transfer and disclosure of personal information. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and ownership of all of Customer's Data.
- 10. Restrictions on Use of the Services.** Customer agrees not to use or permit use of the Services, including by uploading, emailing, posting, publishing or otherwise transmitting any material, for any purpose that may (a) menace or harass any person or cause damage or injury to any person or property, (b) involve the publication of any material that is false, defamatory, harassing or obscene, (c) violate privacy rights or promote bigotry, racism, hatred or harm, (d) constitute unsolicited bulk e-mail, "junk mail", "spam" or chain letters; (e) constitute an infringement of intellectual property or other proprietary rights, or (f) otherwise violate applicable laws, ordinances or regulations. In addition to any other rights afforded to SFS under the Agreement, SFS reserves the right to remove or disable access to any material that violates the foregoing restrictions. SFS shall have no liability to Customer in the event that SFS takes such action. Customer agrees to defend and indemnify SFS against any claim arising out of a violation of Customer's obligations under this section.
- 11. Services Tools.** If Customer uses the companion pocket survey tool in connection with the Services, Customer shall have a non-transferable, non-exclusive, limited right to use such tool solely to facilitate Customer's administration and monitoring of Customer's Services environment, subject to

the terms of the Agreement. Customer's right to use such tool will terminate upon the earlier of SFS's notice or the end of the Services term.

12. Statistical Information. SFS may compile statistical information related to the performance of the Services. SFS may make such information publicly available, provided that such information does not incorporate identify Customer's confidential information or include Customer's company's name. SFS retains all intellectual property rights in such information.

13. Other.

13.1. No Assignment. Customer may not assign this Agreement, give or transfer the Services or an interest in them to another individual or entity, or delegate the duties provided for under the terms of this Agreement without the prior written consent of SFS, which consent SFS may withhold in the exercise of its absolute discretion. All terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted transferees, successors and assigns.

13.2. Status of the Parties. SFS is an independent contractor and, the parties agree that no partnership, joint venture, or agency relationship exists between them. Nothing in this Agreement shall be construed in any manner as to make either party the agent or legal representative of the other party for any purpose whatsoever.

13.3. Consents. Customer shall obtain at Customer's sole expense any rights and consents from third parties necessary for SFS to perform the Services under the Agreement.

13.4. Notices. If Customer has a dispute with SFS or if Customer wishes to provide a notice under the Indemnification section of this Agreement, or if Customer becomes subject to insolvency or other similar legal proceedings, Customer will promptly send written notice to: SFS at the address set forth in the preamble to this Agreement. SFS may give notice applicable to SFS's software as a service customer base by means of a general notice on the SFS portal for the Services, and notices specific to Customer by electronic mail to Customer's e-mail address on record in SFS's account information or by written communication sent by first class mail or pre-paid post to Customer's address on record in SFS's account information.

13.5. Limitation of Action. Except for actions for nonpayment or breach of SFS's proprietary rights, no action, regardless of form, arising out of or relating to the Agreement may be brought by either party more than two years after the cause of action has accrued.

13.6. Audit. SFS may audit Customer's use of the Services. Customer agrees to cooperate with SFS's audit and provide reasonable assistance and

access to information. Any such audit shall not unreasonably interfere with Customer's normal business operations. Customer agrees to pay within 30 days of written notification any fees applicable to Customer's use of the Services in excess of Customer's rights. If Customer does not pay, SFS can end Customer's Services and/or the Agreement. Customer agrees that SFS shall not be responsible for any of Customer's costs incurred in cooperating with the audit.

13.7. Entire Agreement. Customer agrees that this Agreement is the complete Agreement for the Services, and that the Agreement supersedes all prior or contemporaneous agreements or representations, written or oral, regarding such Services. If any term of the Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective and such term shall be replaced with a term consistent with the purpose and intent of the Agreement. It is expressly agreed that the terms of the Agreement shall supersede the terms in any purchase order or other non-SFS document and no terms included in any such purchase order or other non-SFS document shall apply to the Services. The Agreement may not be modified and the rights and restrictions may not be altered or waived except in a writing signed by authorized representatives of Customer and of SFS.

13.8. Governing Law, Jurisdiction and Waiver of Venue. This Agreement shall be governed by and construed in accordance with the substantive and procedural laws of the State of Nevada regardless of the fact that any of the parties hereto may be or may become a resident of a different country, state, or jurisdiction. Any suit or action arising out of this Agreement shall be filed in a court of competent jurisdiction within the County of Washoe, State of Nevada. The parties hereby consent to the personal jurisdiction of such courts within Washoe County, State of Nevada. The parties hereby waive any objections to venue in such courts within Washoe County, State of Nevada.

13.9. Attorneys' Fees. If any action, suit or other proceeding is instituted concerning or arising out of this Agreement, the prevailing party shall recover all of such party's reasonable costs and attorneys' fees incurred in each and every such action, suit or other proceeding, including any and all appeals or petitions there from.

13.10.No Waiver. The waiver by any party hereto of any breach or default shall not constitute a waiver of any different or subsequent breach or default. No waiver to this Agreement shall be effective unless stated in writing and signed by an authorized representative of each party.

13.11.Counterparts; Facsimile. This Agreement may be executed in several counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument. Executed copies of this Agreement may be delivered by facsimile or other electronic transmission, and delivery of executed facsimile or other electronically

transmitted copies to the parties or their counsel shall be deemed to be a delivery of a duplicate original and sufficient delivery to result in entry to this Agreement by the transmitting party.