

END USER LICENSE AND TERMS OF USE (ToU) FOR DFS REMOTE KEY INJECTION SOFTWARE

THIS END USER LICENSE AGREEMENT (the "Agreement") is between Wayne Fueling Systems LLC, on behalf of itself and its affiliates within the Dover Fueling Solutions family of companies (collectively, "DFS" or "we" or "us") and you, the end user ("you" or the "User") who accepts the terms of this agreement or otherwise accesses or uses the DFS Remote Key Injection Software (the "Software").

PLEASE READ THIS AGREEMENT CAREFULLY. THIS AGREEMENT IS A LEGALLY BINDING AGREEMENT BETWEEN YOU AND DFS, AND THIS AGREEMENT SHALL GOVERN YOUR ACCESS AND USE OF DFS' SOFTWARE THROUGH YOUR DOWNLOADING AND INSTALLATION OF THE SOFTWARE PROVIDED BY DFS ON YOUR DEVICE AND YOUR USE OF SUCH SOFTWARE IN CONNECTION WITH THE SERVERS AND OTHER HARDWARE, IF ANY, PROVIDED BY OR ON BEHALF OF DFS, AS WELL AS ANY MANUALS, INSTRUCTIONS, DESCRIPTIONS, SPECIFICATIONS OR OTHER MATERIALS, IN HARD COPY OR ELECTRONIC FORM, PROVIDED BY OR ON BEHALF OF DFS DESCRIBING OR RELATING TO THE USE OF THE SOFTWARE (THE "DOCUMENTATION"), ABSENT ANOTHER SIGNED LICENSE AGREEMENT COVERING THE SOFTWARE EFFECTIVE BETWEEN YOU AND DFS. TO THE EXTENT THIS AGREEMENT IS CONSIDERED TO BE AN OFFER BY DFS, YOUR ACCEPTANCE IS EXPRESSLY LIMITED TO THE TERMS AND CONDITIONS SET FORTH HEREIN. ANY TERMS IN ANY PURCHASE ORDER OR OTHER DOCUMENTATION ISSUED BY OR ON BEHALF OF YOU THAT CONTAINS ADDITIONAL OR CONFLICTING TERMS OR PURPORTS TO REPLACE, REJECT, MODIFY OR BE A COUNTER OFFER TO THIS AGREEMENT ARE EXPRESSLY REJECTED AND ARE VOID. BY CLICKING THE BOX NEXT TO THE STATEMENT "I AGREE TO THE LICENSE TERMS AND CONDITIONS" DURING INSTALLATION OR BY INSTALLING THE SOFTWARE OR OTHERWISE USING OR ACCESSING THE SERVICES, YOU AFFIRM THAT YOU HAVE READ AND UNDERSTAND THE TERMS AND CONDITIONS SET FORTH HEREIN AND ACCEPT THIS AGREEMENT. IF YOU DO NOT ACCEPT ALL TERMS AND CONDITIONS OF THIS AGREEMENT, DO NOT INSTALL OR OTHERWISE USE OR ACCESS THE SOFTWARE.

THIS AGREEMENT REQUIRES FINAL AND BINDING ARBITRATION TO RESOLVE ANY DISPUTE OR CLAIM ARISING OUT OF OR RELATING IN ANY WAY TO THIS AGREEMENT, OR YOUR ACCESS TO OR USE OF THE SOFTWARE, INCLUDING THE VALIDITY, APPLICABILITY OR INTERPRETATION OF THIS AGREEMENT, AND YOU AGREE THAT ANY SUCH CLAIM WILL BE RESOLVED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION, ARBITRATION OR OTHER SIMILAR PROCESS. PLEASE REVIEW SECTION 14 CAREFULLY TO UNDERSTAND YOUR RIGHTS AND OBLIGATIONS WITH RESPECT TO THE RESOLUTION OF ANY CLAIM.

You represent and warrant that you: (a) are of legal age to form a binding contract; (b) have the right, authority, and capacity to agree to and abide by this Agreement; and (c) are not a person barred from using the Software under the laws of any applicable jurisdiction. THE SOFTWARE IS NOT INTENDED FOR USERS UNDER THE AGE OF 13, AND SUCH USERS ARE EXPRESSLY PROHIBITED FROM SUBMITTING ANY PERSONAL DATA OR USING ANY ASPECT OF THE SOFTWARE, AND BY TAKING SUCH ACTIONS YOU AGREE, REPRESENT, AND WARRANT THAT YOU ARE 13 YEARS OF AGE OR OLDER.

BY CLICKING THE BOX NEXT TO THE STATEMENT "I AGREE TO THE LICENSE TERMS AND CONDITIONS" OR BY OTHERWISE USING OR ACCESSING THE SOFTWARE, YOU INDICATE THAT YOU INTEND YOUR ACT TO SERVE AS YOUR SIGNATURE TO THIS AGREEMENT AND TO HAVE THE SAME FORCE AND EFFECT AS THE USE OF A MANUAL SIGNATURE, AND IF YOU ARE USING THE SOFTWARE IN YOUR CAPACITY AS AN EMPLOYEE OR AGENT OF A BUSINESS ENTITY, YOU WARRANT THAT YOU HAVE ACTUAL AUTHORITY TO LEGALLY BIND SUCH ENTITY TO THIS AGREEMENT.

1. SOFTWARE DESCRIPTION

The Software enables an Authorized User to inject an Encryption Key from a remote location to a working card reader or other Secure Payment Module keypad, located in a DFS fuel or fluid dispenser, that is compliant with Payment Card Industry Data Security Standard (collectively, "SPM") at your location. For

the avoidance of doubt this definition includes SPM1 and SPM2. An “Authorized User” is someone who has personally been trained and certified by DFS, is an active employee of an ASO (defined below), or is otherwise registered as an authorized user for the Software with DFS. An “Encryption Key” is a digital key that encrypts the data transmitted from the SPM to the bank, payment processor or other financial institution that owns the key. Notwithstanding the foregoing, DFS has the right to refuse to issue keys, terminate or suspend any Authorized User’s access to the Software without reason or notice, at any time. To download and install the Software or the related documentation available from DFS (“Documentation”), you need a device (for example, a desktop computer or a laptop computer) with Internet access that can connect the SPM into DFS’ secure host bridge where the encryption is located. You are solely responsible for providing the device and the Internet access to that device and for inspecting the SPM for any signs of tampering. There shall be no charge to download and install the Software. You shall be assigned a unique identifier. A fee, shall be charged to you or your current ASO for each key downloaded using the Software and injected into a SPM. You or your ASO, if applicable, will receive periodic invoices for these fees, and must pay such fee in accordance with the payment terms of their contract with DFS. DFS retains the right to suspend or terminate your access to the Software in the event of nonpayment for such fees by you or your ASO.

2. THE USER

2.1 Individual User

Individual Users who have been authorized by DFS to download and install the Software, may access and use the Software solely as authorized by DFS and only after each has been trained and certified by DFS. Individual Users may only use the Software on devices that they own and control.

2.2 Authorized Service Organization (“ASO”)

An ASO is a service provider duly authorized and under contract with DFS to access and use the Software. Only employees of an ASO who are in good standing with the ASO and who have been trained and certified by DFS may download, install and otherwise access and use the Software onto the ASO’s devices only. The ASO must promptly notify DFS if an employee of the ASO authorized to access and use the Software is suspected or convicted of any crimes or other acts of dishonesty or moral turpitude. Upon such notification or if DFS independently learns that such an employee of the ASO has been suspected of any crimes or other acts of moral turpitude, DFS shall have the right to cancel or revoke that employee’s access to the Software and the Documentation without notice.

2.3 Payment for Use of the Software

The Software can be downloaded and installed onto your device without charge. Each user, whether an individual user or an employee of an ASO, shall be assigned a unique identifier. You/the associate company to which the unique identifier is linked shall be charged for each billable key injected in SPMs. The invoice shall be sent on a monthly basis for the number of billable keys downloaded in the preceding month. DFS may assign a maximum number of key injections per unique identifier per month. For any unique identifier, DFS shall have the right to suspend permission to inject keys if a number of downloads in a month exceeds the maximum number.

3. GRANT OF LICENSE

Subject to and conditioned on your ongoing compliance with this Agreement, you are hereby granted, and you accept, a nonexclusive, nontransferable, nonsublicensable, limited, personal license during the Term to: (a) install, access and use the Software, only in object code form, only in accordance with any applicable DFS Software training and the Documentation, and only as necessary to transfer the Encryption Key to the SPM (that is PCI compliant) and secured RAM where the Encryption Key will be stored, and (b) use the Documentation solely as necessary to enable your use of the Software. You have no right to receive, discover, attempt to discover, use or examine any source code or design documentation relating to the Software or the Documentation. The license granted herein does not constitute a sale of the Software or the Documentation, or any portion or copy thereof. The Software is licensed and not sold, and ALL RIGHTS NOT EXPRESSLY GRANTED HEREIN ARE RESERVED BY DFS.

4. RESTRICTIONS

No part of the Software or the Documentation may be used by anyone other than you without the prior written consent of DFS. You shall not (and shall not allow any third party to): (a) copy or distribute the Software or Documentation except as expressly authorized herein [and/or by the app platform], (b) decompile, disassemble, translate, reverse engineer, or otherwise attempt to reconstruct or discover any source code or underlying ideas, algorithms, file formats, data structures or other aspects of the Software, (c) remove, modify or obscure any product or service identifier, copyright, trademark or other proprietary rights notice or other notices, instructions, disclaimers or legends from any part of the Software or the Documentation, (d) provide, lease, lend, host, use for timesharing, service bureau, ASP, SaaS or similar purposes or otherwise use or allow others to use any part of the Software or the Documentation to or for the benefit of third parties, (e) except as expressly specified in the Documentation, use or incorporate any hardware or software with any part of the Software, or (f) modify or create a derivative work of any part of the Software or the Documentation. Except as expressly allowed by this Agreement, you shall not use or disclose any aspect of the Software or the Documentation, or any related technology, ideas, algorithms, data or other information (collectively, "Data"). You expressly acknowledge and agree that there is no adequate remedy at law for a breach of this Section, that such a breach would irreparably harm DFS and that DFS is entitled, without limiting any of DFS' other remedies at law or equity, to obtain injunctive relief (temporary and permanent) from any court of competent jurisdiction immediately upon request and without the need to post a bond or security, with respect to any such breach or potential breach in addition to any other remedies.

5. ACCEPTABLE USE POLICY AND YOUR CONDUCT

You may only use the Software and Documentation as set forth in this Agreement or as expressly permitted in the Software or Documentation itself. The provisions of this Section are also sometimes referred to as our Acceptable Use Policy. From time to time, DFS may, in our reasonable discretion, change our Acceptable Use Policy to add new, alter or otherwise modify restrictions on your use of the Software or the Documentation. Any change to the Acceptable Use Policy made during the term of this Agreement will become effective upon the first to occur of: (a) your logging in to the Software, or (b) 30 days following our notice to you describing such change. By logging in to the Software, you shall be deemed to have accepted all new restrictions on your use of the Software and the Documentation. If you choose not to accept any new restriction on your use of any part of the Software or the Documentation, this Agreement shall be immediately terminated and you shall no longer be authorized to access or otherwise use any of the Software or the Documentation in any manner or for any purpose whatsoever.

5.1 Password and Security

A user account is required to access the Software and may be accessed and used only by those authorized by DFS. You are solely responsible for any and all activities that occur under your account. You shall notify DFS immediately of any unauthorized use of your password or account or any other breach of security that is known or suspected by you. User accounts cannot be "shared" or used by more than one individual. We may use cookies and web beacons to identify users when they register to use the Software and to assist users to use the Software or the Documentation. You agree to: (i) provide true, accurate, current and complete account information; and (ii) maintain and promptly update the account information to keep it true, accurate, current and complete. If you provide any information that is untrue, inaccurate, not current or incomplete, or DFS reasonably suspects that you have done so, DFS may suspend or terminate your account. If your account remains inactive for an extended period of time, you agree that DFS may suspend or terminate your account, with or without notice to you.

5.2 Acceptable Conduct

You agree not to:

- (a) provide any false information, inaccurate information, or incomplete information required to access the Software or the Documentation;
- (b) impersonate any person or entity;
- (c) attempt, through any means, to gain unauthorized access to the Software, or another user's account;
- (d) forward or otherwise provide any information regarding the Software or the Documentation to any third party;
- (e) use any robot, spider, other automatic device, or manual process to monitor or copy any information or content contained in the Software or the Documentation. Additionally, you

- agree that you will not take any action that imposes an unreasonable or disproportionately large load on the Software's infrastructure or DFS' network or otherwise impairs the use of the Software by others;
- (f) take any action, or refrain to act, in any way with respect to the Software that would cause DFS to violate any applicable law, statute, ordinance or regulation, or that violate these Terms of Use or the Acceptable Use Policy;
 - (g) use any device, software or routine that interferes or attempts to interfere with the proper working of the Software; or
 - (h) disclose or share your password with any third party or use your password for any unauthorized purpose. In any case, you remain solely responsible for any authorized or unauthorized use of your password.

6. TERM AND TERMINATION

6.1 Term. The term of this Agreement commences upon the earliest to occur of (i) when you download the Software; (ii) when you install the Software; (iii) when you otherwise acknowledge your acceptance of this Agreement, or (iv) your first use of the Software, and will continue in effect until terminated by you or DFS as set forth in this Section 8 ("Term").

6.2 Termination by You. You may terminate this Agreement at any time by discontinuing use of and/or uninstalling the Software and thereafter, providing notice to DFS.

6.3 Termination by Company. DFS may terminate this Agreement, without prejudice to any other rights we may have, at any time upon notice to you, for any reason or no reason, including if you fail to comply with any of the terms or conditions of this Agreement.

6.4 Automatic Termination. If you violate this Agreement, all rights granted to you under this Agreement shall terminate automatically and immediately, with or without notice to you.

6.5 Effect of Termination. Upon any termination of this Agreement, the all rights granted hereunder and all of DFS' performance obligations immediately terminate and you must no longer access, attempt to access or utilize the Software and/or the Documentation. All provisions of the Agreement which reasonably should survive termination will do so; by way of example but not of limitation, all obligations regarding confidentiality survive. Termination is not DFS' exclusive remedy and all other remedies will be available to DFS despite termination, DFS will not be liable for any damages resulting solely from termination of this Agreement as permitted under this Agreement.

6.6 Suspension. You agree that DFS may suspend the Software without liability if: (i) we reasonably believe that the Software is being used in violation of this Agreement; (ii) you don't cooperate with our reasonable investigation of any suspected violation of the Agreement; (iii) there is an event for which we reasonably believe that the suspension of the Software is necessary to protect the DFS network or our other customers; or (iv) if required by law.

7. RESPONSIBILITY FOR ACCESS AND USE

YOU UNDERSTAND THAT YOU ARE PERSONALLY RESPONSIBLE FOR THE USE OF AND ACCESS TO ALL DATA AND THE SOFTWARE AND THE DOCUMENTATION BY YOU, ANY PERSON TO WHOM YOU HAVE GIVEN ACCESS TO YOUR DATA, THE SOFTWARE OR THE DOCUMENTATION, AND ANY PERSON WHO GAINS ACCESS TO ANY DATA, THE SOFTWARE OR THE DOCUMENTATION AS A RESULT OF YOUR FAILURE TO USE REASONABLE SECURITY PRECAUTIONS, EVEN IF SUCH USE OR ACCESS WAS NOT AUTHORIZED BY YOU, AS WELL AS ANY AND ALL RESULTS OF ANY SUCH USE OR ACCESS. YOU AGREE TO INDEMNIFY AND HOLD HARMLESS DFS, AND EACH OF ITS DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES, RESELLERS, LICENSORS, SUPPLIERS, INVESTORS AND OWNERS, ASSIGNS OR AFFILIATES (EACH, A "DFS AFFILIATE"), FROM AND AGAINST ANY AND ALL ACTIONS, CLAIMS, AND SUITS TO THE EXTENT ARISING FROM USE OF OR ACCESS TO ANY DATA, THE SOFTWARE OR THE DOCUMENTATION ("CLAIMS"); AND YOU WILL INDEMNIFY EACH DFS AFFILIATE FROM ALL LIABILITIES, LOSSES, DAMAGES (INCLUDING ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES), SETTLEMENT PAYMENTS, INTEREST, AWARDS, JUDGMENTS, DIMINUTION IN VALUE, FINES, FEES

AND PENALTIES, AS WELL AS ALL OTHER CHARGES, COSTS OR EXPENSES (INCLUDING, BUT NOT LIMITED TO, ANY COURT FILING FEE, COURT COST, ARBITRATION FEE, ARBITRATION COST, WITNESS FEE, AS WELL AS ANY OTHER FEE OR COST OF INVESTIGATING, DEFENDING OR OTHERWISE ASSERTING ANY CLAIM FOR INDEMNIFICATION UNDER THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, IN EACH CASE, ANY ATTORNEYS' FEES, OTHER PROFESSIONALS' FEES OR DISBURSEMENTS) (COLLECTIVELY, "LOSS") , IN ANY WAY ARISING FROM OR RELATED TO ANY SUCH CLAIM. IN NO EVENT SHALL DFS HAVE ANY LIABILITY TO YOU OR ANY THIRD PARTY IN ANY WAY ARISING FROM OR RELATED TO ANY USE OF OR ACCESS TO ANY DATA, THE SERVICES, THE SOFTWARE OR THE DOCUMENTATION.

8. NO OTHER SERVICES

This Agreement does not obligate DFS to provide you with any updates, upgrades, support or other products, software or services, whether in connection with the Software or the Documentation or otherwise. Any such other products, software or services shall be subject to a separate agreement between you and DFS.

9. USER INFORMATION

You acknowledge that when you download, install, or use the Software, DFS may use automatic means (including, for example, cookies and web beacons) to collect information about your use of the Software. You also may be required to provide certain information about yourself as a condition to downloading, installing, or using the Software or certain of its features or functionality. DFS may collect, use, disclose, store and process all information it collects through or in connection with the Software in accordance with DFS' [Privacy Policy](https://www.doverfuelingsolutions.com/privacy) (located at <https://www.doverfuelingsolutions.com/privacy>). By downloading, installing, using, and providing information to or through the Software, you consent to all actions taken by DFS with respect to your information in compliance with the Privacy Policy. You agree that DFS may collect, publish, share, and otherwise utilize performance data, usage data and other technical information gathered as part of your access and use of the Software or any such other services for any purpose, including without limitation in order to better serve its customers, facilitate problem trouble shooting and improve and enhance DFS' various product and service offerings; provided that such information will be aggregated with the data from other DFS customers in a manner that does not specifically identifies you as the source of the data. Usage data may also be used in aggregate to establish usage trends across multiple locations for marketing purposes. You hereby consent to the collection and use of such information and data as described herein.

YOU ARE RESPONSIBLE FOR GIVING ANY NOTICES TO THE DATA SUBJECTS THAT ARE REQUIRED UNDER ANY APPLICABLE LAW OR REGULATION. YOU ARE ALSO RESPONSIBLE FOR ENSURING COMPLIANCE WITH ALL REQUIREMENTS IMPOSED BY ANY LAW OR REGULATION WITH RESPECT TO ANY DATA RETRIEVED OR SAVED FROM THE SOFTWARE. WE MAKE NO REPRESENTATION AS TO THE REQUIREMENTS YOU MUST FOLLOW TO COMPLY WITH ANY LAW OR REGULATION.

10. CONFIDENTIAL INFORMATION

"Confidential Information" means any and all of DFS' proprietary technical or business information, in any tangible or non-tangible form, including without limitation, information (tangible or intangible) regarding DFS' technology, designs, techniques, research, know-how, specifications, product plans, pricing, customer information, user data, current or future strategic information, current or future business plans, policies or practices, employee information, and other business and technical information. User acknowledges that the Software and the Documentation constitute valuable trade secrets of DFS and that the Software and the Documentation are included in the Confidential Information of DFS. User agrees that it shall (a) not use any of the Confidential Information except as necessary to exercise the rights granted to it by this Agreement; (b) not provide access to or disclose any Confidential Information to any third party; and (c) take actions to protect the confidentiality of all Confidential Information which are at least as stringent as the precautions it takes to protect its own confidential information and which in all cases are at least reasonable precautions. Confidential Information received by DFS from a third party will be deemed Confidential Information of DFS. User will have no obligations of confidentiality under this Section 10 for information that is proven by User (x) to have been known to User prior to its receipt from DFS from a source other than one having an obligation of confidentiality to DFS; (y) to have become publicly known, except through a breach of this Agreement by User; or (z) to have been entirely independently developed by User without use of or reference to the Confidential Information. User may disclose Confidential Information pursuant to the requirements of a governmental agency or applicable law, provided that, to

the extent permitted, it will give DFS reasonable prior written notice sufficient to permit DFS to contest such disclosure.

11. OWNERSHIP OF INTELLECTUAL PROPERTY

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12. EXPORT COMPLIANCE

User will comply with all applicable export laws and regulations of any United States or foreign agency or authority. User agrees that it will not export or re-export, or allow the export or re-export of any product, technology or information it obtains or learns pursuant to this Agreement, including the Software (or any direct product thereof) in violation of any such laws or regulations. User agrees to indemnify, defend and hold harmless DFS and each DFS Affiliate from and against any and all Loss in any way arising out of or related to User's breach of this Section.

13. WARRANTIES AND DISCLAIMERS

13.1 Mutual Representations and Warranties. Each party represents and warrants that it has full right, power, and authority to enter into this Agreement and to perform its obligations and duties under this Agreement, and that the performance of such obligations and duties does not conflict with or result in a breach of any other agreement of such party or any judgment, order, or decree by which such party is bound.

13.2 DFS Representations and Warranties. DFS represents and warrants that the Software will operate in material conformance with the Documentation.

13.3 Your Representations and Warranties. Where not otherwise prohibited by applicable law, you represent and warrant that you have not been convicted or suspected of any crimes or other acts of dishonesty or moral turpitude, or otherwise been found ineligible for access to a Public Key Infrastructure (PKI) under Payment Card Industry guidelines or regulations (as they may be revised from time to time). You shall promptly notify DFS if you become involved in any claims, actions, or suits against you of any crimes or other acts of dishonesty or moral turpitude. Upon such notification or if DFS independently learns that you have been suspected of any crimes or other acts of moral turpitude, DFS shall have the right to cancel or revoke your access to the Software and the Documentation without notice.

13.4 Disclaimers. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 13, THE SOFTWARE AND THE DOCUMENTATION ARE PROVIDED TO USER ON AN "AS IS, WHERE-IS AND AS-AVAILABLE" BASIS, WITH ALL FAULTS, AND WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND OR NATURE WHATSOEVER. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN OR OTHER STATEMENT MADE BY DFS OR ANY DFS AFFILIATE IS EFFECTIVE TO CREATE ANY WARRANTY OR OTHER LIABILITY OR OBLIGATION CONTRARY TO THIS DISCLAIMER. USER EXPRESSLY AGREES THAT USE OF THE SOFTWARE AND THE DOCUMENTATION IS AT USER'S SOLE RISK. TO THE EXTENT ALLOWED BY APPLICABLE LAW, DFS HEREBY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS, WARRANTIES, CONDITIONS OR GUARANTEES, OF ANY KIND OR NATURE WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO ANY ASPECT OF THE SOFTWARE AND THE DOCUMENTATION, INCLUDING, BUT NOT LIMITED TO, AS TO THE CONDITION, VALUE, QUALITIES, PROVISION, OPERATION, USE, RESULTS OR WORKMANSHIP THEREOF, OR THE ABSENCE OR CORRECTION OF ANY DEFECTS THEREIN,

WHETHER LATENT OR PATENT. DFS SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY, ACCURACY, NON-INFRINGEMENT, TITLE OR FITNESS FOR A PARTICULAR PURPOSE, AS WELL AS ANY REPRESENTATIONS OR WARRANTIES ARISING FROM ANY COURSE OF DEALING, USAGE OR TRADE PRACTICE. DFS MAKES NO WARRANTY OR REPRESENTATION THAT THE SOFTWARE, THE DOCUMENTATION, OR ANY ASPECT OF THE CONDITION, VALUE, QUALITIES, PROVISION, OPERATION, USE, RESULTS OR WORKMANSHIP THEREOF, WILL MEET USER'S REQUIREMENTS, WILL BE CONTINUOUS, UNINTERRUPTED OR ERROR FREE, WILL BE ACCURATE OR COMPLETE, WILL BE COMPLETELY SECURE, OR WILL NOT BE SUSCEPTIBLE TO UNAUTHORIZED ACCESS, INTRUSION OR ATTACK BY THIRD PARTIES OR TO INFECTION BY COMPUTER VIRUS OR OTHER MALICIOUS OR INJURIOUS CODE. IN NO EVENT SHALL DFS OR ANY DFS AFFILIATE BE LIABLE FOR THE CONSEQUENCES OF ANY INTERRUPTIONS, ERRORS, INACCURACIES, INCOMPLETENESS OR UNAUTHORIZED ACCESS, INTRUSION, ATTACK OR INFECTION, OR OF ANY FAILURE TO MEET USER'S REQUIREMENTS, WHETHER OR NOT THE PARTY WAS NOTIFIED, ADVISED OR WARNED, OR OTHERWISE KNEW OR SHOULD HAVE KNOWN, OF ANY SUCH REQUIREMENTS OR THE POSSIBILITY OF ANY SUCH CONSEQUENCES.

14. LIMITATION OF LIABILITY

14.1 Waiver. TO THE EXTENT ALLOWED BY APPLICABLE LAW, IN NO EVENT SHALL DFS OR ANY DFS AFFILIATE BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, OR FOR UNAUTHORIZED USE OF THE SOFTWARE, LOSS ASSOCIATED WITH BUSINESS INTERRUPTION, BODILY INJURY OR DEATH, LOSS OF PRODUCTION, LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS, LOSS OF OPPORTUNITIES OR LOSS OF GOODWILL, IN ANY WAY ARISING IN CONNECTION WITH THIS AGREEMENT.

14.2 Limit. TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAW, IN NO EVENT SHALL THE CUMULATIVE MONETARY LIABILITY OF DFS AND ANY DFS AFFILIATES FOR ANY AND ALL CLAIMS IN CONNECTION WITH THIS AGREEMENT EXCEED THE ACTUAL AMOUNT YOU PAID TO DFS FOR THE SOFTWARE IN TWELVE (12) MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO SUCH CLAIM(S).

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

15. GOVERNING LAW AND DISPUTE RESOLUTION

15.1 Governing Law. By using the Software, you agree that the statutes and laws of the United States and the State of Texas, without regard to conflicts of laws principles, will apply to all matters relating to use of the Software or this Agreement. If the arbitration provisions below do not apply to a given dispute or claim, you agree that any litigation of that dispute or claim shall be subject to the exclusive jurisdiction of the state or federal courts in Travis County, Texas, United States. The United Nations Convention on Contracts for the International Sale of Goods (1980) and the Uniform Computer Information Transaction Act (UCITA) are hereby excluded in their entirety from application to this Agreement.

15.2 Binding Arbitration and Class Action Waiver.

- (a) ALL CLAIMS ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE RESOLVED BY FINAL AND BINDING ARBITRATION RATHER THAN IN COURT, EXCEPT THAT YOU MAY ASSERT CLAIMS IN SMALL CLAIMS COURT (DEFINED FOR THE PURPOSES OF THIS TOS AS A COURT OF LIMITED JURISDICTION THAT MAY ONLY HEAR CLAIMS NOT EXCEEDING \$5,000) IF YOUR CLAIMS ARE WITHIN THE COURT'S

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

- (b) The arbitration shall be conducted by the American Arbitration Association (AAA) under its then-applicable Commercial Arbitration Rules or, as appropriate, its Consumer Arbitration Rules. The AAA's rules are available at <http://www.adr.org/>. Payment of all filing, administration and arbitrator fees shall be governed by the AAA's rules. The arbitration shall be conducted in the English language by a single independent and neutral arbitrator. For any hearing conducted in person as part of the arbitration, you agree that such hearing shall be conducted in Austin, Texas or, if the Consumer Arbitration Rules apply, another location reasonably convenient to both parties with due consideration of their ability to travel and other pertinent circumstances, as determined by the arbitrator. The decision of the arbitrator shall be final and binding. Judgment on the arbitral award may be entered in any court of competent jurisdiction.
- (c) WE EACH AGREE THAT ALL CLAIMS SHALL BE RESOLVED ONLY ON AN INDIVIDUAL BASIS AND NOT IN A CLASS, CONSOLIDATED OR REPRESENTATIVE ACTION OR OTHER SIMILAR PROCESS (INCLUDING ARBITRATION). IF FOR ANY REASON A CLAIM PROCEEDS IN COURT RATHER THAN IN ARBITRATION, WE EACH WAIVE ANY RIGHT TO A JURY TRIAL AND AGREE THAT SUCH CLAIM SHALL BE BROUGHT ONLY IN A COURT OF COMPETENT JURISDICTION IN AUSTIN, TEXAS. YOU HEREBY SUBMIT TO THE PERSONAL JURISDICTION AND VENUE OF SUCH COURTS AND WAIVE ANY OBJECTION ON THE GROUNDS OF VENUE, FORUM NON-CONVENIENS OR ANY SIMILAR GROUNDS WITH RESPECT TO ANY SUCH CLAIM.
- (d) Time Limit for Filing Claims. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to any use of the Software or any activity related to this Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

15.3 Right to Preliminary and Injunctive Relief. Despite any other provision herein, you expressly acknowledge and agree that any misuse or disclosure of Confidential Information or DFS' intellectual property would cause irreparable harm and, without limiting any of DFS' other remedies at law or equity, in the event of any actual or threatened breach or violation of the provisions of this Agreement concerning Confidential Information or intellectual property, DFS is entitled, without limiting any of DFS' other remedies at law or equity, to obtain injunctive relief (temporary and permanent) from any court of competent jurisdiction immediately upon request and without the need to post a bond or security, with respect to any such breach or potential breach in addition to any other remedies.

16. IOS APPLICATIONS

16.1 iOS Mobile Apps. If any application is downloaded by you from the iTunes App Store (each, an "iOS Mobile Apps"), the license in Section 3 with respect to such iOS Mobile Apps is further subject to your compliance in all material respects with the terms and conditions of the Usage Rules set forth in the iTunes App Store Terms of Service.

16.2 Disclaimers. With respect to any iOS Mobile Apps, you and DFS acknowledge that this Agreement is concluded between you and DFS only, and not with Apple Inc. ("Apple"), and Apple is not responsible for iOS Mobile Apps and the contents thereof. Apple has no obligation whatsoever to furnish any maintenance and support services with respect to iOS Mobile Apps. DFS, not Apple, is responsible for addressing any claims from you or any third party relating to iOS Mobile Apps or your possession and/or use of iOS Mobile Apps, including product liability claims, any claim that the iOS Mobile Apps fail to conform to any applicable legal or regulatory requirement and claims arising under consumer protection or similar legislation. Apple and Apple's subsidiaries are third-party beneficiaries of this Agreement with respect to iOS Mobile Apps, and Apple shall have the right (and will be deemed to have accepted the right) to enforce this Agreement against you as a third-party beneficiary hereof with respect to iOS Mobile Apps. DFS, not Apple, shall be solely responsible for the investigation, defense, settlement and discharge of any intellectual property infringement claim attributable to iOS Mobile Apps.

16. GENERAL

DFS may, at its sole discretion, freely assign, sell, delegate or transfer this Agreement and any of its rights or obligations hereunder, in whole or in part, to any third party, including, but not limited to, any third party who succeeds to substantially all its business or assets. User may not assign, sell, delegate, sublicense or transfer this Agreement or any of its rights, obligations, liabilities or duties hereunder, in whole or in part, to any third party (including any affiliated party) without DFS's prior written consent (which DFS may withhold or delay in its sole discretion). Any purported attempts by User to do so in violation of the immediately preceding sentence are void, and DFS may immediately terminate this Agreement upon such attempt. Except as expressly stated herein, there are no third-party beneficiaries to the Agreement, meaning that this Agreement shall not be for the benefit of or enforceable by any person or entity not a party hereto and shall not confer any rights or remedies upon any person or entity other than the parties and their respective successors and permitted assigns. The relationship of DFS and User established by this Agreement is that of independent parties. This Agreement constitutes the entire, final, complete and exclusive agreement between the parties with respect to the subject matter hereof, and it supersedes all prior and contemporaneous oral or written negotiations and agreements between you and DFS with respect to such subject matter. This Agreement may not be amended by you except in a writing executed by you and an authorized representative of DFS. No waiver by either party of any default shall be deemed as a waiver of prior or subsequent default of the same of other provisions of this Agreement. Section headings and titles are provided only for convenience and will not be used in interpreting the Agreement. For the purposes of this Agreement, the words "such as," "include," "includes" and "including" shall be deemed to be followed by the words "without limitation." Except as otherwise expressly provided herein, all remedies available to either party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies. If any provision of this Agreement is prohibited by law or held to be void or unenforceable, the remaining provisions hereof will not be affected, this Agreement will continue in full force and effect as if such void or unenforceable provision had never constituted a part hereof, and the void or unenforceable provision will be automatically amended so as best to accomplish the original objectives of such provision within the limits of applicable law.

YOU ACKNOWLEDGE THAT YOU HAVE READ THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT, UNDERSTAND ALL SUCH TERMS AND CONDITIONS AND AGREE TO BE BOUND THEREBY