

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

1. ACCEPTANCE OF TERMS

Wayne Fueling LLC, on behalf of itself and its affiliates within the Dover Fueling Solutions family of companies (collectively, “DFS”), provides technology-enabled services at the website and associated domains of <https://producttraining.doverfuelingsolutions.com/> including all information and materials accessible from the Website, any and all of which as may be updated from time-to-time, including any successor websites and domains (collectively, the “LMS Platform”). Any access to or use of the LMS Platform is subject to the terms and conditions in this Terms of Use (“TOU”). DFS may, at its discretion, update this TOU at any time. You can access and review the most current version of this TOU at the URL for this page or by clicking on the “Terms of Use” link within the LMS Platform or as otherwise made available by DFS.

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

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

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

2. GRANT OF RIGHTS

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

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

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

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

3. PRIVACY POLICY

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

4. THIRD PARTY SOFTWARE

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

5. SUPPORT

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

6. PERSONAL INFORMATION; REGISTRATION; ACCOUNT

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

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

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

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

7. RESPONSIBILITY FOR CONTENT

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

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

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

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

8. RIGHTS TO CONTENT

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

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

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

9. CONFIDENTIALITY

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

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

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

10. USER CONDUCT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11. FEEDBACK

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

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

12. LINKS AND EXTERNAL MATERIALS

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

13. MODIFICATIONS TO THE LMS PLATFORM

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

14. INDEMNIFICATION

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

15. DISCLAIMER OF WARRANTIES

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

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

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

16. LIMITATION OF LIABILITY

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

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

(b) THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS SHALL APPLY REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. 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.

17. TERMINATION

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

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

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

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

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

18. GOVERNING LAW

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

19. BINDING ARBITRATION AND CLASS ACTION WAIVER

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

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

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

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

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

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

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

20. U.S. GOVERNMENT ENTITIES

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

21. PROCEDURE FOR MAKING CLAIMS OF COPYRIGHT INFRINGEMENT

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

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

22. CALIFORNIA USERS & RESIDENTS

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

23. GENERAL PROVISIONS

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

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

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

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

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