

## DIGITAL FORCE TECHNOLOGIES

### TERMS AND CONDITIONS

These Terms and Conditions (these “*Terms and Conditions*”) are integrated into the Order executed between Digital Force Technologies, LLC, a Delaware limited liability company (“*DFT*”) and the Customer listed therein (the “*Order*”). These Terms and Conditions, together with the Order, Side Letter(s) (if any), a Statement of Work (if any), and any other documents referenced in these Terms and Conditions are collectively referred to herein as this “*Agreement*”. This Agreement is effective as of the date the Order is accepted by DFT (the “*Effective Date*”). Each of DFT and the Customer are a “*Party*” and collectively together the “*Parties*”.

#### Article I GENERAL

##### Section 1.1 Definitions

“*Customer*” means the counterparty to that certain Order and Party to this Agreement.

“*DFT Commercial Software*” means (a) the software platform developed by, and proprietary to, DFT and referred to as “*Seraphim*”, and any Improvements thereto (the “*Seraphim Platform*”) and (b) any other software offered by DFT.

“*DFT Intellectual Property*” means all DFT Technology and Improvements.

“*DFT Offering*” means DFT Equipment and DFT Commercial Software.

“*DFT Technology*” means any and all routines, techniques, scripts, libraries, tools, methodologies, processes, technologies or other documentation or material, including, without limitation, any and all Intellectual Property Rights therein, developed and used by DFT prior to the Effective Date and includes, without limitation, the DFT Commercial Software.

“*Improvements*” means any and all improvements, variations, updates, modifications, or enhancements to DFT Technology and all derivatives thereof.

“*Intellectual Property Rights*” means all intellectual property rights of any nature or form of protection of a similar nature or having equivalent or similar effect to any of the foregoing, including without limitation: (a) patents, patent applications, divisionals, continuations, reissues, renewals, registrations, confirmations, re-examinations, certificates of inventorship, extensions, and the like, and any provisional applications of any such patents or patent applications, and any foreign or international equivalent of any of the foregoing; (b) registered and common law trademarks, trade dress, service marks, and any foreign or international equivalent of any of the foregoing and all goodwill associated therewith; (c) any copyrights to works of authorship, whether or not registered in the United States or elsewhere; and (d) all rights to know-how and trade secrets.

“*Personnel*” means employees, agents or contractors of Customer authorized by Customer to access or use the DFT Equipment or DFT Commercial Software on behalf and for the benefit of Customer, respectively.

“*Specifications*” means the technical, design, and performance specifications applicable to the DFT Offering that DFT provides to Customer, except if particular specifications are given by Customer and accepted by DFT in writing.

**Section 1.2 Orders.** The Customer has ordered the products and services as set forth on the Order into which these Terms and Conditions are integrated. Additional or differing terms, conditions or limitations of liability proposed by Customer, whether in a quote, acceptance or delivery document shall have no effect. DFT reserves the right to make amendments or additions to these Terms and Conditions. Any Order submitted is subject to acceptance by DFT. DFT reserves the right to reject any Order in full or in part or to apply a maximum order amount. Orders accepted by DFT are firm and non-cancelable by the Customer. Customer may from time to time request changes to an Order, however, any changes shall not be binding upon DFT, except when specifically confirmed in writing by DFT.

**Section 1.3 Order of Precedence.** In the event of a conflict between the documents comprising this Agreement, the order of precedence and control shall be: (a) Side Letter(s) (if any), (b) these Terms and Conditions; (b) the applicable Order; and (c) Statement(s) of Work, if any. Notwithstanding the foregoing, if an Order or Statement of Work expressly states that one or more of its terms shall apply despite contrary language in these Terms and Conditions, then such term or terms of the Order or Statement of Work shall control with respect to the DFT Equipment or Improvements provided pursuant thereto.

**Section 1.4 Compensation.** Unless otherwise provided in the Order or a Statement of Work, DFT will invoice Customer for all amounts due pursuant to this Agreement. Customer shall pay invoices in full within thirty (30) days after the Customer’s receipt of the invoice in U.S. dollars. The fees do not include any taxes or duties of any kind which may be imposed by any governmental entity on the transactions contemplated by this Agreement, and Customer shall be solely responsible for all such taxes, other than taxes based solely on DFT’s income. Failure to timely pay an invoice shall permit DFT, without further notice and without prejudice to any other rights it may have, to charge interest equal to eight percent (8%) or the maximum allowed by an applicable law, for the full duration of the payment delay. DFT reserves the right at any time to require full or partial payment in advance of delivery. No part of any amount payable to DFT hereunder may be reduced due to any counterclaim, charge back,

offset, adjustment, withholding or other right which Customer may have against DFT, any other party or otherwise. Except as otherwise provided in this Agreement, all amounts paid are non-refundable.

**Section 1.5 Term and Termination.** This Agreement and the licenses granted herein shall remain in effect unless terminated as set forth herein (the “*Term*”). Customer may terminate this Agreement by ceasing to use all DFT Offerings and destroying all copies of the DFT Commercial Software not otherwise embedded in the DFT Equipment. Either Party may, upon written notice to the other party, terminate this Agreement for material breach, provided that such material breach is not cured within thirty (30) days following receipt of such notice. Upon termination of this Agreement, all licenses granted herein shall also terminate, and Customer shall cease using any DFT Offering on which DFT Commercial Software is installed and shall destroy all copies of the DFT Commercial Software not otherwise embedded in the DFT Equipment. Notwithstanding any expiration or termination of this Agreement, any provisions of this Agreement which by their terms are intended to survive expiration or termination of this Agreement shall so survive and continue in full force and effect.

## **Article 2 PURCHASE OF DFT EQUIPMENT.**

If the Order includes the purchase of a tangible asset offered by DFT (“*DFT Equipment*”) then the following terms will apply in relation to the purchase of that DFT Equipment:

### **Section 2.1 Supply and Delivery.**

(a) DFT will supply the DFT Equipment listed in an Order, subject to the terms of this Agreement at the prices indicated in an Order. Notwithstanding the foregoing or anything to the contrary in this Agreement, the firmware and other software embedded into or integrated with the DFT Equipment is licensed to the Customer in accordance with Article 3 of this Agreement.

(b) Except as otherwise specifically agreed in writing by DFT, DFT reserves the right to change at any time the Specifications of any DFT Equipment (including all statements and data appearing in DFT’s catalogues, data sheets and advertisements) without notice.

(c) Unless otherwise specified in the applicable Order, all prices are Ex-Works (INCOTERMS 2020) DFT facility selected by DFT in its sole discretion, exclusive of taxes and other charges including, but not limited to, import duties, brokerage fees, handling and other charges. If Customer refuses or neglects to take Delivery of the DFT Equipment, DFT reserves the right to charge Customer for the reasonable cost of storing the DFT Equipment and any other expenses incurred by DFT (including, but not limited to, shipping costs) until Delivery (as defined below) can be made. Prices are subject to change at any time prior to DFT’s acceptance of the applicable Order.

(d) DFT will make reasonable efforts to meet any delivery dates for DFT Equipment indicated in the applicable Order, however, any such delivery dates are approximations only. Unless otherwise specified in the applicable Order, delivery of the DFT Equipment shall be made and transfer of risk shall take place Ex-Works (INCOTERMS 2020) DFT facility selected by DFT in its sole discretion (“*Delivery*”).

(e) Any claim regarding non-conformity of DFT Equipment with the applicable Specifications will be accepted by DFT only if: (1) Customer’s claim is submitted in writing to DFT within one (1) month of Delivery and (2) such DFT Equipment has not been modified, damaged or manipulated. After such one (1) month period has expired, all DFT Equipment shall be deemed accepted.

### **Section 2.2 DFT Equipment Limited Warranty.**

(a) Subject to the terms hereof, DFT warrants that the DFT Equipment shall conform to the applicable Specifications for a period of twelve (12) months from Delivery. However, the foregoing warranty shall be void and of no effect (i) if the DFT Equipment has been damaged after Delivery; (ii) if DFT Equipment has been submitted to abnormal conditions (mechanical, electrical or thermal) during storage, installation, or use; (iii) if the DFT Equipment is used in an environment requiring a robustness not documented in the applicable Specifications; (iv) to DFT Equipment supplied at the request of Customer, which DFT has indicated may not conform to applicable Specifications or constitutes experimental, developmental or non-qualified products; (v) if the non-conformance of the DFT Equipment results from usage either in excess of the limits listed in the Specifications or, other than in accordance with the applicable Specifications; or (vi) if any default or non-conformity is not directly attributable to DFT.

(b) THE FOREGOING WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, CONDITIONS OR TERMS EXPRESS OR IMPLIED BY STATUTE OR COMMON LAW (INCLUDING WITHOUT LIMITATION WARRANTIES AS TO MERCHANTABILITY OR SATISFACTORY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE OR USAGE).

(c) DFT’S ENTIRE LIABILITY AND CUSTOMER’S SOLE AND EXCLUSIVE REMEDY FOR ANY BREACH OF THE FOREGOING WARRANTY SHALL BE, AT DFT’S OPTION, TO (A) REPAIR OR REPLACE THE NON-

CONFORMING DFT EQUIPMENT OR PART THEREOF, OR (B) ISSUE A CREDIT OR REBATE OF THE PURCHASE PRICE OF THE NON-CONFORMING DFT EQUIPMENT.

### **Article 3 DFT COMMERCIAL COMPUTER SOFTWARE LICENSE**

If the Order includes (a) a sale of DFT Equipment, or (b) access or other provision of the DFT Commercial Software, then the following terms will apply in relation to DFT Commercial Software.

**Section 3.1 Limited License Grant.** Subject to the terms and conditions of this Agreement, DFT hereby grants to Customer a limited, non-exclusive, non-assignable, non-transferable, terminable, revocable, non-sublicensable license to access and use the DFT Commercial Software (a) in object code form only, (b) solely by Customer's Personnel and (c) for the sole purpose of operating the DFT Equipment in order to perform, track, or manage surveillance, provide real-time alerts, surveillance, and related perimeter defense information. Only with respect to the computer desktop application that can be used with the Seraphim Platform (the "*DFT Desktop Application*"), DFT further grants to Customer a limited, non-exclusive, non-assignable, non-transferable, terminable, revocable, non-sublicensable license to use, store, and execute the DFT Desktop Application (in executable code format) on Customer-owned or operated computer and server equipment, Customer may make a reasonable number of copies of the DFT Commercial Software in machine-readable form solely for archive or backup purposes in accordance with Customer's standard archive or backup policies and procedures.

**Section 3.2 Improvements to DFT Commercial Software.** DFT may make Improvements to the DFT Commercial Software required to meet the Specifications in accordance with one or more statement(s) of work, either attached to an Order or into which these terms are incorporated (each a "*Statement of Work*") and DFT may use subcontractors to complete such Improvements.

**Section 3.3 Updates and Upgrades.** DFT may, in its discretion, develop and release generally to its customers updates or upgrades to the DFT Commercial Software ("*Updates*"). The terms on which DFT makes Updates available are solely at DFT's discretion and DFT reserves the right to charge Customer additional amounts for access to such Updates. Updates shall be deemed to constitute part of the DFT Commercial Software and shall be subject to all of the terms and conditions set forth in this Agreement. In order to use any updates or upgrades, the Customer may need to upgrade Customer-owned or operated computer and server equipment. DFT may, at its sole discretion, discontinue support, maintenance, or upgrades for certain older versions of the DFT Commercial Software.

**Section 3.4 NO WARRANTIES.** THE DFT COMMERCIAL SOFTWARE IS PROVIDED ON AN "AS IS" BASIS, WITHOUT ANY WARRANTIES OF ANY KIND TO THE FULLEST EXTENT PERMITTED BY LAW, AND DFT EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, AND FITNESS FOR A PARTICULAR PURPOSE. CUSTOMER ACKNOWLEDGES AND AGREES THAT DFT DOES NOT WARRANT THAT THE DFT COMMERCIAL SOFTWARE WILL BE ERROR-FREE. NOTWITHSTANDING THE FOREGOING, TO THE EXTENT THAT THE DFT COMMERCIAL SOFTWARE CAUSES THE DFT EQUIPMENT TO NONCONFORM TO THE SPECIFICATIONS OR OTHERWISE BREACH Section 2.2 THEN THE TERMS OF THAT Section 2.2 SHALL APPLY AND SUPERSEDE THIS SECTION.

### **Article 4 INTELLECTUAL PROPERTY**

**Section 4.1 Ownership of DFT Intellectual Property.** DFT owns all right, title, and interest in and to all DFT Intellectual Property that is generated or developed by or through DFT, Customer, or their respective Personnel in connection with this Agreement or the use of the DFT Commercial Software. Through the development of DFT Intellectual Property, DFT has expended significant resources gathering, assembling, and compiling the DFT Intellectual Property, and such DFT Intellectual Property is the valuable and exclusive property of DFT.

**Section 4.2 Improvements.** Upon Customer learning of any Improvement, Customer shall promptly disclose such Improvement to DFT. Customer hereby assigns and transfers (and agrees to assign and transfer), from the moment of creation, to DFT all right, title, and interest in and to any Improvement, and any and all Intellectual Property Rights therein, that Customer may have made, discovered, or created. Customer hereby waives and agrees to cause all of its Personnel to waive any and all moral rights in or to such related Improvements and any and all Intellectual Property Rights therein. Any such Improvements, and any and all Intellectual Property Rights therein, made, discovered, or created by relating to DFT Intellectual Property shall become DFT Intellectual Property and be subject to this Agreement at no cost or additional royalty payments by DFT or to Customer or its Personnel. Any Intellectual Property Rights that are or have already been or will be independently developed by Customer that arose prior to the Effective Date or that do not, directly or indirectly, relate to the DFT Intellectual Property shall belong exclusively to Customer.

**Section 4.3 Ownership of Customer Intellectual Property.** Customer shall own all right, title and interest in and to any data, information, information derived from such information, know-how, and Intellectual Property Rights (including, without limitation, any technology, inventions, discoveries, works of authorship or other prior creations that were conceived, created or reduced to practice by or for Customer, alone or with others) and further including any and all intellectual property rights therein, controlled, developed and used by Customer prior to the Effective Date (the “*Customer Intellectual Property*”). Customer grants DFT a non-exclusive, non-transferable, royalty-free worldwide license to use the Customer Intellectual Property solely for the purpose of completing fulfilling any Order (and any associated Statement of Work) and for no other purpose.

**Section 4.4 Reservation of Rights.** Customer acknowledges that DFT and its licensors own all Intellectual Property Rights in and to the DFT Intellectual Property and DFT expressly reserves all rights not expressly granted to Customer hereunder.

**Section 4.5 Restrictions.** Except to the extent otherwise expressly authorized by DFT under this Agreement, Customer shall not, and shall not allow its Personnel or any third party to, copy, modify, adapt, translate, publicly display, publish, create derivative works of or distribute the DFT Commercial Software. Customer will not, and shall ensure that its Personnel will not, use the DFT Commercial Software for any purposes beyond the scope of or otherwise not in accordance with the limited licenses granted in Section 3.1. Without limiting the foregoing, Customer will not: (a) authorize or permit access or use of the DFT Commercial Software by or for persons other than Personnel as expressly permitted herein; (b) assign, sublicense, sell, lease or otherwise transfer or convey the limited license granted hereunder; (c) modify or create any derivative works of DFT Commercial Software; or (d) decompile, disassemble, reverse engineer, or otherwise attempt to obtain or perceive the source code from which the DFT Commercial Software is compiled or interpreted. Customer hereby acknowledges and agrees that nothing in this Agreement shall be construed to grant Customer or its Personnel any right to obtain or use source code to the DFT Commercial Software or any derivative works thereof.

**Section 4.6 U.S. Government License Rights.** The DFT Commercial Software is commercial computer software, as such term is defined in 48 C.F.R. § 2.102 and 48 C.F.R. § 252.227-7014. Accordingly, if the US Government or any contractor therefor is the owner or authorized user of the DFT Equipment, or an authorized user of the DFT Commercial Software, the US Government and/or the contractor, as applicable, shall receive only those rights with respect to the DFT Commercial Software as are granted to all other end users under license, in accordance with: (a) 48 C.F.R. §227.7201 through 48 7 C.F.R. §227.7204, with respect to the Department of Defense and their contractors; or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.

## **Article 5 INDEMNIFICATION; LIMITATION OF LIABILITY**

**Section 5.1 Indemnification.** Customer shall fully defend, indemnify and hold harmless DFT, its successors, assigns, officers, directors, employees, partners, trustees, investors, shareholders, members, attorneys, agents, beneficiaries, affiliates and representatives for, from and against any third party claim, liability, damage, cost or expense (including without limitation reasonable attorneys’ fees and costs of investigation and litigation) (each a “*Claim*”), arising from:

- (a) Customer’s use of the DFT Offerings;
- (b) Customer’s breach of this Agreement;
- (c) a DFT Offering that has been modified by someone other than DFT, to the extent the Claim would not exist but for such modification;
- (d) a DFT Offering that has been modified strictly in accordance with Customer-provided specifications, to extent the Claim would not exist but for such modification;
- (e) use or combination of a DFT Offering with products of a third party, provided that the Claim would not exist but for such use or combination; or
- (f) Customer products or products of a third party;

provided, however, that Customer shall have no obligation of indemnity hereunder with respect to any Claim to the extent that such Claim arises from negligence or intentional misconduct on the part of DFT or its agents or employees, or is a direct result of DFT’s breach of any of its obligations, representations, or warranties under this Agreement.

**LIMITATION OF LIABILITY.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO EACH OTHER OR TO ANY THIRD PARTY FOR ANY CONSEQUENTIAL, SPECIAL, DIRECT, INDIRECT, INCIDENTAL, PUNITIVE OR EXEMPLARY LOSS, DAMAGE, COST OR EXPENSE (INCLUDING WITHOUT LIMITATION LOST PROFITS AND OPPORTUNITY COSTS, BUSINESS INTERRUPTION, COSTS OF LOST OR DAMAGED DATA), WHETHER ARISING OUT OF CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN SUCH DAMAGES. IN NO EVENT SHALL EITHER PARTY’S CUMULATIVELIABILITY FOR ANY LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH OR RESULTING FROM THIS AGREEMENT EXCEED THE ORDER PRICE. THESE LIMITATIONS SHALL BE DEEMED TO

APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDIES. EACH PARTY ACKNOWLEDGES AND AGREES THAT THEY HAVE FULLY CONSIDERED THE FOREGOING ALLOCATION OF RISK AND FIND IT REASONABLE, AND THAT THE FOREGOING LIMITATIONS ARE AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. NOTWITHSTANDING ANYTHING ELSE IN THE ORDER TO THE CONTRARY, THE STATED MONETARY LIMITATION HEREINABOVE IS THE MAXIMUM LIABILITY EITHER PARTY HAS TO EACH OTHER. TO THE EXTENT THAT THIS LIMITATION OF LIABILITY CONFLICTS WITH ANY OTHER PROVISION OF THE ORDER, THE PROVISION SHALL BE REGARDED AS AMENDED TO WHEVER EXTEND REQUIRED TO MAKE SUCH PROVISION CONSISTENT WITH THIS LIMITATION OF LIABILITY.

## **Article 6 COVENANTS**

**Section 6.1 Customer Compliance.** Customer shall use the DFT Offerings in compliance with all applicable laws, statutes, regulations, ordinances, and rules. In any event, Customer shall not: (a) use the DFT Offerings in any way that violates the rights of any person or DFT protected by copyright, trademark, trade secret, patent or other intellectual property or similar laws or regulations; or (b) use the DFT Commercial Software to introduce malicious programs into the DFT Equipment, DFT Commercial Software, systems of DFT, or any third party networks or servers, including viruses, worms, Trojan horses, e-mail bombs, cancelbots or other computer programming routines that are intended to damage, interfere with, intercept or expropriate any system, data or personal information, including executing any form of network monitoring that will intercept or extract data. Under no circumstances shall Customer be authorized to make any representations, warranties or guarantees with respect to the DFT Offerings, except to the extent expressly set forth in this Agreement. Customer shall be responsible for the compliance by its Personnel with all of the terms and conditions of this Agreement.

**Section 6.2 Non-Solicitation.** Customer shall not, directly or indirectly, and whether on behalf of itself or for another person, solicit for employment or hire any individual who is or was an employee of DFT at any time during the period beginning on the Effective Date and ending eighteen (18) months after the later of (a) Delivery or (b) the date of any Order. Notwithstanding anything to the contrary in this Section, nothing will prohibit the solicitation or hiring of any individual who is or was an employee of DFT (i) through advertising in newspapers, periodicals, websites or electronic mail of general or trade circulation not specifically targeted to the employees of DFT; (ii) by an employee search firm on behalf of the Customer, provided, that such employee search firm is not advised, by employee or company name, to solicit such employees; or (iii) as a result of an employee initiating discussion with the Customer without any direct or indirect solicitation by the Customer.

### **Section 6.3 Confidentiality.**

(a) “*Confidential Information*” means: (a) the terms of this Agreement; (b) all documents, materials, and information relating to the DFT Intellectual Property (which, for the avoidance of doubt, is the Confidential Information of DFT); and (c) all other information that either party treats as proprietary or confidential and that is designated in writing to be confidential or proprietary or whose confidential or proprietary nature is apparent from the context of the disclosure or the contents or nature of the information disclosed.

(b) Each Party agrees: (a) to use the disclosing party’s Confidential Information only for the purposes of this Agreement and for no other purpose; (b) to hold in confidence and prevent the disclosure and protect, using the highest degree of care that the receiving party uses to protect its own confidential information of similar nature, but in no event less than reasonable care, the confidentiality of the disclosing party’s Confidential Information from dissemination to, and use by, any third party without first obtaining the express written consent from the disclosing party; (c) not to create any derivative work from the disclosing party’s Confidential Information; (d) to restrict access to the disclosing party’s Confidential Information to such of its employees, consultants, officers, directors, professional advisors, agents, or affiliates (collectively, “*Representatives*”) who have a need to know and access such Confidential Information to accomplish the purposes of this Agreement and who have been advised of and have agreed in writing, or with respect to professional advisors are bound by professional ethics rules, to treat such information as confidential; and (e) to return or destroy all of the disclosing party’s Confidential Information in its possession upon termination or expiration of this Agreement. Compliance with the confidentiality and use obligations under this Agreement by the receiving party and its Representatives shall be and at all times remain the responsibility of the receiving party, and the receiving party shall be liable for any breach of this Agreement by it and any of its Representatives. Each Party agrees to promptly notify the disclosing party in writing of any actual or suspected misuse or unauthorized disclosure of the disclosing party’s Confidential Information.

(c) **Confidentiality Exceptions.** The restrictions set forth in Section 6.3(b) shall not apply to the disclosing party’s Confidential Information that: (a) was at the time of disclosure or subsequently becomes generally publicly available or in the public domain through no act or omission in breach of this Agreement by the receiving party or its Representatives; (b) is already in the receiving party’s possession free of any confidentiality obligations with respect thereto at the time of disclosure; (c) becomes rightfully known to the receiving party from a third party without breach of this Agreement, which third party is not bound by any confidentiality restriction to disclose such information to the receiving party; (d) is approved for release or disclosure by prior written agreement of the disclosing Party; (e) is independently developed by the receiving party, as evidenced by contemporaneous

written records, without the use of or reference to any of the disclosing party's Confidential Information; or (f) is required to be disclosed by the receiving party in order to comply with a valid and applicable order of a court or other governmental body, or as otherwise necessary to comply with applicable law; provided, that the receiving party provides the disclosing party with prompt prior written notice of the required disclosure, to the extent permitted by the applicable order, and reasonably cooperates with the disclosing party in any efforts to limit the nature and scope of such required disclosure.

## **Article 7 MISCELLANEOUS**

**Section 7.1 Governing Law; Venue.** This Agreement shall be construed, interpreted, and the rights of the Parties hereunder shall be determined in accordance with the internal laws of the State of California without regard to its conflicts of law principles. The Parties hereby agree and submit to the exclusive jurisdiction of courts located in San Diego, California for all proceedings, suits, or claims arising out of or in connection with this Agreement. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.

**Section 7.2 Force Majeure.** DFT shall not be in breach of this Agreement, and, shall have no liability whatsoever with respect to DFT's obligations under this Agreement, to the extent related to interruptions, delays, failures to perform, damages, losses or destruction, or malfunction of any equipment or any consequence thereof caused or occasioned by, or due to fire, flood, wind storms, water, the elements, acts of God, war and threats of imminent war, labor disputes or shortages, utility curtailments, power failures, spikes, explosions, civil disturbances, governmental actions, shortages of equipment or supplies, unavailability of transportation, acts or omissions of third parties widespread pandemic or contagion, or business interruption due to closures attributed to any of the foregoing, or any other cause beyond the reasonable control of DFT. DFT will provide prompt notice of such event to Customer and will exercise good faith commercially reasonable efforts to remedy any such cause of delay or cause preventing performance.

**Section 7.3 Side Letters; Entire Agreement; Amendments and Waivers; Conflicting Terms.** From time to time, DFT and Customer may enter into side letters that supplement or modify this Agreement each of which shall be binding only if such letters are in writing and duly executed by both Parties ("*Side Letters*"). This Agreement, the Order, the Statement of Work (if any), the Side Letter(s) (if any), and all exhibits and attachments incorporated herein and therein by reference, constitute the entire understanding of the Parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether oral or written, of the Parties. No supplement, modification, amendment or waiver of this Agreement shall be binding unless executed in writing by the Parties. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly provided. In the event of conflict between the terms of this Agreement, the Order, a Statement of Work or a Side Letter, the terms of Section 1.3 concerning the order of precedence shall prevail.

**Section 7.4 Notices.** All notices required or permitted under this Agreement will be given in writing and will either be (a) personally delivered, (b) transmitted by postage prepaid certified mail, return receipt requested, (c) transmitted by nationally-recognized private express courier, or (d) sent by e-mail, and will be deemed to have been given on the date of delivery if delivered personally, upon receipt of acknowledgement of receipt if by e-mail, five (5) days after post marked date when sent via certified mail, or two (2) days after deposit with an express courier to the parties to this Agreement and addressed to the parties at their respective addresses set forth on the Order or addressed to such other address as that Party may have given by written notice in accordance with this provision. Either Party may change its address or e-mail address for purposes hereof by written notice to the other in accordance with this Section.

**Section 7.5 Attorney Fees.** If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement or to protect the rights obtained hereunder the prevailing party shall be entitled to its reasonable attorneys' fees, including attorneys' fees on appeal, costs, and disbursements in addition to any other relief to which it may be entitled.

**Section 7.6 Assignment.** DFT may assign, delegate, or transfer this Agreement or any of its rights and obligations hereunder without notice to or prior written consent of Customer. Customer may not assign, delegate or transfer this Agreement or any of its rights and obligations hereunder without the prior written consent of DFT. Any assignment or transfer in violation of this Agreement is void. This Agreement will be binding upon and inure to the benefit of all permitted successors and assigns. Nothing in this Agreement is intended to or will confer upon any third party any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**Section 7.7 Survival.** Any provision of this Agreement, which, by its nature, would survive termination or expiration of this Agreement will survive any such termination or expiration, including, without limitation, those provisions concerning confidentiality, indemnification and limitation of liability.

**Section 7.8 Export Compliance.** The DFT Offerings provided or made available to Customer are subject to U.S. export control and economic sanctions laws as administered and enforced by the Office of Foreign Assets and Control of the United States Department of Treasury. Customer agrees to comply with all such laws and regulations as they relate to access to and use of the DFT Offerings by Customer. Customer shall not access or use the DFT Offerings if located in any jurisdiction in which the

provision of the DFT Offerings is prohibited under U.S. or other applicable laws or regulations (a “*Prohibited Jurisdiction*”) and Customer shall not provide access to any DFT Offering to any government, entity or individual located in any Prohibited Jurisdiction. Customer represents, warrants and covenants that (a) Customer is not named on any U.S. government list of persons or entities prohibited from receiving U.S. exports, or transacting with any U.S. person; (b) Customer is not a company registered in any Prohibited Jurisdiction; (c) Customer will not permit any third party to access or use the DFT Offerings in violation of any U.S. or other applicable export embargoes, prohibitions or restrictions; and (d) Customer shall comply with all applicable laws regarding the transmission of technical data exported from the United States and the country in which Customer and its customers are located.

**Section 7.9 Severability.** If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision shall be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability.

**Section 7.10 Headings.** The headings herein are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this Agreement.

**Section 7.11 Independent Contractor Status.** This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties. DFT’s relationship to Customer shall be that of an independent contractor.