

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM499125

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ENTITY CONVERSION		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
B.S. & S. SERVICES, INC		12/30/2017	Corporation: TEXAS
RECEIVING PARTY DATA			
Name:	BERKEYS LLC		
Doing Business As:	Berkeys Air Conditioning Plumbing and Electrical		
Street Address:	1070 S. Kimball Avenue		
City:	Southlake		
State/Country:	TEXAS		
Postal Code:	76092		
Entity Type:	Limited Liability Company: UNITED STATES		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Registration Number:	3840581	BERKEYS	
CORRESPONDENCE DATA			
Fax Number:	8177962870		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	8174815869		
Email:	lee.pogue@berkeys.com		
Correspondent Name:	Lee Pogue		
Address Line 1:	PO Box 1748		
Address Line 4:	Grapevine, TEXAS 76099		
NAME OF SUBMITTER:	Lee Pogue		
SIGNATURE:	/leepogue/		
DATE SIGNED:	11/21/2018		
Total Attachments: 23			
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Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF FORMATION OF "BERKEYS LLC", FILED IN THIS OFFICE ON THE FIFTEENTH DAY OF DECEMBER, A.D. 2016, AT 11:59 O`CLOCK A.M.




Jeffrey W. Bullock, Secretary of State

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SR# 20167096983

You may verify this certificate online at corp.delaware.gov/authver.shtml

Authentication: 203521361
Date: 12-15-16

TRADEMARK
REEL: 006487 FRAME: 0209

AMENDED AND RESTATED OUTSOURCING AGREEMENT

between

BERKEYS LLC

and

B. S. & S. SERVICES, INC.

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AMENDED AND RESTATED OUTSOURCING AGREEMENT

This Amended and Restated Outsourcing Agreement is made and entered into as of December 30, 2017 by and between Berkeys LLC and B. S. & S. Services, Inc. (the "Agreement").

WHEREAS, the Parties entered into that certain Outsourcing Agreement effective as of December 30, 2016 (the "Original Agreement"); and

WHEREAS, the Parties desire to amend and restate the Original Agreement on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for and in consideration of the agreements set forth below, the Parties agree as follows:

ARTICLE 1 DEFINITIONS AND INTERPRETATION.

1.01 Definitions. The following terms have the following meanings:

- (1) "Affected Berkeys Personnel" shall have the meaning set forth in Section 18.07.
- (2) "Affected Employees" shall mean the employees of BS&S.
- (3) "Affiliate" shall mean with respect to any Person, any other Person which directly or indirectly, through one or more intermediaries, Controls, or is Controlled by, or is under common control with, such Person.
- (4) "Aggregate Order Price" shall have the meaning set forth in Section 8.01(6).
- (5) "Agreement" shall have the meaning set forth in the preamble.
- (6) "Authority" shall mean any government or governmental or regulatory body thereof, or political subdivision thereof, whether supranational, federal, state, local or foreign, or any agency, bureau, commission, instrumentality or authority thereof, or any court, tribunal or arbitrator (public or private).
- (7) "Berkeys" shall mean Berkeys LLC, a Delaware limited liability company.
- (8) "Berkeys Agent" shall mean an agent or contractor of Berkeys performing any of Berkeys' obligations under this Agreement.
- (9) "Berkeys Contract Executive" shall mean the individual assigned by Berkeys to manage Berkeys' obligations under this Agreement.
- (10) "Berkeys Hardware" shall mean the Hardware leased or owned by Berkeys that is used by Berkeys to operate the Outsourced Business.
- (11) "Berkeys Indemnified Parties" shall mean Berkeys, its Affiliates, officers, directors, employees, successors and permitted assigns.
- (12) "Berkeys Personnel" shall mean the personnel of Berkeys (including the Berkeys Agents) providing the Outsourced Business.

- (13) “BS&S” shall mean B. S. & S. Services, Inc., a Texas corporation.
- (14) “BS&S Agent” shall mean an agent or contractor of BS&S, excluding Berkeys, exercising any of BS&S’s rights or performing any of BS&S’s obligations under this Agreement.
- (15) “BS&S Auditors” shall mean BS&S and any of its regulators, accountants and auditors.
- (16) “BS&S Consents” shall mean all licenses, consents, permits, approvals and authorizations that are necessary to allow Berkeys to use (a) the BS&S Intellectual Property and BS&S Hardware, (b) any assets owned or leased by BS&S and (c) the services provided for the benefit of BS&S under BS&S’s third party services contracts, in each case, as necessary to operate the Outsourced Business.
- (17) “BS&S Contract Executive” shall mean the individual assigned by BS&S to manage BS&S’s obligations under this Agreement.
- (18) “BS&S Customers” shall mean the customers of BS&S.
- (19) “BS&S Indemnified Parties” shall mean BS&S, its Affiliates, general and limited partners, officers, directors, employees, successors and permitted assigns.
- (20) “BS&S Intellectual Property” shall mean Intellectual Property that is licensed or owned by BS&S and used by Berkeys in connection with the Outsourced Business.
- (21) “BS&S Service Location” shall mean any premises owned, leased or used by BS&S, at which BS&S may provide space for Berkeys Personnel.
- (22) “Business Data” shall mean all data or information (a) submitted to Berkeys by BS&S or BS&S Agents, (b) developed, processed or produced by Berkeys (other than data internal to Berkeys) or (c) accessed by Berkeys, in each case, in connection with this Agreement.
- (23) “Confidential Information” of a Party means all technical or business information (and documentation) and all intellectual property of such Party, its Affiliates, clients, customers, suppliers (including contractors) and other third parties doing business with such Party, whether disclosed to, accessed by or otherwise learned by the other, including: (a) with respect to Berkeys, the Business Data, (b) this Agreement; and (c) all information marked as confidential (or with words of similar meaning).
- (24) “Contract Executives” shall mean the BS&S Contract Executive and the Berkeys Contract Executive.
- (25) “Control” shall mean, with respect to any entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities (or other ownership interest), by contract or otherwise.
- (26) “Developed Intellectual Property” shall mean any Intellectual Property developed by Berkeys pursuant to this Agreement that is (a) a significant modification or enhancement of BS&S Intellectual Property or Berkeys Intellectual Property or (b) an original non-derivative work.
- (27) “Dispute Notice” shall mean notice from a Party specifying the nature of a dispute.

- (28) “Effective Date” shall mean December 30, 2016.
- (29) “Final Royalty Rate” shall mean the royalty rate mutual agreed by the Parties following a transfer pricing analysis to be completed by the Parties as soon as reasonably practical after the date hereof.
- (30) “Hardware” shall mean equipment, including computers and related equipment, such as central processing units and other processors, controllers, modems, communications and telecommunications equipment (e.g., voice, data and video), cables, storage devices, printers, terminals, other peripherals and input and output devices, and other tangible mechanical and electronic equipment intended for the processing, input, output, storage, manipulation, communication, transmission and retrieval of information and data.
- (31) “Income Tax” shall mean any tax on or measured by the net income of an Person (including taxes on capital or net worth that are imposed as an alternative to a tax based on net or gross income), or taxes which are of the nature of excess profits tax, minimum tax on tax preferences, alternative minimum tax, accumulated earnings tax, personal holding company tax, capital gains tax or franchise tax for the privilege of doing business.
- (32) “Indemnified Party” shall mean the Party entitled to indemnification under Section 15.01 or Section 15.02.
- (33) “Indemnifying Party” shall mean the Party obligated to indemnify the Indemnified Party under Section 15.01 or Section 15.02.
- (34) “Intellectual Property” shall mean all intellectual property rights arising from or associated with the following, whether protected, created or arising under the laws of the United States or any other jurisdiction: common law and registered trademarks, service marks, trade names, brand names, Internet domain names, logos, certification marks, trade dress and other indications of origin, including the goodwill associated with the foregoing and registrations and applications to register the foregoing (a “Trademark”), including any extension, modification or renewal of any such registration or application; patents, applications for patents (including divisions, continuations, continuations in part and renewal applications), and any renewals, extensions or reissues thereof; trade secrets, inventions, data, proposals, customer lists, business plans, pricing and marketing information and know-how; writings and other published or unpublished works of authorship, whether copyrightable or not, compilations, collections, designs, layouts, website content and databases (including computer software), including registrations and applications to register the foregoing, and any renewals or extensions thereof; any copyrights; and all moral rights, publicity rights and any similar intellectual property or proprietary rights.
- (35) “Laws” shall mean any law, statute, ordinance, rule, regulation, code, writ, injunction, judgment, order, award, resolution, edict, decree, rule of common or civil law or treaty of any Authority.
- (36) “Loss” shall mean losses, liabilities, judgments, damages, awards, fines, penalties, expenses, fees (including reasonable attorney’s fees), costs, or amounts paid in settlement arising out of any claim, complaint, demand, action, suit or other proceeding asserted or initiated or otherwise existing in respect of any matter.
- (37) “Original Agreement” shall have the meaning set forth in the recitals.

- (38) “Outsourced Business” shall mean the business of providing plumbing, heating, ventilation, air conditioning, electrical, water quality and home automation services to residential and light commercial customers operated by BS&S prior to the Effective Date.
- (39) “Parties” shall mean BS&S and Berkeys.
- (40) “Party” shall mean either BS&S or Berkeys, as applicable.
- (41) “Person” shall mean any individual, corporation, limited liability company, partnership, joint venture, association, trust, unincorporated organization, Authority or other entity.
- (42) “Preliminary Royalty Rate” shall mean 5%.
- (43) “Royalties” shall have the meaning set forth in Section 8.01.
- (44) “Royalty Rate” shall mean (i) prior to the determination of the Final Royalty Rate, the Preliminary Royalty Rate or (ii) following the determination of the Final Royalty Rate, the Final Royalty Rate.
- (45) “Royalty Rate Determination Date” shall have the meaning set forth in Section 8.01(6).
- (46) “Service Tax” shall mean all sales, use, lease, service, value-added, personal property, excise, consumption, stamp duty and other such other taxes and duties that are assessed against a Party to this Agreement on the operation of the Outsourced Business, but excluding Income Taxes.
- (47) “Tax Authority” shall mean any Authority or other fiscal, revenue, customs or excise authority, body or official competent to impose, collect or assess tax.
- (48) “Term” shall have the meaning set forth in Section 18.01.
- (49) “Termination Assistance Period” shall mean a period of time designated by BS&S, commencing on the date a determination is made that there shall be an expiration or termination of this Agreement, in whole or in part, and continuing for up to 30 days after the effective date of such expiration or termination.
- (50) “Termination Assistance Services” shall mean any services reasonably requested by BS&S to transition the Outsourced Business from Berkeys to BS&S.
- (51) “Total Price” shall mean the amount paid by a BS&S Customer for a service order placed with the Outsourced Business including any and all tax or other similar charges or fees.
- (52) “Trademark” shall have the meaning set forth in Section 1.01(34).

1.02 References.

- (1) Except where otherwise indicated, references in this Agreement to Articles or Sections are to Articles or Sections in this Agreement.
- (2) References to any Law shall mean such Law as changed, supplemented, amended or replaced.
- (3) References in this Agreement to and mentions of the word “include”, “including” or the phrases “e.g.” or “such as” shall mean “including, without limitation.”

- (4) References to “day”, “week”, “quarter” or “year” refer to a calendar day, week, quarter or year respectively, unless otherwise indicated.
- (5) \$ or “dollars” refers to United States dollars.

1.03 Headings. The Article and Section headings and Table of Contents are for reference and convenience only and shall not be considered in the interpretation of this Agreement.

ARTICLE 2 TRANSITION SERVICES.

2.01 Transition Services. Berkeys shall transition the Outsourced Business from BS&S to Berkeys in accordance with the timeframes agreed by the Parties.

2.02 Employee Transition. If the employment of any of the Affected Employees is terminated by Berkeys other than for cause at any time during the first 18-months of the Term, BS&S shall be liable for all costs and expenses, including without limitation any severance costs, incurred in connection with such termination.

ARTICLE 3 OPERATION OF THE OUTSOURCED BUSINESS.

3.01 Service Levels. Berkeys shall use commercially reasonable efforts to operate the Outsourced Business so as to meet or exceed the level of performance of BS&S prior to the Effective Date.

3.02 Labor and Materials. Berkeys shall perform all work necessary to operate the Outsourced Business in accordance with this Agreement. Except as explicitly provided herein, Berkeys shall furnish and pay for all labor, materials, services, facilities, equipment and computer resources necessary to operate the Outsourced Business and meet its obligations under this Agreement.

3.03 Third Party Agreements. BS&S and Berkeys shall use commercially reasonable efforts to assign, in whole or in part, all BS&S third party agreements to Berkeys. In the event that the Parties are not able to assign a third party agreement, BS&S and Berkeys shall enter into reasonable alternative arrangements that will permit Berkeys to operate the Outsourced Business in substantially the same manner as currently conducted.

3.04 Record Retention. Berkeys shall comply with the current record retention policy of BS&S with respect to books and records produced in connection with its operation of the Outsourced Business.

ARTICLE 4 BERKEYS PERSONNEL AND SUBCONTRACTING.

4.01 Berkeys Personnel.

- (1) All Berkeys Personnel shall possess the training, skills and qualifications agreed upon by the Parties and otherwise necessary to properly operate the Outsourced Business.
- (2) Berkeys shall use commercially reasonable efforts to ensure that each of the Berkeys Personnel complies with (1) the confidentiality provisions of this Agreement, both during and after the Term, (2) the provisions of this Article and (3) while each such Berkeys Personnel is at any BS&S Service Location, the facilities policies, codes of conduct and safety requirements applicable to such BS&S Service Location.

4.02 Contract Executives.

- (1) Berkeys shall designate one of the Berkeys Personnel to be the Berkeys Contract Executive. The Berkeys Contract Executive shall be responsible for managing the Outsourced Business. Berkeys shall provide BS&S notice if it replaces the individual serving as the Berkeys Contract Executive.
- (2) BS&S shall assign an individual to serve as the BS&S Contract Executive.

4.03 Subcontracting.

- (1) Berkeys may subcontract or delegate performance of any of its obligations under this Agreement, without the approval of, or notice to, BS&S.
- (2) No subcontracting or delegation shall release Berkeys from its responsibility for its obligations under this Agreement and Berkeys shall be responsible for all acts and omissions of the Berkeys Agents, including any compliance or non-compliance with the terms of this Agreement. Berkeys shall be responsible for all payments to the Berkeys Agents. Berkeys shall ensure that any entity to which Berkeys subcontracts or delegates performance of any of its obligations under this Agreement complies with this Agreement.
- (3) To the extent a Berkeys Agent is performing an obligation of Berkeys pursuant to this Agreement, use of the term "Berkeys" shall include such Berkeys Agent. The inclusion of Berkeys Agent within the term of "Berkeys" does not cause any Berkeys Agent to be a party to this Agreement (or be part of the term "Party" or "Parties").

ARTICLE 5 SERVICE LOCATIONS.

5.01 Service Locations. If Berkeys provides the Outsourced Business from the BS&S Service Locations, BS&S shall provide the amount of space to Berkeys at each BS&S Service Location as reasonably requested by Berkeys, at no additional cost to Berkeys.

5.02 Safety, Health and Hazards. Berkeys shall use commercially reasonable efforts to provide the Berkeys Personnel with a safe and healthy workplace and shall use commercially reasonable efforts to operate the Outsourced Business in a careful and safe manner.

ARTICLE 6 LICENSES AND PROPRIETARY RIGHTS.

6.01 BS&S Intellectual Property. To the extent Berkeys requires use of the BS&S Intellectual Property in connection with operating the Outsourced Business, BS&S grants Berkeys a global, perpetual, royalty-free, non-exclusive, non-transferable license for Berkeys to access, use and copy the BS&S Intellectual Property (but only to the extent permitted by any applicable third party license agreement). To the extent that the BS&S Intellectual Property licensed under this Section is a Trademark of BS&S and Berkeys uses such Trademark in connection with the operation of the Outsourced Business, Berkeys shall ensure that the quality of all goods and services provided by Berkeys under or in connection with such Trademark will be at least as good, in all material respects, as the quality of the goods and services provided under or in connection with the Trademark as of the Effective Date.

6.02 Developed Intellectual Property. Berkeys shall own and have all right, title and interest in and to the Developed Intellectual Property. BS&S hereby irrevocably assigns, transfers and conveys to Berkeys all of its right, title and interest in and to the Developed Intellectual Property. BS&S shall

execute any documents (or take any other actions) as may be necessary, or as Berkeys may request, to perfect the ownership of Berkeys in the Developed Intellectual Property.

6.03 BS&S Consents. BS&S shall, at its cost, obtain, maintain and comply with the BS&S Consents. Berkeys shall comply with the BS&S Consents. In the event BS&S is unable to obtain a BS&S Consent, BS&S shall implement (at its own cost) a workaround as necessary to enable Berkeys to operate the Outsourced Business without such consent.

ARTICLE 7 DATA.

7.01 Ownership of Business Data. Berkeys shall own and have all right, title and interest in and to the Business Data. BS&S hereby irrevocably assigns, transfers and conveys to Berkeys all of its right, title and interest in and to the Business Data. BS&S shall execute any documents (or take any other actions) as may be necessary, or as Berkeys may request, to perfect the ownership of Berkeys in the Business Data.

7.02 Regulatory Information. Berkeys shall promptly provide to BS&S any information or records of BS&S maintained by Berkeys that are requested by any Authority or otherwise required to answer any inquiries from any Authority.

ARTICLE 8 ROYALTIES AND INVOICING.

8.01 Royalties. In consideration of providing to Berkeys the exclusive right to operate the Outsourced Business, Berkeys shall pay royalties to BS&S in accordance with the following ("Royalties"):

- (1) Royalties shall be payable on orders placed and paid in full by the BS&S Customers during the Term and shall equal the Total Price multiplied by the Royalty Rate.
- (2) After Berkeys has been paid in full by the BS&S Customer for an order, Royalties for such order shall become due and owing and shall be payable by Berkeys on the first day of the calendar quarter beginning after the date in which payment in full was received by Berkeys.
- (3) The Royalty Rate shall be reviewed by the Contract Executives every twelve months during the Term and shall be subject to adjustment based on the agreement of the Parties.
- (4) Each month, Berkeys shall provide a report to BS&S of Royalties paid for the immediately preceding month and year to date.
- (5) All amounts collected by BS&S from BS&S Customers after the Effective Date shall be treated as received by BS&S for the benefit of Berkeys.
- (6) Following the determination of the Final Royalty Rate (such date of determination, the "Royalty Rate Determination Date"), the Parties shall determine the Total Price of all orders placed and paid in full by the BS&S Customers from the Effective Date to the Royalty Rate Determination Date (the "Aggregate Order Price"). If the Final Royalty Rate is greater than the Preliminary Royalty Rate, Berkeys shall pay to BS&S an amount equal to (i) (A) the Final Royalty Rate minus (B) the Preliminary Royalty Rate multiplied by (ii) the Aggregate Order Price. If the Preliminary Royalty Rate is greater than the Final Royalty Rate, BS&S shall pay to Berkeys an amount equal to (i) (A) the Preliminary Royalty Rate minus (B) the Final Royalty Rate multiplied by (ii) the Aggregate Order Price.

(7) All Royalties shall be paid in U.S. dollars.

8.02 Expenses.

- (1) During the term of this Agreement, Berkeys shall reimburse BS&S for the reasonable documented out-of-pocket expenses incurred by BS&S in connection with the transition of the Outsourced Business from BS&S to Berkeys. All reimbursements shall be paid in U.S. dollars.
- (2) If any expenses of Berkeys are expressly set forth to be reimbursed by BS&S, such expenses shall be reimbursed only if such expenses are: (a) reasonable and customary; (b) approved by BS&S; and (c) itemized in a manner as mutually agreed by the parties.

8.03 Invoices.

- (1) Berkeys shall pay Royalties to BS&S quarterly in accordance with Section 8.01. Berkeys shall provide with each Royalty payment such reasonable documentation supporting the Royalty as BS&S may reasonably request.
- (2) Berkeys shall pay the reasonable documented out-of-pocket expenses incurred by BS&S from the Effective Date to the date hereof within 30 days of the date hereof and thereafter shall pay the reasonable documented out-of-pocket expenses incurred by BS&S on a monthly basis in accordance with Section 8.02(1). BS&S shall provide such reasonable documentation supporting such expenses as Berkeys may reasonably request.
- (3) Berkeys shall maintain, in secure locations (to prevent destruction and unauthorized access) and in accordance with generally accepted accounting principles, records sufficient to substantiate Royalties including such records required to be kept by any Authority. Berkeys shall retain such records in accordance with statutory requirements.

ARTICLE 9 TAXES.

9.01 Service Tax. Subject to the other provisions of this Article, Royalties paid by Berkeys are inclusive of any applicable Service Tax. In the event that a Service Tax applies pursuant to this Agreement, BS&S shall be financially responsible for such Service Tax assessed by Tax Authorities against any party to this Agreement on the operation of the Outsourced Business.

9.02 Income Taxes. Each Party shall be responsible for its own Income Tax.

9.03 Sales Tax.

- (1) Each Party shall be responsible for any sales, use, lease, service, value-added, personal property, excise, consumption, stamp duty or other such other taxes and duties payable on Hardware, software or property such Party owns or leases from a third party, or for which such Party is financially responsible under this Agreement.
- (2) Berkeys shall be responsible for all sales, use, lease, service, value-added, personal property, excise, consumption, stamp duty or other taxes and duties payable on any goods or services used or consumed by Berkeys in operating the Outsourced Business (including services obtained from Berkeys Agents) where the tax is imposed on Berkeys' acquisition or use of such goods or services.

9.04 Filings and Registrations. Each Party represents, warrants and covenants that it shall file appropriate tax returns, and pay applicable taxes owed arising from or related to the operation of the Outsourced Business in applicable jurisdictions. Berkeys represents, warrants and covenants that it is registered to and shall collect and remit Service Taxes in all applicable jurisdictions as required by Law.

ARTICLE 10 GOVERNANCE AND DISPUTE RESOLUTION.

10.01 Governance. Each Party shall cause its Contract Executive to meet quarterly (including by teleconference) to discuss the operation of the Outsourced Business, compliance with this Agreement, payment of Royalties and any other issue agreed by the Contract Executives.

10.02 Dispute Resolution. Any dispute arising out of this Agreement shall be considered by the BS&S Contract Executive and Berkeys Contract Executive no later than 10 days after receipt of a Dispute Notice. If such individuals do not resolve such dispute within 20 days after the date of receipt of a Dispute Notice, then either Party may otherwise pursue its rights and remedies under this Agreement.

ARTICLE 11 AUDITS.

11.01 Financial Audits. Upon notice from BS&S to the Berkeys Contract Executive, Berkeys shall provide BS&S Auditors with access to such records and supporting documentation (except for records and documentation regarding Berkeys' internal costs, payroll and profitability) as may be requested by BS&S Auditors to audit and determine if Royalties are accurate and in accordance with this Agreement as well as compliance with financial terms and conditions of this Agreement.

11.02 Cooperation with Regulators. As directed by BS&S, Berkeys shall work with any Authority that regulates BS&S in an open and co-operative way, including: (1) meeting with such Authority; (2) coordinating with BS&S to provide to representatives or appointees of such Authority any materials, records and information relating to the Outsourced Business or allowing any such representatives or appointees access to such materials, records and information and providing such facilities as such representatives or appointees may reasonably require; and (3) permitting representatives or appointees of such Authority to have access on demand to any of its premises.

ARTICLE 12 CONFIDENTIAL INFORMATION.

12.01 Generally. Each Party agrees that: (1) it shall keep and maintain all Confidential Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized use or disclosure, but in no event less than a commercially reasonable degree of care; (2) it shall use and disclose Confidential Information solely for the purposes for which such information, or access to it, is provided pursuant to the terms of this Agreement and shall not use or disclose Confidential Information for such Party's own purposes or for the benefit of anyone other than the other Party; and (3) it shall not, directly or indirectly, disclose Confidential Information to anyone outside of the other Party, except with the other Party's prior consent.

12.02 Permitted Disclosure. Either Party may disclose relevant aspects of the other's Confidential Information to the general and limited partners, officers, directors, employees, professional advisors (including accountants), contractors and other agents of it to the extent such disclosure is necessary for the current or future performance of their obligations to such Party; provided, however, that the disclosing Party causes the Confidential Information to be held in confidence by the recipient to the same extent and in the same manner as required under this Agreement. In addition, (1) either Party may disclose Confidential Information of the other Party to the extent required to comply with any Law (provided, however that to the extent permissible by Law such Party provides the other Party with prior

notice of any such disclosure and further provided that the disclosing Party limit any such disclosure to the information or records required to satisfy the request or inquiry and to the entity (or entities) to whom such disclosure is required to be made), (2) BS&S may disclose Confidential Information to any Authority having jurisdiction over BS&S and (3) Berkeys may disclose information stating (a) the existence of this Agreement, and (b) Royalties paid or payable.

12.03 Exclusions. The restrictions on use and disclosure in this Article shall not apply to: (1) Confidential Information already known to a Party on a non-confidential basis, as demonstrated by prior existing records, when it was disclosed by the other Party; (2) Confidential Information that is or becomes known to the public through no fault of a Party or its employees, agents or contractors; (3) Confidential Information that is received by a Party from a third party where such Party is unaware, after reasonable inquiry, that such Confidential Information is subject to a confidentiality or other non-disclosure agreement; and (4) Confidential Information developed by a Party independently of disclosure by or receipt from the other Party.

12.04 Unauthorized Acts. Each Party shall immediately notify the other of any unauthorized possession, use or knowledge of the other's Confidential Information of which such Party is aware.

ARTICLE 13 COMPLIANCE WITH LAWS.

13.01 BS&S. BS&S shall comply with all Laws applicable to BS&S.

13.02 Berkeys. Berkeys shall comply with all Laws applicable to Berkeys related to its operation of the Outsourced Business.

ARTICLE 14 REPRESENTATIONS AND WARRANTIES.

14.01 By BS&S. BS&S represents and warrants that:

- (1) it is a corporation, duly organized, validly existing and in good standing under the Laws of the State of Texas;
- (2) it has all requisite corporate power and authority to execute and deliver this Agreement and perform its obligations hereunder, and to consummate the transactions contemplated by this Agreement;
- (3) the execution, delivery and performance by BS&S of this Agreement has been duly and validly authorized by BS&S and shall not conflict with, result in a breach of or constitute a default under any other agreement to which BS&S is a party or by which BS&S is bound;
- (4) it is duly licensed, authorized or qualified to do business and is in good standing in every jurisdiction in which a license, authorization or qualification is required for the ownership or leasing of its assets or the transaction of business of the character transacted by it, except where the failure to be so licensed, authorized or qualified would not have a material adverse effect on BS&S's ability to fulfill its obligations under this Agreement; and
- (5) it is in compliance with all Laws applicable to BS&S.

14.02 By Berkeys. Berkeys represents and warrants that:

- (1) it is a limited liability company, duly organized, validly existing and in good standing under the Laws of the State of Delaware;
- (2) it has all requisite corporate power and authority to execute and deliver this Agreement and perform its obligations hereunder, and to consummate the transactions contemplated by this Agreement;
- (3) the execution, delivery and performance by Berkeys of this Agreement has been duly and validly authorized by Berkeys and shall not conflict with, result in a breach of or constitute a default under any other agreement to which Berkeys is a party or by which Berkeys is bound;
- (4) subject to obtaining the licenses, permits, authorization and qualifications necessary to operate the Outsourced Business, it is duly licensed, authorized or qualified to do business and is in good standing in every jurisdiction in which a license, authorization or qualification is required for the ownership or leasing of its assets or the transaction of business of the character currently transacted by it, except where the failure to be so licensed, authorized or qualified would not have a material adverse effect on Berkeys' ability to fulfill its obligations under this Agreement; and
- (5) subject to obtaining the licenses, permits, authorization and qualifications necessary to operate the Outsourced Business, Berkeys is in compliance with all Laws applicable to Berkeys.

14.03 Disclaimer. NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY OTHER THAN AS SET FORTH IN THIS ARTICLE. EACH PARTY EXPLICITLY DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

ARTICLE 15 INDEMNIFICATION.

15.01 BS&S. BS&S shall defend, indemnify and hold harmless the Berkeys Indemnified Parties from and against any Loss relating to any assertion, or any actual or threatened claim, action, suit or proceeding (whether civil, criminal, administrative, arbitral, investigative or otherwise) by a third party against the Berkeys Indemnified Parties:

- (1) that the BS&S Intellectual Property or use thereof infringes, or causes the infringement of, the proprietary rights of a third party, except to extent such infringement is a result of: (a) use of the BS&S Intellectual Property in contravention of the license granted to Berkeys under Article 7; (b) modifications made by Berkeys or an Berkeys Agent other than at the direction of BS&S; (c) BS&S complying with instructions or designs required or provided by Berkeys where such compliance necessarily would give rise to such infringement; or (d) combination of the BS&S Intellectual Property by Berkeys or an Berkeys Agent with products or systems other than those provided by, or authorized by, BS&S;
- (2) relating to any taxes, interest, penalties or other amounts assessed against Berkeys that are the obligation of BS&S pursuant to Article 9;
- (3) relating to breach of Article 12 by BS&S;
- (4) relating to a breach of Section 13.01 by BS&S;
- (5) relating to the inaccuracy, untruthfulness or breach of any representation or warranty made by BS&S in Section 14.01;

- (6) relating to (a) injury or death of any person (including employees of Berkeys or BS&S) or (b) the loss of or damage to any tangible property (including tangible property of the employees of Berkeys or BS&S), in each case, resulting from the acts or omissions (including breach of contract) of BS&S;
- (7) any failure by BS&S to comply with, or failure to observe or perform any duties or obligations under, any of the agreements assigned or novated to Berkeys prior to the date of assignment; or
- (8) relating to BS&S's operation of the Outsourced Business prior to the Effective Date.

BS&S shall indemnify Berkeys from any costs reasonably incurred in connection with enforcing this Section 15.01.

15.02 Berkeys. Berkeys shall defend, indemnify and hold harmless the BS&S Indemnified Parties from and against any Loss relating to any assertion, or any actual or threatened claim, action, suit or proceeding (whether civil, criminal, administrative, arbitral, investigative or otherwise) by a third party against the BS&S Indemnified Parties:

- (1) relating to any taxes, interest, penalties or other amounts assessed against BS&S that are the obligation of Berkeys pursuant to Article 9;
- (2) relating to a breach of Article 12, by Berkeys;
- (3) relating to a breach of Section 13.02 by Berkeys;
- (4) relating to the inaccuracy, untruthfulness or breach of any representation or warranty made by Berkeys in Section 14.02;
- (5) relating to (a) injury or death of any person (including employees of Berkeys or BS&S, or customers of BS&S) or (b) the loss of or damage to any tangible property (including tangible property of the employees of Berkeys or BS&S, or customers of BS&S), in each case, resulting from the acts or omissions (including breach of contract) of Berkeys;
- (6) any failure by Berkeys to comply with, or failure to observe or perform any duties or obligations under, any of the agreements assigned or novated to Berkeys after the date of assignment; or
- (7) relating to Berkeys' operation of the Outsourced Business after the Effective Date.

Berkeys shall indemnify BS&S from any costs reasonably incurred in connection with enforcing this Section 15.02.

15.03 Indemnification Procedures. If any assertion, or actual or threatened claim, action, suit or proceeding is commenced against an Indemnified Party, prompt notice thereof shall be given by the Indemnified Party to the Indemnifying Party. At the Indemnifying Party's cost: (1) the Indemnifying Party shall immediately take control of the defense of such claim and shall engage attorneys acceptable to the Indemnified Party to defend such claim; and (2) the Indemnified Party shall cooperate with the Indemnifying Party (and its attorneys) in the defense of such claim. The Indemnified Party may, at its own cost, participate (through its attorneys or otherwise) in such defense. No settlement of a claim that involves a remedy other than the payment of money by the Indemnifying Party shall be entered into without the consent of the Indemnified Party. If the Indemnifying Party does not assume control over the

defense of a claim as provided in this Section, the Indemnified Party may defend the claim in such manner as it may deem appropriate, at the cost of the Indemnifying Party.

ARTICLE 16 DAMAGES.

16.01 Direct Damages. Each Party shall be liable to the other for any direct damages arising out of or relating to its performance or failure to perform under this Agreement; provided, however, that the liability of a Party to the other, whether based on an action or claim in contract, equity, negligence, tort or otherwise, for all events, acts or omissions occurring during the Term shall not exceed, in the aggregate, an amount equal to Royalties paid by Berkeys pursuant to this Agreement for the 12 consecutive month period immediately preceding the date of the occurrence of the applicable event, act or omission giving rise to such damages.

16.02 Consequential Damages. Neither Party shall be liable for, nor shall the measure of damages include, any consequential, special or punitive damages arising out of or relating to its performance or failure to perform under this Agreement.

16.03 Exclusions. The limitations of liability set forth in Section 16.01 and exculpation of liability set forth in Section 16.02 shall not apply, in the case of: (1) Berkeys' failure to pay Royalties due and owing under this Agreement; (2) either Party's indemnification obligations under Article 15; and (3) either Party's gross negligence or willful misconduct.

ARTICLE 17 INSURANCE.

17.01 Coverage. Berkeys shall carry and maintain in force, with reputable insurance companies authorized to do business in the jurisdictions where the Outsourced Business is operated, insurance of the types and in the amounts of the minimum coverage, including:

- (1) workers' compensation in the statutory required limits in accordance with all federal, state, municipal, local, territorial or other requirements;
- (2) employer's liability insurance with limits not less than the limits applicable to Berkeys employees not engaged in the Outsourced Business; and
- (3) commercial general liability insurance (including bodily injury, death and property damage) relating to any act or omission by Berkeys and any Berkeys subcontractor.

17.02 Cost of Insurance Coverage. All insurance coverage shall be provided at Berkeys' sole expense. The deductible amounts for each of the policies in Section 17.01 shall be borne by Berkeys.

17.03 Certificate of Insurance Coverage. Upon BS&S's request, Berkeys shall furnish to BS&S (1) copies of the policies of insurances referenced in Section 17.01 and (2) certificates of insurance or other appropriate documentation in a form acceptable to BS&S (including evidence of renewal of insurance) evidencing all coverage referenced in Section 17.01. Such policies, certificates or other documentation shall include a provision whereby 30 days' notice must be received by BS&S prior to coverage cancellation or material alteration of the coverage by either Berkeys or the applicable insurer. Such cancellation or material alteration shall not relieve Berkeys of its continuing obligation to maintain insurance coverage in accordance with this Article.

17.04 Waiver of Subrogation. Berkeys hereby agrees to waive its rights of recovery from BS&S with regard to all causes of property or liability loss and shall cause a waiver of subrogation

endorsement to be provided in favor of BS&S and related companies on all insurance coverage carried by Berkeys, whether required herein or not.

17.05 Status and Rating of Insurance Company. All insurance coverage shall be written through insurance companies authorized to do business in the state in which the work is to be performed.

ARTICLE 18 TERM AND TERMINATION.

18.01 Term. This Agreement shall commence on the first Effective Date and shall expire at 24:00 (Eastern Time) on the fourth anniversary of the Effective Date unless terminated earlier as otherwise permitted under this Agreement or extended for an additional period pursuant to the agreement of the Parties (the "Term").

18.02 Termination for Convenience. Either Party may terminate this Agreement upon 30 days' notice to the other Party at any time without cause.

18.03 Termination for Cause. BS&S may terminate this Agreement upon notice to Berkeys if Berkeys has breached a material obligation under this Agreement, and fails to cure such breach within 30 days after receipt of notice thereof.

18.04 Reorganization and Insolvency. Either Party may terminate this Agreement upon notice to the other Party if the other Party (a) makes an assignment for the benefit of creditors or (b) files for protection, or is subject to an accepted petition for any involuntary bankruptcy, under any applicable insolvency or bankruptcy Laws.

18.05 Effect of Termination. In the event of any such termination or expiration of this Agreement:

- (1) Berkeys deliver to BS&S, at no cost to BS&S, a copy of the BS&S Intellectual Property, if any, in the form in use as of the date of termination or expiration of this Agreement.
- (2) Berkeys shall pay any Royalties due and owing prior to the effective date of termination.
- (3) Upon BS&S's request, with respect to (a) any third party services being used by Berkeys primarily for the benefit of BS&S to operate the Outsourced Business as of the effective date of expiration or termination of this Agreement and (b) agreements assigned to Berkeys by BS&S (not otherwise covered in clause (3)(a) of this Section), in each case, Berkeys shall transfer or assign such agreements to BS&S or its designee, on terms and conditions acceptable to all applicable parties.
- (4) Upon BS&S's request, Berkeys may, at its option, sell to BS&S or its designee the Berkeys Hardware used by Berkeys to operate the Outsourced Business as of the effective date of expiration or termination of this Agreement free and clear of all liens, security interests or other encumbrances at the greater of the fair market value, as shall be determined by an agreed-upon appraisal, and the book value.

18.06 Termination Assistance. Berkeys shall provide the Termination Assistance Services during the Termination Assistance Period. Berkeys shall provide the Termination Assistance Services at no additional cost to BS&S. BS&S shall notify Berkeys prior to the effective date of the termination or expiration of this Agreement, in whole or in part, of the Termination Assistance Services to be provided and the time period during which such services shall be provided.

18.07 Hiring of Berkeys Personnel. As of the date a determination is made that there shall be an expiration or termination of this Agreement, with respect to the then-current members of the Berkeys Personnel that were Affected Employees (each, an “Affected Berkeys Personnel”), Berkeys shall not terminate, reassign or otherwise remove from the Berkeys Personnel any Affected Berkeys Personnel for 10 days. During such 10 day period, upon one days’ notice from BS&S, Berkeys shall (1) provide BS&S with the name of each Affected Berkeys Personnel’s position and such Affected Berkeys Personnel’s description of job responsibilities, in accordance with Berkeys’ standard employment policies, (2) provide BS&S and its designees full access to such Affected Berkeys Personnel and (3) allow BS&S and its designees to meet with and extend offers of employment to such Affected Berkeys Personnel. Berkeys shall waive any restrictions that may prevent any Affected Berkeys Personnel from being hired by BS&S or its designees pursuant to this Section. Additionally, Berkeys shall not make any other material change to the terms or conditions of its employment of the Affected Berkeys Personnel other than such changes that are made in accordance with Berkeys’ normal personnel practices and cycles.

ARTICLE 19 MISCELLANEOUS.

19.01 Amendment. No amendment of this Agreement shall be valid unless in writing and signed by an authorized representative of the Parties (as designated by each entity from time-to-time).

19.02 Assignment. Neither Party shall assign this Agreement, or any amounts payable pursuant to this Agreement, without the prior consent of the other; provided, however, that either Party may assign this Agreement to: (1) an entity acquiring all or substantially all of its assets; (2) the successor in any merger involving it; or (3) an Affiliate of it. This Agreement shall be binding upon the successors and permitted assigns of each Party.

19.03 Consents, Approvals and Requests. Except as specifically set forth in this Agreement, all consents, acceptances and approvals to be given by either Party under this Agreement shall be in writing and shall not be unreasonably withheld or delayed and each Party shall make only reasonable requests under this Agreement.

19.04 Entire Agreement. This Agreement supersedes all prior discussions and agreements between the Parties with respect to the subject matter hereof and represents the entire agreement between the Parties with respect to that subject matter.

19.05 Good Faith and Fair Dealing. Except where explicitly stated otherwise (e.g., use of “sole discretion”), the performance of all obligations and exercise of all rights by each Party shall be governed by the principle of good faith and fair dealing and by a commercially reasonable standard.

19.06 Governing Law and Jurisdiction. This Agreement shall be governed by, and construed and enforced in accordance with, the law of the State of New York without giving effect to the principles of conflicts of law (other than Section 5-1401 of the New York General Obligations Law). This Agreement shall not be governed by the U.N. Convention on Contracts for the International Sale of Goods. Each Party consents to the exclusive jurisdiction of, and service of process by, the United States District Court for the Southern District of New York or state courts for the City of New York, Borough of Manhattan with respect to any legal action, suit or proceeding by a Party arising out of this Agreement. EACH PARTY AGREES TO WAIVE ANY RIGHT TO A TRIAL BY JURY.

19.07 Independent Contractor. Berkeys is an independent contractor of BS&S. Officers, directors, employees, agents and contractors retained by or on behalf of Berkeys to perform Berkeys’ obligations under this Agreement shall at all times be under Berkeys’ exclusive direction and control and shall in no way be deemed to be an employee, agent or contractor of BS&S.

19.08 No Co-Employment. Berkeys agrees and acknowledges, for itself and for the Berkeys Personnel, that:

- (1) The Berkeys Personnel shall not be entitled to any benefits provided to employees of BS&S or its Affiliates, whether consisting of participation in an employee retirement, pension, supplemental compensation, defined contribution or similar plan; workers' compensation; disability or other similar benefits; unemployment or other similar insurance or otherwise. Berkeys shall be responsible for providing all the Berkeys Personnel with all such benefits as may be required by law or by the terms of any employee retirement, pension, supplemental compensation, defined contribution or similar plan in or to which Berkeys or any Berkeys Personnel participates or contributes.
- (2) Except as otherwise provided for in Section 2.02(2), BS&S shall not be responsible for, and Berkeys shall be exclusively responsible for, making payment of wages, salary or bonus or other amounts to the Berkeys Personnel, and for withholding from all such amounts and making payments to the appropriate Authority for any and all statutory withholdings and other amounts in connection with any and all governmental taxes or fees. BS&S shall further not be responsible for, and Berkeys shall be exclusively responsible for, any withholdings from payments to the Berkeys Personnel with respect to payments to any union, club, or other organization of or to which Berkeys or any Berkeys Personnel is a member or may be subject, or any employee retirement, pension, supplemental compensation, defined contribution or similar plan in or to which either Berkeys or any member of the Berkeys Personnel participates or contributes.
- (3) Berkeys acknowledges and agrees that BS&S shall have no responsibility for verifying the work authorization status of any of the members of the Berkeys Personnel.

19.09 Notices. All notices, consents, approvals, agreements, authorizations, acceptances, rejections and waivers under this Agreement shall be in writing and shall be deemed given when: (1) delivered by hand or private, prepaid courier service to the person specified for the receiving Party at the address specified; or (2) mailed to that addressee at that address by a nationally recognized express mail carrier with package tracking capability or certified mail, return receipt requested, with postage fully prepaid. The Parties may change the address or person for notification upon 10 days' notice to the other. The initial notification information is:

For BS&S:

c/o Wrench Group LLC
Attention: Michael Thompson
1787 Williams Dr.
Marieta, GA, 30066

With a copy to:

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, New York 10166
Attention: David Rosenauer

For Berkeys:

c/o Wrench Group LLC
Attention: Michael Thompson
1787 Williams Dr.
Marieta, GA, 30066

With a copy to:

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, New York 10166
Attention: David Rosenauer

Except as expressly permitted in this Agreement, an electronic mail message does not satisfy any requirement in this Agreement that a notice, consent, approval, agreement, authorization, acceptance, rejection or waiver must be in writing or signed by any person or Party, or any similar requirement.

19.10 Remedies Cumulative. No specific remedy under this Agreement shall limit a Party's right to exercise all other remedies available to such Party under Law, in equity or under this Agreement, and all such remedies shall be cumulative.

19.11 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, then the remaining provisions of this Agreement shall remain in full force and effect, except to the extent such remaining provisions are not capable of substantial performance as a result of such holding.

19.12 Survival. Any provision, Section or Article that by its nature should survive, shall survive termination (or expiration) of this Agreement.

19.13 Third Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their permitted assigns and each Party intends that this Agreement shall not benefit, or create any right or cause of action in or on behalf of, any person or entity other than the Parties, their permitted assigns, and with respect to Article 15, the BS&S Indemnified Parties and Berkeys Indemnified Parties.

19.14 Waiver. No delay or omission by either Party to exercise any right or power it has under this Agreement shall impair or be construed as a waiver of such right or power. A waiver by any Party of any breach or obligation shall not be construed to be a waiver of any succeeding breach or any other obligation.

IN WITNESS WHEREOF, the authorized representatives of each Party have executed this Agreement as the Effective Date.

BERKEYS LLC
by: [Signature]
name: MIKE THOMPSON
title: SECRETARY

B. S. & S. SERVICES, INC.
by: [Signature]
name: Ken Haines
title: PRESIDENT

[Signature Page - Amended and Restated Outsourcing Agreement]