

END USER LICENSE AGREEMENT

IMPORTANT: THIS END USER LICENSE AGREEMENT CONSTITUTES A BINDING AGREEMENT BETWEEN YOU AND DEGATECH SYSTEMS, INC. DOING BUSINESS AS FUELERLINX AND/OR FBOLINX. PLEASE READ THIS AGREEMENT CAREFULLY.

This END USER LICENSE AGREEMENT ("**Agreement**") is a binding agreement between you ("**you**", "**your**", "**Customer**") and DegaTech Systems, Inc. doing business as FuellerLinx and/or FBOLinx. ("**DTS**," "**we**," "**our**" or "**us**"). DTS and Customer shall be referred to individually, as a "**Party**" and collectively, as the "**Parties**" throughout this Agreement. This Agreement governs Customer's use of the Subscription Services (as defined below).

BY USING THE SUBSCRIPTION SERVICES, CUSTOMER (A) ACKNOWLEDGES THAT IT HAS READ AND UNDERSTANDS THIS AGREEMENT; AND (B) ACCEPTS THIS AGREEMENT AND AGREES THAT IT IS LEGALLY BOUND BY ITS TERMS. IF CUSTOMER DOES NOT AGREE TO THESE TERMS, CUSTOMER IS NOT PERMITTED TO USE THE SUBSCRIPTION SERVICES.

WHEREAS, the DTS provides an aviation fuel planning & tankering software system that enables its customers to optimize flight operations, automate the process of purchasing fuel and reduce operating costs; and

WHEREAS, Customer desires to obtain certain services from DTS and DTS desires to provide such services to Customer on the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual premises and promises set forth herein, DTS and Customer hereby agree as follows:

1. DEFINITIONS.

In addition to the capitalized terms defined elsewhere in this Agreement or in any Exhibits hereto, the following terms shall have the meanings set forth below:

"Affiliate" means, with respect to each Party, any entity that directly or indirectly controls, is controlled by, or is under common control with, such Party.

"Confidential Information" means any nonpublic information of a party (the "**Disclosing Party**"), whether disclosed orally or in written or digital media, that is identified as "confidential" or with a similar legend at the time of such disclosure or that the receiving party (the "**Receiving Party**") knows or should have known is the confidential or proprietary information of the Disclosing Party. The Services, DTS Materials, Documentation, and all enhancements and improvements thereto will be considered Confidential Information of DTS.

"Customer Data" means data, information or material uploaded or routed to the Subscription Services or otherwise provided to DTS in any medium by Customer or Users.

"Documentation" means the technical materials provided by DTS to Customer or Users in hard copy or electronic form describing the use and operation of the Subscription Services.

"DTS Materials" means the Subscription Services, Supported Environment, Documentation and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by DTS or any related service provider in connection with the Services or otherwise comprise or relate to the Services. For the avoidance of doubt, DTS Materials include all Resultant Data (as defined below) and any information, data, or other content derived from DTS's monitoring of Customer's access to or use of the Services, but does not include Customer Data.

“Intellectual Property Rights” means any and all now known or hereafter existing (a) rights associated with original works of authorship, including copyrights, mask work rights, and moral rights; (b) trademark or service mark rights; (c) trade secret rights; (d) patents, patent rights, and industrial property rights; (e) layout design rights, design rights, and other proprietary rights of every kind and nature other than trademarks, service marks, trade dress, and similar rights; and (f) all registrations, applications, renewals, extensions, or reissues of the foregoing, in each case in any jurisdiction throughout the world.

“Quote” means the ordering document signed by an authorized representative of each Party that describes the Services, including Subscription Services, and which may specify additional restrictions on the use of the Services and the fees therefor. The term “Quote” shall include any subsequent ordering document for Services signed by the Parties specifically referencing this Agreement.

“Supported Environment” means the minimum hardware, software, and connectivity configuration specified from time to time by DTS as required for use of the Subscription Services.

“Services” means any services provided by DTS to Customer and Users under this Agreement, including, but not limited to, provision of the Subscription Services.

“Subscription Services” means the subscription services described in the Quote.

“Users” means employees and contractors of Customer who are designated by Customer to use the Subscription Services under this Agreement and have been supplied user identifications and passwords by Customer or by DTS at Customer’s request.

2. SUBSCRIPTION SERVICES.

2.1 DTS Responsibilities. Subject to all of the terms and conditions of this Agreement, including without limitation, Customer’s payment of the fees set forth in the Quote and the limitations set forth in this Agreement, including in any Quote, DTS will provide Customer the Services, including access to the Subscription Services. During the Term (as defined below) of this Agreement, DTS agrees to host, maintain and support the Subscription Services and make them available to Customer via the Internet or other data transmission system, pursuant to the terms and conditions of this Agreement and the applicable Quote. Nothing herein will be construed to require DTS to provide, or bear any responsibility with respect to, any telecommunications or computer network hardware required by Customer or any User to access the Subscription Services from the Internet or other data transmission system. The terms and conditions of a Quote shall, with respect to such Quote, prevail over any conflicting terms and conditions of this Agreement.

2.2 Access and Restrictions. Subject to all of the terms and conditions of this Agreement, DTS grants to Customer a non-exclusive, non-transferable license during the Term, solely for Customer’s internal business purposes and in accordance with the limitations set forth herein and in Exhibit A, (a) to access and use the features and functions of the Subscription Services in a Supported Environment, in accordance with the Documentation; and (b) to use and reproduce a reasonable number of copies of the Documentation solely to support Customer’s use of the Subscription Services. Customer may permit Users to access and use the features and functions of the Subscription Services as contemplated by this Agreement. Customer will not, and will not permit any User to: (a) allow any third party to access the Subscription Services, DTS Materials or Documentation, except as expressly provided herein; (b) modify, adapt, alter or translate the Subscription Services, DTS Materials or Documentation; (c) sublicense, lease, sell, resell, rent, loan, distribute, transfer or otherwise allow the use of the Subscription Services, DTS Materials or Documentation for the benefit of any unauthorized third party; (d) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of the Subscription Services; (e) interfere in any manner with the operation of the Subscription Services or the hardware and network used to operate the Subscription Services; (f) modify, copy or make derivative works based on any part of the Subscription Services, DTS Materials or Documentation; (g) access or use the Subscription Services to build a similar or competitive product or service; (h) attempt to access the Subscription Services through any unapproved interface; or (i) otherwise use the Subscription Services, DTS Materials or Documentation in any manner that exceeds the scope of use permitted under this Section 2.2 or in a manner inconsistent with applicable law, the Documentation, or this Agreement. Customer will not remove, alter, or obscure any proprietary notices (including

copyright and trademark notices) of DTS or its licensors on the DTS Materials, Documentation or any copies thereof. Upon termination of this Agreement, Customer will immediately discontinue use of the Subscription Services.

2.3 Performance. Subject to the terms and conditions of this Agreement, DTS shall provide the Subscription Services during the Term of this Agreement on a 24/7 basis, it being understood that the Subscription Services may be inaccessible or inoperable from time to time for any reason, including, without limitation: (i) equipment malfunctions; (ii) periodic maintenance procedures or repairs which DTS may undertake from time to time; or (iii) causes beyond the control of DTS or which are not reasonably foreseeable by DTS, including, without limitation, interruption or failure of telecommunication or digital transmission links, delays or failures due to Customer's Internet access connections, hostile network attacks, network congestion or other Force Majeure Events (defined in Section 13 of this Agreement). Customer agrees that DTS has no control over the stability and throughput speed of the Internet or other data transmission systems used by Customer.

2.4 Modification of the Services. DTS may periodically modify the features, components and functionality of the Subscription Services from time to time; provided, however, that DTS will use commercially reasonable efforts to provide Customer with at least twenty-four (24) hours advance notice of any modification or maintenance of the Subscription Services that is expected to materially and adversely affect Customer's use of, or ability to access, the Subscription Services. DTS shall have no liability for, or any obligations due to, any changes in Customer's hardware, systems or other software which may be necessary to use or access the Subscription Services due to a modification of the Subscription Services provided by DTS.

2.5 New Versions. DTS reserves the right to create, at its sole discretion, new versions of the Subscription Services. DTS shall have no obligation to make available to Licensee new versions, releases or updates of the Subscription Services and shall have no obligation to provide, at no additional expense to Customer, major product enhancements and/or new features that DTS markets separately to other customers for an additional fee; provided, that, DTS may, in its sole discretion, elect to provide such enhancements or features on a case-by-case basis at no cost. DTS shall have no liability for, or any obligations due to, any changes in Customer's hardware, systems or other software which may be necessary to use or access the Subscription Services due to new versions or updates provided by DTS.

2.6 User Access. DTS will deliver to Customer all user IDs and passwords necessary for Customer to access the Subscription Services in accordance with this Agreement. User subscriptions cannot be shared or used by more than one User. Any additional User subscriptions added during the Term shall be coterminous with the then current subscription Term. The fee for additional User subscriptions shall be as set forth on Quote, prorated if necessary for the remainder of the Term.

2.7 Customer Responsibilities. Customer agrees to provide DTS with all cooperation and information reasonably necessary or desirable to implement the Subscription Services and Services for Customer. Customer shall be solely responsible for providing, maintaining and ensuring compatibility with the Subscription Services, including securing Internet access connections. Customer shall cooperate with DTS and shall render all reasonable assistance requested by DTS in preventing and identifying any use of or access to the Services, Subscription Services, DTS Materials or the Documentation, by Customer personnel or Users, in violation of this Agreement.

3. OTHER SUBSCRIPTION SERVICES. If the Quote or the Subscription Services include any of the services set forth in this Section 3, such services are deemed to be Services and will be governed under the applicable provisions below. Professional services such as software design, development and construction, data migration, deployment, consulting and resource provisioning will be governed under a separate professional services agreement.

3.1 Configuration. In the event the Quote includes configuration of the Subscription Services, DTS will advise and assist Customer in such configuration.

3.2 Training. In the event the Quote includes training to be provided by DTS, the training will consist of DTS providing specified individuals with sufficient training on the functions, features, operation and support of the Subscription Services, and delivery to Customer of any tools, utilities and other documentation necessary or appropriate for Customer to become self-reliant with respect to the operation thereof

3.3 Third Party Data. In the event the Subscription Services require DTS to collect data from third parties ("Third Party Data") to be delivered to Customer as part of the Subscription Services, DTS does not guarantee the accuracy,

quality or completeness of the Third Party Data as received by DTS.

4. INTELLECTUAL PROPERTY.

4.1 Ownership. As between the parties, the Subscription Services, DTS Materials, Documentation and any ideas and know-how which are developed in the course of providing the Services and any related technical services, including any enhancements or modifications made to the Subscription Services, DTS Materials and/or Documentation, and all worldwide Intellectual Property Rights in each of the foregoing, are the exclusive property of DTS, except as expressly licensed to Customer hereunder. All rights in and to the Subscription Services, DTS Materials or Documentation not expressly granted to Customer in this Agreement are reserved by DTS and its suppliers. Except as expressly set forth herein, no express or implied license or right of any kind is granted to Customer regarding the Subscription Services, DTS Materials, Documentation, or any part thereof.

4.2 Open Source Software. Certain items of software underlying the Subscription Services may be provided to Customer with the Subscription Services and are subject to “open source” or “free software” licenses (“**Open Source Software**”). Some of the Open Source Software is owned by third parties. The Open Source Software is not subject to the terms and conditions of [Section 2.2](#). Instead, each item of Open Source Software is licensed under the terms of the end-user license that accompanies such Open Source Software. Nothing in this Agreement limits Customer’s rights under, or grants Customer rights that supersede, the terms and conditions of any applicable end user license for the Open Source Software.

4.3 Third-Party Services. The Subscription Services may contain links to third-party websites, applications, and services (“**Third-Party Services**”). When Customer accesses such Third-Party Services, Customer is subject to the terms and conditions (including privacy policies) of such other website or destination. Such Third-Party Services are not under the control of DTS. DTS is not responsible for any Third-Party Services and will have no liability to Customer for any such Third-Party Services. DTS provides these Third-Party Services as a convenience and does not review, approve, monitor, endorse, warrant, or make any representations with respect Third-Party Services, or their products or services. Customer uses all Third-Party Services at its own risk. Customer should review applicable terms and policies, including privacy and data gathering practices, of any Third-Party Services.

4.4 Customer License. Customer will obtain all third-party licenses, consents and permissions needed for DTS to use the Customer Data to provide the Services. Without limiting the foregoing, Customer will be solely responsible for obtaining from third parties all necessary rights for DTS to use the Customer Data provided, submitted or made accessible by or on behalf of Customer for the purposes set forth in this Agreement. Customer grants DTS a non-exclusive, worldwide, royalty-free and fully paid license to: (a) use the Customer Data as necessary to provide and improve the Services, and (b) to the extent necessary during the Term, use Customer’s trademarks, service marks, and logos (collectively, the “**Marks**”) to provide the Services. Customer additionally grants DTS a perpetual, irrevocable, non-exclusive, sublicensable, transferable, worldwide, royalty-free and fully paid license to use, copy, reproduce, adapt, re-format, generate, store, disclose, distribute, maintain a database of, make derivative works based upon, and exploit any and all the Customer Data in an aggregated and anonymized form to: (i) improve the Services and DTS’s related products and services; (ii) provide analytics and benchmarking services; and (iii) generate and disclose statistics regarding use of the Services (collectively the “**Resultant Data**”). As between the parties, the Customer Data and Marks, and all worldwide Intellectual Property Rights therein, is the exclusive property of Customer, except as expressly licensed to DTS hereunder. All rights in and to the Customer Data and Marks not expressly granted to DTS in this Agreement are reserved by Customer.

5. PRIVACY; DATA PROTECTION.

5.1 Privacy Policy. Each Party shall comply with all applicable laws, orders, rules, and regulations relating to the use, disclosure or processing of personal information, including but not limited to, privacy and data protection laws. Each Party shall implement and maintain appropriate security safeguards, including administrative, physical and technical safeguards designed to protect its information systems from unauthorized access, and shall inform the other Party if it believes its systems have been compromised in a manner that could result in harm to such Party.

5.2 Ownership of Data; Data Protection. In addition to any other protections afforded under this Agreement, Customer acknowledges that Customer Data is subject to certain privacy laws and regulations, as well as FuelerLinx’s privacy policy, as may be changed by FuelerLinx in its discretion from time to time (found at

6. **INDEPENDENT CONTRACTOR.** DTS shall furnish all Services, including Subscription Services, as an independent contractor. All personnel utilized by DTS in the furnishing of the Services shall be employees of DTS and under no circumstances shall be deemed employees of Customer. DTS shall bear sole responsibility for payment of compensation to its personnel. DTS shall withhold (if applicable), pay and report, for all personnel assigned to the Services, federal, state and local income tax withholding, social security taxes, employment head taxes, unemployment insurance, and any other taxes or charges applicable to such personnel as employees of DTS. DTS shall bear sole responsibility for any health or disability benefits, retirement benefits, or welfare, pension or other benefits (if any) to which such personnel may be entitled. DTS agrees to defend, indemnify, and hold harmless Customer, Customer's officers, directors, employees and agents, any benefit plan sponsored by Customer, and any fiduciaries or administrators of any such benefit plan, from and against any claims, liabilities, or expenses relating to any claim by DTS's personnel for compensation, tax, insurance, or benefits from Customer or any benefit plan sponsored by Customer.

7. **TERM.** This Agreement will begin on the date set forth in the Quote and remain in full force and effect for one (1) year (the "**Initial Term**"). Upon the expiration of the Initial Term, this Agreement shall automatically renew for consecutive terms of one (1) year each (each, a "**Renewal Term**"), unless either Party terminates this Agreement by giving the other Party thirty (30) days written notice prior to the expiration of the Initial Term or the then current Renewal Term. The Initial Term, together with any and all Renewal Terms, is collectively referred to as the "**Term**."

8. **PAYMENT.**

8.1 **Fees.** DTS's Fees for the Services, including the Subscription Services, are set forth in the Quote and shall be subject to increase in accordance with the terms set forth in the Quote. All prices are in United States dollars.

8.2 **Invoices.** All Fees are billed in accordance with the terms set forth in the Quote. DTS will be reimbursed only for expenses that are expressly provided for in the Quote or that have been approved in advance in writing by Customer, provided DTS has furnished such documentation for authorized expenses as Customer may reasonably request. DTS reserves the right (in addition to any other rights or remedies DTS may have) to suspend all Users' and Customer's access and use of the Services if any Fees are more than three (3) days overdue until such amounts are paid in full. Customer will maintain complete, accurate and up-to-date Customer billing and contact information at all times. Any amounts not paid when due will bear interest at the rate of one- and one-half percent (1.5%) per month, or the maximum legal rate if less, from the due date until paid.

8.3 **Taxes.** "Tax" or "Taxes" means any and all sales, use, value-added, excise, or similar transaction taxes or duties, together with any penalties, fines, charges or interest thereon, imposed by any domestic or foreign taxing authority on or with respect to the sale of any services or materials in connection with the performance of this Agreement. Taxes shall not include any taxes, fees, levies or other charges based on or measured by DTS's gross or net income, gross receipts, excess profits, net worth, or capital. The Fees are exclusive of all applicable Taxes, and Customer will be responsible for payment of all such Taxes arising from the payment of the Fees, the provision of the Services, or the license of any DTS Materials. Customer will make all payments of Fees to DTS free and clear of, and without reduction for, any withholding taxes; any such taxes imposed on payments of Fees to DTS will be Customer's sole responsibility, and Customer will provide DTS with official receipts issued by the appropriate taxing authority, or such other evidence as DTS may reasonably request, to establish that such taxes have been paid.

9. **REPRESENTATIONS, WARRANTIES AND COVENANTS.**

9.1 **DTS's Representations, Warranties and Covenants.** DTS represents, warrants and covenants to Customer that: (i) the Services will be performed by qualified personnel in a thorough and workmanlike manner consistent with industry standards; (ii) the Services will not knowingly infringe upon or violate any Intellectual Property Right of any third party; and (iii) DTS shall take commercially reasonable efforts to avoid the introduction any "back door," "time bomb," "Trojan horse," "worm," "drop dead device," "virus," "preventative routines" or other computer software routines designed: to permit access to or use of Customer's computer systems by DTS or a third party not authorized by this Agreement; to disable, modify, damage or delete the Customer Data and any data, software, computer hardware or other equipment operated or maintained by Customer; or to perform any other such similar actions.

9.2 Customer's Representations, Warranties and Covenants. Customer represents, warrants and covenants to DTS that (i) all Customer Data is and at all times will be true, correct, and complete and that the Customer has the right to provide, submit or make accessible the Customer Data to DTS and DTS has the right to use the Customer Data for the purposes set forth herein, (ii) the Customer Data will not infringe any Intellectual Property Rights of any third party; and (iii) Customer shall take commercially reasonable efforts to avoid the introduction any "back door," "time bomb," "Trojan horse," "worm," "drop dead device," "virus," "preventative routines" or other computer software routines designed to permit access to or use of DTS's computer systems by Customer or a third party not authorized by this Agreement; to disable, modify, damage or delete any data, software, computer hardware or other equipment operated or maintained by DTS; or to perform any other such similar actions. DTS is not obligated to back up any Customer Data; Customer is solely responsible for creating backup copies of any Customer Data at Customer's sole cost and expense. Customer agrees that any use of the Subscription Services contrary to or in violation of the representations, warranties and covenants of Customer in this Section 9.2 constitutes unauthorized and improper use of the Subscription Services, and DTS reserves the right (in addition to any other rights or remedies DTS may have) to suspend all Users' and Customer's access and use of the Services immediately in the event of such unauthorized and improper use of the Subscription Services. Customer and its Users will have access to the Customer Data and will be responsible for all changes to and/or deletions of Customer Data and the security of all passwords and other access protocols required in order the access the Subscription Services. Customer agrees to keep current and accurate its list of authorized Users.

9.3 Disclaimer. THE LIMITED WARRANTY SET FORTH IN SECTION 9.1 IS MADE FOR THE BENEFIT OF CUSTOMER ONLY. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 9.1, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES, DTS MATERIALS AND DOCUMENTATION ARE PROVIDED "AS IS," AND DTS MAKES NO (AND HEREBY DISCLAIMS ALL) OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, COURSE OF DEALING, TRADE USAGE OR PRACTICE, SYSTEM INTEGRATION, DATA ACCURACY, MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. DTS DOES NOT WARRANT THAT ALL BUGS AND OTHER DEFECTS CAN BE CORRECTED, OR THAT OPERATION OF THE SUBSCRIPTION SERVICES WILL BE UNINTERRUPTED OR FREE OF ANY BUGS OR DEFECTS.

9.4 Enabler Only. DTS WILL HAVE NO RESPONSIBILITY OR LIABILITY FOR ANY CUSTOMER DATA OR THIRD-PARTY SERVICES MADE AVAILABLE THROUGH THE SERVICES. CUSTOMER ACCEPTS THAT DTS IS NOT RESPONSIBLE FOR, AND FUELERLIX EXPRESSLY DISCLAIMS, ALL LIABILITY THAT MAY RESULT FROM ANY INFORMATION PROVIDED BY A USER THROUGH THE SERVICES OR THIRD-PARTY SERVICES MADE AVAILABLE THROUGH THE SERVICES.

10. DEFAULT; TERMINATION; REMEDIES.

10.1 Termination for Cause. In addition to any other remedy available under this Agreement or otherwise, either Party may terminate this Agreement (or any Quote) if the other Party breaches any material provision of this Agreement and has not cured the breach within thirty (30) days after receipt of written notice of the breach from the non-breaching Party. In addition, DTS may terminate this Agreement if it is prevented from providing the Services for any reason.

10.2 Termination for Insolvency. This Agreement will terminate, effective upon delivery of written notice by either Party to the other Party: (i) upon the institution of insolvency, receivership or bankruptcy proceedings or any other proceedings for the settlement of debts of the other Party; (ii) upon the making of a general assignment for the benefit of creditors by the other Party; or (iii) upon the dissolution of the other Party.

10.3 Cooperation. During any period after which notice of termination has been given by either Party under this Section, each Party shall continue to fulfill its respective obligations under this Agreement, unless otherwise prohibited by law, and shall cooperate in the orderly wind-down of the Parties' performance of this Agreement.

10.4 Survival. Sections 1, 4, 6, 8, 9, 10.3, 10.4, 11, 12, 14, 15 and 16 shall survive termination or expiration of this Agreement, in addition to any provisions that by their nature should, or by their own express terms do, survive or extend beyond termination or expiration of this Agreement.

11. INDEMNIFICATION.

11.1 By Customer. Customer hereby agrees, subject to Section 11.2 and the limitations set forth in this Section 11.1, to indemnify, defend and hold DTS and its respective Affiliates, and its and their respective officers, stockholders, directors, agents and employees (collectively, the “**DTS Indemnified Parties**”) harmless from any damages, losses, liabilities and costs (including reasonable attorneys’ fees) incurred as a result of any third party claims arising out of the following: (i) any breach by Customer of its obligations, representations and warranties hereunder, and (ii) allegations that the Customer Data infringes a third party’s Intellectual Property Rights (“**Customer Data Infringement Claim**”). Customer shall not have any liability to DTS for any Customer Data Infringement Claim to the extent that the Customer Data Infringement Claim is based upon DTS’s use of the Customer Data in any manner not expressly permitted under this Agreement. This Section 11.1 states the sole and exclusive remedy of DTS and the entire liability of Customer, or any of the officers, directors, employees, shareholders, contractors or representatives of the foregoing, for infringement claims and actions.

11.2 Indemnification Procedure. The Party claiming indemnification pursuant to this Section 11 (the “**Indemnified Party**”) shall promptly notify the other Party (the “**Indemnifying Party**”) of any such claim of which it becomes aware and shall: (i) at the Indemnifying Party’s expense, provide reasonable cooperation to the Indemnifying Party in connection with the defense or settlement of any such claim, and (ii) at the Indemnified Party’s expense, be entitled to participate in the defense of any such claim. The Indemnified Party agrees that the Indemnifying Party shall have sole and exclusive control over the defense and settlement of any such third party claim. However, the Indemnifying Party shall not acquiesce to any judgment or enter into any settlement that adversely affects the Indemnified Party’s rights or interests without prior written consent of the Indemnified Party.

12. LIABILITY.

12.1 LIMITATION OF LIABILITY. EACH PARTY’S LIABILITY FOR ALL CLAIMS ARISING OUT OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE GREATER OF THE VALUE OF THE QUOTE UNDER WHICH THE LIABILITY ARISES OR THE AMOUNT OF FEES PAYABLE BY CUSTOMER TO DTS UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRIOR TO WHEN THE LIABILITY ARISES.

12.2 EXCLUSION OF CONSEQUENTIAL DAMAGES. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL DTS OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, HAVE ANY LIABILITY ARISING FROM OR RELATED TO CUSTOMERS USE OF OR INABILITY TO USE THE SERVICES FOR PERSONAL INJURY, PROPERTY DAMAGE, LOST PROFITS, COST OF SUBSTITUTE GOODS OR SERVICES, LOSS OF DATA, LOSS OF GOODWILL, BUSINESS INTERRUPTION, COMPUTER FAILURE OR MALFUNCTION, OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, INDIRECT, DIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES. THE FOREGOING LIMITATIONS WILL APPLY WHETHER SUCH DAMAGES ARISE OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR DTS WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

12.3 Exceptions. The limitation of liability set forth in Section 12.1 shall not apply to: (i) Customer’s indemnification obligations hereunder; or (ii) the breach by Customer of its confidentiality obligations set forth in this Agreement.

12.4 Basis of the Bargain. The Parties agree that the limitations of liability set forth in this Section 12 will survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy. The Parties acknowledge that the prices have been set and the Agreement entered into in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between the Parties.

13. FORCE MAJEURE. Neither Party will be liable to the other Party, nor be deemed to be in default of this Agreement because of, any failure or delay in its performance due under this Agreement not occasioned by or based

upon the fault or negligence of the Party claiming relief under this Section and caused by unforeseeable acts of God, fire, floods, industry- wide strikes, work-to-rule actions, go-slows or similar labor difficulties, unavailability of equipment, materials, or services, due to industry-wide shortages, terrorist acts, wars, actions by a Governmental Authority, pandemics, or any other similar, unforeseeable cause beyond a Party's reasonable control (collectively, "**Force Majeure Events**"). The following is a non- exclusive list of circumstances that are not Force Majeure Events: (i) economic hardship; (ii) changes in market conditions (other than those resulting from Force Majeure Events); and (iii) insufficiency of funds. The Parties agree that Force Majeure Events shall not excuse any payment due from one Party to the other.

14. CONFIDENTIALITY.

14.1 Protection of Confidential Information. The Receiving Party agrees that it will not use or disclose to any third party any Confidential Information of the Disclosing Party, except as expressly permitted under this Agreement. The Receiving Party will limit access to the Confidential Information to Users or to those employees or consultants who have a need to know, who have confidentiality obligations no less restrictive than those set forth herein, and who have been informed of the confidential nature of such information. In addition, the Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At the Disclosing Party's request or upon termination or expiration of this Agreement, the Receiving Party will return to the Disclosing Party or destroy (or permanently erase in the case of electronic files) all copies of the Confidential Information that the Receiving Party does not have a continuing right to use under this Agreement, and the Receiving Party will, upon request, certify to the Disclosing Party its compliance with this sentence.

14.2 Exceptions. The confidentiality obligations set forth in Section 14.1 will not apply to any information that (a) is at the time of disclosure or becomes generally available to the public through no fault of the Receiving Party; (b) is lawfully provided to the Receiving Party by a third party free of any confidentiality duties or obligations; (c) was already known to the Receiving Party at the time of disclosure free of any confidentiality duties or obligations as demonstrated by written records; or (d) the Receiving Party can demonstrate, by clear and convincing evidence, was independently developed by employees and contractors of the Receiving Party who had no access to the Confidential Information. In addition, the Receiving Party may disclose Confidential Information to the extent that such disclosure is necessary for the Receiving Party to enforce its rights under this Agreement or is required by law or by the order of a court or similar judicial or administrative body, provided that (to the extent legally permissible) the Receiving Party promptly notifies the Disclosing Party in writing of such required disclosure and cooperates with the Disclosing Party if the Disclosing Party seeks an appropriate protective order.

14.3 Duration of Obligation. Receiving Party's confidentiality obligations with respect to Confidential Information shall remain in effect until five (5) years after the termination or expiration of this Agreement; provided that Receiving Party's obligations hereunder with respect to Confidential Information consisting of trade secrets shall remain in effect for as long as governing law allows.

14.4 Third Party Information. The confidentiality provisions herein apply to and shall also protect Confidential Information of third parties provided by the Disclosing Party to the Receiving Party.

14.5 Injunctive Relief. The Receiving Party acknowledges that disclosure of any Confidential Information by it or its employees, consultants or Affiliates will give rise to irreparable injury to the Disclosing Party or the owner of such information, not adequately compensated by damages. Accordingly, the Disclosing Party may seek and obtain injunctive relief against the breach or threatened breach of the undertakings contained herein, in addition to any other legal remedies which may be available, without the requirement of posting bond. The Receiving Party further acknowledges and agrees that the covenants contained herein are necessary for the protection of the Disclosing Party's legitimate business interests and are reasonable in scope and content.

15. COMPLIANCE WITH LAW.

15.1 Compliance with Laws. As applicable to each Party's respective obligations under this Agreement, and notwithstanding anything to the contrary in this Agreement, each Party shall comply with and cause each of its employees, agents and subcontractors to comply with, Applicable Laws, and shall obtain all licenses, permits, permissions and consents which may be required of it by any Governmental Authority. "**Applicable Laws**" means all

federal, foreign, provincial, state and local laws, statutes, regulations, rules, executive orders, supervisory requirements, directives, interpretive letters and other official releases of any Governmental Authority, in each case as amended, consolidated, supplemented or replaced from time to time. “**Governmental Authority**” means any federal, provincial, state and local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity or any arbitrator with authority to bind Customer or DTS at law.

16. GENERAL PROVISIONS.

16.1 Interpretation. The interpretation of this Agreement shall be governed by the following rules of construction: (a) words in the singular shall be held to include the plural and vice versa and words of one gender shall be held to include the other gender as the context requires; (b) the word “including” and words of similar import shall mean “including, without limitation;” (c) the headings contained herein are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement; (d) references to “days” or a “day” shall mean a calendar day, unless otherwise stated; and (e) as this Agreement is the product of negotiations between the Parties and their respective counsel, no provision or section of this Agreement shall be construed against either Party by reason of ambiguity of language, rule of construction against the draftsman, or similar doctrine.

16.2 Notices. Any notices, requests or other communications required or permitted to be given hereunder shall be in writing and shall be delivered by hand, by overnight courier, or by facsimile transmission (“fax”), or mailed by United States registered or certified mail, return receipt requested, postage prepaid, and addressed to the appropriate Party at its address or to its fax number, as appropriate, as set forth in the Quote. Any such notice, request, or other communication shall be considered given on the date of hand or courier delivery if delivered by hand or overnight courier, on the date of transmission, as shown by confirmation of transmission if delivered by fax, or on the third day following the date of deposit in the United States mail as provided above. Rejection or other refusal to accept or inability to deliver because of changed address or fax number of which no notice was given shall not affect the validity or the effectiveness of the notice, request or other communication. By giving prior written notice thereof, either Party may from time to time and at any time change its mailing address or fax number hereunder.

16.3 Governing Law. All matters arising from or relating to this Agreement shall be governed and construed in accordance with the laws of the state of California without giving effect to any choice-of-law provision or rule (whether of the state of California or any other jurisdiction) that would cause the application of the laws of any other jurisdiction. The Federal or state courts situated in Los Angeles County, Los Angeles, have exclusive jurisdiction over the resolution of all disputes that arise under this Agreement, and each Party irrevocably submits to the personal jurisdiction of such courts. The United Nations Convention on Contracts for the International Sale of Goods shall not be applicable to the Parties’ rights or obligations under this Agreement.

16.4 Publicity. Neither Party will, without the other Party’s prior written consent in each instance (a) use in advertising, publicity or marketing communications of any kind the name or other trademarks of the other party or any of its Affiliates, or any employee of either, or (b) represent, directly or indirectly, that any product or service provided by a party has been approved or endorsed by the other party or any of its Affiliates.

16.5 Assignment. No Party may assign any of its rights under this Agreement or delegate its performance under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, upon notice to Customer, DTS may assign its rights and delegate its performance under this Agreement, and any licenses granted hereunder, to: (i) any entity that acquires all or substantially all of DTS’s assets or substantially all of the assets of that portion of DTS’s business that manages this Agreement; (ii) any Affiliate that controls, is controlled by, or is under common control with DTS; and (iii) any successor in a merger, acquisition, or reorganization, including any judicial reorganization. Any purported assignment of rights or delegation of performance in violation of this Section 16.5 is void.

16.6 Successors and Assigns; No Third Party Beneficiaries. This Agreement is legally binding upon and inures to the benefit of the Parties and their permitted successors and assigns. Except as expressly provided herein, no third party is intended to benefit from, nor may any third party seek to enforce, any of the terms of this Agreement.

16.7 Relationship of the Parties. Nothing contained in this Agreement shall be deemed to create an association, partnership, joint venture, or relationship of principal and agent or master and servant between the Parties, or to grant

either Party the right or authority to assume, create or incur any liability or obligation of any kind, express or implied, against, in the name of, or on behalf of, the other Party.

16.8 Complete Agreement. This Agreement constitutes the final agreement between the Parties and is the complete and exclusive expression of the Parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the Parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement. In entering into this Agreement, neither Party has relied upon any statement, representation, warranty, or agreement by or from the other Party except for those expressly contained in this Agreement. Each Party represents and warrants to the other that it has the right and authority to enter into this Agreement and to perform all of its respective obligations and undertakings.

16.9 Modification. No modification of or amendment to this Agreement, or any waiver of any rights under this Agreement, will be effective unless in writing and signed by an authorized signatory of each of the Parties.

16.10 Attachments; Precedence. Every exhibit and attachment to this Agreement is an integral part of this Agreement and is incorporated into this Agreement. Later exhibits, attachment or amendments to this Agreement may, by written agreement of the Parties, be incorporated into this Agreement by a reference to this Agreement made in such exhibit, attachment or amendment. Should any term contained in any exhibit or attachment conflict with any provision of this Agreement, the provision contained in the exhibit or attachment controls, unless the term contained in this Agreement expressly states otherwise. In the event of any conflict between the terms of this Agreement and the terms of any purchase order, invoice or any other similar documentation issued in connection with the transactions contemplated under this Agreement, the terms of this Agreement shall govern and control; provided, however, that terms and conditions of a Quote shall, with respect to such Quote, prevail over any conflicting terms and conditions of this Agreement.

16.11 Waiver. The failure of a Party to enforce any of the provisions of this Agreement, or to exercise any option provided in this Agreement, or to require performance by the other Party of any of the provisions in this Agreement, is not a present or future waiver of such provisions and does not affect the validity of this Agreement or the right of the Party to enforce each and every provision of this Agreement thereafter. The express waiver (whether one or more times) by a Party of any provision, condition or requirement of this Agreement does not constitute a waiver of any future obligation of the other Party to comply with such provision, condition or requirement.

16.12 Severability. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.