



DFS STANDARD MERCHANDISING TERMS & CONDITIONS

These standard merchandising terms and conditions apply to, and form part of, any Contract for the purchase of Deliverables (as defined below) by DFS.

1. DEFINITIONS	"Affiliate(s)"	means a person, corporation, firm, limited liability company, partnership, or other business entity, which directly controls or is controlled by or is under common control with an entity and for the purpose of this definition, the term "control" shall mean ownership directly or indirectly, through one or more Affiliates of fifty percent (50%) or more of the shares entitled to vote for the election of directors, in the case of a corporation, or fifty percent (50%) or more of the equity interests in the case of any other type of legal entity, status as a general partner in any partnership, or any other arrangement whereby a person or entity controls or has the right to control the Board of Directors or equivalent governing body of a corporation or other entity.
	"Confidential Information"	<p>means all information (in any form or medium) of a confidential nature whether or not marked as "Confidential", whether oral or written provided in the course of the Contract (whether on, before or after the effective date) by or on behalf of the disclosing Party and/or its Representatives to the receiving Party and/or its Representatives, including, but not limited to, customer data, business and marketing plans, organizational structure and financial information or other information that relates to the Contract (including the terms and existence of the Contract). Confidential Information shall not include information which:</p> <ul style="list-style-type: none">a) has been placed in the public domain through no breach of this Contract by the receiving Party;b) was lawfully in the possession of the receiving Party prior to its receipt from the disclosing Party pursuant to this Contract; orc) is independently developed by the receiving Party or its Representatives without reference to or use of the Confidential Information or violating any of the obligations in this Contract.
	"Contract"	<p>means any contractual undertaking (whether documented in writing or verbally communicated) as agreed upon by the Parties for the supply of Deliverables by Counterparty to DFS of which, may include without limitation, duly executed documents resembling the following:</p> <ul style="list-style-type: none">a) DFS template contract;b) Purchase orders and/or an equivalent;c) Statement of work documentation and/or an equivalent;d) Requests for proposal; and/ore) Binding letters of intent.
	"Counterparty"	means the party named under a Contract responsible for supplying the Deliverable.
	"Data Controller"	means the organization which alone or jointly, determines the purposes and means of the processing of Personal Data.
	"Data Processor"	means the organization which processes Personal Data on behalf of the Data Controller.
	"Data Protection Legislation"	means all applicable laws, rules and regulatory requirements in relation to Personal Data protection and cybersecurity, including but not limited to the EU General Data Protection Regulation 2016/679 ("GDPR") and/or the data protection or privacy laws of any other country, to the extent applicable.
	"Deliverables"	means any Goods, Services and/or Works which Counterparty shall supply, produce, manufacture and/or design in favour of DFS under a Contract.
	"DFS"	means the DFS entity and/or its Affiliates (if any) named under a Contract.
	"Effective Period"	means the period of time, as stated in a Contract, with which the Parties have agreed to be bound by that Contract and in the absence of which, shall be construed in accordance with terms of these SMTC.
	"Fees"	means the fees payable by DFS to Counterparty for the Deliverable in accordance with the terms of a Contract.



	<p>“Force Majeure Event” means an act of God, act of civil or military authority, labour disputes, fire, riots, civil commotions, sabotage, war, embargo, blockage, boycotts, floods, epidemics, pandemics, reportable communicable and virulent disease, public health emergencies, governmental restrictions and any other event which is beyond the reasonable control of either Party.</p> <p>“Good(s)” means any physical goods (which in the merchandising context includes retail merchandise, inventory, products, furniture, fixtures, etc.) purchased as a Deliverable by DFS under a Contract.</p> <p>“Intellectual Property” means any and all designs, design rights, trademarks, trade names, copyright, models, patents, databases, logos, distinctive designs, domain names or rights of any other nature capable of being deemed as intellectual property rights (whether registered or not).</p> <p>“Party or Parties” mean either DFS and/or Counterparty.</p> <p>“Personal Data” means any information or data that is considered as personal data by the applicable Data Protection Legislation and specifically regulated as such.</p> <p>“Representatives” means, as to a Party, such of its affiliates, directors, officers, employees, agents, advisors (including, without limitation, financial advisors, legal counsel and accountants), contractors, sub-contractors and controlling persons who has an interest, involvement and/or is concerned with the Contract and whose knowledge of the Confidential Information is necessary for these purposes.</p> <p>“Service(s)” means any service (other than the provision of Goods) purchased as a Deliverable by DFS under a Contract.</p> <p>“SMTC” means these standard merchandising terms and conditions of which DFS reserves the right to update from time-to-time and enforce any such updates to the maximum extent permitted by applicable laws.</p> <p>“Work(s)” means any and all reports, recommendations, specifications, drawings, technical data, sketches and any information prepared or furnished as a Deliverable for DFS under a Contract.</p>
2. ENGAGEMENT OF COUNTERPARTY	<p>a) The provisions of these SMTC shall govern the respective rights and obligations of the Parties under a Contract.</p> <p>b) Under no circumstances shall DFS be construed as agreeing to Counterparty:</p> <ul style="list-style-type: none">(i) to pay a minimum amount of fees;(ii) to guarantee a minimum order quantity; and/or(iii) to guarantee an engagement with the Counterparty for a minimum term.
3. TERM	<p>a) Each Contract shall be binding upon the Parties during the Effective Period.</p> <p>b) Should a Contract be silent on the Effective Period, the Effective Period for that Contract:</p> <ul style="list-style-type: none">(i) where Goods are being supplied, shall be deemed to be concluded upon the due delivery of such Deliverable; and(ii) where Services are being supplied, shall remain effective for a term of 2 years commencing from the date of executing that Contract and/or upon the obligations therein being duly completed by Counterparty, whichever being the sooner event.
4. FEES	<p>a) In consideration of Counterparty supplying the Deliverables to DFS, DFS shall pay the Fees as prescribed under the relevant Contract.</p> <p>b) Specifically, where Goods are being supplied, the relevant Fees:</p> <ul style="list-style-type: none">(i) shall be stated in the Contract;(ii) unless expressly stated otherwise, shall be deemed to be inclusive of all applicable customs duties, packaging, marking, handling, freight and delivery, insurance and all other applicable costs and charges;(iii) shall be fixed and shall not be subject to any variation unless otherwise agreed by the Parties in writing; and(iv) shall include all taxes except taxes which Counterparty is required by law to collect from DFS - such taxes, if any, shall be separately stated in Counterparty's invoice and paid by DFS subject to the availability of any exemptions. <p>c) DFS shall determine the retail and resale price of the Goods in its absolute discretion.</p> <p>d) Counterparty shall promptly notify DFS in writing of any fee reduction made with respect to the Goods</p>



	<p>covered by a Contract. Any fee reductions announced after Counterparty's acceptance of a Contract but prior to DFS' payment shall be automatically applied to that Contract and invoiced and/or credited in the following invoice accordingly. DFS may also set off the amount of the credit against any payment due to Counterparty if so agreed between the Parties.</p>
5. PAYMENT TERMS	<p>a) Where Goods are being supplied, Counterparty shall invoice DFS for the Fees within the time period indicated in the relevant Contract issued by DFS.</p> <p>b) Where Services are being supplied, Counterparty shall invoice DFS for the Fees upon completing the Services.</p> <p>c) Counterparty agrees that all invoiced amounts are final and are inclusive of any and all costs, fees and/or taxes as they may relate to the supply of Deliverables by Counterparty to DFS.</p> <p>d) DFS shall pay all properly invoiced and undisputed amounts due to Counterparty within 60 days after month end of any such invoice.</p> <p>e) Unless otherwise agreed by the parties in writing, Counterparty shall submit all invoices to DFS' designated electronic platform as may be communicated to Counterparty as part of DFS' vendor onboarding. All invoices submitted to DFS must be compliant with DFS' policies relating to invoicing.</p> <p>f) All payments hereunder shall be made in US dollars unless otherwise agreed by the Parties in writing.</p> <p>g) If DFS disputes an invoice, DFS shall issue a written notice to Counterparty within 14 days of the payment due date setting out (with reasonable detail) the items in dispute. The Parties shall discuss all such disputes expeditiously and in good faith with a view to resolve the dispute within 30 days from the date of the notice. Counterparty shall continue to perform its obligations under any ongoing Contract(s) notwithstanding any such dispute.</p> <p>h) Without prejudice to any other right or remedy available to DFS, DFS reserves the right of set-off with respect to any amounts owing to it by Counterparty against any amounts payable by DFS to Counterparty under any Contract which the Parties may have entered into including those which may have been entered into between the Counterparty and an Affiliate of DFS.</p>
6. EXPENSES	<p>a) All expenses incurred by Counterparty for and/or in connection with its supply of the Deliverable to DFS, shall be borne solely by Counterparty unless otherwise agreed by the Parties in writing.</p> <p>b) Where DFS agrees to reimburse Counterparty on such fees, reimbursement of the same must be approved in writing by DFS in advance and supported by documentation to the reasonable satisfaction of DFS and submitted by no later than 14 days after end of the month in which they were incurred, or 30 days after the termination of the relevant Contract, whichever date being earlier.</p>
7. CONTRACT ACCEPTANCE	<p>Even if no Contract is executed, Counterparty shall be deemed to have unconditionally accepted a Contract by providing DFS with conforming Deliverables in whole or in part.</p>
8. COUNTERPARTY REPRESENTATIONS & WARRANTIES	<p>a) Counterparty represents, warrants and undertakes that:</p> <p>(i) it has the capacity, power and authority to enter into this Contract;</p> <p>(ii) the Contract shall constitute its legal, valid and binding obligations and shall not violate the terms of any other agreement, judgment or court order to which it is bound;</p> <p>(iii) it shall comply with all applicable international and/or domestic laws, regulations and legislations (including obtaining and maintaining any requisite regulatory approvals, licenses, consents, rights and permits throughout the term of the Contract) which may apply directly and/or indirectly to 1) the Counterparty in the course of carrying-on its business, and/or 2) the Deliverable.</p> <p>(iv) it shall perform its obligations under a Contract with the necessary care, skill and diligence as expected upon them in Counterparty's profession and industry;</p> <p>(v) neither Counterparty nor any of its Affiliates or, to its knowledge, any director, officer, employee, or supplier(s) of Counterparty or any of its Affiliates is a person who (a) is directly or indirectly owned or controlled by any person currently included on the Specially Designated Nationals and Blocked Persons List or the Consolidated Sanctions List (collectively, "SDN List") maintained by governmental bodies with jurisdiction over this Contract and/or activities connected to this Contract, included but not limited to the United Nations and the US Office of Foreign Assets Control (collectively, "Government Entities"), or (b) is directly or indirectly owned or controlled by any person who is located, organized, or resident in a country or territory that is, or whose government is, the target of sanctions imposed by Government Entities; and</p> <p>(vi) it shall promptly notify in writing DFS if the Counterparty or any of its Affiliates, or any of its, or to its knowledge, any of its Affiliates' directors, officers, employees, agents, or suppliers becomes directly or indirectly owned or controlled by any person (a) included on the then-current SDN List, or (b) located, organized, or resident in a country or territory that is, or whose government is, the target of sanctions imposed by Government Entities.</p> <p>b) For the purpose of this Section, person may refer to a natural person or a legal entity.</p>



9. WARRANTIES ON DELIVERABLES	<p>a) Counterparty warrants that all Deliverables (where applicable):</p> <ul style="list-style-type: none">(i) will be free from defects in design, workmanship and materials, including but not limited to defects potentially hazardous to life or property;(ii) will be suitable and fit for the purposes intended whether express or reasonably implied;(iii) will comply with, and where required, be registered under, any applicable laws, regulations, codes, orders and ordinances;(iv) will be in conformity with the drawings, specifications, samples or other descriptions applicable thereto;(v) will be free and clear of all liens, security interests or other encumbrances;(vi) will have accurate product labels detailing their ingredients and that fully comply with all labelling requirements under the applicable laws;(vii) will have not less than 18 months left before their expiration date when delivered to DFS;(viii) will not violate or infringe upon the trademark, copyright or other Intellectual Property or other statutory or common law rights of any person or entity, nor violate the right of privacy of, nor constitute a libel against, any person or entity, provided that the above representation and warranty shall not apply to any violation, infringement or libel to the extent attributable to the materials provided to Counterparty by DFS;(ix) will conform with all other requirements of the relevant Contract;(x) where the Deliverable is a Service, that it will use due care in selecting, hiring, training and supervising its employees that will provide the Service to DFS and should DFS take the view that any such employee is or becomes unfit to carry-out his or her obligations, then Counterparty shall, upon request of DFS, remove such employee from the assignment under the relevant Contract; and(xi) where the Deliverable is a Service requiring Counterparty to place staff on site at DFS' premises, Counterparty will (1) observe all health and safety rules and regulations and any other security requirements that apply at any of DFS' premises; and (2) not do or omit to do anything which may cause DFS to lose any licence, authority, consent or permission upon which DFS relies for the purposes of conducting its business. <p>b) If a Deliverable fails to conform to the warranty requirements above, DFS may, in addition to any other remedies at law or in the relevant Contract, return such Deliverable to Counterparty, and/or reject such Deliverable, at Counterparty's expense, for correction, replacement or credit, as DFS may direct.</p> <p>c) These warranties survive any delivery, inspection, acceptance or payment of or for the Deliverables by DFS.</p>
10. GOODS SUPPLIED AS A DELIVERABLE	<p>a) Delivery terms shall be as specified in a Contract and time of delivery shall be of the essence.</p> <p>b) Unless otherwise agreed by the Parties in writing, risk and title to Goods purchased by DFS from Counterparty passes to DFS upon DFS taking physical delivery of the same.</p> <p>c) All Goods shall be packed for shipment according to DFS's reasonable instructions or, if there are no instructions, in a manner sufficient to ensure that the Goods are delivered in an undamaged condition.</p> <p>d) DFS has the right to inspect the Goods on or after taking delivery for a period of up to 180 days following the date of delivery. DFS may reject all or any portion of Goods if it determines that such Goods are nonconforming or defective.</p> <p>e) If DFS rejects any portion of the Goods, DFS has the right, effective upon written notice to Counterparty, to:</p> <ul style="list-style-type: none">(i) rescind the Goods delivered under the relevant Contract in its entirety;(ii) accept the Goods at a reasonably reduced Fees; or(iii) reject the Goods and require replacement of the rejected Goods. <p>f) Counterparty shall not deliver substituted Goods unless otherwise agreed by DFS.</p> <p>g) If DFS requires replacement of Goods which are nonconforming, Counterparty shall, at its own expense, promptly replace the nonconforming Goods and shall bear all related expenses, including, but not limited to, transportation charges for the return of the defective Goods and the delivery of replacement Goods.</p> <p>h) If Counterparty fails to make a timely replacement of the defective Goods, DFS may replace them with goods from a third party and charge Counterparty the cost thereof and terminate the relevant Contract for cause pursuant to Section 17 below. Any inspection or other action by DFS under this Section shall not reduce or otherwise affect Counterparty's obligations under the relevant Contract, and DFS shall have the right to conduct further inspections after Counterparty has carried out its remedial actions.</p> <p>i) If any Goods are determined by Counterparty, DFS or any governmental agency or court to contain a defect or a quality or performance deficiency, or not be in compliance with any standard or requirement</p>



	<p>so as to make it advisable or required by any party concerned, that such Goods be reworked or recalled, Counterparty and DFS undertake to promptly communicate with each other, relevant facts and to develop and implement a mutually agreeable corrective action. Nothing contained in this Section shall preclude DFS from taking any such action independently (at the expense of Counterparty) and as may be required of it under any such law or regulation. Counterparty shall pay all reasonable expenses associated with any such recall or rework unless otherwise agreed by the Parties in writing.</p>
11. SERVICES SUPPLIED AS A DELIVERABLE	<p>a) Where a Deliverable is a Service requiring Counterparty to place staff within DFS' premises:</p> <ul style="list-style-type: none">(i) if, in the sole and reasonable opinion of DFS, such Service is being materially under-performed by said staff, DFS may request by way of written notice, the replacement or removal of the under-performing staff at the sole cost of Counterparty provided always that Counterparty shall have up to 30 days from the date of said notice, to remedy the under-performance;(ii) if Counterparty chooses to re-allocate a team member from the DFS team to another project, Counterparty will provide DFS with 30 days written notice, with no more than 1 such re-allocations happening in any six months period, unless otherwise agreed by the Parties in writing; and(iii) Counterparty agrees to coordinate staff vacations by way of 30 days' notice in advance with DFS to minimize any negative impact such vacations may have on the delivery date and timing of the Services and the Deliverables and in no event shall its staff be permitted to take in excess of 3 vacation days (except with the expressed written consent of DFS) in one continuous period. <p>b) Counterparty warrants the Works against defects in workmanship and materials for a period of twelve (12) months from the date that it is completed and accepted by DFS.</p> <p>c) Where a Contract requires Counterparty to deliver Deliverables based on certain pre-agreed delivery milestones:</p> <ul style="list-style-type: none">(i) Counterparty accepts that any delay will severely impact DFS' operations and in such case, DFS may require Counterparty to pay as liquidated damages (and not as a penalty) an amount which is agreed by the Parties in a Contract. Such liquidated damages are in lieu of all other damages arising from such delay.(ii) In the absence of pre-agreed terms on liquidated damages, any Deliverable not completed by the deliverable milestone shall be one percent (1%) of the price of the specifically identified for each calendar day delay following the scheduled completion date of such Deliverable, but shall in no event exceed 10% of the total Fees payable by DFS to Counterparty under a Contract. Liquidated damages shall be assessed each calendar day until the date on which Counterparty completes such Major Deliverable, up to a maximum of thirty 30 calendar days. Counterparty may recoup the total amount of liquidated damages assessed against previous Deliverables if Counterparty accelerates progress towards future Deliverables (if any under the same Contract) and meets the final project completion date set out in that Contract. The Parties acknowledge and agree that such measure of liquidated damages is reasonable and proportionate to the possible disruption caused to DFS' business (including DFS' ability to retail the Deliverable or a product derived from a Deliverable), additional costs incurred by DFS, and other losses or damages suffered by DFS as a result of delayed delivery.(iii) If, at the end of the 30-day period specified above, Counterparty has not met the schedule for completion of the Deliverable, then DFS, at no additional expense and at its option, may either<ul style="list-style-type: none">1) immediately terminate the Contract and claim for damages; or2) instruct Counterparty to continue with no decrease in effort until the Deliverable is completed in accordance with the Contract and accepted by DFS or until DFS terminates the Contract.(iv) DFS shall have a right to set-off the amount equivalent to the liquidated damages against invoices issued by Counterparty under the Contract.(v) To the extent that the delays to the Deliverable was solely and directly caused by DFS, no liquidated damages shall be levied on Counterparty.



12. STOCK	<p>a) Counterparty shall:</p> <p>(i) accept returns of Goods, on an Ex-Works (EXW) basis (Incoterms 2020), which are:</p> <ol style="list-style-type: none">1) returned by DFS' customers pursuant to DFS' customer return policy (if any) but have since been discontinued;2) damaged (upon arrival of the Goods to the point of delivery);3) non-compliant with applicable legal and regulatory requirements; and/or4) expired or has less than 6 months' shelf-life at the time of DFS' request. <p>(ii) provide (i) Return Authorizations for discontinued, damaged, or non-compliant Goods or for customer returns and</p> <p>(ii) the coordination and payment of shipping of these Goods if they are not Destroy in Field ("DIF"). In case of DIF, Counterparty shall have to pay the costs of destruction.</p> <p>b) Upon agreement between the Parties concerning stock returns, the Counterparty is responsible to organize the return of the Goods and to pay any costs associated with this return within thirty (30) days. Should the Counterparty not comply with this provision, DFS will destroy the Goods at the Counterparty's expense.</p>
13. GOODS RECALL	<p>a) This Section shall apply in any of the following scenarios where a Goods recall is required:</p> <p>(i) where required by the relevant authorities; and/or</p> <p>(ii) the Counterparty has initiated a voluntarily recall.</p> <p>b) Where this Section applies, the Counterparty shall promptly issue a written notice specifying the Good(s) affected by the recall and the reasons for such recall ("Goods Recall Notice") to DFS.</p> <p>c) Upon receipt of the Goods Recall Notice, DFS will promptly remove the affected Goods from its Point of Sales and the Parties will co-operate to manage the return of the affected Goods to the Counterparty.</p> <p>d) The Counterparty acknowledges and agrees that it shall issue a credit note to DFS for the value of the affected Goods and bear all costs of the Goods recall.</p> <p>e) Where a Goods recall is voluntarily initiated by the Counterparty, the Parties shall co-operate to manage whether a notification to the relevant authorities is required and, if so, who will make that notification.</p>
14. ANCILLARY SUPPORT	<p>To support DFS' retailing of the Goods, DFS may require and the Counterparty may agree to provide, either directly and/or indirectly (by way of funding) and without limitation, manpower, marketing, store development and/or supply-chain related resources ("ancillary support services"). Where such ancillary support services involve Counterparty providing funding to DFS, the Parties acknowledge that it would be in their respective interests to have this funding arrangement documented. In this connection, the Parties shall negotiate and execute any such agreement expeditiously and in good faith. In the absence of any formal written agreement to this effect, DFS shall be entitled to invoice Counterparty regularly on the proportionate amount of funding which DFS had taken-up for and on behalf Counterparty. Any such invoices issued shall be payable by Counterparty within 45 days of the date of the invoice.</p>
15. INTELLECTUAL PROPERTY	<p><u>Goods supplied as a Deliverable:</u></p> <p>a) Subject to Section 15.b), the Intellectual Property owned by a Party prior to the effective date of a Contract\ and made available to the other Party under such Contract shall remain the sole property of such Party or their licensors as applicable.</p> <p>b) Section 15.a) shall not apply where title to that Intellectual Property is intended to pass to such other Party or that such other Party is to be granted a license or right to use that Intellectual Property post termination of such Contract.</p> <p>c) Neither Party shall use or permit the use of any Intellectual Property belonging to the other Party or any of the other Party's Affiliates for any purpose whatsoever, without the express prior written approval of the Party which owns such Intellectual Property.</p> <p>d) Unless otherwise agreed, Counterparty grants to DFS and its Affiliates a non-exclusive, perpetual, sublicensable, assignable, worldwide, royalty-free licence to reproduce, distribute, display, perform and otherwise use and exploit such Intellectual Property, to the extent required to receive the full benefit of such Contract.</p> <p><u>For all Deliverables (both Goods and Services supplied to DFS):</u></p> <p>e) Subject to Section 15. f) and i) below, all Intellectual Property created by a Party during the Term of a Contract shall vest unconditionally and immediately upon its creation with that Party.</p> <p>f) DFS may, from time to time, request the Counterparty to create/develop new Intellectual Property as a product or as part of a Contract, in which case the Counterparty:</p> <p>(i) acknowledges and agrees that all new Intellectual Property is created at the request, and for the benefit of DFS (on a commissioned/work-for-hire basis), and that DFS owns that Intellectual Property and hereby assigns, transfers, and conveys all rights, title, and interest in and to such</p>



	<p>Intellectual Property to DFS Property; and</p> <p>(ii) shall do everything necessary or requested by DFS to enable it to own the new Intellectual Property, including formally assigning/procuring the assignment of all rights in the new Intellectual Property.</p> <p><u>Services supplied as a Deliverable:</u></p> <p>g) Unless otherwise agreed by the Parties in writing, each Party acknowledges and agrees that it has no right, title or interest in or to the Intellectual Property nor to any goodwill of the other Party and agrees not to use the other Party's Intellectual Property for reasons other than in accordance with the terms of this Contract, or as may be expressly authorized by the other Party in writing, and shall not claim or acquire any right, title or interest of any kind therein or to any identical or confusingly similar rights by virtue of a Contract and/or its operations thereunder.</p> <p>h) Where Counterparty, in the course of supplying a Deliverable, is required to make use of its own Intellectual Property to which the Parties have expressly agreed to not form part of the Works, Counterparty undertakes that:</p> <p>(i) it is the sole and unencumbered owner of any such Intellectual Property and that none of its Intellectual Property nor the use thereof as contemplated under a Contract infringes the Intellectual Property of any third party;</p> <p>(ii) it shall have given to DFS a perpetual, transferable, non-exclusive, royalty-free, sublicensable, assignable, worldwide license to use such Intellectual Property in accordance to the terms of the Contract; and</p> <p>(iii) it shall indemnify and keep DFS and its employees, affiliates and agents harmless from and against any liabilities, damages, losses, costs, expenses, proceedings, suits or other consequences arising from any allegation or claim that a third party's Intellectual Property or other right has been infringed by Counterparty's Intellectual Property and/or any part or use thereof under a Contract.</p> <p>i) Where a Deliverable is a Service requiring Counterparty to produce certain Works:</p> <p>(i) Counterparty acknowledges and agrees that the Intellectual Property in such Works shall vest unconditionally and immediately upon creation with DFS and constitute the sole property of DFS (unless otherwise agreed in writing by the Parties) and hereby assigns, transfers, and conveys all rights, title, and interest in and to such Works and such Intellectual Property to DFS;</p> <p>(ii) If and to the extent that any Work is not automatically vested in DFS pursuant to Section 15 (i)(i), Counterparty shall promptly assign and transfer to DFS all rights, title and interest in and to the Works, including all copyright, trademark and other Intellectual Property relating to the Works, in all countries of the world, for any use, whether known or hereafter devised and to the maximum extent permitted by applicable law, waives, and agrees not to assert, moral rights in the Works; and</p> <p>(iii) Upon DFS's request, Counterparty shall sign and deliver to DFS any documents or instruments relating to the Works to evidence or confirm such assignment and transfer to and ownership by DFS.</p>
16. DATA PROTECTION	<p>a) Counterparty agrees that to the extent Counterparty collects, stores, has access to, and/or processes Personal Data, Counterparty shall: (i) at all times comply with Data Protection Legislation; (ii) process Personal Data as transferred by DFS or collected on behalf of DFS only for the purposes of performing its obligations under the Contract, and not transfer, share or grant access to, by any means or media, Personal Data of any kind to or with any third party without prior authorization from DFS; and (iii) use its best endeavors to protect the confidentiality and security of Personal Data, and such measures shall be in compliance with Data Protection Legislation and industry best practices.</p> <p>b) For Personal Data transferred by Counterparty to DFS, Counterparty warrants to DFS that it has all necessary rights to provide the Personal Data to DFS for the processing to be performed in relation to the Contract and agrees that it shall be responsible for obtaining all necessary consents, and providing all necessary notices, as required under the Data Protection Legislation.</p> <p>c) If it appears during the course of the Contract that Counterparty acts as Data Processor and DFS acts as Data Controller, both Parties agree to sign a data processing agreement before starting the processing of Personal Data. Such data processing agreement will be provided by DFS.</p>
17. CHANGE REQUEST	<p>a) The Parties acknowledge that DFS shall be entitled at any time, to issue change orders and/or addendums to vary any part of the Deliverables to be supplied to DFS.</p> <p>b) Where a change order and/or addendum is issued by DFS, the Counterparty shall advise DFS on any time and/or cost implications that may result from such change order and/or addendum within such time as may be allowed by DFS thereunder.</p> <p>c) DFS shall pay the Counterparty for any such variation in accordance with Section 5, and the amount payable shall be agreed to by the Parties in writing within 30 days upon DFS' receipt of the varied cost proposed by the Counterparty, failing which, subject to such adjustment as DFS may consider reasonable, the prevailing industry rates shall be used to determine the amount payable for such variation.</p>



18. TERMINATION	<p>a) Either Party may terminate a Contract immediately by written notice to the other:</p> <ul style="list-style-type: none">(i) if the other Party commits a material breach of the relevant Contract which cannot be cured within fourteen (14) days or causes irreparable harm to the non-breaching Party;(ii) if the other Party commits a material breach of the relevant Contract which can be cured within fourteen (14) days but fails to cure such material breach within fourteen (14) days;(iii) if the other Party becomes insolvent, makes a general assignment for the benefit of creditors; files or suffers the filing against it of any petition for relief under bankruptcy, dissolution or similar laws providing for debtors' relief; or becomes subject to any attachment, execution or other judicial seizure of, or affecting the properties or assets of such Party which may materially adversely affect the ability of such Party to perform its obligations under the Contract; and/or(iv) where the Force Majeure Event has continued for thirty (30) days, pursuant to Section 27 below. <p>b) DFS may terminate any and all Contracts as entered into by the Parties, without cause at any time by serving written notice of termination to Counterparty thirty (30) days in advance. For purposes of determining Fees (if any) due upon termination, Fees shall be deemed to be earned by Counterparty only if and to the extent the Deliverables have been actually completed and accepted by DFS. No termination under this Section shall give rise to any claim for damages or other compensation, but no such termination shall terminate or otherwise affect any right of either Party accruing prior to the effective date of such termination, or the right of either Party to recover damages for the breach of the relevant Contract.</p>
19. CONSEQUENCES OF TERMINATION	<p>a) Upon an event of early termination of a Contract under Section 17 above, all unfulfilled Contracts which the Parties may have entered into, are deemed terminated without liability on DFS' part unless otherwise agreed by the Parties in writing.</p> <p>b) Where DFS terminates a Contract under Section 17(a) and notwithstanding any rights and/or remedies which may be available to DFS, Counterparty agrees to remit any and all advance payments which may have been made by DFS to Counterparty as a condition of DFS entering into a Contract.</p> <p>c) If a Contract is terminated for any reason, Counterparty shall comply with all reasonable instructions from DFS with regard to termination and transition to DFS or another service provider and take such other steps as are necessary to mitigate any costs incurred by the termination or such transition.</p>
20. CONFIDENTIALITY	<p>a) The receiving Party agrees:</p> <ul style="list-style-type: none">(i) not to use any Confidential Information for any purpose other than to carry out its performance of this Contract;(ii) not to disclose or permit the disclosure of any Confidential Information to any party, other than its Representatives on a need-to-know basis only;(iii) to advise its Representatives of the confidential nature of such Confidential Information and require them to observe the terms of this Contract and be responsible for any actions of its Representatives;(iv) to take reasonable measures to protect the secrecy of and to avoid unauthorized disclosure or use of Confidential Information; and(v) to notify the disclosing Party as soon as practicable in writing of any unauthorized disclosure of the Confidential Information by the receiving Party or its Representatives. <p>b) The receiving Party may disclose the disclosing Party's Confidential Information to the minimum extent required by applicable law, or pursuant to an order of any court of competent jurisdiction or any regulatory, judicial, governmental or similar body or any taxation authority of competent jurisdiction. Before the receiving Party discloses any of the disclosing Party's Confidential Information pursuant to this clause, it shall, to the extent permitted by law, use all reasonable endeavours to give the disclosing Party as much notice of this disclosure as possible. Where notice of such disclosure is not prohibited and is given as aforesaid, the receiving Party shall take into account the reasonable requests of the disclosing Party in relation to the content of this disclosure. If the receiving Party is unable to inform the disclosing Party before the disclosing Party's Confidential Information is disclosed pursuant to this clause, it shall, to the extent permitted by law, inform the disclosing Party of the full circumstances of the disclosure and the information that has been disclosed as soon as reasonably practicable after such disclosure has been made.</p> <p>c) Neither Party shall make any announcement in relation to any Contract nor shall it otherwise publicize its existence or its contents, or the existence of the negotiations between the Parties in relation to it, unless otherwise agreed by the Parties in writing.</p> <p>d) The confidentiality obligations of each Party shall survive and continue for a period of three (3) years from the expiry or earlier termination of this Contract.</p>
21. INDEMNITY	<p>a) Each Party hereby agrees to defend, indemnify and hold the other and its officers, directors, agents and employees, harmless from and against any claims, actions, losses, damages and liabilities (including, but not limited to, reasonable legal fees and court costs, but excluding consequential damages) on account of any claim by a third party for bodily injury, death and/or property damage against the indemnified Party to the extent caused by the negligent act or omission, or willful misconduct of, or breach of a Contract by, the indemnifying Party or the indemnifying Party's employees, contractors, subcontractors or agents, in connection with the performance of their respective obligations under a</p>



	<p>Contract.</p> <p>b) Counterparty shall defend, indemnify and hold DFS and its officers, directors, agents and employees, harmless from and against any claims, actions, losses, damages and liabilities (including, but not limited to, reasonable legal fees and court costs, but excluding consequential damages) on account of any actual or threatened claims or proceedings, arising out of or in connection with:</p> <ul style="list-style-type: none">(i) an act or order of any governmental, judicial or other authority including any and all duties, taxes, levies, deposits and outlays of whatsoever nature levied by any authority;(ii) Counterparty's non-compliance with applicable international and/or domestic laws, regulations and legislations;(iii) any breach or failure of Counterparty to perform an obligation or warranty under this Agreement;(iv) any inherent defects/vice of the Deliverables;(v) (for Services) any claims brought against DFS by the Counterparty's personnel; and(vi) Counterparty's fraud, gross negligence or willful misconduct.
22. LIMITATION OF LIABILITY	<p>a) Unless otherwise agreed by the Parties in writing, Counterparty expressly waives any limitation of liability which may appear in any of the documentation that Counterparty has incorporated in the course of carrying out a Contract.</p> <p>b) To the maximum extent permitted by applicable laws, notwithstanding any provisions which may indicate otherwise, neither Party shall be liable to the other for any special, consequential, incidental, punitive or indirect damages arising from or relating to any breach of a Contract regardless of any notices given by a Party to other on such damages.</p> <p>c) The Fees payable by DFS to Counterparty under a Contract represents the maximum extent of liability which DFS shall be responsible (if applicable) to Counterparty under that Contract and to the maximum extent permissible by applicable law.</p>
23. INSURANCE	<p>a) Without affecting any other obligation and liability of Counterparty under a Contract, Counterparty shall affect and maintain at its own cost an insurance policy with the following coverage by insurance companies rated at least "A-, VIII" with AM Best, or equivalent rating service:</p> <ul style="list-style-type: none">(i) Product liability insurance, product recall insurance and product contamination insurance in the amount of at least US\$3,000,000 per occurrence naming DFS as additional insured. Such policy shall provide protection against any and all claims, demands and cause of action arising out of any defects or failure to perform, alleged or otherwise of the Goods or any material used in connection with the Goods. This policy should be maintained for a minimum of one year after the relevant Contract expires.(ii) Marine Insurance (or shipping insurance) for the shipped Goods if Counterparty is responsible for the shipping arrangements to DFS <p>b) Counterparty must provide DFS with certificates of insurance of the above policies before starting work under this Contract and keep the policies current throughout the term of this Contract.</p> <p>c) Counterparty shall deliver to DFS a certificate of insurance evidencing the required coverage, which names DFS as an additional insured on all policies where possible, and which provides that DFS shall receive at least 30 days' written notice of any cancellation or material modification of the coverage certified in the certificate. The certificate shall also state that the insurance evidenced thereby is primary and not contributory with any coverage that DFS may have. The required limits of insurance do not in any way limit Counterparty's liability in the event of a claim.</p> <p>d) In the event Counterparty fails to keep in effect at all times the specified insurance coverage, DFS may, in addition to any other remedies it may have, terminate the contract upon the occurrence of such event, subject to the provisions of the Contract.</p>
24. ASSIGNMENT	<p>a) DFS may assign, transfer, sub-contract and/or delegate its rights and/or obligations under a Contract or any part thereof, to a third party by way of notice to Counterparty in writing.</p> <p>b) Counterparty may only assign, transfer, sub-contract and/or delegate its rights and/or obligations under a Contract or any part thereof with the expressed written consent of DFS.</p>
25. TAXES	<p>a) DFS is not liable for any taxes that Counterparty is legally obligated to pay, including net income or gross receipts taxes, franchise taxes, and property taxes. DFS will pay Counterparty any sales tax, or value added taxes it owes for the performing the Deliverables and which applicable law requires Counterparty to collect from DFS. If DFS provides Counterparty a valid exemption certificate, Counterparty will not collect the taxes covered by such certificate. If applicable law requires DFS to withhold taxes from payments to Counterparty, DFS may withhold those taxes and pay them to the appropriate taxing authority and, in such case, DFS will deliver to Counterparty an official receipt for such taxes.</p> <p>b) Other applicable charges such as shipping costs, duties, customs, tariffs, imposts, and government-imposed surcharges shall be stated separately on Counterparty's invoice.</p> <p>c) Where the Contract includes a sales component from DFS, the Counterparty shall be responsible for all taxes, duties, levies, and other similar charges (and any related interest and penalties), however</p>



	designated, arising out of or in connection with those sales. If any such taxes are levied on such sales, the Counterparty shall pay such taxes as are necessary to ensure that DFS receives a net amount equal to the amount DFS would have received had the payment not been made subject to such taxes.
26. COUNTERPARTY'S COMPLIANCE	<p>a) Counterparty, in the course of carrying out a Contract, agrees to comply with the following:</p> <ul style="list-style-type: none">(i) DFS' Business Partner Code of Conduct accessible at https://tc.dfs.com/coc/;(ii) DFS' Business Partner Anti-Corruption Policy accessible at https://tc.dfs.com/acp/; and(iii) Data Security and Privacy Requirements accessible at https://tc.dfs.com/dfs-security-requirements-for-business-partners/. <p>b) Counterparty confirms that except as disclosed in writing by Counterparty to DFS prior to the Contract execution date:</p> <ul style="list-style-type: none">(i) no principal, employee, officer or director of Counterparty, or any of their immediate family members work for, or represent or act in any capacity for, DFS or any of its Affiliates;(ii) no officer, director or employee of DFS or any of its Affiliates, or any member of their immediate families controls or have a 5% or greater ownership interest in Counterparty; and(iii) no officer, director or employee of DFS or any of its Affiliates, or any member of their immediate families is also an officer, director or employee of Counterparty. <p>c) Counterparty represents, warrants and undertakes that neither Counterparty nor any of its Affiliates or, to its knowledge, any director, officer, employee, or supplier(s) of Counterparty or any of its Affiliates is a person who:</p> <ul style="list-style-type: none">(i) has been convicted of any acts of corruption or influence peddling;(ii) is, or directly or indirectly owned or controlled by any person who is, identified on any export denial or sanctions list, maintained by governmental bodies with jurisdiction over the Contract and/or activities connected to the Contract, including but not limited to the United Nations and the US Office of Foreign Assets Control (collectively, "Government Entities"); <p>In this Section, person refers to a natural person or a legal entity.</p> <p>d) Counterparty agrees to promptly notify DFS if it has knowledge of any breach of this Section after the Contract execution date.</p>
27. FORCE MAJEURE	Neither Party shall be liable for any failure to comply with its obligations hereunder if such failure is due to a Force Majeure Event. Should a Force Majeure Event subsist for a period of 30 days or more, either Party shall, without liability, be entitled to terminate a Contract immediately by way of a written notice 7 days in advance.
28. RIGHT OF SET-OFF	<p>a) To the extent permitted by applicable law, DFS shall have the right to deduct from and set off:</p> <ul style="list-style-type: none">(i) any part or all of the fees and any other amounts due and payable or that may become due and payable by DFS to Counterparty under any Contracts which the Parties may have entered into from time to time; against(ii) any amount payable or that becomes payable to DFS and/or its Affiliate by Counterparty and/or its Affiliate (including any ancillary support in accordance with section 14 above); <p>b) For the avoidance of doubt, the exercise by DFS of its right of deduction and set-off shall not constitute a waiver by DFS and/or its Affiliate of its respective rights to pursue any and all other available rights or remedies against Counterparty and/or its Affiliate to collect the full amount of dues or to recover damages for Counterparty's breach of this Contract.</p>
29. MISCELLANEOUS	<ul style="list-style-type: none">a) The governing law of a Contract shall be the laws of New Zealand.b) The existence of a Contract between the Parties does not constitute either Party as an employee, agent or legal representative of the other for any purpose whatsoever.c) No express or implied right of authority is granted to assume or to create any obligation or to conclude any contract on behalf of or in the name of the other or to bind the other in any manner whatsoever.d) Each Contract constitutes an entire agreement between the Parties concerning the subject matter hereof and supersedes all prior relevant agreements, representations and understandings.e) Each Contract cannot be amended verbally.f) The failure by either Party to enforce any right hereunder shall not constitute a waiver of such right or affect the ability to enforce such right at any time thereafter.g) If either Party brings suit against the other Party to enforce any right hereunder or arising out of a Contract, the prevailing Party shall be entitled to recover reasonable attorneys' fees and costs on a full indemnity basis in addition to all other relief to which such Party may be entitled.h) In the case of conflict between the terms of a Contract and these SMTC, the terms of the SMTC shall prevail.i) Unless expressly incorporated by reference into a Contract, no terms and conditions on any other document



	<p>issued by Counterparty to DFS shall be incorporated into a Contract or shall be deemed a part of that Contract (unless otherwise agreed by the Parties in writing).</p> <p>j) If any provision in this Contract becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Contract shall continue in full force and effect without the said provision.</p> <p>k) A person who is not a party to a Contract shall not have any rights under the Contract and Commercial Law Act 2017 (Part 2, Subpart 1) to enforce, or to enjoy the benefit of, any term of the Contract.</p> <p>l) The Parties expressly acknowledge that this Contract does not create any exclusive relationship or arrangement between the Parties (unless otherwise agreed by the Parties in writing).</p> <p>m) Each Party shall bear its own solicitor's costs and fees incidental to this Contract.</p> <p>n) This Contract may be signed in any number of counterparts and by the Parties on separate counterparts, each of which when so executed shall be an original, but all counterparts shall together constitute one and the same document.</p>
30. NOTICES	<p>a) All notices required or permitted to be given hereunder shall be in writing and shall be delivered by hand, internationally recognized courier services or email addressed to the Parties' usual business address (or such other address as set out in the Contract).</p> <p>b) A notice sent according to Section 30 (a) shall be deemed to have been received:</p> <p>(i) if delivered by hand, on written acknowledgement or receipt by an officer or an employee of the receiving Party;</p> <p>(ii) if delivered by internationally recognized courier, on production of evidence from the relevant courier that the notice has been successfully delivered; or</p> <p>(iii) if sent by email, on receipt by the Party sending the notice of an email delivery confirmation.</p> <p>If, under the preceding provisions of this Section 30(b), a notice would otherwise be deemed to have been received outside normal business hours in the place of receipt, it shall be deemed to have been received at 9:00 a.m. on the next business day.</p> <p>c) Either Party may change its address for notices by written notice to the other, 30 days in advance of any such change.</p>
31. DISPUTE RESOLUTION	<p>a) The Parties shall attempt in good faith to resolve any dispute, controversy or difference arising out of or in connection with a Contract between them, including any question regarding its existence, validity or termination ("Dispute") promptly by negotiation between executives.</p> <p>b) If the negotiation does not result in resolution within 45 days of the notice, or such other period as the Parties may agree, the Parties shall endeavor in good faith to resolve the Dispute by mediation in New Zealand in accordance with the Resolution Institute Mediation Rules.</p> <p>c) If the mediation is abandoned by the mediator or is otherwise concluded without the Dispute being resolved, or if either Party refuses to mediate, then the Dispute shall be referred to and finally resolved by arbitration administered by the Resolution Institute under the Resolution Institute Arbitration Rules in force when the Notice of Arbitration is submitted. The seat of arbitration shall be New Zealand. The language of the arbitration shall be English. The number of arbitrators shall be one. Either Party may enforce the award of the arbitrator before any competent court. The decision of the arbitrator shall be final and binding on the Parties and neither Party shall appeal against such decision.</p> <p>d) Despite the existence of a Dispute, each Party must continue to perform its obligations under the relevant Contract as long as the relevant Contract is in effect, provided that this Section does not restrict or limit the right of either Party to obtain interlocutory relief, or to immediately terminate the relevant Contract where the relevant Contract provides such a right.</p>