



Subscriber Billing Address & Billing Contact Info:

Note: This section is to gather end user / subscriber billing information only. The site details of where the subscribed solution(s) will be installed/deployed is captured toward the end of this Agreement.

Legal Entity CITY OF EVERETT

Name: _____

Address: 3200 CEDAR ST. _____

City: EVERETT _____

State: WA _____

Zip: 98206 _____

Country: USA _____

Billing Contact JUDIE SHIRLEY

Name: _____

Email: JSHIRLEY@EVERETTWA.GOV _____

Phone: 425-257-7700 _____

Overview

Subscriber: If you are an end user company purchasing Subscription Services (a “Subscriber”) directly from DFS, this Subscription Agreement (this “Agreement”) is between Wayne Fueling Systems LLC, part of the Dover Fueling Solutions family of companies, (“DFS”) and Subscriber and governs Subscriber’s use of all Subscription Services beginning on the Agreement Effective Date. The “Agreement Effective Date” is the date that Subscriber or Distributor (as applicable) agrees to this Agreement by executing this document. The “Subscription Start Date” is the date on which the Subscription Services commence. “Subscription Services” means the software-as-a-service solutions provided by DFS. This Agreement incorporates by reference of (i) the Terms and Conditions of Sale, the End User License Addendum (“EULA”), and the Services Addendum (collectively, the “Terms”) and (ii) certain technical requirements and terms specific to the Subscription Services (“Technical Requirements”), all of which are attached to this Agreement.. This “Agreement” includes all terms and conditions in this document, the Terms, Technical Requirements and all other terms and conditions that are incorporated herein by reference.

Distributor: If you are a DFS-authorized third party distributor or sales agent (a “Distributor”) of Subscription Services, this Agreement is between DFS and Distributor, and this Agreement confers upon Distributor only the following rights: (i) the right to sell to Subscribers in the Territory the right to access and use the Subscription Services, and (ii) the right to use the Subscription Services only to the extent needed to support Distributor’s sales thereof. For each sale of a Subscription Service, Distributor will ensure that the corresponding contract executed between Distributor and the Subscriber includes terms and conditions substantially similar to, and no less protective of DFS than, the Terms, the Technical Requirements, and the provisions of this Agreement. Distributor shall indemnify, defend, and hold DFS and its Affiliates from and against all claims, expenses, and damages related to or arising out of Distributor’s sale of Subscription Services on terms other than those required herein.

Whether sold directly to a Subscriber by a Distributor or DFS, any Agreement provided hereunder must be approved by DFS, and the Subscriber must meet the applicable Technical Requirements. Any conflict between the Terms and this Subscription Agreement document shall be resolved in favor of this Subscription Agreement document, and any conflict between the Technical Requirements and this Agreement (not including the Technical Requirements) shall be resolved in favor of the Technical Requirements. Capitalized terms used but not defined herein shall have the meanings ascribed in the Terms or Technical Requirements.

Subscription Services. Subscription Service pricing, features, and options depend on the plan selected as well as any changes instigated by the Subscriber. DFS reserves the right to change the Subscription Services, the associated subscription plans, and the pricing thereof. Except as expressly provided otherwise in this Agreement, any changes to Subscription Services will take effect 30 days after written notice to the Subscriber or Distributor, as applicable.

Minimum Term and Renewal

Minimum Term. The Minimum Term for this Agreement is 12-months commencing upon the Subscription Start Date, except as otherwise stated herein and unless this Agreement is earlier terminated in accordance with the terms of this Agreement. Periodic Charges will begin on the Subscription Start Date. Subscriber or Distributor may increase the number of Units to a Subscription Service during a Subscription Period, and/or add additional Subscription Service(s) during a Subscription Period. The Periodic Charges for such additional Units and/or additional Subscription Service(s) will be pro-rated for the remainder of the current Subscription Period after the install date of such additional Units.

Renewal. At the end of the Minimum Term, this Agreement will automatically renew for successive 12-month renewal terms (each an “Automatic Renewal Term”) unless DFS or Subscriber or Distributor (as applicable) provides the other party at least 30 days’ prior written notice of non-renewal or unless this Agreement is earlier terminated in accordance with the terms of this Agreement. The Minimum Term and the Automatic Renewal Terms, if any, are collectively the “Subscription Period”.

Payment

Periodic Charges. Periodic Charges for Subscription Services will be billed in advance. All Periodic Charges are due in full within 30 days of the date of invoice. Distributor shall be obligated to pay Periodic Charges regardless of whether it has collected payment from its customer for the corresponding Subscription Service(s). Subscriber or Distributor, as applicable, must provide and maintain accurate and complete billing and payment information, and will be billed for Subscription Service

via the provided payment method (or, if Subscription Services are purchased through a Distributor, will be billed via the Distributor, if any specified above). BY PURCHASING A SUBSCRIPTION SERVICE, SUBSCRIBER OR DISTRIBUTOR, AS APPLICABLE, AUTHORIZES DFS OR ITS AGENT, FOR THE TERM OF THE ASSOCIATED ORDER, TO CHARGE SUBSCRIBER'S OR DISTRIBUTOR'S PAYMENT METHOD ON A RECURRING (E.G. MONTHLY, QUARTERLY OR YEARLY) BASIS ("AUTHORIZATION") FOR: (a) THE APPLICABLE SUBSCRIPTION SERVICE CHARGES; (b) ANY AND ALL APPLICABLE TAXES; AND (c) ANY OTHER CHARGES INCURRED IN CONNECTION WITH THE CORRESPONDING SUBSCRIBER'S USE OF THE SUBSCRIPTION SERVICES.

No Refunds. PAYMENTS ARE NON-REFUNDABLE EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS.

Invoices and Collection Costs. DFS will provide billing information in a format it chooses and reserves the right to correct any associated errors or mistakes even if it has already issued an invoice or received payment. Subscriber or Distributor, as applicable, agrees to notify DFS (by emailing Dbs_na_ar_inquiries@dovercorp.com) about any billing problems or discrepancies in writing within thirty (30) days after they first appear on the relevant invoice, or such problems or discrepancies shall be waived. Subscriber or Distributor, as applicable, will reimburse any costs or expenses (including, but not limited to, reasonable attorneys' fees) incurred by DFS to collect any amount that is not paid when due. Payments marked 'paid in full', or with any other restrictive language, will not operate as an accord and satisfaction without our prior written approval. Additional terms relating to late fees and taxes are included in the Terms.

Billing by Distributor. If Subscriber purchases a Subscription Service from a Distributor, the Distributor will charge the Subscriber for the associated costs and applicable taxes; and DFS will collect payments from Distributor as described in the "Payment" section above. DFS reserves the right to suspend access to or terminate Subscription Services for nonpayment or late payment.

Cancellation. Either DFS or a Subscriber or Distributor, as applicable, can cancel a Subscription Service and/or this Agreement at any time with 30 days' prior written notice to the non-terminating party (such notice to be provided to DFS by email to (i) dfsdxsupport@doverfs.com for DFS DX subscriptions or (ii) support@avalan.com for AvalAN subscriptions). For Distributors, the termination of this Agreement for any reason shall result in the automatic and immediate termination of all contracts for the provision of Subscription Services purchased through the Distributor. DFS does not provide refunds for partially rendered Subscription Services.

Nonstandard Subscription

"Nonstandard Subscription" subscriptions for temporary or testing situations including, but not limited to, demos, pilots, betas, labs, tradeshow. Nonstandard Subscription minimum term is for 90 days following the Subscription Start Date. Notwithstanding anything to the contrary herein or elsewhere, during the Nonstandard Subscription, either party may terminate this Agreement for any or no reason by delivery of written notice to the other party, provided that, in order to exercise this termination right, the terminating party must deliver the written notice of termination to the other party during the Nonstandard Subscription. THE SUBSCRIPTION SERVICE IS PROVIDED TO DISTRIBUTOR AND SUBSCRIBER STRICTLY ON AN "AS IS" BASIS.

Miscellaneous

Warranty and Limitation of Liability. DFS MAKES NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE COMPLIANCE, QUALITY, SUITABILITY, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SUBSCRIPTION SERVICE, OR ANY PART THEREOF, OR ANY OTHER GOODS, PRODUCTS, SERVICES OR SOFTWARE PROVIDED OR MADE AVAILABLE BY OR ON BEHALF OF DFS. DFS DOES NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SUBSCRIPTION SERVICE WILL BE SECURE, UNINTERRUPTED OR ERROR-FREE; (B) THE SUBSCRIPTION SERVICE WILL OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA; (C) THE SUBSCRIPTION SERVICE WILL MEET THE DISTRIBUTOR'S OR SUBSCRIBER'S REQUIREMENTS OR EXPECTATIONS; (D) ERRORS OR DEFECTS WILL BE CORRECTED; (E) THE SUBSCRIPTION SERVICE OR SERVER(S) THAT MAKE THE SUBSCRIPTION SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS; OR (F) THE SUBSCRIPTION SERVICE IS IN COMPLIANCE WITH ANY FEDERAL, STATE AND LOCAL LAWS, RULES OR ORDINANCES. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

NEITHER DFS NOR ANY OF ITS AFFILIATES OR THIRD-PARTY SUPPLIERS WILL BE LIABLE TO DISTRIBUTOR OR SUBSCRIBER, OR ANY THIRD PARTY, FOR ANY LOSS OF PROFITS, LOSS OF DATA, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR BREACH OF CONTRACT, EXPECTATION DAMAGES, RELIANCE DAMAGES, LOSS OF PROFITS, GOODWILL, USE, OR DATA (EVEN IF DFS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) IN CONNECTION WITH THIS AGREEMENT OR THE SUBSCRIPTION SERVICES PROVIDED HEREUNDER, INCLUDING, WITHOUT LIMITATION, ANY SUCH DAMAGES RESULTING FROM: (I) THE USE OR THE INABILITY TO USE THE SERVICES; (II) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES; OR (III) UNAUTHORIZED ACCESS TO, OR LOSS, MISAPPROPRIATION OR ALTERATION OF DISTRIBUTOR'S OR SUBSCRIBER'S DATA/CONTENT. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN OR ELSEWHERE, THE CUMULATIVE LIABILITY OF DFS AND ITS AFFILIATES ARISING FROM OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, OR THE SUBSCRIPTION SERVICES SHALL NOT, IN THE AGGREGATE, EXCEED THE GREATER OF FIVE HUNDRED DOLLARS (\$500) OR THE CUMULATIVE AMOUNT PAID TO DFS BY THE SUBSCRIBER/DISTRIBUTOR UNDER THIS SUBSCRIPTION AGREEMENT DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE CLAIM.

Applicable Law. This Agreement will be interpreted and construed in accordance with the laws of (a) the State of Washington if Subscriber's or Distributor's invoiced place of business is in the U.S., Canada or Mexico; or (b) England and Wales if the Subscriber's or Distributor's invoiced place of business is outside the U.S., Canada or Mexico, in either case without giving effect to any choice of law rules that would cause the application of laws of any other jurisdiction.

Content. Subscriber shall be solely responsible for all content that it publishes via, or otherwise provides for use with, Subscription Services, and any associated consequences. For sales by a Distributor, the Distributor shall, as between DFS and Distributor, be solely responsible for all content published via, or otherwise provided for use with, the Subscription Services by any Subscriber to which Distributor sells Subscription Services, and all associated consequences. Subscriber affirms, represents, and warrants that it owns or has the necessary licenses, rights, consents, and permissions to (i) publish content that it submits and (ii) use data, including but not limited to personal data, that it provides in connection with the setup and initialization of Subscription Services; and any Distributor signatory to this Agreement hereby acknowledges that it is obligated to include the aforementioned representation and warranty in each of its direct contracts with Subscribers for Subscription Services. Subscriber will defend, indemnify and hold DFS, its affiliates, and its and their respective officers, directors, employees, agents, successors and assigns harmless from and against any and all claims, actions, suits, proceedings, losses, damages, liabilities, judgments, costs and expenses of any nature whatsoever (including reasonable attorney fees) that arise from, relate to, are based upon or allege: (i) any claim that Licensee Data or any other data, information or content provided or made available by or on behalf of Subscriber, or use or disclosure thereof as contemplated hereunder, infringes any right of any party or violate any law, rule or regulation, or (ii) Subscriber's actual or alleged breach of this Agreement.

Technical Requirements and Hardware. Except as otherwise provided in this Agreement, any hardware provided by DFS hereunder is subject to a parts-only warranty and the Terms. DFS will retain ownership of any hardware device(s) included as a part of the Subscription Service(s) and will upgrade such hardware device(s) only as it deems necessary to enable the technological functionality of the Subscription Service(s). Failure to adhere to the Technical Requirements will not result in suspension of Periodic Charges. DFS is not responsible for any of Subscriber's or Distributor's malfunctioning equipment not covered under warranty.

General. Subscriber or Distributor, as applicable, shall promptly notify DFS upon any of the following changes: principal place of business, EIN or legal entity name. This Agreement shall supersede and replace all prior agreements, orders and understandings, oral or written, between DFS and the signatory to this Agreement (whether Subscriber or Distributor) in its entirety.

Security. Subscriber shall, and shall ensure that all of its users, comply with all DFS rules and regulations and security restrictions in connection with use of the Subscription Service(s). If applicable, each user will be assigned a unique user identification name and password for access to and use of the Subscription Service(s) ("User ID"). Subscriber shall be solely responsible for ensuring the security and confidentiality of all User IDs provided to Subscriber. Subscriber acknowledges that Subscriber will be fully responsible for all liabilities incurred through use of any of Subscriber's User IDs and that any transactions under Subscriber's User IDs will be deemed to have been performed by Subscriber. Use of any User ID other than as provided in this Agreement shall be considered a breach of this Agreement by Subscriber. Subscriber must purchase a User ID for each unique User and acknowledge that User IDs may not be shared between Users.

Force Majeure. DFS shall not be in default or otherwise liable for any delay in or failure of its performance under this Agreement where such delay or failure arises by reason of any Act of God, or any government or any governmental body, war, insurrection, acts of terrorism, the elements, strikes or labor disputes, or other similar or dissimilar causes beyond DFS's control. Subscriber acknowledges that the performance of certain of DFS's obligations may require the cooperation of third parties designated by Subscriber and outside the control of DFS. In the event such third parties fail to cooperate with DFS in a manner that reasonably permits DFS to perform its obligations, such failures shall be considered as causes beyond the control of DFS for the purposes of this Section and shall not be the basis for a determination that DFS is in breach of any of its obligations under this Agreement or is otherwise liable. Either Party may terminate at its option this Agreement if any such situation continues for thirty (30) days and prevents the continued performance of this Agreement by the other Party.

Collection and Protection of Licensee Data. By executing this Agreement, Subscriber and Distributor, as applicable, consent(s) and agree(s) to the collection and use of information about Subscriber's and Distributor's use of Subscription Services (hereinafter "Licensee Data") in accordance, unless otherwise provided herein, with the privacy policy adopted by DFS and available on DFS's website, at <https://www.doverfuelingsolutions.com/privacy>, with the provisions therein applicable mutatis mutandis to Licensee Data collected in connection with the performance of this Agreement. Except as provided herein, or in the privacy policy, DFS will not sell, rent, or lease Subscriber's or Distributor's personally identifiable information (defined as information that can be used on its own or with other information to identify, contact or locate a single person or to identify an individual in context) to others, but may provide aggregated statistics, and sales and traffic patterns, that are anonymized, or site-specific pricing information, to third parties in exchange for compensation or to support, enhance or improve the Subscription Services. Distributor and Subscriber each consents and agrees that DFS may collect, use, transmit, process and maintain, and share, as described above, information related to Distributor's and Subscriber's account(s) and any registered devices or computers for the purposes of providing, supporting, enhancing or improving the Subscription Services. As such, DFS may collect technical data, including pricing data, aggregate statistics, sales, and traffic patterns related to or resulting from Distributor's or Subscriber's use of Services that may be used by DFS to support, improve and enhance the Subscription Services.

Use Restrictions. Subscriber will not, and Distributor will not, directly or indirectly: (i) use the Subscription Services other than its own internal business purposes; (ii) use or access the Subscription Services in violation of any applicable law, rule or regulation; (iii) sell, resell, license, lease, transfer, redistribute, assign or otherwise commercially exploit or make the Subscription Services available to any third party (except by Distributor as expressly permitted by DFS); (iv) send, store, submit or upload libelous, unlawful or tortious material on or to the Subscription Services; (v) send, store, submit or upload malicious or harmful code on or to the Subscription Services; (vi) save to the extent necessary for the operation of the Subscription Services, send, store, submit or upload any personal data or personal information on or to the Subscription Services; (vii) interfere with or disrupt the integrity or performance of the cloud environment where the Subscription Services is deployed; (viii) attempt to circumvent security restrictions or protocols for the cloud environment where the Subscription Services is deployed; (ix) duplicate or reverse engineer the Subscription Services, in whole or in part; (x) disclose the results of any benchmarking test; or (xi) remove or modify any proprietary markings or notices on the Subscription Services or other materials delivered by DFS in the performance of this Agreement.

Suspension of Access. DFS may, on written notice, suspend access to the Subscription Services without liability if: (i) DFS reasonably believes that the Subscription Services are being used in violation of this Agreement; (ii) Subscriber does not cooperate with reasonable investigation by DFS of any suspected violation of this Agreement; (iii) the Subscription Services, Licensee Data or any Subscriber content are accessed or manipulated by a third party without Subscriber consent; (iv) DFS is required by law, or a regulatory or government body to suspend access to the Subscription Services; (v) if any invoiced amounts remain unpaid by Subscriber; or (vi) there is another event for which DFS reasonably believes that the suspension of access to the Subscription Services is necessary to protect the cloud environment in which Subscriber's instance of the Subscription Services is deployed.

Acknowledgement:

The following minimum deployment requirements ("Additional Terms") apply to DX Promote and DX Monitor Subscription Services:

(i) Promote : [DX Promote Minimum Environment Requirements;](#)

(ii) Monitor: [DX Monitor Minimum Environment Requirements ;](#)

(iii) *DX Fleet:* [DX Fleet Spec Sheet;](#)

(iv) *Phoenix SQL:* [Phoenix SQL Spec Sheet; and](#)

(v) Phoenix SQL Lite: [Phoenix SQL Lite Spec Sheet](#).

The Additional Terms are incorporated herein by reference. By signing below, I acknowledge that I am agreeing to the terms set forth in this Agreement (including, without limitation, the Terms and Additional Terms) on behalf of Subscriber or Distributor (as applicable). I also confirm that every applicable site location deploying the Subscription Service(s) does already or will meet the minimum site deployment requirements prior to deploying the Subscription Service(s).

Dover Fueling Solutions
Terms and Conditions of Sale—Products & Services

NOTICE: Sale of any Products or Services is expressly conditioned on Buyer's assent to these Terms and Conditions of Sale. Any acceptance of Seller's offer is expressly limited to acceptance of these Terms and Conditions of Sale and Seller expressly objects to any additional or different terms proposed by Buyer. No facility entry form or purchase order will modify these Terms and Conditions of Sale even if signed by Seller's representative. Any Purchase Order to perform work and Seller's performance of work will constitute Buyer's assent to these Terms and Conditions of Sale. Unless otherwise specified in the quotation, Seller's quotation will expire 30 days from its date and may be modified or withdrawn by Seller before receipt of Buyer's conforming acceptance. Moreover, these Terms prevail over any of Buyer's general terms and conditions of purchase regardless whether or when Buyer has submitted its Purchase Order or such terms. Fulfillment of Buyer's order does not constitute Seller's acceptance of any of Buyer's terms and conditions and does not serve to modify or amend these Terms and Conditions of Sale.

1. Definitions

"Buyer" means the entity to which Seller is providing Products or Services under the Contract.

"Contract" means either the contract agreement signed by both parties, order form, or the Purchase Order signed by Buyer and accepted by Seller in writing, for the sale of Products or Services, together with these Terms and Conditions of Sale, Seller's final quotation, the agreed scope(s) of work, and Seller's order acknowledgement. Unless expressly provided herein, or otherwise in a written agreement executed by an authorized officer of Seller, these Terms and Conditions of Sale will take precedence over any other documents included in the Contract.

"Contract Price" means the agreed price stated in the Contract for the sale of Products and Services, including adjustments (if any) in accordance with the Contract.

"End User License Addendum" means, the End User License Addendum attached to the Contract.

"Hazardous Materials" means any toxic or hazardous substance, hazardous material, dangerous or hazardous waste, dangerous good, radioactive material, petroleum or petroleum-derived products or by-products, or any other chemical, substance, material or emission, that is regulated, listed or controlled pursuant to any national, state, provincial, or local law, statute, ordinance, directive, regulation or other legal requirement of the United States ("U.S.") or the country of the Site.

"Insolvent/Bankrupt" means that a party is insolvent, makes an assignment for the benefit of its creditors, has a receiver or trustee appointed for it or any of its assets, or files or has filed against it a proceeding under any bankruptcy, insolvency dissolution or liquidation laws.

"Ongoing Services" means Services subscribed to and performed over an agreed period of time as set forth in a separate maintenance contract, Purchase Order or statement of work. For the avoidance of doubt, Ongoing Service does not include basic commissioning or warranty services included with the list price of products.

"Products" means the equipment, parts, materials, supplies, Software, and other goods Seller has agreed to supply to Buyer under the Contract.

"Purchase Order" means a written order for Products or Services issued by the Buyer pursuant to these Terms and Conditions of Sale.

"Seller" means the entity providing Products or performing Services under the Contract.

"Service Applications and Tools" means any services and/or applications created by Seller and used by Buyer to help with the associated Services to install, maintain and repair the Products.

"Services" means the services Seller has agreed to perform for Buyer under the Contract.

"Services Addendum" means the Services Addendum attached to the Contract.

"Site" means the premises where Products are used or Services are performed, not including Seller's premises from which it performs Services.



“Software” means any computer software, Service Applications and Tools and software security devices provided directly or indirectly by Seller under the Contract and the End User License Addendum, whether Software is provided separately or has been incorporated into a Product.

“Terms and Conditions of Sale” means these Terms and Conditions of Sale – Products and Services including any relevant addenda pursuant to Article 17, together with any modifications or additional provisions specifically stated in Seller’s final quotation or expressly agreed upon by Seller in writing.

“Terms of Use” means the Terms of Use attached to this Agreement.

2. Payment

- 2.1 Buyer shall pay Seller for the Products and Services by paying all invoiced amounts in U.S. dollars, without set-off for any payment from Seller not due under this Contract, within 30 days from the invoice date. For each calendar month, or fraction thereof, that payment is late; Buyer shall pay a late payment charge computed at the rate of 1.5% per month on the overdue balance, or the maximum rate permitted by law, whichever is less.

3. Taxes and Duties

Seller shall be responsible for all corporate taxes measured by net income due to performance of or payment for work under this Contract (“Seller Taxes”). Buyer shall be responsible for all taxes, duties, fees, or other charges of any nature (including, but not limited to, consumption, gross receipts, import, property, sales, stamp, turnover, use, or value-added taxes, and all items of withholding, deficiency, penalty, addition to tax, interest, or assessment related thereto, imposed by any governmental authority on Buyer or Seller or its subcontractors) in relation to the Contract or the performance of or payment for work under the Contract other than Seller Taxes (“Buyer Taxes”). The Contract Price does not include the amount of any Buyer Taxes. If Buyer deducts or withholds Buyer Taxes, Buyer shall pay additional amounts so that Seller receives the full Contract Price without reduction for Buyer Taxes. Buyer shall provide to Seller, within one month of payment, official receipts from the applicable governmental authority for deducted or withheld taxes.

4. Deliveries; Title Transfer; Risk of Loss; Storage

- 4.1 For shipments that do not involve export, including shipments from one European Union (“EU”) country to another EU country, Seller shall deliver Products to Buyer FCA Seller’s facility or warehouse (Incoterms 2010). For export shipments, Seller shall deliver Products to Buyer FCA Port of Export (Incoterms 2010). Buyer shall pay all delivery costs and charges or pay Seller’s standard shipping charges plus up to 25%. Partial deliveries are permitted. Seller may deliver Products in advance of the delivery schedule. Delivery times are approximate and are dependent upon prompt receipt by Seller of all information necessary to proceed with the work without interruption. If Products delivered do not correspond in quantity, type or price to those itemized in the shipping invoice or documentation, Buyer shall so notify Seller within ten days after receipt.

- 4.2 Except for shipments that involve export from the U.S., title to Products will pass to Buyer upon delivery in accordance with Section 4.1. For shipments being exported from the U.S., title to Products will pass to Buyer at the port of export immediately after Products have been cleared for export. When Buyer arranges the export or intercommunity shipment, Buyer will provide Seller evidence of exportation or intercommunity shipment acceptable to the relevant tax and custom authorities. Notwithstanding the foregoing, Seller grants only a license, and does not pass title, for any Software provided by Seller under this Contract, and title to any leased equipment remains with Seller.
- 4.3 Risk of loss will pass to Buyer upon delivery pursuant to Section 4.1, except that for export shipments from the U.S., risk of loss will transfer to Buyer upon title passage.
- 4.4 If any Products to be delivered under this Contract or if any Buyer equipment repaired at Seller's facilities cannot be shipped to or received by Buyer when ready due to any cause attributable to Buyer or its other contractors, Seller may ship the Products and equipment to a storage facility, including storage at the place of manufacture or repair, or to an agreed freight forwarder. If Seller places Products or equipment into storage, the following apply: (a) title and risk of loss immediately pass to Buyer, if they have not already passed, and delivery will be deemed to have occurred; (b) any amounts otherwise payable to Seller upon delivery or shipment will be due; (c) all expenses and charges incurred by Seller related to the storage will be payable by Buyer upon submission of Seller's invoices; and (d) when conditions permit and upon payment of all amounts due, Seller shall make Products and repaired equipment available to Buyer for delivery.
- 4.5 If repair Services are to be performed on Buyer's equipment at Seller's facility, Buyer shall be responsible for, and shall retain risk of loss of, such equipment at all times, except that Seller shall be responsible for damage to the equipment while at Seller's facility to the extent such damage is caused by Seller's negligence.

5. Warranty

- 5.1 Seller warrants that Products shall be delivered free from defects in material, workmanship, and title and that Services shall be performed in a competent, diligent manner in accordance with any mutually agreed specifications.
- 5.2 Unless otherwise stated in materials accompanying the Products or in other warranty documentation provided by Seller, the warranty for Products will expire on the earlier of (a) one year from first use; (b) 18 months from delivery; or (c) the relocation of Products to a different Site after first use, except that Software is warranted for 90 days from delivery. The warranty for Services will expire one year after the Services have been performed, except that Software-related Services are warranted for 90 days.
- 5.3 If Products or Services do not meet the above warranties, Buyer shall promptly notify Seller in writing prior to expiration of the warranty period. Seller shall, at its option (a) repair or replace defective Products; and (b) re-perform defective Services. If despite Seller's reasonable efforts, a non-conforming Product cannot be repaired or replaced, or non-conforming Services cannot be re-performed, Seller shall refund or credit monies paid by Buyer for such non-conforming Products and Services. Warranty repair, replacement or re-performance by Seller will not extend or renew the applicable warranty period. Buyer shall obtain Seller's agreement on the specifications of any tests it plans to conduct to determine whether a non-conformance exists.
- 5.4 Buyer shall bear the costs of access for Seller's remedial warranty efforts (including removal and replacement of systems, structures or other parts of Buyer's facility), de installation, decontamination, re installation and transportation of defective Products to Seller and back to Buyer.

- 5.5 The warranties and remedies set forth herein are expressly conditioned upon (a) proper storage, installation, use, operation, and maintenance of Products; (b) Buyer's keeping complete, accurate records of operation and maintenance during the warranty period and providing Seller access to those records; and (c) modification or repair of Products or Services only as authorized by Seller in writing. Failure to meet any such condition renders the warranty null and void. Seller is not responsible for normal wear and tear.
- 5.6 Notwithstanding the preceding provisions of this Article 5, in the event Seller provides Products to Buyer at no charge, including free accounts, trial use, and access to Beta Versions (as defined below) ("No-Charge Products"), Buyer's use of No-Charge Products is subject to any additional terms that Seller may specify. Buyer's use of No-Charge Products is only permitted for the period designated by Seller. Buyer agrees not use No-Charge Products for competitive analysis or similar purposes. Seller may terminate Buyer's right to use No-Charge Products at any time and for any reason in Seller's sole discretion, without creating any obligation to Buyer. Buyer understands that any pre-release and beta products made available by Seller ("Beta Versions") are still under development, may be inoperable or incomplete and are likely to contain more errors and bugs than generally available Products. Seller makes no promises that any Beta Versions will ever be made generally available. In some circumstances, Seller may charge a fee in order to allow you to access Beta Versions, but the Beta Versions will still remain subject to this Section 5.6. All information regarding the characteristics, features or performance of Beta Versions constitutes Seller's Confidential Information. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SELLER DISCLAIMS ALL OBLIGATIONS OR LIABILITIES WITH RESPECT TO NO-CHARGE PRODUCTS, INCLUDING ANY SUPPORT AND MAINTENANCE, WARRANTY, AND INDEMNITY OBLIGATIONS.
- 5.7 This Article 5 provides the exclusive remedies for all claims based on a failure of or defect in Products or Services, regardless of when such failure or defect arises, and whether a claim, however described, is based on contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability or otherwise. The warranties provided in this Article 5 are exclusive and are in lieu of all other warranties, conditions and guarantees, whether written, oral, implied or statutory. NO IMPLIED OR STATUTORY WARRANTY, OR WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE APPLIES.

6. Confidentiality

- 6.1 Seller and Buyer (as to information disclosed, the "Disclosing Party") may each provide the other party (as to information received, the "Receiving Party") with Confidential Information in connection with this Contract. "Confidential Information" means (a) information that is designated in writing as "confidential" or "proprietary" by Disclosing Party at the time of written disclosure, and (b) information that is orally designated as "confidential" or "proprietary" by Disclosing Party at the time of oral or visual disclosure and is confirmed to be "confidential" or "proprietary" in writing within 20 days after the oral or visual disclosure. "Confidential Information" of Seller also includes information defined as "Proprietary Information" in the End User License Addendum. In addition, prices for Products and Services will be considered Seller's Confidential Information.
- 6.2 Receiving Party agrees: (a) to use the Confidential Information only in connection with the Contract and associated Products and Services; and (b) to take reasonable measures to prevent disclosure of the Confidential Information to third parties. The reasonable measures that Receiving Party shall take to prevent disclosure of the Confidential Information include the same security measures and degree of care that Receiving Party applies to its own confidential information, which Receiving Party warrants as providing adequate protection from unauthorized disclosure, copying or use.
- 6.3 Notwithstanding the restrictions set forth in 6.2, (a) Seller may disclose certain Confidential Information to its representatives, affiliates, and subcontractors in connection with performance of the Contract; (b) a Receiving Party may disclose Confidential Information to its auditors; (c) Buyer may disclose certain Confidential Information to lenders as necessary for Buyer to secure or retain financing needed to perform its obligations under the Contract; and (d) a Receiving Party may disclose Confidential Information to any other third party with the prior written permission of Disclosing Party, and in each case, only so long as the Receiving Party obtains a non-disclosure commitment from any such subcontractors, auditors, lenders or other permitted third party that prohibits disclosure of the Confidential Information and provided further that the Receiving Party remains responsible for any

unauthorized use or disclosure of the Confidential Information. Receiving Party shall upon request return to Disclosing Party or destroy all copies of Confidential Information except to the extent that a specific provision of the Contract entitles Receiving Party to retain an item of Confidential Information. Seller may also retain one archive copy of Buyer's Confidential Information.

- 6.4 The obligations under this Article 6 will not apply to any portion of the Confidential Information that: (a) is or becomes generally available to the public other than as a result of disclosure by Receiving Party, its representatives or its affiliates; (b) is or becomes available to Receiving Party on a non-confidential basis from a source other than Disclosing Party when the source is not, to the best of Receiving Party's knowledge, subject to a confidentiality obligation to Disclosing Party; (c) is independently developed by Receiving Party, its representatives or affiliates, without reference to or use of the Confidential Information; (d) is required to be disclosed by law or court order. All "Confidential" and "Proprietary" information fall within the Washington State Transparency Laws and Confidential Provision are to be posted to the Buyers "Digital Records Center" for compliance with legal requirements. The Buyer agrees to exempt the Seller's confidential information from posting in the Digital Records Center.
- 6.5 Each Disclosing Party warrants that it has the right to disclose the Confidential Information that it discloses. Neither Buyer nor Seller will be permitted to make any public announcement about the Contract. As to any individual item of Confidential Information, the restrictions under this Article 6 shall expire five years after the date of disclosure, except with respect to information designated as a trade secret of the Disclosing Party, in which case the obligation will not expire unless and until such Confidential Information becomes part of the public domain or subject to an exception as set forth in section 6.4, through no act or omission of the Receiving Party. Nothing in this section is intended or will be construed to supersede any separate confidentiality or nondisclosure agreement signed by the parties.

7. Intellectual Property

- 7.1 Seller shall defend and indemnify Buyer against any claim by a non-affiliated third party (a "Claim") alleging that Products or Services furnished under this Contract infringe a patent in effect in the U.S., an EU member state or the country of the Site (provided there is a corresponding patent issued by the U.S. or an EU member state), or any copyright or trademark registered in the country of the Site, provided that Buyer (a) promptly notifies Seller in writing of the Claim; (b) makes no admission of liability and does not take any position adverse to Seller; (c) gives Seller sole authority to control defense and settlement of the Claim; and (d) provides Seller with full disclosure and reasonable assistance as required to defend the Claim.
- 7.2 Section 7.1 will not apply and Seller will have no obligation or liability with respect to any Claim based upon (a) Products or Services that have been modified, or revised, (b) the combination of any Products or Services with other products or services when such combination is a basis of the alleged infringement, (c) failure of Buyer to implement any update provided by Seller that would have prevented the Claim, (d) unauthorized use of Products or Services, or (e) Products or Services made or performed to Buyer's specifications.
- 7.3 Should a Product or Service, or any portion thereof, become the subject of a Claim, Seller may at its option (a) procure for Buyer the right to continue using the Product or Service, or applicable portion thereof; (b) modify or replace it in whole or in part to make it non-infringing; or (c) failing (a) or (b), take back infringing Products or Services and refund the price received by Seller attributable to the infringing Products or Services.
- 7.4 Article 7 states Seller's exclusive liability for intellectual-property infringement by Products or Services.
- 7.5 Each party will retain ownership of all Confidential Information and intellectual property it had prior to the Contract. Any new intellectual property conceived or created by Seller in the performance of this

Contract, whether alone or with any contribution from Buyer, will be owned exclusively by Seller, and Buyer agrees to cooperate as necessary to achieve that result.

- 7.6 Buyer hereby agrees that any logos, trademarks and livery designs requested to be placed on Products by Seller are legally-owned or licensed to Buyer and that Seller and its affiliates are not responsible for any liabilities arising from our reproduction of such logos, trademark or designs supplied by Buyer.

8. Indemnity

Each of Buyer and Seller (as an “Indemnifying Party”) shall indemnify the other party (as an “Indemnified Party”) from and against claims brought by a third party on account of personal injury or damage to the third party’s tangible property, to the extent caused by negligent or intentional acts or omissions of the Indemnifying Party in connection with this Contract. In the event the injury or damage is caused by joint or concurrent negligence of Buyer and Seller, the loss shall be borne by each party in proportion to its degree of negligence. For purposes of Seller’s indemnity obligation, no part of the Products or Site is considered third party property.

9. Insurance

During the term of the Contract, Seller shall maintain for its protection the following insurance coverage: (a) Worker’s Compensation, Employer’s Liability and other statutory insurance required by law with respect to work related injuries or disease of employees of Seller in such form(s) and amount(s) as required by applicable laws; (b) Automobile Liability insurance with a combined single limit of \$2,500,000.00; and (c) Commercial General Liability or Public Liability insurance for bodily injury and property damage with a combined single limit of \$2,500,000.00. If required in the Contract, Seller shall provide a certificate of insurance reflecting such coverage.

10. Excusable Events

Seller will not be liable or considered in breach of its obligations under this Contract to the extent that Seller’s performance is delayed or prevented, directly or indirectly, by any cause beyond its reasonable control, or by armed conflict, acts or threats of terrorism, epidemics, strikes or other labor disturbances, or acts or omissions of any governmental authority or of the Buyer or Buyer’s contractors or suppliers. If an excusable event occurs, the schedule for Seller’s performance will be extended by the amount of time lost by reason of the event plus such additional time as may be needed to overcome the effect of the event. If acts or omissions of the Buyer or its contractors cause the delay, Seller will also be entitled to an equitable price adjustment.

11. Termination and Suspension

- 11.1 Buyer may terminate the Contract (or the portion affected) for cause if Seller (a) becomes Insolvent/Bankrupt; or (b) commits a material breach of the Contract that does not otherwise have a specified contractual remedy, provided that (i) Buyer first provides Seller with detailed written notice of the breach and of Buyer’s intention to terminate the Contract; and (ii) Seller then fails, within 30 days after receipt of the notice, to commence and diligently pursue cure of the breach.
- 11.2 If Buyer terminates the Contract pursuant to Section 11.1, (a) Seller shall reimburse Buyer the difference between that portion of the Contract Price allocable to the terminated scope and the actual amounts reasonably incurred by Buyer to complete that scope; and (b) Buyer shall pay to Seller (i) the portion of the Contract Price allocable to Products completed; (ii) lease fees incurred; and (iii) amounts for Services performed before the effective date of termination. The amount due for Services will be determined in accordance with the milestone schedule (for completed milestones) and rates set forth in the Contract (for work toward milestones not yet achieved and where there is no milestone schedule), as applicable or, where there are no milestones and/or rates in the Contract, at Seller’s then-current standard time and material rates.
- 11.3 Seller may suspend or terminate the Contract (or any affected portion thereof) immediately for cause if Buyer (a) becomes Insolvent/Bankrupt; or (b) materially breaches the Contract, including but not

limited to failure or delay in Buyer's providing Payment Security, making any payment when due, or fulfilling any payment conditions.

- 11.4 Except as pursuant to the Contract, if the Contract (or any portion thereof) is terminated for any reason other than Seller's default under Section 11.1, Buyer shall pay Seller for all Products completed, lease fees incurred and Services performed before the effective date of termination, plus expenses reasonably incurred by Seller in connection with the termination. The amount due for Services will be at Seller's then-current standard time and material rates. In addition, Buyer shall pay Seller a cancellation charge equal to 80% of the Contract Price applicable to uncompleted made-to-order Products and 15% of the Contract Price applicable to all other uncompleted Products.
- 11.5 Either Buyer or Seller may terminate the Contract (or the portion affected) upon 20 days' advance notice if there is an excusable event (as described in Article 10) lasting longer than 120 days. In such case, Buyer shall pay to Seller amounts payable under Section 11.4, excluding the cancellation charge for uncompleted Products.
- 11.6 Buyer shall pay all reasonable expenses incurred by Seller in connection with a suspension, including, but not limited to, expenses for repossession, fee collection, demobilization/remobilization, and costs of storage during suspension. The schedule for Seller's obligations will be extended for a period of time reasonably necessary to overcome the effects of any suspension.

12. Compliance with Laws, Codes, and Standards

- 12.1 Seller shall comply with laws applicable to the manufacture of Products and its performance of Services. Buyer shall comply with laws applicable to the application, operation, use and disposal of the Products and Services.
- 12.2 Seller's obligations are conditioned upon Buyer's compliance with all U.S. and other applicable trade control and export laws and regulations, including the U.S. Foreign Corrupt Practices Act and all other applicable laws and regulations prohibiting corrupt practices or relating to trade and export control (including "deemed export" and "deemed re-export" regulations). Buyer shall not trans-ship, re-export, divert or direct Products other than in and to the ultimate country of destination declared by Buyer and specified as the country of ultimate destination on Seller's invoice. Buyer shall not use any data, information, program and/or materials resulting from or provided with the Services or pursuant to any Contract for any purpose prohibited by such laws, including in connection with the proliferation of nuclear, chemical, or biological weapons, or development of missile technology.
- 12.3 Notwithstanding any other provision, Buyer shall timely obtain, effectuate and maintain in force any required permit, license, exemption, filing, registration and other authorization, including, but not limited to, building and environmental permits, import licenses, environmental impact assessments, and foreign exchange authorizations, required for the lawful performance of Services at the Site or fulfillment of Buyer's obligations, except that Seller shall obtain any license or registration necessary for Seller to generally conduct business and visas or work permits, if any, necessary for Seller's personnel. Buyer shall provide reasonable assistance to Seller in obtaining such visas and work permits.

13. Environmental, Health, and Safety Matters

- 13.1 Buyer shall maintain safe working conditions at the Site, including, without limitation, implementing appropriate procedures regarding Hazardous Materials, confined space entry, and energization and de-energization of power systems (electrical, mechanical and hydraulic) using safe and effective lock-out/tag-out ("LOTO") procedures including physical LOTO or a mutually agreed upon alternative method.
- 13.2 Buyer shall timely advise Seller in writing of all applicable Site-specific health, safety, security and environmental requirements and procedures. Without limiting Buyer's responsibilities under Article 13, Seller has the right but not the obligation to, from time to time, review and inspect applicable health, safety, security and environmental documentation, procedures and conditions at the Site.
- 13.3 If, in Seller's reasonable opinion, the health, safety, or security of personnel or the Site is, or is apt to be, imperiled by security risks, terrorist acts or threats, the presence of or threat of exposure to Hazardous Materials, or unsafe working conditions, Seller may, in addition to other rights or

- remedies available to it, evacuate some or all of its personnel from Site, suspend performance of all or any part of the Contract, or remotely perform or supervise work. Any such occurrence will be considered an excusable event. Buyer shall reasonably assist in any such evacuation.
- 13.4 Operation of Buyer's equipment is the responsibility of Buyer. Buyer shall not require or permit Seller's personnel to operate Buyer's equipment at Site.
- 13.5 Buyer will make its Site medical facilities and resources available to Seller personnel who need medical attention.
- 13.6 Seller has no responsibility or liability for the pre-existing condition of Buyer's equipment or the Site. Prior to Seller's starting any work at Site, Buyer will provide documentation that identifies the presence and condition of any Hazardous Materials existing in or about Buyer's equipment or the Site that Seller may encounter while performing under this Contract. Buyer shall disclose to Seller industrial hygiene and environmental monitoring data regarding conditions that may affect Seller's work or personnel at the Site. Buyer shall keep Seller informed of changes in any such conditions.
- 13.7 Seller shall notify Buyer if Seller becomes aware of: (a) conditions at the Site differing materially from those disclosed by Buyer, or (b) previously unknown physical conditions at Site differing materially from those ordinarily encountered and generally recognized as inherent in work of the character provided for in the Contract. If any such conditions cause an increase in Seller's cost of, or the time required for, performance of any part of the work under the Contract, an equitable adjustment in price and schedule will be made.
- 13.8 If Seller encounters Hazardous Materials in Buyer's equipment or at the Site that require special handling or disposal, Seller is not obligated to continue work affected by the hazardous conditions. In such an event, Buyer shall eliminate the hazardous conditions in accordance with applicable laws and regulations so that Seller's work under the Contract may safely proceed, and Seller will be entitled to an equitable adjustment of the price and schedule to compensate for any increase in Seller's cost of, or time required for, performance of any part of the work. Buyer shall properly store, transport and dispose of all Hazardous Materials introduced, produced or generated in the course of Seller's work at the Site.
- 13.9 Buyer shall indemnify Seller for any and all claims, damages, losses, and expenses arising out of or relating to any Hazardous Materials which are or were (a) present in or about Buyer's equipment or the Site prior to the commencement of Seller's work; (b) improperly handled or disposed of by Buyer or Buyer's employees, agents, contractors or subcontractors; or (c) brought, generated, produced or released on Site by parties other than Seller.
- 13.10 The Buyer shall be responsible for each Site's compliance with NFPA-30A, EN 13617 (or any successor standard) and all applicable building and safety codes and taking appropriate safety measures in accordance with industry best practices. It is the responsibility of the Buyer to operate Site locations safely at all times. Seller shall not be responsible for the design or installation of safety measures not included as a component of the Products; including, without limitation, bollards and traffic control structures, emergency stop buttons, shear or impact valves, other fire suppression devices or the inadequacy and/or failure of environmental risk mitigation measures. Except where installed in the factory, Seller shall not be responsible for hanging hardware, filters or other component parts of the system not supplied by Seller.

14. Limitations of Liability

- 14.1 The total liability of Seller for all claims of any kind arising from or related to the formation, performance or breach of this Contract, or any Products or Services, will not exceed the (a) Contract Price; or (b) if Buyer places multiple Purchase Order(s) under the Contract, the price of each particular Purchase Order for all claims arising from or related to that Purchase Order and US \$10,000 for all claims not arising from a particular Purchase Order.
- 14.2 Seller will not be liable for loss of profit or revenues, loss of use of equipment or systems, interruption of business, environmental damages, cost of capital, downtime costs, increased operating costs, any special, consequential, incidental, indirect, or punitive damages, or claims of Buyer's customers for any of the foregoing types of damages.

- 14.3 All Seller liability will end upon expiration of the applicable warranty period, provided that Buyer may continue to enforce a claim for which it has given notice prior to that date by commencing an action or arbitration, as applicable under this Contract, before expiration of any statute of limitations or other legal time limitation but in no event later than one year after expiration of such warranty period.
- 14.4 Seller will not be liable for advice or assistance that is not required for the work scope under this Contract.
- 14.5 If Buyer is supplying Products or Services to a third party, or using Products or Services at a facility owned by a third party, Buyer shall either (a) indemnify and defend Seller from and against any and all claims by, and liability to, any such third party in excess of the limitations set forth in this Article 14; or (b) require that the third party agree, for the benefit of and enforceable by Seller, to be bound by all the limitations included in this Article 14.
- 14.6 For purposes of this Article 14, the term “Seller” means Seller, its affiliates, subcontractors, and suppliers of any tier, and their respective employees. The limitations in this Article 14 will apply regardless of whether a claim is based in contract, warranty, indemnity, tort/extra-contractual liability (including negligence), strict liability or otherwise, and will prevail over any conflicting terms, except to the extent that such terms further restrict Seller’s liability.

15. Governing Law and Dispute Resolution

- 15.1 This Contract will be governed by and construed in accordance with the laws of (a) the State of Washington if Buyer’s place of business is in the U.S., Canada or Mexico; or (b) England and Wales if the Buyer’s place of business is outside the U.S., Canada or Mexico in either case without giving effect to any choice of law rules that would cause the application of laws of any other jurisdiction (the “Governing Law”). If the Contract includes the sale of Products and the Buyer is outside the Seller’s country, the United Nations Convention on Contracts for the International Sale of Goods will apply.
- 15.2 All disputes arising in connection with this Contract, including any question regarding its existence or validity, shall be resolved in accordance with this Article 15. If a dispute is not resolved by negotiations, either party may, by giving written notice, refer the dispute to a meeting of appropriate higher management, to be held within 20 business days after the giving of notice. If the dispute is not resolved within 30 business days after the giving of notice, or such later date as may be mutually agreed, either party may commence arbitration or court proceedings, depending upon the location of the Buyer, in accordance with the following: (a) if Buyer’s pertinent place of business is in the U.S., Canada or Mexico legal action may be commenced either in federal court with jurisdiction applicable to, or state court located in, either Washington or (b) if Buyer’s pertinent place of business is outside the U.S., Canada or Mexico the dispute shall be submitted to and finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce (“ICC”). The parties shall select a single arbitrator in accordance with the ICC rules, unless the amount in dispute exceeds the equivalent of U.S. \$5,000,000, in which event the dispute will be adjudicated by three arbitrators. In such cases, each party shall appoint one arbitrator, and those two shall appoint the third within 30 days, with the third’s being deemed the Chair. The seat, or legal place of arbitration, will be London, England, and the arbitration will be conducted in English. In reaching their decision, the arbitrators shall give full force and effect to the intent of the parties as expressed in the Contract, and if a solution is not found in the Contract, shall apply the governing law of the Contract. The decision of the arbitrator(s) will be final and binding upon both parties, and neither party shall seek recourse to a law court or other authority to appeal for revisions of the decision.
- 15.3 Notwithstanding the foregoing, each party will have the right at any time, at its option and where legally available, to immediately commence an action or proceeding in a court of competent jurisdiction, subject to the terms of this Contract, to seek a restraining order, injunction, or similar order to enforce the confidentiality provisions set forth in Article 6 or to seek interim or conservatory measures. Monetary damages will be available only in accordance with Section 15.2.

16. Inspection and Factory Tests

Seller shall apply its normal quality-control procedures in manufacturing Products. Seller shall attempt to accommodate requests by Buyer to witness Seller's factory tests of Products, subject to appropriate access restrictions, if such witnessing can be arranged without delaying the work.

17. Terms of Software and Services

- 17.1 If Seller provides any Software to Buyer, the End User License Addendum will apply. To the extent the Seller provides any Ongoing Services to Buyer, those Ongoing Services are provided subject to the terms and conditions set forth in the Services Addendum and/or any applicable Terms of Use. Any training services provided from Seller to Buyer's personnel shall be governed by the terms and conditions of a training agreement or the Terms of Use for the applicable learning management system. If there is any conflict between these Terms and Conditions of Sale and the terms of any addendum incorporated pursuant to this Article 17, the addenda will take precedence with respect to the applicable scope.
- 17.2 The Software provided by Seller may contain or be delivered with certain third party software ("Third Party Software"). Seller shall have only such rights and/or licenses, if any, to use the Third Party Software as are set forth by the provider of the Third Party Software. Buyer will have no obligation whatsoever under this Agreement or any of the addenda to support or maintain any such Third Party Software. Buyer will not have any liability under this Agreement or any of the addenda, regardless of the nature of the claim or the alleged damages, for any claim arising from or related to Licensee's use or distribution of the Third Party Software. Seller disclaims any and all representations and warranties, express, implied or statutory, with respect to any and all such Third Party Software, including without limitation, any warranties of merchantability, fitness for a particular purpose, system integration, data accuracy, title, non-infringement, quiet enjoyment, and/or non-interference. Each of the parties acknowledges and agrees that the foregoing disclaimers, limitations and exclusions of liability form an essential basis of the bargain between the parties, and that, absent such disclaimers, limitations and exclusions, the terms of this Agreement, including, without limitation, any economic terms, would be substantially different.

18. General Clauses

- 18.1 Seller may assign or novate its rights and obligations under the Contract, in whole or in part, to any of its affiliates or may assign any of its accounts receivable under this Contract to any party without Buyer's consent. Buyer agrees to execute any documents that may be necessary to complete Seller's assignment or novation. Seller may subcontract portions of the work, so long as Seller remains responsible for it. The delegation or assignment by Buyer of any or all of its rights or obligations under the Contract without Seller's prior written consent (which consent shall not be unreasonably withheld) will be void.
- 18.2 Buyer shall notify Seller immediately upon any change in ownership of more than 50% of Buyer's voting rights or of any controlling interest in Buyer. If Buyer fails to do so or Seller objects to the change, Seller may (a) terminate the Contract, (b) require Buyer to provide adequate assurance of performance (including but not limited to payment), and/or (c) put in place special controls regarding Seller's Confidential Information.
- 18.3 If any Contract provision is found to be void or unenforceable, the remainder of the Contract will not be affected. The parties will endeavor to replace any such void or unenforceable provision with a new provision that achieves substantially the same practical and economic effect and is valid and enforceable.
- 18.4 The following Articles will survive termination or cancellation of the Contract: 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 15, 17, 18, and 19.
- 18.5 The Contract represents the entire agreement between the parties. No oral or written representation or warranty not contained in this Contract will be binding on either party. Buyer's and Seller's rights, remedies and obligations arising from or related to Products and Services sold under this Contract are limited to the rights, remedies and obligations stated in this Contract. No modification, amendment, rescission or waiver will be binding on either party unless agreed in writing.

18.6 Except as provided in Article 14 (Limitations of Liability), this Contract is only for the benefit of the parties, and no third party will have a right to enforce any provision of this Contract, whether under the English Contracts (Rights of Third Parties) Act of 1999 or otherwise.

19. U.S. Government Contracts

- 19.1 This Article 19 applies only if the Contract is for the direct or indirect sale to any agency of the U.S. government and/or is funded in whole or in part by any agency of the U.S. government.
- 19.2 Buyer agrees that all Products and Services provided by Seller meet the definition of “commercial- off-the-shelf” (“COTS”) or “commercial item” as those terms are defined in Federal Acquisition Regulation (“FAR”) 2.101. To the extent the Buy American Act, Trade Agreements Act, or other domestic preference requirements are applicable to this Contract, the country of origin of Products is unknown unless otherwise specifically stated by Seller in this Contract. Buyer agrees any Services offered by Seller are exempt from the Service Contract Act of 1965 (FAR 52.222-41). Buyer represents and agrees that this Contract is not funded in whole or in part by American Recovery Reinvestment Act funds unless expressly stated in the Contract. The version of any applicable FAR clause listed in this Article 19 will be the one in effect on the effective date of this Contract.
- 19.3 If Buyer is an agency of the U.S. Government, then as permitted by FAR 12.302, Buyer agrees that all paragraphs of FAR 52.212-4 (except those listed in 12.302(b)) are replaced with these Terms and Conditions of Sale. Buyer further agrees that the subparagraphs of FAR 52.212-5 apply only to the extent applicable for sale of COTS or commercial items and as appropriate for the Contract Price.
- 19.4 If Buyer is procuring the Products or Services as a contractor or subcontractor at any tier, on behalf of any agency of the U.S. Government, then Buyer agrees that FAR 52.212-5(e) or 52.244-6 (whichever is applicable) applies only to the extent applicable for sale of COTS and/or commercial items and as appropriate for the Contract Price.

Services Addendum to Terms and Conditions

THIS SERVICES ADDENDUM ("ADDENDUM") INCORPORATES BY REFERENCE THE TERMS AND CONDITIONS, THE CONTRACT AND THE END USER LICENSE ADDENDUM TO WHICH THIS ADDENDUM IS ATTACHED, REFERENCED, OR INCORPORATED INTO AND INCLUDES THE FOLLOWING PROVISIONS. IN THE EVENT OF ANY CONFLICT BETWEEN THIS ADDENDUM, THE TERMS AND CONDITIONS, OR THE CONTRACT, THE CONTRACT SHALL FIRST TAKE PRECEDENCE, AND THEN ANY APPLICABLE ADDENDA. IN THE EVENT OF ANY CONFLICT BETWEEN THE END USER LICENSE ADDENDUM AND THIS ADDENDUM, THIS SERVICES ADDENDUM SHALL TAKE PRECEDENCE. TERMS NOT DEFINED HEREIN SHALL HAVE THE MEANING SET FORTH IN THE TERMS AND CONDITIONS OF SALE, THE CONTRACT OR THE END USER LICENSE ADDENDUM, AS APPLICABLE.

1. Support Services.

(a) During the term of the Contract, and subject to the exclusions set forth herein, Licensor will provide, or cause to be provided through subcontractors at its discretion, the following Services (such support Services, collectively, the "Support Services"), for consideration to be set forth in the applicable Contract (the "Support Fees"), with such consideration subject to increase in accordance with the notice and other applicable terms of the Contract:

(i) Licensor will make available to Licensee a telephone number and email address (the "Support Contacts") for Licensee to call or email reporting Errors. Such calls and emails will be returned and addressed during Licensor's standard business hours which are from 9:00 am to 5:00 pm local time from Monday to Friday, excluding local holidays;

(ii) Notwithstanding the foregoing, Support Contacts may be inoperable and unavailable for reasons outside Licensor's control including Licensee's own telecommunications or network service providers, a Force Majeure Event (defined below), any systemic network failure, or any failure in Licensee's own hardware, software or network connection; and

(iii) Licensor will maintain the Licensed Software by providing to Licensee Software Updates and Maintenance Releases from time to time, in accordance with the terms of the End User License Addendum.

(iii) Licensor will use commercially reasonable efforts so that the Subscription Software and Service Applications and Tools shall have an uptime (i.e., shall be operational and accessible by the Licensee) of at least 95%. The uptime percentage shall not include any minutes of downtime resulting from (1) scheduled maintenance (of which notice will be provided to Licensee), (2) Force Majeure Events, (3) malicious attacks on the system, (4) issues associated with Licensee's computing devices, local area networks or Internet service provider connections, or (5) Licensor's inability to deliver services because of Licensee's acts or omissions. Licensor may take the Subscription Software offline for scheduled maintenances. While the unavailability of the Subscription Software due to such scheduled maintenance will not be included in the uptime percentage specified above, Licensor shall provide the schedule for the scheduled maintenance to Licensee in writing. Licensor may change its schedule for the scheduled maintenance upon providing advance written notice to Licensee.

(iv) Except as provided in the Contract, Licensor reserves the right to limit Support Service phone and technical calls from Licensee to 5 per month.

(v) All Software Updates and Maintenance Releases, in each case whether updates to Licensed Software or to Subscription Software, provided to Licensee by Licensor pursuant to the terms of this Agreement shall be subject to the terms and conditions of the End User License Addendum between Licensor and Licensee. Licensee acknowledges and agrees that Maintenance Releases do not include new releases or versions of the Software or added functionality of the Software, which are provided at Licensor's sole discretion under the terms and conditions of the End User License Addendum.

(b) Licensor will provide, or cause to be provided through subcontractors at its discretion, software support only for (i) the current version of the Licensed Software and (ii) the immediately previous version of the Licensed Software for a minimum period of twelve (12) months following the general availability of a new release or Software Update. After this time, Licensor shall have no further responsibility for supporting and maintaining any prior release of the Licensed Software.

Licensor will not provide software support for any version of the Subscription Software other than the current version.

(c) Licensee shall not make any improvements, customizations or modifications to the Software and Service Applications and Tools without prior approval and in any case Software Support shall be provided pursuant to a written agreement for a fee outlined in a SOW executed by Licensor and Licensee.

(d) Upon termination of the software license, Licensee or Licensor (upon request) shall disable the software.

(e) Additional Support Services requested as a result of, or with respect to, causes which are not attributable to Licensor shall be provided at Licensor's sole discretion. If provided, such Support Services shall be, billed to Licensee at Licensor's then-current rates. Causes which are not attributed to Licensor include, but are not limited to:

(i) technological change, modification of or damage to the Software or its operating environment (unless such modification or damage is caused by Licensor);

(ii) Licensee's failure to operate the Software in the proper and reliable network, hardware and software environment as specified by Licensor;

(iii) Licensee's failure to operate the Software in accordance with the Documentation;

(iv) Licensee's failure to implement any Maintenance Releases, or other updates, improvements, modifications and/or patches provided by Licensor in a timely manner, provided that Licensee has been provided with email notification to Licensee contacts who were flagged to receive such information and availability of the same;

(v) any virus, malware or similar issue on Licensee's system;

(vi) fire, water damage, problems with the power grid, Internet connectivity, lightning, bad weather or any other such event; or

(vii) compatibility of the Software with other software or hardware utilized by Licensee.

(f) Licensor's provision of software support to Licensee is subject to Licensee's compliance with the following:

(i) Licensee shall document and promptly report all Errors to Licensor;

(ii) Licensee shall maintain a current backup copy of the Licensed Software and all related data;

(iii) Licensee shall train its personnel in the use and application of the Software and provide all initial troubleshooting of Software and Errors to Licensor;

(iv) Licensee shall comply with the applicable Service Applications and Tools Terms of Use; and

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[End of Services Addendum]

Dover Fueling Solutions
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[End of Terms]

DOVER FUELING SOLUTIONS – EXTRANET TERMS OF USE Revised: July 19, 2024

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5. SUPPORT

Except as explicitly agreed by DFS, DFS is not obligated to provide you any support for the Site, and this TOU does not entitle you to any support for the Site.

6. PERSONAL INFORMATION; REGISTRATION; ACCOUNT

(a) You acknowledge and agree that by accessing or using the Site, DFS may receive certain information about you, including personal information, and DFS may collect, use, disclose, store and process such information in accordance with the DFS [Privacy Policy](#).

(b) DFS may enable you to access and browse the Site without registering, but some features may not be accessible unless you register. In registering for the Site, you agree to: (i) provide true, accurate, current and complete information about yourself as prompted by the Site's registration form (the "Registration Data"); and (ii) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or DFS reasonably suspects that you have done so, DFS may suspend or terminate your account.

(c) You may not share your account or password with anyone. You are fully responsible for all activities that occur under your account, whether or not you authorized the particular use or user, and regardless of your knowledge of such use. You agree to notify DFS immediately of any unauthorized use of your account or password or any other similar breach of security.

(d) You acknowledge and agree that (i) you are solely responsible for any data, usage and other charges assessed by mobile, cable, internet or other communications services providers for your access to and use of the Site; and (ii) if your account remains inactive for an extended period of time, DFS may suspend or terminate your account, with or without notice to you, and delete your Content (as defined in Section 7(a)), all without liability to you.

7. RESPONSIBILITY FOR CONTENT

(a) You acknowledge and agree that all information, data, data records, databases, text, software, music, sounds, photographs, images, graphics, videos, messages, scripts, tags and other content and materials accessible through the Site, whether publicly posted or privately transmitted ("Content"), are the sole responsibility of the person from whom such Content originated. This means that you, and not DFS, are entirely responsible for all Content that you upload, post, email, transmit or otherwise make available through the Site ("Your Content"), and other users of the Site, and not DFS, are similarly responsible for all Content they upload, post, email, transmit or otherwise make available through the Site ("User Content").

(b) You acknowledge and agree that DFS has no obligation to pre-screen any Content (including Your Content and User Content), although DFS reserves the right in its sole discretion to pre-screen, refuse or remove any Content. Without limiting the generality of the foregoing sentence, DFS shall have the right to remove any Content that violates this TOU or that it deems objectionable.

(c) To the extent that you submit any Content, you represent and warrant that: (i) you have all necessary right and authority to grant the rights set forth in this TOU with respect to Your Content; and (ii) Your Content does not violate any duty of confidentiality owed to another party, or the copyright, trademark, right of privacy, right of publicity or any other right of any other party.

8. RIGHTS TO CONTENT

(a) DFS does not claim ownership of Your Content. However, you grant DFS and its service providers a worldwide, perpetual, royalty-free, fully-paid-up, non-exclusive, sublicensable, transferable license to use, reproduce, modify, adapt, create derivative works from, publicly perform, publicly display, distribute, make and have made Your Content (in any form and any medium, whether now known or later developed) as necessary to (i) provide access to the Site to you and other users (including any maintenance, calibration, diagnostic, and troubleshooting); and (ii) monitor and improve the Site.

(b) You acknowledge and agree that DFS may collect or generate Aggregate Data in connection with providing you with access to the Site, and you hereby grant DFS and its service providers a perpetual, irrevocable, worldwide, royalty-free, fully-paid-up, non-exclusive, sublicensable, transferable license to use, reproduce, modify, adapt, create derivative works from, publicly perform, publicly display, distribute, make and have made Aggregate Data for any lawful purpose. "Aggregate Data" means Your Content that has been aggregated with information from other users or otherwise de-identified in a manner that does not allow such data about you to be separated from the aggregate data and identified as originating from you.

(c) Except with respect to Your Content, you acknowledge and agree that, as between you and DFS, DFS and its licensors own all rights, title and interest (including all intellectual property rights) in the Site and all Content and other materials within the Site. The Site is protected by U.S. and international copyright, trademark, patent and other intellectual property laws and treaties. DFS reserves all rights not expressly granted to you herein.

9. CONFIDENTIALITY

(a) As used herein, "Confidential Information" means information disclosed or made available by DFS through the Site that DFS identifies as confidential or proprietary or, given the nature of the information or the circumstances surrounding its disclosure, should reasonably be understood to be confidential or proprietary. Confidential Information shall include, but not be limited to, information relating to DFS' intellectual property; technology; know-how; prototypes; current and future products and services; product manuals and documentation; processes; customers; vendors; employees; contractors; business plans and methods; research and development; promotional and marketing activities; finances; contracts and business arrangements; and other business affairs. Confidential Information shall not include any information that: (i) is known or becomes known to the public in general (other than as a result of a breach of this Section 9); (ii) was known by you or in your lawful possession prior to receipt from DFS; (iii) is or has been independently developed or conceived by you without use of or reference to Confidential Information; or (iv) is or has been made known or disclosed to you by a third party without a breach of any obligation of confidentiality.

(b) You further agree that you will secure and protect the confidentiality of the Confidential Information using precautions that are at least as stringent as you take to protect your own confidential information of a similar nature, but in no case less than reasonable precautions. All "Confidential" and "Proprietary" information fall within the Washington State Transparency Laws and Confidential Provision are to be posted to the Buyers "Digital Records Center" for compliance with legal requirements. The Buyer agrees to exempt the Seller's confidential information from posting in the Digital Records Center.

1D. USER CONDUCT

In connection with your access to or use of the Site, you shall not:

(a) upload, post, email, transmit or otherwise make available any Content that: (i) is illegal, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful or otherwise objectionable; (ii) may not be made available under any law or under contractual or fiduciary relationships (such as confidential or proprietary information learned as part of an employment relationship or under a non-disclosure agreement); (iii) infringes any patent, trademark, trade secret, copyright or other proprietary right of any party; (iv) consists of unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, commercial electronic messages or any other form of solicitation; (v) contains software viruses or any other code, files or programs designed to interrupt, destroy or limit the functionality of any software or hardware; or (vi) consists of information that you know or have reason to know is false or inaccurate;

(b) use, reproduce, modify, adapt, create derivative works from, publicly perform, publicly display, distribute, make, have made, assign, pledge, transfer or otherwise grant rights to the Site, except as expressly permitted under this TOU

(c) reverse engineer, disassemble, decompile, translate, or otherwise attempt to derive the source code, trade secrets, algorithms, architectural framework or data records of any software within or associated with the Site;

(d) frame or utilize any framing technique to enclose any Content;

(e) use spiders, crawlers, robots, scrapers, automated tools or any other similar means to access the Site, or substantially download, reproduce or archive any portion of the Site;

(f) access the Site for the purpose of developing, marketing, selling or distributing any product or service that competes with or includes features substantially similar to the Site or any products or services offered by DFS;

(g) rent, lease, lend, sell or sublicense the Site or otherwise provide access to the Site as part of a service bureau or similar fee-for-service purpose;

(h) sell, share, transfer, trade, loan or exploit for any commercial purpose any portion of the Site, including your user account and password; or

(i) remove or obscure any proprietary notice that appears within the Site;

(j) remove, disable, circumvent, or otherwise create or implement any workaround to any copy protection, rights management, or security features in or protecting the Application;

(k) impersonate any person or entity, including DFS personnel, or falsely state or otherwise misrepresent your affiliation with any person or entity;

(l) act in a manner that negatively affects the ability of other users to access or use the Site;

(m) interfere with or disrupt the Site or servers or networks connected to the Site, or disobey any requirements, procedures, policies or regulations of networks connected to the Site;

(n) violate any applicable local, state, provincial, federal or international law or regulation.

11. FEEDBACK

If you elect to provide or make available to DFS any suggestions, comments, ideas, improvements or other feedback relating to the Site ("Feedback"), DFS shall own and be free to use, reproduce, modify, adapt,

create derivative works from, publicly perform, publicly display, distribute, make, have made, assign, pledge, transfer or otherwise grant rights in your Feedback in any form and any medium (whether now known or later developed), without credit or compensation to you.

12. LINKS AND EXTERNAL MATERIALS

The Site or users of the Site may provide links or other connections to other websites or resources. You acknowledge and agree that DFS does not endorse and is not responsible for any content, advertising, products, services or other materials on or available through such sites or resources ("External Materials"). External Materials are subject to different terms of use and privacy policies. You are responsible for reviewing and complying with such terms of use and privacy policies. You further acknowledge and agree that DFS shall not be liable for any damage or loss resulting from or arising out of use of or reliance on any External Materials.

13. MODIFICATIONS TO THE SITE

DFS reserves the right to modify, suspend or discontinue the Site or any product or service to which it connects, with or without notice, and DFS shall not be liable to you or to any third party for any such modification, suspension or discontinuance. DFS may at its sole discretion from time to time develop patches, bug fixes, updates, upgrades and other modifications to improve the performance of the Site or related services ("Updates").

14. INDEMNIFICATION

You shall indemnify, defend and hold DFS harmless from and against all claims, demands, losses, damages, costs, liabilities and expenses, including reasonable attorneys' fees, resulting from or arising out of: (i) Your Content; (ii) your violation of this TOU, any law or regulation, or any rights (including intellectual property rights) of another party; or (iii) your access to or use of the Site.

15. DISCLAIMER OF WARRANTIES

(a) YOUR USE OF THE SITE IS AT YOUR SOLE RISK. THE SITE IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DFS EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED OR ARISING FROM STATUTE, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

(b) DFS MAKES NO WARRANTY OR REPRESENTATION THAT: (i) THE SITE WILL MEET YOUR REQUIREMENTS; (ii) ACCESS TO THE SITE WILL BE UNINTERRUPTED, TIMELY, SECURE, VIRUS-FREE OR ERROR-FREE; OR (iii) THE INFORMATION, CALCULATIONS AND ANY RESULTS THAT MAY BE OBTAINED FROM ACCESS TO OR USE OF THE SITE WILL BE ACCURATE, RELIABLE, CURRENT OR COMPLETE. ALL CONTENT MADE AVAILABLE THROUGH THE SITE IS MADE AVAILABLE FOR INFORMATIONAL PURPOSES ONLY. YOU ACKNOWLEDGE AND AGREE THAT YOU ARE SOLELY RESPONSIBLE FOR VERIFYING THE ACCURACY AND COMPLETENESS OF ALL CONTENT OBTAINED FROM THE SITE BEFORE TAKING ANY ACTION BASED UPON SUCH CONTENT.

(c) THIS DISCLAIMER OF WARRANTY MAY NOT BE VALID IN SOME JURISDICTIONS AND YOU MAY HAVE WARRANTY RIGHTS UNDER LAW WHICH MAY NOT BE WAIVED OR DISCLAIMED. ANY SUCH WARRANTY EXTENDS ONLY FOR THIRTY (30) DAYS FROM THE EFFECTIVE DATE OF THIS AGREEMENT (UNLESS SUCH LAW PROVIDES OTHERWISE).

16. LIMITATION OF LIABILITY

(a) DFS SHALL NOT BE LIABLE FOR ANY LOST PROFITS OR COST OF COVER, OR INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES ARISING FROM ANY TYPE OR MANNER OF COMMERCIAL, BUSINESS OR FINANCIAL LOSS, EVEN IF DFS HAD ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE. IN NO EVENT SHALL DFS' TOTAL LIABILITY TO YOU FOR ANY AND ALL CLAIMS ARISING FROM OR RELATING TO THIS TOU OR YOUR ACCESS TO OR USE OF (OR INABILITY TO ACCESS OR USE) THE SITE EXCEED THE GREATER OF FIFTY

DOLLARS (\$50) OR THE AMOUNT PAID BY YOU TO DFS FOR ACCESS TO THE SITE WITHIN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE APPLICABLE CLAIM(S) AROSE.

(b) THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. INsofar AS APPLICABLE LAW PROHIBITS ANY LIMITATION ON LIABILITY HEREIN, THE PARTIES AGREE THAT SUCH LIMITATION WILL BE AUTOMATICALLY MODIFIED, BUT ONLY TO THE EXTENT SO AS TO MAKE THE LIMITATION COMPLIANT WITH APPLICABLE LAW. THE PARTIES AGREE THAT THE LIMITATIONS ON LIABILITIES SET FORTH HEREIN ARE AGREED ALLOCATIONS OF RISK AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

17. TERMINATION

(a) *Term.* The term of this TOU commences upon the earliest to occur of (i) when you download the Application; (ii) when you install the Application; (iii) when you otherwise acknowledge your acceptance of this TOU, or (iv) your first use of the Application, and will continue in effect until terminated by you or Company as set forth in this Section 17 ("Term").

(b) *Termination by You.* You may terminate this TOU by uninstalling and deleting the Application and all copies thereof from your possession, and thereafter, providing notice to DFS.

(c) *Termination by Company.* Company may terminate this TOU at any time upon notice to you, for any reason or no reason.

(d) *Automatic Termination.* If you violate this TOU, all rights granted to you under this TOU shall terminate automatically and immediately, with or without notice to you.

(e) *Effect of Termination.* Upon termination of this TOU for any reason: (i) all rights granted to you under this TOU shall immediately terminate; (ii) you shall immediately cease using the Site; (iii) you shall immediately delete all Content (other than Your Content), which you have downloaded; (iv) DFS, in its sole discretion, may remove and discard Your Content and delete your user account; and (v) any provision that, by its terms, is intended to survive the expiration or termination of this TOU shall survive such expiration or termination.

18. GOVERNING LAW

This TOU shall be governed by and construed and enforced in accordance with the laws of the State of Washington, without regard to conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this TOU.

19. BINDING ARBITRATION AND CLASS ACTION WAIVER

ALL CLAIMS AND DISPUTES INVOLVING THE PARTIES SHALL BE RESOLVED BY BINDING ARBITRATION RATHER THAN IN COURT, EXCEPT THAT YOU MAY ASSERT CLAIMS IN SMALL CLAIMS COURT (DEFINED FOR THE PURPOSES OF THIS AGREEMENT AS A COURT OF LIMITED JURISDICTION THAT MAY ONLY HEAR CLAIMS NOT EXCEEDING \$5,000) IF YOUR CLAIMS ARE WITHIN THE COURT'S JURISDICTION. THERE IS NO JUDGE OR JURY IN ARBITRATION, AND COURT REVIEW OF AN ARBITRATION AWARD IS LIMITED.

The arbitration shall be conducted by the American Arbitration Association (AAA) under its then-applicable Commercial Arbitration Rules or, as appropriate, its Consumer Arbitration Rules. The AAA's rules are available at <http://www.adr.org/>. The arbitrator will, among other things, have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any Claims. Payment of all filing, administration and arbitrator fees shall be governed by the AAA's rules. The arbitration shall be conducted in the English language by a single independent and neutral arbitrator. For any hearing conducted in person as part of the arbitration, you agree

FUELING SOLUTIONS

that such hearing shall be conducted in Snohomish County, Washington, United States of America or, if the Consumer Arbitration Rules apply, another location reasonably convenient to both parties with due consideration of their ability to travel and other pertinent circumstances, as determined by the arbitrator. The decision of the arbitrator on all matters relating to the Claim shall be final and binding. Judgment on the arbitral award may be entered in any court of competent jurisdiction.

WE EACH AGREE THAT ALL CLAIMS AND DISPUTES INVOLVING THE PARTIES SHALL BE RESOLVED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, COLLECTIVE, CONSOLIDATED OR REPRESENTATIVE ACTION, ARBITRATION OR OTHER SIMILAR PROCESS AND EXPRESSLY WAIVE ANY RIGHT TO HAVE A CLAIM DETERMINED OR RESOLVED ON A CLASS, COLLECTIVE, CONSOLIDATED OR REPRESENTATIVE BASIS. IF FOR ANY REASON THE PROVISIONS OF THE PRECEDING SENTENCE ARE HELD TO BE INVALID OR UNENFORCEABLE IN A CASE IN WHICH CLASS, COLLECTIVE, CONSOLIDATED OR REPRESENTATIVE CLAIMS HAVE BEEN ASSERTED, THE PROVISIONS OF THIS SECTION 19 REQUIRING BINDING ARBITRATION SHALL LIKEWISE BE UNENFORCEABLE AND NULL AND VOID. IF FOR ANY REASON A CLAIM PROCEEDS IN COURT RATHER THAN IN ARBITRATION, WE EACH WAIVE ANY RIGHT TO A JURY TRIAL AND AGREE THAT SUCH CLAIM SHALL BE BROUGHT ONLY IN A COURT OF COMPETENT JURISDICTION IN EVERETT WASHINGTON. YOU HEREBY SUBMIT TO THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS AND WAIVE ANY OBJECTION ON THE GROUNDS OF VENUE, FORUM NON-CONVENIENS OR ANY SIMILAR GROUNDS WITH RESPECT TO ANY SUCH CLAIM.

Notwithstanding anything to the contrary, you and DFS may seek injunctive relief and any other equitable remedies from any court of competent jurisdiction to protect our intellectual property rights, whether in aid of, pending or independently of the resolution of any dispute pursuant to the arbitration procedures set forth in this Section 19.

If the arbitration agreement in this Section 19 does not apply to a given Claim, you agree that any litigation of that Claim (whether in small claims court or otherwise) shall be subject to the exclusive jurisdiction of the state or federal courts in Snohomish County, Washington, United States of America.

If DFS implements any material change to this Section 19, such change shall not apply to any Claim for which you provided written notice to DFS before the implementation of the change

20. U.S. GOVERNMENT ENTITIES

This section applies to access to or use of the Site by a branch or agency of the United States Government. The Site includes "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 and qualifies as "commercial items" as defined in 48 C.F.R. 2.101. Such items are provided to the United States Government: (a) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (b) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-3. The United States Government shall acquire only those rights set forth in this TOU with respect to the such items, and any access to or use of the Site by the United States Government constitutes: (a) agreement by the United States Government that that such items are "commercial computer software" and "commercial computer software documentation" as defined in this section; and (b) acceptance of the rights and obligations herein.

21. PROCEDURE FOR MAKING CLAIMS OF COPYRIGHT INFRINGEMENT

If you believe that your work has been made available through the Site in a way that constitutes copyright infringement, please provide DFS's Agent for Notice of Copyright Claims the following information: (a) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (b) a description of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works are covered by a single notification, a representative list of such works; (c) a description of the material that you claim is infringing and where that material may be accessed within the Site; (d) your address, telephone number and email address; (e) a statement by you that you have a good-faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law; and (f) a statement from you that the information in the notification is accurate and, under penalty of perjury,

that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. DFS's Agent for Notice of Copyright Claims can be reached as follows:

Agent for Notice of Copyright Claims
Wayne Fueling Systems LLC
3814 Jarrett Way
Austin, TX 78728, USA
Email: legal@doverfs.com

22. CALIFORNIA USERS & RESIDENTS

In accordance with California Civil Code §1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting such unit in writing at 1625 North Market Blvd., Suite N 112, Sacramento, CA 95834, or by telephone at (800) 952-5210.

23. GENERAL PROVISIONS

This TOU constitutes the entire agreement between you and DFS concerning your access to and use of the Site. It supersedes all prior and contemporaneous oral or written negotiations and agreements between you and DFS with respect to such subject matter. In the event of any conflict between or among this TOU and any additional terms to which this TOU refers, the terms and conditions of this TOU shall take precedence and govern with regard to the Site.

You agree that, except for DFS Parties and as otherwise expressly provided in this TOU, there shall be no third-party beneficiaries to this TOU. For the purposes of this TOU, the words "such as," "include," "includes" and "including" shall be deemed to be followed by the words "without limitation."

This TOU may not be amended by you except in a writing executed by you and an authorized representative of DFS. You may not assign or delegate any right or obligation under this TOU without the prior written consent of DFS. The failure of DFS to exercise or enforce any right or provision of this TOU shall not constitute a waiver of such right or provision. If any provision of this TOU is held to be invalid or unenforceable under applicable law, then such provision shall be construed, limited, modified or, if necessary, severed to the extent necessary to eliminate its invalidity or unenforceability, without in any way affecting the remaining parts of this TOU.

Any prevention of or delay in performance by DFS hereunder due to labor disputes, acts of god, governmental restrictions, enemy or hostile governmental action, fire or other casualty or other causes beyond its reasonable control shall excuse the performance of its obligations for a period equal to the duration of any such prevention or delay.

DOVER FUELING SOLUTIONS – LMS TERMS OF USE
Revised: January 29, 2021

1. ACCEPTANCE OF TERMS

Wayne Fueling LLC, on behalf of itself and its affiliates within the Dover Fueling Solutions family of companies (collectively, "DFS"), provides technology-enabled services at the website and associated domains of <https://producttraining.doverfuelingsolutions.com/> including all information and materials accessible from the Website, all of which are attached to this agreement. This "agreement" includes all terms and condition in thei document, The Terms, Technical Requirements and .all other terms and conditions are incorporated herein by reference.

PLEASE REVIEW THIS TOU CAREFULLY, INCLUDING, WITHOUT LIMITATION: (A) **BINDING ARBITRATION**, INCLUDING THE **CLASS ACTION WAIVER**, (B) **LIMITATION OF LIABILITY**, AND (C) **INDEMNIFICATION**. BY REGISTERING FOR AN ACCOUNT OR OTHERWISE ACCESSING OR USING THE LMS PLATFORM (INCLUDING ANY APPS), YOU AGREE TO BE BOUND BY THIS TOU, INCLUDING ANY UPDATES OR REVISIONS POSTED HERE OR OTHERWISE COMMUNICATED TO YOU. IF YOU ARE ENTERING INTO THIS TOU ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU ARE AUTHORIZED AND LAWFULLY ABLE TO BIND SUCH ENTITY TO THIS TOU, IN WHICH CASE THE TERM "YOU" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS TOU, YOU MAY NOT ACCESS OR USE THE LMS PLATFORM, AND YOU MUST UNINSTALL THE LMS PLATFORM, AND ALL OF ITS COMPONENTS, FROM ALL DEVICES OWNED OR CONTROLLED BY YOU.

THIS TOU REQUIRES BINDING ARBITRATION TO RESOLVE ANY DISPUTE OR CLAIM ARISING OUT OF OR RELATING IN ANY WAY TO THIS TOU OR YOUR ACCESS TO OR USE OF THE LMS PLATFORM, INCLUDING THE VALIDITY, APPLICABILITY OR INTERPRETATION OF THIS TOU, AND YOU AGREE THAT ANY SUCH CLAIM SHALL BE RESOLVED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, COLLECTIVE, CONSOLIDATED OR REPRESENTATIVE ACTION, ARBITRATION OR OTHER SIMILAR PROCESS. PLEASE REVIEW SECTION 19 CAREFULLY TO UNDERSTAND YOUR RIGHTS AND OBLIGATIONS WITH RESPECT TO THE RESOLUTION OF ANY CLAIM.

You represent and warrant that you are: (i) over eighteen (18) years of age or the age of majority in your jurisdiction, whichever is greater; (ii) of legal age to form a binding contract; (iii) not a person barred from using the LMS Platform under the laws of your country of residence or any other applicable jurisdiction; (iv) not located in a country that is subject to a U.S. Government embargo or designated by the U.S. Government as a "terrorist supporting" country; and (v) not listed on any U.S. Government list of prohibited or restricted parties, including the Specially Designated Nationals List.

2. GRANT OF RIGHTS

(a) DFS grants you a limited, non-exclusive, non-transferable, non-sublicensable, revocable license during the Term solely to (i) access and view pages within the LMS Platform; (ii) access and use any online software, applications or other similar components provided through the LMS Platform, only within the LMS Platform and only in the form found within the LMS Platform; and (iii) download and copy, certain Content (defined below) designated by DFS, only as reasonably necessary and provided you do not modify such content, treat such Content as Confidential Information (defined below), and use such downloaded or copied Content solely for your internal business purposes. Your access to and use of the LMS Platform must further comply in all material respects with all usage guidelines posted on the LMS Platform itself.

(b) All rights granted to you under this TOU are subject to and conditioned upon your compliance with this TOU and may only be exercised by you for your personal, non-commercial use or internal business purposes.

(c) You may not use the DFS names, brands, trademarks, service marks and logos that DFS makes available on the LMS Platform ("Marks"). DFS claims trademark protection over all such Marks and you

will not use the Marks except as expressly authorized herein. You will not remove or alter the Marks or any proprietary notices on the LMS Platform. The Marks may not be included in or as part of any registered corporate name, any other logo, or service or product name. You may not create any derivative works of the Marks or use the Marks in a manner that creates or reasonably implies an inaccurate sense of endorsement, sponsorship, or association with DFS. You will not otherwise use business names or logos in a manner that can mislead, confuse, or deceive any third party. All use of the Marks and all goodwill arising out of such use, will inure to DFS' benefit.

3. PRIVACY POLICY

In addition to this TOS, the DFS [Privacy Policy](https://www.doverfuelingsolutions.com/privacy) at <https://www.doverfuelingsolutions.com/privacy> ("Privacy Policy") applies to how DFS may process information provided as part of the Services. You acknowledge and agree that by accessing or using the Services, DFS may receive certain information about you, including personal data, as set forth in the Privacy Policy, and DFS may collect, use, disclose, store, share, and process such personal data in accordance with such Privacy Policy.

4. THIRD PARTY SOFTWARE

The LMS Platform may include software or other components, including open source software, made available by third parties under license terms promulgated by the licensors of such components ("[Third-Party Software](#)"). DFS is not the author or owner of Third-Party Software, and this Agreement does not govern access to or use of Third-Party Software. You acknowledge and agree that: (i) DFS has no proprietary interest in any Third-Party Software; (ii) to the extent permitted by applicable law and notwithstanding the rest of this TOU, any Third-Party Software is provided "AS IS" with all faults, and neither the licensor of such Third-Party Software nor DFS shall be liable for any direct, indirect, incidental, or consequential damages related to such Third Party Software or the use thereof; and (iii) such Third-Party Software may be subject to separate license restrictions and obligations set forth in the respective agreements related to such Third-Party Software.

5. SUPPORT

Except as explicitly agreed by DFS, DFS is not obligated to provide you any support for the LMS Platform, and this TOU does not entitle you to any support for the LMS Platform.

6. PERSONAL INFORMATION; REGISTRATION; ACCOUNT

(a) You acknowledge and agree that by accessing or using the LMS Platform, DFS may receive certain information about you, including personal information, and DFS may collect, use, disclose, store and process such information in accordance with the DFS [Privacy Policy](#).

(b) DFS may enable you to access and browse the LMS Platform without registering, but some features may not be accessible unless you register. In registering for the LMS Platform, you agree to: (i) provide true, accurate, current and complete information about yourself as prompted by the LMS Platform's registration form (the "[Registration Data](#)"); and (ii) maintain and promptly update the Registration Data to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or DFS reasonably suspects that you have done so, DFS may suspend or terminate your account.

(c) You may not share your account or password with anyone. You are fully responsible for all activities that occur under your account, whether or not you authorized the particular use or user, and regardless of your knowledge of such use. You agree to notify DFS immediately of any unauthorized use of your account or password or any other similar breach of security.

(d) You acknowledge and agree that (i) you are solely responsible for any data, usage and other charges assessed by mobile, cable, internet or other communications services providers for your access to and use of the LMS Platform; and (ii) if your account remains inactive for an extended period of time, DFS may suspend or terminate your account, with or without notice to you, and delete your Content (as defined in Section 7(a)), all without liability to you.

7. RESPONSIBILITY FOR CONTENT

(a) You acknowledge and agree that all information, data, data records, databases, text, software, music, sounds, photographs, images, graphics, videos, messages, scripts, tags and other content

and materials accessible through the LMS Platform, whether publicly posted or privately transmitted ("Content"), are the sole responsibility of the person from whom such Content originated. This means that you, and not DFS, are entirely responsible for all Content that you upload, post, email, transmit or otherwise make available through the LMS Platform ("Your Content"), and other users of the LMS Platform, and not DFS, are similarly responsible for all Content they upload, post, email, transmit or otherwise make available through the LMS Platform ("User Content").

(b) You acknowledge and agree that DFS has no obligation to pre-screen any Content (including Your Content and User Content), although DFS reserves the right in its sole discretion to pre-screen, refuse or remove any Content. Without limiting the generality of the foregoing sentence, DFS shall have the right to remove any Content that violates this TOU or that it deems objectionable.

(c) To the extent that you submit any Content, you represent and warrant that: (i) you have all necessary right and authority to grant the rights set forth in this TOU with respect to Your Content; and (ii) Your Content does not violate any duty of confidentiality owed to another party, or the copyright, trademark, right of privacy, right of publicity or any other right of any other party.

8. RIGHTS TO CONTENT

(a) DFS does not claim ownership of Your Content. However, you grant DFS and its service providers a worldwide, perpetual, royalty-free, fully-paid-up, non-exclusive, sublicensable, transferable license to use, reproduce, modify, adapt, create derivative works from, publicly perform, publicly display, distribute, make and have made Your Content (in any form and any medium, whether now known or later developed) as necessary to (i) provide access to the LMS Platform to you and other users (including any maintenance, calibration, diagnostic, and troubleshooting); and (ii) monitor and improve the LMS Platform.

(b) You acknowledge and agree that DFS may collect or generate Aggregate Data in connection with providing you with access to the LMS Platform, and you hereby grant DFS and its service providers a perpetual, irrevocable, worldwide, royalty-free, fully-paid-up, non-exclusive, sublicensable, transferable license to use, reproduce, modify, adapt, create derivative works from, publicly perform, publicly display, distribute, make and have made Aggregate Data for any lawful purpose. "Aggregate Data" means Your Content that has been aggregated with information from other users or otherwise de-identified in a manner that does not allow such data about you to be separated from the aggregate data and identified as originating from you.

(c) Except with respect to Your Content, you acknowledge and agree that, as between you and DFS, DFS and its licensors own all rights, title and interest (including all intellectual property rights) in the LMS Platform and all Content and other materials within the LMS Platform. The LMS Platform is protected by U.S. and international copyright, trademark, patent and other intellectual property laws and treaties. DFS reserves all rights not expressly granted to you herein.

9. CONFIDENTIALITY

(a) As used herein, "Confidential Information" means information disclosed or made available by DFS through the LMS Platform that DFS identifies as confidential or proprietary or, given the nature of the information or the circumstances surrounding its disclosure, should reasonably be understood to be confidential or proprietary. Confidential Information shall include, but not be limited to, information relating to DFS's: intellectual property; technology; know-how; prototypes; current and future products and services; product manuals and documentation; processes; customers; vendors; employees; contractors; business plans and methods; research and development; promotional and marketing activities; finances; contracts and business arrangements; and other business affairs. Confidential Information shall not include any information that: (i) is known or becomes known to the public in general (other than as a result of a breach of this Section 9); (ii) was known by you or in your lawful possession prior to receipt from DFS; (iii) is or has been independently developed or conceived by you without use of or reference to Confidential Information; or (iv) is or has been made known or disclosed to you by a third party without a breach of any obligation of confidentiality.

(b) You agree that you will (i) keep confidential all Confidential Information; (ii) not disclose Confidential Information to any third parties; and (iii) not use the Confidential Information outside of the direct business relationship between you and DFS. You further agree that you will secure and protect the

confidentiality of the Confidential Information using precautions that are at least as stringent as you take to protect your own confidential information of a similar nature, but in no case less than reasonable precautions.

10. USER CONDUCT

In connection with your access to or use of the LMS Platform, you shall not:

(a) upload, post, email, transmit or otherwise make available any Content that: (i) is illegal, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful or otherwise objectionable; (ii) may not be made available under any law or under contractual or fiduciary relationships (such as confidential or proprietary information learned as part of an employment relationship or under a non-disclosure agreement); (iii) infringes any patent, trademark, trade secret, copyright or other proprietary right of any party; (iv) consists of unsolicited or unauthorized advertising, promotional materials, junk mail, spam, chain letters, pyramid schemes, commercial electronic messages or any other form of solicitation; (v) contains software viruses or any other code, files or programs designed to interrupt, destroy or limit the functionality of any software or hardware; or (vi) consists of information that you know or have reason to know is false or inaccurate;

(b) use, reproduce, modify, adapt, create derivative works from, publicly perform, publicly display, distribute, make, have made, assign, pledge, transfer or otherwise grant rights to the LMS Platform, except as expressly permitted under this TOU

(c) reverse engineer, disassemble, decompile, translate, or otherwise attempt to derive the source code, trade secrets, algorithms, architectural framework or data records of any software within or associated with the LMS Platform;

(d) frame or utilize any framing technique to enclose any Content;

(e) use spiders, crawlers, robots, scrapers, automated tools or any other similar means to access the LMS Platform, or substantially download, reproduce or archive any portion of the LMS Platform;

(f) access the LMS Platform for the purpose of developing, marketing, selling or distributing any product or service that competes with or includes features substantially similar to the LMS Platform or any products or services offered by DFS;

(g) rent, lease, lend, sell or sublicense the LMS Platform or otherwise provide access to the LMS Platform as part of a service bureau or similar fee-for-service purpose;

(h) sell, share, transfer, trade, loan or exploit for any commercial purpose any portion of the LMS Platform, including your user account and password; or

(i) remove or obscure any proprietary notice that appears within the LMS Platform;

(j) remove, disable, circumvent, or otherwise create or implement any workaround to any copy protection, rights management, or security features in or protecting the Application;

(k) impersonate any person or entity, including DFS personnel, or falsely state or otherwise misrepresent your affiliation with any person or entity;

(l) act in a manner that negatively affects the ability of other users to access or use the LMS Platform;

(m) interfere with or disrupt the LMS Platform or servers or networks connected to the LMS Platform, or disobey any requirements, procedures, policies or regulations of networks connected to the LMS Platform;

(n) violate any applicable local, state, provincial, federal or international law or regulation.

11. FEEDBACK

If you elect to provide or make available to DFS any suggestions, comments, ideas, improvements or other feedback relating to the LMS Platform ("Feedback"), DFS shall own and be free to use, reproduce, modify, adapt, create derivative works from, publicly perform, publicly display, distribute, make, have made,

assign, pledge, transfer or otherwise grant rights in your Feedback in any form and any medium (whether now known or later developed), without credit or compensation to you..

12. LINKS AND EXTERNAL MATERIALS

The LMS Platform or users of the LMS Platform may provide links or other connections to other websites or resources. You acknowledge and agree that DFS does not endorse and is not responsible for any content, advertising, products, services or other materials on or available through such sites or resources ("External Materials"). External Materials are subject to different terms of use and privacy policies. You are responsible for reviewing and complying with such terms of use and privacy policies. You further acknowledge and agree that DFS shall not be liable for any damage or loss resulting from or arising out of use of or reliance on any External Materials.

13. MODIFICATIONS TO THE LMS PLATFORM

DFS reserves the right to modify, suspend or discontinue the LMS Platform or any product or service to which it connects, with or without notice, and DFS shall not be liable to you or to any third party for any such modification, suspension or discontinuance. DFS may at its sole discretion from time to time develop patches, bug fixes, updates, upgrades and other modifications to improve the performance of the LMS Platform or related services ("Updates"). DFS may develop Updates that require installation by you before you continue to access or use the LMS Platform or related services. Updates may also be automatically installed without providing any additional notice to you or receiving any additional consent from you. The manner in which Updates may be automatically downloaded and installed is determined by settings on your device and its operating system.

14. INDEMNIFICATION

You shall indemnify, defend and hold DFS harmless from and against all claims, demands, losses, damages, costs, liabilities and expenses, including reasonable attorneys' fees, resulting from or arising out of: (i) Your Content; (ii) your violation of this TOU, any law or regulation, or any rights (including intellectual property rights) of another party; or (iii) your access to or use of the LMS Platform.

15. DISCLAIMER OF WARRANTIES

(a) YOUR USE OF THE LMS PLATFORM IS AT YOUR SOLE RISK. THE LMS PLATFORM IS PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITH ALL FAULTS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DFS EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED OR ARISING FROM STATUTE, COURSE OF DEALING, USAGE OF TRADE OR OTHERWISE, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

(b) DFS MAKES NO WARRANTY OR REPRESENTATION THAT: (i) THE LMS PLATFORM WILL MEET YOUR REQUIREMENTS; (ii) ACCESS TO THE LMS PLATFORM WILL BE UNINTERRUPTED, TIMELY, SECURE, VIRUS-FREE OR ERROR-FREE; OR (iii) THE INFORMATION, CALCULATIONS AND ANY RESULTS THAT MAY BE OBTAINED FROM ACCESS TO OR USE OF THE LMS PLATFORM WILL BE ACCURATE, RELIABLE, CURRENT OR COMPLETE. ALL CONTENT MADE AVAILABLE THROUGH THE LMS PLATFORM IS MADE AVAILABLE FOR INFORMATIONAL PURPOSES ONLY. YOU ACKNOWLEDGE AND AGREE THAT YOU ARE SOLELY RESPONSIBLE FOR VERIFYING THE ACCURACY AND COMPLETENESS OF ALL CONTENT OBTAINED FROM THE LMS PLATFORM BEFORE TAKING ANY ACTION BASED UPON SUCH CONTENT.

(c) THIS DISCLAIMER OF WARRANTY MAY NOT BE VALID IN SOME JURISDICTIONS AND YOU MAY HAVE WARRANTY RIGHTS UNDER LAW WHICH MAY NOT BE WAIVED OR DISCLAIMED. ANY SUCH WARRANTY EXTENDS ONLY FOR THIRTY (30) DAYS FROM THE EFFECTIVE DATE OF THIS AGREEMENT (UNLESS SUCH LAW PROVIDES OTHERWISE).

16. LIMITATION OF LIABILITY

(a) DFS SHALL NOT BE LIABLE FOR ANY LOST PROFITS OR COST OF COVER, OR INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES

ARISING FROM ANY TYPE OR MANNER OF COMMERCIAL, BUSINESS OR FINANCIAL LOSS, EVEN IF DFS HAD ACTUAL OR CONSTRUCTIVE KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE. IN NO EVENT SHALL DFS' TOTAL LIABILITY TO YOU FOR ANY AND ALL CLAIMS ARISING FROM OR RELATING TO THIS TOU OR YOUR ACCESS TO OR USE OF (OR INABILITY TO ACCESS OR USE) THE PLATFORM EXCEED THE GREATER OF FIFTY DOLLARS (\$50) OR THE AMOUNT PAID BY YOU TO DFS FOR ACCESS TO THE PLATFORM WITHIN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE DATE ON WHICH THE APPLICABLE CLAIM(S) AROSE.

(b) THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. INsofar AS APPLICABLE LAW PROHIBITS ANY LIMITATION ON LIABILITY HEREIN, THE PARTIES AGREE THAT SUCH LIMITATION WILL BE AUTOMATICALLY MODIFIED, BUT ONLY TO THE EXTENT SO AS TO MAKE THE LIMITATION COMPLIANT WITH APPLICABLE LAW. THE PARTIES AGREE THAT THE LIMITATIONS ON LIABILITIES SET FORTH HEREIN ARE AGREED ALLOCATIONS OF RISK AND SUCH LIMITATIONS WILL APPLY NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

17. TERMINATION

(a) *Term.* The term of this TOU commences upon the earliest to occur of (i) when you download the Application; (ii) when you install the Application; (iii) when you otherwise acknowledge your acceptance of this TOU, or (iv) your first use of the Application, and will continue in effect until terminated by you or Company as set forth in this Section 17 ("Term").

(b) *Termination by You.* You may terminate this TOU by uninstalling and deleting the Application and all copies thereof from your possession, and thereafter, providing notice to DFS.

(c) *Termination by Company.* Company may terminate this TOU at any time upon notice to you, for any reason or no reason.

(d) *Automatic Termination.* If you violate the TOU, all rights granted to you under the TOU shall terminate automatically and immediately, with or without notice to you.

(e) *Effect of Termination.* Upon termination of the TOU for any reason: (i) all rights granted to you under the TOU shall immediately terminate; (ii) you shall immediately cease using the Site; (iii) you shall immediately delete all Content (other than Your Content), which you have downloaded; (iv) DFS, in its sole discretion, may remove and discard Your Content and delete your user account; and (v) any provision that, by its terms, is intended to survive the expiration or termination of this TOU shall survive such expiration or termination.

18. GOVERNING LAW

This TOU shall be governed by and construed and enforced in accordance with the laws of (i) the State of Washington if your place of business is in the U.S. or Canada, or (ii) England and Wales if your place of business is outside the U.S. or Canada, in either case without giving effect to any choice of law rules that would cause the application of laws of any other jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this TOU.

19. BINDING ARBITRATION AND CLASS ACTION WAIVER

ALL CLAIMS AND DISPUTES INVOLVING THE PARTIES SHALL BE RESOLVED BY BINDING ARBITRATION RATHER THAN IN COURT, EXCEPT THAT YOU MAY ASSERT CLAIMS IN SMALL CLAIMS COURT (DEFINED FOR THE PURPOSES OF THIS AGREEMENT AS A COURT OF LIMITED JURISDICTION THAT MAY ONLY HEAR CLAIMS NOT EXCEEDING \$5,000) IF YOUR CLAIMS ARE

WITHIN THE COURT'S JURISDICTION. THERE IS NO JUDGE OR JURY IN ARBITRATION, AND COURT REVIEW OF AN ARBITRATION AWARD IS LIMITED.

The arbitration shall be conducted by the American Arbitration Association (AAA) under its then-applicable Commercial Arbitration Rules or, as appropriate, its Consumer Arbitration Rules. The AAA's rules are available at <http://www.adr.org/>. The arbitrator will, among other things, have the power to rule on his or her own jurisdiction, including any objections with respect to the existence, scope, or validity of the arbitration agreement or to the arbitrability of any Claims. Payment of all filing, administration and arbitrator fees shall be governed by the AAA's rules. The arbitration shall be conducted in the English language by a single independent and neutral arbitrator. For any hearing conducted in person as part of the arbitration, depending upon your location, in accordance with the following: (a) if your pertinent place of business is in the U.S., legal action shall be commenced in federal court with jurisdiction applicable to, or state court located in, either Snohomish County, Washington or the location of your principal place of business; or (b) if your pertinent place of business is outside the U.S., the dispute shall be submitted to and finally resolved by arbitration under the Rules of Arbitration of the International Chamber of Commerce ("ICC"). The number of arbitrators shall be one, selected in accordance with the ICC rules, unless the amount in dispute exceeds the equivalent of U.S. \$5,000,000, in which event it shall be three. When three arbitrators are involved, each party shall appoint one arbitrator, and those two shall appoint the third within 30 days, who shall be the Chairman. The seat, or legal place, of arbitration, shall be London, England. The arbitration shall be conducted in English. In reaching their decision, the arbitrators shall give full force and effect to the intent of the parties as expressed in this TOU, and if a solution is not found in the Agreement, shall apply the governing law of this TOU. The decision of the arbitrator(s) shall be final and binding upon both parties, and neither party shall seek recourse to a law court or other authority to appeal for revisions of the decision. The decision of the arbitrator on all matters relating to the Claim shall be final and binding. Judgment on the arbitral award may be entered in any court of competent jurisdiction.

WE EACH AGREE THAT ALL CLAIMS AND DISPUTES INVOLVING THE PARTIES SHALL BE RESOLVED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, COLLECTIVE, CONSOLIDATED OR REPRESENTATIVE ACTION, ARBITRATION OR OTHER SIMILAR PROCESS AND EXPRESSLY WAIVE ANY RIGHT TO HAVE A CLAIM DETERMINED OR RESOLVED ON A CLASS, COLLECTIVE, CONSOLIDATED OR REPRESENTATIVE BASIS. IF FOR ANY REASON THE PROVISIONS OF THE PRECEDING SENTENCE ARE HELD TO BE INVALID OR UNENFORCEABLE IN A CASE IN WHICH CLASS, COLLECTIVE, CONSOLIDATED OR REPRESENTATIVE CLAIMS HAVE BEEN ASSERTED, THE PROVISIONS OF THIS SECTION 19 REQUIRING BINDING ARBITRATION SHALL LIKEWISE BE UNENFORCEABLE AND NULL AND VOID. IF FOR ANY REASON A CLAIM PROCEEDS IN COURT RATHER THAN IN ARBITRATION, WE EACH WAIVE ANY RIGHT TO A JURY TRIAL AND AGREE THAT SUCH CLAIM SHALL BE BROUGHT ONLY IN A COURT OF COMPETENT JURISDICTION IN EVERETT, WASHINGTON. YOU HEREBY SUBMIT TO THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS AND WAIVE ANY OBJECTION ON THE GROUNDS OF VENUE, FORUM NON-CONVENIENS OR ANY SIMILAR GROUNDS WITH RESPECT TO ANY SUCH CLAIM.

Notwithstanding anything to the contrary, you and DFS may seek injunctive relief and any other equitable remedies from any court of competent jurisdiction to protect our intellectual property rights, whether in aid of, pending or independently of the resolution of any dispute pursuant to the arbitration procedures set forth in this Section 19.

If the arbitration agreement in this Section 19 does not apply to a given Claim, you agree that any litigation of that Claim (whether in small claims court or otherwise) shall be subject to the exclusive jurisdiction and will be interpreted and construed in accordance with the laws of (a) the State of Washington if your invoiced place of business is in the U.S., Canada or Mexico; or (b) England and Wales if your invoiced place of business is outside the U.S., Canada or Mexico in either case without giving effect to any choice of law rules that would cause the application of laws of any other jurisdiction.

If DFS implements any material change to this Section 19, such change shall not apply to any Claim for which you provided written notice to DFS before the implementation of the change

20. U.S. GOVERNMENT ENTITIES

This section applies to access to or use of the LMS Platform by a branch or agency of the United States Government. The LMS Platform includes “commercial computer software” and “commercial computer software documentation” as such terms are used in 48 C.F.R. 12.212 and qualifies as “commercial items” as defined in 48 C.F.R. 2.101. Such items are provided to the United States Government: (a) for acquisition by or on behalf of civilian agencies, consistent with the policy set forth in 48 C.F.R. 12.212; or (b) for acquisition by or on behalf of units of the Department of Defense, consistent with the policies set forth in 48 C.F.R. 227.7202-1 and 227.7202-3. The United States Government shall acquire only those rights set forth in this TOU with respect to the such items, and any access to or use of the LMS Platform by the United States Government constitutes: (a) agreement by the United States Government that that such items are “commercial computer software” and “commercial computer software documentation” as defined in this section; and (b) acceptance of the rights and obligations herein.

21. PROCEDURE FOR MAKING CLAIMS OF COPYRIGHT INFRINGEMENT

If you believe that your work has been made available through the LMS Platform in a way that constitutes copyright infringement, please provide DFS’s Agent for Notice of Copyright Claims the following information: (a) a physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed; (b) a description of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works are covered by a single notification, a representative list of such works; (c) a description of the material that you claim is infringing and where that material may be accessed within the LMS Platform; (d) your address, telephone number and email address; (e) a statement by you that you have a good-faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent or the law; and (f) a statement from you that the information in the notification is accurate and, under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed. DFS’s Agent for Notice of Copyright Claims can be reached as follows:

Agent for Notice of Copyright Claims
Wayne Fueling Systems LLC
3814 Jarrett Way
Austin, TX 78728, USA
Email: legal@doverfs.com

22. CALIFORNIA USERS & RESIDENTS

In accordance with California Civil Code §1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting such unit in writing at 1625 North Market Blvd., Suite N 112, Sacramento, CA 95834, or by telephone at (800) 952-5210.

23. GENERAL PROVISIONS

This TOU constitutes the entire agreement between you and DFS concerning your access to and use of the LMS Platform. It supersedes all prior and contemporaneous oral or written negotiations and agreements between you and DFS with respect to such subject matter. In the event of any conflict between or among this TOU and any additional terms to which this TOU refers, the terms and conditions of this TOU shall take precedence and govern with regard to the Platform.

You agree that, except as otherwise expressly provided in this TOU, there shall be no third-party beneficiaries to this TOU. For the purposes of this TOU, the words “such as,” “include,” “includes” and “including” shall be deemed to be followed by the words “without limitation.”

This TOU may not be amended by you except in a writing executed by you and an authorized representative of DFS. You may not assign or delegate any right or obligation under this TOU without the prior written consent of DFS. The failure of DFS to exercise or enforce any right or provision of this TOU shall not constitute a waiver of such right or provision. If any provision of this TOU is held to be invalid or unenforceable under applicable law, then such provision shall be construed, limited, modified or, if necessary, severed to the

extent necessary to eliminate its invalidity or unenforceability, without in any way affecting the remaining parts of this TOU.

Any prevention of or delay in performance by DFS hereunder due to labor disputes, acts of god, governmental restrictions, enemy or hostile governmental action, fire or other casualty or other causes beyond its reasonable control shall excuse the performance of its obligations for a period equal to the duration of any such prevention or delay.

City of Everett



Mayor: Cassie Franklin

Dover Fueling Solutions

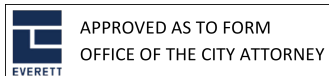
Ramon Ruiz

Senior Manager: Ruiz Ramon

Attest:



City Clerk: Marista Jorve













DFS Subscription Agreement for MVD_20240812_SD

Final Audit Report

2024-09-03

Created:	2024-08-22
By:	Marista Jorve (mjorve@everettwa.gov)
Status:	Signed
Transaction ID:	CBJCHBCAABAAGvK1DH8yXLc7bjVXCpJf0y0QTBgq6Ppf

"DFS Subscription Agreement for MVD_20240812_SD" History


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Signature Date: 2024-09-03 - 3:37:49 PM GMT - Time Source: server

 Agreement completed.

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