



## DFS STANDARD TERMS AND CONDITIONS OF SALE

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

<b>1. DEFINITIONS</b>	<table><tr><td data-bbox="448 310 662 541"><b>"Affiliate(s)"</b></td><td data-bbox="669 310 1468 541">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.</td></tr><tr><td data-bbox="448 550 662 571"><b>"Brands"</b></td><td data-bbox="669 550 1468 571">means the original manufacturer, distributor and/or vendor of the Goods.</td></tr><tr><td data-bbox="448 579 662 1003"><b>"Confidential Information"</b></td><td data-bbox="669 579 1468 1003">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:  <ul style="list-style-type: none"><li>a) has been placed in the public domain through no breach of the Contract by the receiving Party;</li><li>b) was lawfully in the possession of the receiving Party prior to its receipt from the disclosing Party pursuant to the Contract; or</li><li>c) 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 the Contract.</li></ul></td></tr><tr><td data-bbox="448 1012 662 1243"><b>"Contract"</b></td><td data-bbox="669 1012 1468 1243">means any contractual undertaking (whether documented in writing or verbally communicated) as agreed upon by the Parties for the supply of Deliverables by DFS to Counterparty of which, may include without limitation, the following:  <ul style="list-style-type: none"><li>a) DFS template contract;</li><li>b) Purchase orders and/or an equivalent;</li><li>c) Statement of work documentation and/or an equivalent;</li><li>d) Requests for proposal; and/or</li><li>e) Binding letters of intent.</li></ul></td></tr><tr><td data-bbox="448 1251 662 1283"><b>"Counterparty"</b></td><td data-bbox="669 1251 1468 1283">means the party named under a Contract which purchases the Deliverable from DFS.</td></tr><tr><td data-bbox="448 1291 662 1344"><b>"Data Controller"</b></td><td data-bbox="669 1291 1468 1344">means the organization which, alone or jointly with others, determines the purposes and means of the processing of Personal Data.</td></tr><tr><td data-bbox="448 1352 662 1415"><b>"Data Processor"</b></td><td data-bbox="669 1352 1468 1415">means the organization which processes Personal Data on behalf of the Data Controller.</td></tr><tr><td data-bbox="448 1423 662 1560"><b>"Data Protection Legislation"</b></td><td data-bbox="669 1423 1468 1560">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"), effective May 25, 2018, the China Personal Information Protection Law ("PIPL") effective November 1, 2021, and/or all applicable national laws.</td></tr><tr><td data-bbox="448 1568 662 1621"><b>"Deliverables"</b></td><td data-bbox="669 1568 1468 1621">means any Goods and/or Services which DFS shall supply and/or render in favour of Counterparty under a Contract.</td></tr><tr><td data-bbox="448 1629 662 1661"><b>"DFS"</b></td><td data-bbox="669 1629 1468 1661">means the DFS entity and/or its Affiliates (if any) named under a Contract.</td></tr><tr><td data-bbox="448 1669 662 1753"><b>"Effective Period"</b></td><td data-bbox="669 1669 1468 1753">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 this STCS.</td></tr><tr><td data-bbox="448 1761 662 1814"><b>"Fees"</b></td><td data-bbox="669 1761 1468 1814">means the fees payable by Counterparty to DFS for the Deliverable in accordance with the terms of a Contract.</td></tr><tr><td data-bbox="448 1822 662 1904"><b>"Force Majeure Event"</b></td><td data-bbox="669 1822 1468 1904">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</td></tr></table>	<b>"Affiliate(s)"</b>	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.	<b>"Brands"</b>	means the original manufacturer, distributor and/or vendor of the Goods.	<b>"Confidential Information"</b>	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:  <ul style="list-style-type: none"><li>a) has been placed in the public domain through no breach of the Contract by the receiving Party;</li><li>b) was lawfully in the possession of the receiving Party prior to its receipt from the disclosing Party pursuant to the Contract; or</li><li>c) 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 the Contract.</li></ul>	<b>"Contract"</b>	means any contractual undertaking (whether documented in writing or verbally communicated) as agreed upon by the Parties for the supply of Deliverables by DFS to Counterparty of which, may include without limitation, the following:  <ul style="list-style-type: none"><li>a) DFS template contract;</li><li>b) Purchase orders and/or an equivalent;</li><li>c) Statement of work documentation and/or an equivalent;</li><li>d) Requests for proposal; and/or</li><li>e) Binding letters of intent.</li></ul>	<b>"Counterparty"</b>	means the party named under a Contract which purchases the Deliverable from DFS.	<b>"Data Controller"</b>	means the organization which, alone or jointly with others, determines the purposes and means of the processing of Personal Data.	<b>"Data Processor"</b>	means the organization which processes Personal Data on behalf of the Data Controller.	<b>"Data Protection Legislation"</b>	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"), effective May 25, 2018, the China Personal Information Protection Law ("PIPL") effective November 1, 2021, and/or all applicable national laws.	<b>"Deliverables"</b>	means any Goods and/or Services which DFS shall supply and/or render in favour of Counterparty under a Contract.	<b>"DFS"</b>	means the DFS entity and/or its Affiliates (if any) named under a Contract.	<b>"Effective Period"</b>	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 this STCS.	<b>"Fees"</b>	means the fees payable by Counterparty to DFS for the Deliverable in accordance with the terms of a Contract.	<b>"Force Majeure Event"</b>	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
<b>"Affiliate(s)"</b>	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.																										
<b>"Brands"</b>	means the original manufacturer, distributor and/or vendor of the Goods.																										
<b>"Confidential Information"</b>	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:  <ul style="list-style-type: none"><li>a) has been placed in the public domain through no breach of the Contract by the receiving Party;</li><li>b) was lawfully in the possession of the receiving Party prior to its receipt from the disclosing Party pursuant to the Contract; or</li><li>c) 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 the Contract.</li></ul>																										
<b>"Contract"</b>	means any contractual undertaking (whether documented in writing or verbally communicated) as agreed upon by the Parties for the supply of Deliverables by DFS to Counterparty of which, may include without limitation, the following:  <ul style="list-style-type: none"><li>a) DFS template contract;</li><li>b) Purchase orders and/or an equivalent;</li><li>c) Statement of work documentation and/or an equivalent;</li><li>d) Requests for proposal; and/or</li><li>e) Binding letters of intent.</li></ul>																										
<b>"Counterparty"</b>	means the party named under a Contract which purchases the Deliverable from DFS.																										
<b>"Data Controller"</b>	means the organization which, alone or jointly with others, determines the purposes and means of the processing of Personal Data.																										
<b>"Data Processor"</b>	means the organization which processes Personal Data on behalf of the Data Controller.																										
<b>"Data Protection Legislation"</b>	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"), effective May 25, 2018, the China Personal Information Protection Law ("PIPL") effective November 1, 2021, and/or all applicable national laws.																										
<b>"Deliverables"</b>	means any Goods and/or Services which DFS shall supply and/or render in favour of Counterparty under a Contract.																										
<b>"DFS"</b>	means the DFS entity and/or its Affiliates (if any) named under a Contract.																										
<b>"Effective Period"</b>	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 this STCS.																										
<b>"Fees"</b>	means the fees payable by Counterparty to DFS for the Deliverable in accordance with the terms of a Contract.																										
<b>"Force Majeure Event"</b>	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																										



	<p>emergencies, governmental restrictions and any other event which is beyond the reasonable control of either Party.</p> <p><b>“Good(s)”</b> means any physical goods (namely retail merchandise) purchased as a Deliverable by Counterparty under a Contract.</p> <p><b>“Intellectual Property”</b> 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><b>“Party or Parties”</b> mean either DFS and/or Counterparty.</p> <p><b>“Personal Data”</b> means any information or data that is considered as personal data by the applicable Data Protection Legislation and specifically regulated as such.</p> <p><b>“Representatives”</b> 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><b>“Service(s)”</b> means any services purchased as a Deliverable by Counterparty under a Contract of which, DFS may be required to provide by way of issuing reports, recommendations, specifications, drawings, technical data, and/or sketches.</p> <p><b>“STCS”</b> means these terms and conditions of sale 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><b>“Work(s)”</b> means any and all reports, recommendations, specifications, drawings, technical data, sketches and any information prepared or furnished as a Deliverable by DFS under a Contract.</p>
<b>2. ENGAGEMENT OF DFS</b>	<p>a) The provisions of this STCS shall govern the respective rights and obligations of the Parties under a Contract.</p> <p>b) Counterparty acknowledges and agrees that any Contract it issues shall be deemed an offer by Counterparty to purchase Deliverables from DFS. DFS shall exercise its best endeavours, but is not contractually obliged, to accept and fulfil any such Contract.</p> <p>c) Each Contract issued by Counterparty and accepted by DFS shall constitute a distinct and separate agreement between the Parties.</p>
<b>3. TERM</b>	<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"> <li>(i) where Goods are being supplied, shall be deemed to be concluded upon the due delivery of such Deliverable; and</li> <li>(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 DFS, whichever being the sooner event.</li> </ul>
<b>4. FEES</b>	In consideration of DFS supplying the Deliverables to Counterparty, Counterparty shall pay the Fees as prescribed under the relevant Contract.
<b>5. PAYMENT TERMS</b>	<p>a) Invoicing and Payment:</p> <ul style="list-style-type: none"> <li>(i) DFS shall be entitled to invoice Counterparty for the Fees at any time and in advance of Deliverables being delivered.</li> <li>(ii) Any amounts invoiced by DFS and payable under a Contract is exclusive of value added taxes (and any other similar or equivalent taxes, duties, fees and levies imposed from time to time by any government or other authority) which will be payable in addition to that amount in the manner and at the rate prescribed by law from time to time.</li> <li>(iii) Counterparty shall pay all properly invoiced amounts to DFS within 30 days after month end of any such invoice.</li> <li>(iv) All payments hereunder shall be made in US dollars unless otherwise agreed by the Parties in writing.</li> </ul>



	<p>(v) Any and all payments made by Counterparty to DFS under a Contract shall be made in full without any set off or deduction, to such account of DFS at such bank as DFS may from time to time notify the Counterparty, or by such other means as DFS may from time to time notify the Counterparty.</p> <p>(vi) Time shall be of the essence in the payment of all sums due and payable to DFS.</p> <p>(vii) Counterparty shall pay DFS interest on any and all sums due or payable to DFS under any Contract at the rate of 12% per annum, calculated daily as from the date when such sum becomes due and payable until full payment thereof is made to DFS by the Counterparty. Such interest shall accrue at such aforementioned rate after as well as before any judgment.</p> <p>(viii) All payments due and payable under any Contract for Deliverables furnished by DFS shall be immediately due upon termination or termination of any Contract for any reasons.</p> <p>b) Disputes on invoices:</p> <p>(i) If Counterparty disputes an invoice issued by DFS, Counterparty shall issue a written notice to DFS within 14 days of the date of invoice setting out (with reasonable detail) the items in dispute.</p> <p>(ii) With respect to the disputed amounts, the Parties shall, within 30 days, meet (in person or by telephone conference) and attempt in good faith to resolve such disputes. If the Parties fail to reach an agreement, the dispute shall be resolved in accordance to Section 23 of this STCS.</p> <p>(iii) For the avoidance of doubt, the undisputed parts of an invoice amounts shall always remain payable.</p>
<b>6. GOODS SUPPLIED AS A DELIVERABLE</b>	<p>a) Risk and Title of Goods:</p> <p>(i) Unless otherwise agreed by the Parties in writing, DFS shall supply Goods on an Ex-Works (EXW) basis (Incoterms 2020) at DFS' designated warehouse. For the avoidance of doubt, Counterparty bears all risks associated with the loading of the Goods onto any vehicle owned or contracted by Counterparty. If required, DFS may provide the relevant equipment to facilitate the loading of the Goods but all risks associated with the same will be borne by the Counterparty.</p> <p>(ii) Title to Goods purchased from DFS by Counterparty passes to Counterparty upon Counterparty making full payment of the relevant Fees or when Goods are on-sold by Counterparty to its end-customers in accordance with Section 6.e) below, whichever being the earlier event. Counterparty acknowledges that the Contract creates, in favour of DFS, a security interest (as defined in the Personal Property Securities Act 1999 ("PPSA")) in the Goods provided to Counterparty by DFS, and any proceeds in those Goods. That security interest continues until DFS releases Counterparty in writing. Counterparty undertakes to promptly do all things, sign any further documents and/or provide any information which DFS may reasonably require to perfect and maintain the perfection of its security interest (including by registration of a financing statement) and to give DFS not less than 14 days' prior written notice of any proposed change in the Counterparty's and/or any other change in the Counterparty's details (including, but not limited to, changes in the Counterparty's address, facsimile number, trading name or business practice). The Counterparty waives its right to receive a verification statement in respect of any financing statement relating to the security interest. To the extent permitted by law, the Counterparty and DFS contract out of section 114(1)(a) of the PPSA, and the Counterparty's rights referred to in sections 107(2)(a), (c), (d), (e), (f), (g), (h) and (i) of the PPSA.</p> <p>(iii) Any delivery date specified under a Contract is approximate only, and the time of delivery is not of the essence although DFS shall make reasonable efforts to meet the requested delivery date.</p> <p>(iv) DFS shall not be liable to Counterparty for any loss or damages incurred as a result of any delay in delivery, and Counterparty shall have no right to cancel or terminate any Contract on the ground of any such delay.</p> <p>(v) If Counterparty fails to take delivery of Goods when due, DFS may charge reasonable costs of storage from the agreed delivery date under the relevant Contract, until delivery is completed.</p> <p>(vi) DFS may deliver any order of Goods in part through multiple shipments.</p> <p>b) Right of inspection of Goods by Counterparty:</p> <p>(i) Counterparty shall inspect Goods within 14 days from taking delivery of the same.</p> <p>(ii) If any Goods are delivered to the Counterparty in a damaged condition, the Counterparty shall promptly notify DFS in writing (in any event not exceeding 14 days from the delivery of Goods), and provide DFS with such details and any supporting documentation and photographs as DFS may require. Upon the expiry of such 14 days period, Goods shall be deemed to have been accepted by the Counterparty and to be free of any defects or damage.</p> <p>(iii) If DFS determines that the damage existed prior to passage of risk of loss of Goods pursuant to Section 6.a)(i) above, DFS will provide the Counterparty with a return Goods authorization number,</p>



	<p>and the Counterparty shall return the damaged Goods to DFS in accordance with DFS' instructions. Upon receipt of the returned Goods, DFS may, at its absolute discretion, choose to:</p> <ol style="list-style-type: none"><li>1) ship to the Counterparty such Goods which conforms to the description stated in the relevant Contract; or</li><li>2) refund to the Counterparty the relevant Fees paid by the Counterparty for such Goods (or a proportionate part of the relevant Fees).</li></ol> <p>(iv) This entire Section 6.b) constitutes the Counterparty's sole and exclusive remedy and DFS' sole and exclusive liability in connection with or arising from any defect or damage in relation to any Goods delivered to the Counterparty.</p> <p>(v) In the event that the Counterparty becomes aware of any damage to or loss of Goods, the Counterparty must immediately inform DFS and promptly produce to DFS an official survey report obtained at the Counterparty's expense, along with all relevant and material details.</p> <p>(vi) To the maximum extent permitted by applicable laws, DFS shall not be liable to the Counterparty by reason of any condition, representation, undertaking or warranty whatsoever or any duty in law for any consequential loss or damage, to any property, whether for loss of profit or revenue or otherwise, which arise out of or in connection with the sale of Goods or the use or resale by the Counterparty, whether caused by the negligence of DFS, its employees, contractors, agents or otherwise.</p> <p>(vii) To the maximum extent permitted by applicable law, DFS shall not be liable to the Counterparty by reason of any condition, representation, undertaking or warranty whatsoever or any duty in law for any personal injury or death which arises out of or in connection with the sale of Goods or the use or resale by the Counterparty.</p> <p>c) Recall of Goods:</p> <ol style="list-style-type: none"><li>(i) If any Goods are determined by DFS, Counterparty, 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 so as to make it advisable or required by any party concerned, that such Goods be reworked or recalled, DFS and Counterparty undertakes to promptly communicate with each other, relevant facts and to develop and implement a mutually agreeable corrective action.</li></ol> <p>d) Pricing of Goods:</p> <ol style="list-style-type: none"><li>(i) DFS shall sell Goods to Counterparty at the Fees indicated in a Contract.</li><li>(ii) Counterparty accepts that it has the sole discretion to set its own retail pricing on Goods it sells to its own customers although Counterparty may request DFS to provide suggested retail pricing on Goods from time to time.</li><li>(iii) Counterparty is solely responsible for any price variations, discounts, promotions which it may elect to apply to the retail pricing on Goods.</li></ol> <p>e) Counterparty represents, warrants and undertakes that:</p> <ol style="list-style-type: none"><li>(i) all Goods purchased by Counterparty from DFS shall be offered for sale at its retail outlets to end customers only and in quantities which can reasonably be considered for personal use or gift-giving but not for resale;</li><li>(ii) it will not re-export Goods nor engage, directly or indirectly, in any other forms of sales of Goods, including but not limited to, wholesale sales, home delivery, or sales by catalogue, mail order or through the Internet;</li><li>(iii) it will not purchase any Goods, or products of the same or substantially similar kind, from any person or entity other than DFS for sale in its shops unless (and only to the extent that) DFS confirms in writing to Counterparty that Counterparty may purchase such specifically identified Goods from such supplier approved by DFS other than DFS;</li><li>(iv) it will be responsible for all costs of its operations and capital expenditures for construction and subsequent improvements, repair and maintenance to its shops along with trade fixtures therein;</li><li>(v) it will be solely responsible for complying with any and all legal requirements (including but not limited to quotas, visas, certificates of origin, permits, declarations, licenses, health and purity certificates, labeling, product testing, certification and ingredients registration or clearance) necessary for lawful export of Goods from the location or country where the Goods are being supplied by DFS and subsequent import;</li><li>(vi) it will submit to DFS monthly reports on the sales of Goods at the stock-keeping unit level and with such other detail as DFS will specify, indicating the total number and value of each such item sold together with stock level report of all unsold Goods in the inventory of Counterparty and the locations in which the stock of Goods is physically located;</li></ol>
--	--



	<p>(vii) it acknowledges that the sales, marketing and promotion policies that are pursued at its shops can have a significant effect on the image of Goods and the Intellectual Property of the Brands which supply Goods and as such, Counterparty undertakes that its shops will be maintained and staffed according to high standards of image, cleanliness and customer service designed to enhance and preserve the prestige of the renowned trademarks and trade names of the Brands;</p> <p>(viii) it will ensure that Goods is at all times displayed and sold according to instructions and specifications provided by DFS, the Brands or their authorized representatives regarding the look, style and appearance that must be associated with the trademarks and trade names of the Brands, and resolve promptly to the satisfaction of the Brands any issues relating to such display and sale of Goods;</p> <p>(ix) it will not engage in any discussions of any type (whether direct, indirect and/or otherwise) with any Brands with which DFS is or may become a supplier of; and</p> <p>(x) DFS will have the final decision in terms of brand placements, adjacency and planogramming the fixtures. No changes will be made to these elements without written agreement and approval of DFS.</p>
<b>7. SERVICES SUPPLIED AS A DELIVERABLE</b>	<p>a) In supplying the Services, DFS shall:</p> <p>(i) perform the Services with reasonable care and skill;</p> <p>(ii) use reasonable endeavours to perform the Services in accordance with the service description set out in the relevant Contract; and</p> <p>(iii) take reasonable care of all information as provided by Counterparty and make them available for collection (if applicable) by Counterparty on reasonable notice and request, provided always that DFS may destroy such information if Counterparty fails to collect them within a reasonable period after termination of the Contract.</p> <p>b) Counterparty shall:</p> <p>(i) co-operate with DFS in all matters relating to the Services;</p> <p>(ii) provide, in a timely manner, such information as DFS may require, and ensure that it is accurate and complete in all material respects; and</p> <p>(iii) provide, for DFS, its agents, subcontractors, consultants and employees, in a timely manner and at no charge, access to Counterparty's premises, office accommodation, data and other facilities as required by DFS for the performance of the Services.</p> <p>c) If DFS' performance of its obligations under the Contract is prevented or delayed by any act or omission of Counterparty, its agents, subcontractors, consultants or employees, DFS shall:</p> <p>(i) not be liable for any costs, charges or losses sustained or incurred by Counterparty that arise directly or indirectly from such prevention or delay;</p> <p>(ii) be entitled to payment of the Fees despite any such prevention or delay; and</p> <p>(iii) be entitled to recover any additional costs, charges or losses DFS sustains or incurs that arise directly or indirectly from such prevention or delay.</p>
<b>8. COUNTERPARTY'S REPRESENTATIONS, WARRANTIES AND UNDERTAKINGS</b>	<p>Counterparty represents, warrants and undertakes that:</p> <p>a) it has the capacity, power and authority to enter into the Contract;</p> <p>b) 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>c) 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 the Counterparty in the course of carrying-on its business; and</p> <p>d) 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>
<b>9. INTELLECTUAL PROPERTY</b>	<p>a) 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 the 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>b) Where a Deliverable is a Service requiring DFS to produce certain Works:</p>



	<ul style="list-style-type: none"><li>(i) Counterparty acknowledges and agrees that such Works shall vest unconditionally and immediately upon creation with DFS, that DFS shall solely and exclusively own and retain all rights, title, and interest in and to such Works and all Intellectual Property therein or related thereto, and that such Works constitute the sole property of DFS (unless otherwise agreed expressly in writing by the Parties); and</li><li>(ii) If and to the extent necessary for the Counterparty to use any such Work, DFS grants the Counterparty a non-exclusive, non-sublicensable, royalty-free license to use such Work internally for its own business for the purpose contemplated by the Parties for such Work, which license shall be non-assignable and non-transferable, except upon the Counterparty's sale of all or substantially all assets of its business including use of such Work.</li></ul>
<b>10. DATA PROTECTION</b>	<ul style="list-style-type: none"><li>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.</li><li>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.</li><li>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.</li></ul>
<b>11. TERMINATION</b>	<ul style="list-style-type: none"><li>a) Either Party may terminate a Contract immediately by written notice to the other:<ul style="list-style-type: none"><li>(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;</li><li>(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;</li><li>(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</li><li>(iv) where the Force Majeure Event has continued for thirty (30) days, pursuant to Section 20 below.</li></ul></li><li>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.</li></ul>
<b>12. CONSEQUENCES OF TERMINATION</b>	Upon an event of early termination of a Contract under Section 11 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.
<b>13. CONFIDENTIALITY</b>	<ul style="list-style-type: none"><li>a) The receiving Party agrees:<ul style="list-style-type: none"><li>(i) not to use any Confidential Information for any purpose other than to carry out its performance of the Contract;</li><li>(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;</li><li>(iii) to advise its Representatives of the confidential nature of such Confidential Information and require them to observe the terms of the Contract and be responsible for any actions of its Representatives;</li><li>(iv) to take reasonable measures to protect the secrecy of and to avoid unauthorized disclosure or use of Confidential Information; and</li><li>(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.</li></ul></li><li>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 Section, it shall, to the extent permitted by law, use all reasonable endeavors 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</li></ul>





	<p>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 Section, 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 expiration or earlier termination of the Contract.</p>
<b>14. INDEMNITY</b>	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 Contract.
<b>15. LIMITATION OF LIABILITY</b>	<p>a) Notwithstanding any provisions which may indicate otherwise, the total liability of DFS to the Counterparty for any and all claims, whether by Counterparty or by any other person, and howsoever arising in connection with or arising out of the sale, supply, delivery, possession, replacement or use of a Deliverable under a Contract shall in no event exceed the Fees paid or payable, whichever is lower, by the Counterparty for the relevant Deliverable(s) under a Contract:</p> <p>b) To the maximum extent permitted by applicable laws, 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>
<b>16. ASSIGNMENT</b>	<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 express written consent of DFS.</p>
<b>17. TAXES</b>	Invoices issued for Deliverables rendered shall be exclusive of goods and services tax. Any goods and services tax which may be levied under any applicable law shall be borne and payable by the Counterparty. Any payments due to DFS shall be exclusive of all withholding tax. In the event that any withholding tax is applicable to the payments to DFS, Counterparty shall increase the amount of such payment to DFS by the amount of such withholding tax, pay such withholding tax to the appropriate government authority and promptly deliver official tax receipts evidencing such payment or certified copies thereof to DFS on whose account such withholding is made.
<b>18. NON-SOLICITATION</b>	<p>a) During the term of a Contract and for 2 years after the expiration or its earlier termination, Counterparty shall not, without DFS' prior written consent, directly or indirectly;</p> <p>(i) solicit or encourage any person to leave the employment or other service of DFS or its Affiliates; or</p> <p>(ii) hire, on behalf of Counterparty or any other person or entity, any person who has left the employment within the one-year period following the termination of that person's employment with DFS or its Affiliates.</p> <p>b) During the term of a Contract and for 2 years after the expiration or its earlier termination, Counterparty will not, whether for its own account or for the account of any other person or entity, intentionally interfere with the relationship of DFS or its Affiliates with, or endeavour to entice away from DFS or its Affiliates, any person who during the term of a Contract is, or during the preceding one-year period, was a tenant, co-investor, co-developer, joint venturer or other customer of DFS or its Affiliates.</p>
<b>19. COUNTERPARTY COMPLIANCE</b>	<p>a) Counterparty, in the course of carrying out a Contract, agrees to comply with the following:</p> <p>(i) DFS' Code of Conduct accessible at <a href="https://tc.dfs.com/coc">https://tc.dfs.com/coc</a>;</p> <p>(ii) DFS' Anti-Corruption Policy accessible at <a href="https://tc.dfs.com/acp">https://tc.dfs.com/acp</a>;</p> <p>(iii) Data Security and Privacy Requirements accessible at <a href="http://www.dfsqops.com/tc/en/DFS_BP_DP.pdf">http://www.dfsqops.com/tc/en/DFS_BP_DP.pdf</a>.</p> <p>b) Counterparty confirms that except as disclosed in writing by Counterparty to DFS prior to the Contract execution date:</p> <p>(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;</p>



	<ul style="list-style-type: none"> <li>(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</li> <li>(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.</li> </ul> <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"> <li>(i) has been convicted of any acts of corruption or influence peddling;</li> <li>(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, "<b>Government Entities</b>");</li> <li>(iii) is, or 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; or</li> <li>(iv) ships to, transships through, sells to, provides to, or otherwise transfer any Deliverable to, directly or indirectly, any country, company or individual that is prohibited by Government Entities.</li> <li>(v) For the purpose of this Section 19.c), person may refer to a natural person or a legal entity.</li> </ul> <p>d) Counterparty agrees to promptly notify DFS if it has knowledge of any breach of this Section 19 after the Contract execution date.</p>
<b>20. FORCE MAJEURE</b>	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 consecutive 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. In the event that a Force Majeure Event occurs, Counterparty is still required to pay the Fees due under the Contract for the Deliverables provided.
<b>21. MISCELLANEOUS</b>	<ul style="list-style-type: none"> <li>a) The governing law of a Contract shall be the laws of New Zealand.</li> <li>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.</li> <li>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 Party or to bind the other Party in any manner whatsoever.</li> <li>d) Each Contract constitutes an entire agreement between the Parties concerning the subject matter hereof and supersedes all prior relevant agreements, representations and understandings.</li> <li>e) Each Contract cannot be amended verbally.</li> <li>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.</li> <li>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.</li> <li>h) In the case of conflict between the terms of a Contract and this SCTS, the terms of the Contract shall prevail.</li> <li>i) Unless expressly incorporated by reference into a Contract, no terms and conditions on any other document issued by DFS to Counterparty shall be incorporated into a Contract or shall be deemed a part of that Contract.</li> <li>j) In the event that any provision in the Contract becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, the Contract shall continue in full force and effect without the said provision.</li> <li>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.</li> <li>l) The 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.</li> </ul>
<b>22. NOTICES</b>	<ul style="list-style-type: none"> <li>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).</li> </ul>





	<p>b) A notice sent according to Section 22.a) shall be deemed to have been received:</p> <ul style="list-style-type: none"><li>(i) if delivered by hand, on written acknowledgement or receipt by an officer or an employee of the receiving Party;</li><li>(ii) if delivered by internationally recognized courier, on production of evidence from the relevant courier that the notice has been successfully delivered; or</li><li>(iii) if sent by email, on receipt by the Party sending the notice of an email delivery confirmation.</li></ul> <p>If, under the preceding provisions of this Section 22.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>
<b>23. DISPUTE RESOLUTION</b>	<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 ("<b>Dispute</b>") promptly by negotiation between executives. Either Party may send the other Party a request to negotiate.</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>a) 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>