

# **General Terms of DGAssistant Software Service**

(Last Updated 20th of August 2018)

## **1. WHAT THE AGREEMENT COVERS:**

The DGAssistant Software Service (as defined below) is being made available by DGAssistant Software S.L.U. ("DGAssistant," "we," "us," or "our") to You on the condition that You agree to these terms and conditions (the "Agreement"). "Licensee," "You," or "Your" refers to the person accessing or using the DGAssistant Software Service, or, if the DGAssistant Software Service is being used on behalf of an organization, such as an employer, "Licensee," "You," or "Your" means such organization. In the latter case, the person accessing or using the DGAssistant Software Service represents and warrants that he or she has the authority to do so and bind such organization to this Agreement. Violation of any of the terms below will result in the termination of this Agreement and Your access to the DGAssistant Software Service. BY CHECKING THE "I ACCEPT THE END USER LICENSE AGREEMENT" CHECK BOX, COMPLETING THE REGISTRATION PROCESS, OR USING THE DGAssistant SOFTWARE SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE REVIEWED AND UNDERSTOOD THIS AGREEMENT AND ACCEPT THESE TERMS AND ARE AUTHORIZED TO ACT ON BEHALF OF, AND BIND TO THIS AGREEMENT, THE OWNER OF THIS ACCOUNT. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT ACCESS OR USE THE DGAssistant SOFTWARE SERVICE. YOU FURTHER AGREE THAT, EXCEPT FOR WRITTEN SEPARATE AGREEMENTS BETWEEN DGAssistant AND YOU, THIS AGREEMENT IS A COMPLETE AND EXCLUSIVE STATEMENT OF THE RIGHTS AND LIABILITIES OF THE PARTIES

This is a license agreement and not an agreement for sale.

DGAssistant Software Service is a cloud service to enable the management of dangerous goods. The DGAssistant Software Service is the unified portal through which Users and Customers can access and manage consignments, receipts, participants and other topics related to dangerous goods.

DGAssistant may change the terms of this Agreement at its sole discretion. If we change the terms, then we will make a new copy of the Agreement available at <http://www.dgassistant.com/documents/license-agreement.pdf>. Your use of the DGAssistant Software Service is subject to the most current version of the Agreement at the time of such use.

## **2. CERTAIN DEFINITIONS.**

"Applicable Laws" means national, federal, state, and local laws, rules, and regulations including, without limitation, those laws and regulations relating to data privacy and security in each applicable jurisdiction.

"Confidential Information" includes any proprietary data and any other information disclosed by one party to the other in writing and marked "confidential" or disclosed orally and, within five business days, reduced to writing and marked "confidential." However, Confidential Information will not include any information which:

- (i) is or becomes known to the general public other than through a breach of the receiving party's obligations hereunder;
- (ii) is already in the receiving party's possession prior to disclosure by the disclosing party;
- (iii) is received rightfully from a third party without an obligation to maintain such information in confidence; or

- (iv) is independently developed by the receiving party without the use of the disclosing party's Confidential Information.

"Content" means all data and content, such as data files, written text, keys, computer software, photographs, videos or other images that You upload to or that is processed using the DGAssistant Software Service.

"User Account" means an account specific to one of Your Licensed Users through which the Licensed User accesses the DGAssistant Software Service for Your benefit or on Your behalf.

"Documentation" means any accompanying documentation made available to You (electronically or otherwise) by DGAssistant for use with the DGAssistant Software Service, expressly excluding any user blogs, reviews, or forums.

"Intellectual Property" or "Intellectual Property Rights" means all inventions and/or works and any and all rights under U.S. and/or other countries, trade secrets, know-how, copyrights, and other industrial or intangible property rights of a similar nature; all rights pursuant to grants and/or registrations worldwide in connection with the foregoing and all other rights with respect thereto; all rights under applications for any such grant or registration, all rights of priority under international conventions to make such applications and the right to control their prosecution, and all rights under amendments, continuations, divisions, and continuations-in-part of such applications; and all rights under corrections, reissues, patents of addition, extensions, and renewals of any such grant, registration, and/or right.

"Licensed User" means You or an individual person, employee or third-party partner authorized to use the DGAssistant Software Service for You in accordance with this Agreement. Each Licensed User must register their own User Account and may not use the DGAssistant Software Service except under the terms of this Agreement.

"End User" means the Customer under whose name DGAssistant has provisioned the Service

"Software" means any DGAssistant proprietary software products, SDKs, data, code, files, or other software made available to You through the DGAssistant Software Service in accordance with Your Subscription, together with any fixes, updates, and upgrades provided to You.

"Subscription" means Your subscription to the DGAssistant Software Service pursuant to the terms of this Agreement. Subscription is further limited to the specific level of service to which You have subscribed.

"DGAssistant Software Service" means the DGAssistant Software Service Portal, including the DGAssistant Software Service Application, the DGAssistant Software Web site (<http://www.dgassistant.com>) and Documentation, as well as the various DGAssistant Products accessible through the DGAssistant Software Service Portal.

The words "include" and "including" mean "including but not limited to."

### 3. SERVICE PROVIDER.

End User acknowledges and agrees that the Service is being provided by DGAssistant Software SLU or its affiliate (individually and collectively, "DGAssistant"), as an application service provider. DGAssistant can choose to appoint a Reseller and End User agreed in such case, Reseller (and not DGAssistant) is selling the Service to End User. Accordingly, Reseller, and not DGAssistant, shall be solely responsible to End User for the Service and the operation and use thereof, notwithstanding any DGAssistant branding on the Web Site. End User shall contact Reseller, and not DGAssistant, with respect to the Service, including obtaining any related support or assistance; report any problems, or the like.

### 4. NONEXCLUSIVE LICENSES.

Licenses.

Subject to the terms and conditions of this Agreement, DGAssistant grants Your Licensed Users to the extent which You have obtained a Subscription, and solely during the period of Your Subscription, a limited, revocable, non-exclusive, non-transferable, non-sublicensable license to access and use the DGAssistant Software Service solely in order to access the DGAssistant Service for the management of your related dangerous goods topics covered by the service. ,

DGAssistant reserves the right at any time to modify or discontinue, temporarily or permanently the topics covered by the service with or without notice.

Use of DGAssistant Software Service.

Your Licensed Users must all be using the DGAssistant Software Service at the same Subscription level (types of licenses required) and may not exceed the number of seats You have purchased from DGAssistant hereunder. Depending of the Subscription level, some usages will be limited, and the limits will be established in the Subscription level description. If such usage exceeds the amount for which You have paid, access to that User Account or to specific features of that User Account will be suspended unless or until

- (i) You pay the applicable fees for an upgrade to higher usage limits; or
- (ii) a new billable period begins.

You are solely responsible for obtaining and maintaining all computer hardware, internet access and internet services necessary to access and use the DGAssistant Software Service.

You are solely responsible for ensuring that all the users that you grant access to the DGAssistant Software Service directly or indirectly have reviewed and understood this agreement and accept these terms prior start using it.

Limitations.

The trial license is limited to only one time usage. After the trial license expires, to keep using the system is required to acquire an end user license.

Except as specifically permitted in the terms of this Agreement **You may not** (and You may not allow any of Your Licensed Users to):

- (i) copy, modify, adapt, translate, or otherwise create derivative works of the DGAssistant Software Service or DGAssistant Intellectual Property, including the Software;
- (ii) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code of the DGAssistant Software Service or DGAssistant Intellectual Property, except as expressly permitted by the law in effect in the jurisdiction in which You are located;
- (iii) rent, lease, sell, resell, assign, sublicense, or otherwise transfer rights in or to the DGAssistant Software Service or DGAssistant Intellectual Property, or make the DGAssistant Software Service or DGAssistant Intellectual Property available on a

- “service bureau” basis or (except as otherwise provided for in this Agreement) otherwise allow any third party to use or access any of the foregoing;
- (iv) remove or modify any proprietary notices, legends, or labels on the DGAssistant Software Service or DGAssistant Intellectual Property;
  - (v) use, post, transmit, or introduce into the DGAssistant Software Service or DGAssistant Intellectual Property any device, software, virus, worm, back door, Trojan Horse, similar harmful code, or routine which interferes or attempts to interfere with the operation of the DGAssistant Software Service or DGAssistant Intellectual Property;
  - (vi) access the DGAssistant Services through any third party product
  - (vii) use or access the DGAssistant Software Service or DGAssistant Intellectual Property in a manner that: (a) violates any Applicable Laws; (b) violates the rights of any third party; (c) purports to subject DGAssistant to any other obligations; or (d) for any purpose not specifically permitted in this Agreement;
  - (viii) access the DGAssistant Software Service for the purpose of bringing an intellectual property infringement claim against DGAssistant;
  - (ix) access the DGAssistant Services in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the DGAssistant Services;
  - (x) use the DGAssistant Software Service in any situation where failure or fault of the DGAssistant Software Service could lead to death or serious bodily injury of any person, or to physical or environmental damage. For example, You may not use, or permit any other person to use, the DGAssistant Software Service in connection with aircraft or other modes of human mass transportation, nuclear or chemical facilities, or medical life support devices.
  - (xi) use the DGAssistant Services damaging the image, reputation or interests of DGAssistant.
  - (xii) create derivative works based on the DGAssistant Services except as permitted herein;
  - (xiii) use the DGAssistant Services to collect, store or process sensitive personal information, including credit card numbers or bank account information
  - (xiv) use the DGAssistant Services for a purpose related to establishing an individual’s eligibility for credit, employment or insurance or for any consumer-initiated transaction as defined in the Spanish law or any similar law.

It is allowed simultaneous connection for as many Users as licenses purchased for each Subscription level. Also, it is allowed to create as many Shippers as licenses purchased for each Subscription level.

The number of acquired licenses for each Subscription level must be equal or greater than the number of active workplaces defined in the service. An ‘Active Workplace’ is a workplace with consignments or receipts assigned.

The number of shipments allowed by one API license is limited to 300 per month. For example, three API licenses allow the creation of 900 shipments per month.

Due to the very low customer demand, the radioactive goods are not covered by the service.

## **5. MEMBER ACCOUNT, PASSWORD, AND SECURITY.**

To access the DGAssistant Software Service,

You / Your Licensed Users must each create An User Account associated with a valid e-mail address. No individual may create or have open more than one (1) User Account at any given time. No one may authorize other individuals to access the DGAssistant Software Service under their User Account. You will notify DGAssistant immediately if You believe an unauthorized third party may be using Your, or Your Licensed Users’, User Account. DGAssistant will not be liable for any loss resulting from an unauthorized person using An User Account, passwords or any assigned credentials.

## 6. TERM AND TERMINATION.

Active Subscription,

You must maintain an active Subscription for each User Account to continue using the DGAssistant Software Service. This Agreement and the License granted hereunder may be renewed for successive Subscription periods pursuant to the applicable Subscription purchased, until terminated in accordance with this Section. If You do not maintain an active Subscription, this Agreement, including any Additional Terms and the Licenses granted hereunder and thereunder, along with You and Your Licensed User's use of and access to the DGAssistant Software Service, will terminate.

If You have obtained a free Subscription, DGAssistant reserves the right at any time to modify or discontinue, temporarily or permanently, such free Subscription and Your access to the DGAssistant Software Service thereunder with or without notice. Unless modified or discontinued by DGAssistant in its sole discretion, Your free Subscription shall continue until You cancel or upgrade to a paid Subscription for any of the DGAssistant Services.

If You have obtained a paid Subscription, payment is non-refundable, even if You / Your Licensed Users stop using the DGAssistant Software Service. If You upgrade Your Subscription, the upgrade will take effect immediately, You will be charged and must pay the applicable fee, and the term of Your Subscription period may be extended, as described at the time You upgrade. You generally may not downgrade a Subscription and there is no automated mechanism available to You by which to downgrade. Downgrades require DGAssistant's approval and assistance and could result in the loss of Your Content. Please contact DGAssistant at [info@dgassistant.com](mailto:info@dgassistant.com) if You wish to request a downgrade. If You downgrade Your Subscription, unless otherwise specified, the downgrade will take effect at the end of the term of Your existing Subscription period.

Automatic Renewal of Paid Subscription. UNLESS YOU / YOUR LICENSED USERS INFORM US THAT THE RENEW IS NOT DESIRED PRIOR TO THE END OF YOUR EXISTING SUBSCRIPTION PERIOD, YOUR PAID SUBSCRIPTION WITH RESPECT TO THAT ACCOUNT WILL AUTOMATICALLY RENEW, AND YOU AUTHORIZE DGAssistant (WITHOUT NOTICE) TO COLLECT THE THEN-APPLICABLE FEE AND ANY TAXES FOR THE RENEWAL SUBSCRIPTION PERIOD, USING THE CREDIT CARD OR BILLING CREDENTIALS THAT YOU PROVIDED WITH RESPECT TO THE PREVIOUS SUBSCRIPTION PERIOD. Subscription fees and features may change over time. Your Subscription will be renewed at the level DGAssistant, in its sole discretion, identifies as being closest to Your previous Subscription.

Promotional and Trial Offers.

DGAssistant may offer trial or promotional Subscriptions ("Promotional Subscriptions") for DGAssistant Services. Unless otherwise specified, a Promotional Subscription will remain active only for as long as You maintain an active, paid Subscription to the DGAssistant Product, or other software or service which formed the basis of Your eligibility for the Promotional Subscription. DGAssistant reserves the right at any time to modify or discontinue, temporarily or permanently, any Promotional Subscription and Your access to the DGAssistant Service thereunder with or without notice.

Unless prohibited by law,

Unless otherwise prohibited by law, and without prejudice to DGAssistant's other rights or remedies, DGAssistant shall have the right to terminate this Agreement and the Licenses granted hereunder immediately if You breach any of the terms of this Agreement.

Unless otherwise prohibited by law, and without prejudice to DGAssistant's other rights or remedies, DGAssistant has the right to suspend and terminate the account of End User if there are any claims or actions are brought against DGAssistant by End User or its affiliates or if any use of the Service is causing harm to DGAssistant, the Service, or others; if DGAssistant has not been paid for the Service; or if DGAssistant is prohibited or enjoined from providing the Service. DGAssistant OR RESELLER SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR

ANY SUCH SUSPENSION OR TERMINATION, subject to any refunds or credits that DGAssistant or Reseller may be required to pay as set forth in this End User Agreement.

Unless Additional Terms,

Unless otherwise specified in the Additional Terms, upon cancellation, suspension or termination, all Licenses granted to You hereunder shall terminate automatically, Your right to use the DGAssistant Software Service and the DGAssistant Products and Services including any/all downloaded/locally installed Software, shall cease. DGAssistant will then hold Your Content for a period of 60 days, during which You will be provided with a reasonable opportunity to collect Your Content. After the end of the 60 days period Your Content will not be accessible to you. You are solely responsible for backing up Your Content. Except in the case of termination by DGAssistant for Your breach of the terms of this Agreement, You may create a new User Account and obtain a new Subscription following the expiration or termination of Your Subscription.

## **7. EXTERNAL SAFETY ADVISOR OR WASTE MANAGEMENT.**

Exclusively If the acquired or used license is one of the 'External Safety Advisor' or 'Waste Management' (or the equivalent name if you are using a language different from English) type you agree to accept the terms included in the file <http://www.dgassistant.com/documents/distribution-agreement.pdf> in the same way that the terms exposed in this document. For other types of licenses only the terms of this document shall be applicable.

## **8. API SUPPORT POLICY**

DGAssistant supports previous versions of published API specifications. However, your new client applications should use the most recent version of the published API specification to fully exploit the benefits of richer features and greater efficiency.

Backward Compatibility

DGAssistant strives to make backward compatibility easy when using the API Platform.

Each new DGAssistant release consists of two components:

- A new release of platform software that resides on DGAssistant systems (backend)
- A new version of the API specification (frontend)

We maintain support for each API version across releases of the platform software. The API is backward compatible in that an application created to work with a given API version will continue to work with that same API version in future platform software releases.

DGAssistant does not guarantee that an application written against one API version will work with future API versions: Changes in method signatures and data representations are often required as we continue to enhance the API. However, we strive to keep the API consistent from version to version with minimal, if any, changes required to port applications to newer API versions.

API End-of-Life

DGAssistant is committed to supporting each API version for a minimum of three years from the date of first release. In order to mature and improve the quality and performance of the API, versions that are more than three years old might cease to be supported.

When an API version is to be deprecated, advance notice is given at least one year before support ends. DGAssistant will directly notify customers using API versions planned for deprecation.

## **9. CONFIDENTIALITY.**

Neither party will use or disclose the other party's Confidential Information without the other's prior written consent, except for the purpose of performing its obligations under this Agreement or if required by law, regulation, or court order, in which case, the party being compelled to disclose Confidential Information will give the other party as much notice as is reasonably practicable prior to disclosing the Confidential Information.

## **10. USE OF THIRD-PARTY VENDORS; TRANSMISSION OF DATA.**

DGAssistant may use third-party vendors and hosting partners (including Microsoft) to provide the infrastructure, hardware, software, networking, storage, and related technology required to operate and provide the DGAssistant Software Service, and such third parties may be granted access to Your Applications and/or Content in connection with providing such services to DGAssistant. DGAssistant is not responsible for the services provided by such third party vendors. In addition, You understand that the technical processing and transmission of the DGAssistant Software Service, including Your Content and/or Application(s), may be transferred unencrypted and involve (i) transmissions over various networks; and (ii) changes to conform and adapt to technical requirements of connecting networks or devices.

## **11. PRIVACY.**

Information Use and Disclosure by DGAssistant.

With respect to the DGAssistant Software Service and DGAssistant Products, DGAssistant may access or disclose information about You, Your Licensed Users, User Accounts and/or the content of Your or Your Licensed Users' communications in order to (i) provide, operate, and improve the DGAssistant Software Service and/or DGAssistant Products; (ii) comply with Applicable Laws or respond to lawful requests or legal process; or (iii) protect the rights or property of DGAssistant or our customers, including the enforcement of DGAssistant's agreements or policies governing the use of the DGAssistant Software Service. Personal data collected or otherwise processed by DGAssistant in the performance of services related to the DGAssistant Software Service may be transferred to, and stored and processed in United States of America or any other country in which DGAssistant or its affiliates or service providers maintain facilities.

Collection and Use of Data.

DGAssistant uses tools to deliver certain features and extensions related to the DGAssistant Software Service, identify trends and bugs, collect activation information, usage statistics and track other data related to Your use of the DGAssistant Software. By Your acceptance of the terms of this Agreement and/or use of the DGAssistant Software Service, You authorize the collection, use and disclosure of this data for the purposes provided for in this Agreement and/or the Privacy Policy

Suggestions.

We shall have a royalty-free, worldwide, irrevocable, perpetual license to use and incorporate into the DGAssistant Services any suggestions, enhancement requests, recommendations, or other feedback provided by You, including Users, relating to the operation of the DGAssistant Services

## **12. DISCLAIMER GOOGLE ANALYTICS**

DGAssistant Software Service, including the DGAssistant website, uses Google Analytics, a web analytics service provided by Google, Inc. ("Google"). Google Analytics uses "cookies", which are text files placed on your computer to help the website analyse how visitors use the site. The information generated by the cookie about your use of the website (including your IP

address) will be transmitted to and stored by Google on servers in the United States. Google will use this information for the purpose of evaluating your use of the website, compiling reports on website activity for website operators and providing other services relating to website activity and internet usage. Google may also transfer this information to third parties where required to do so by law, or where such third parties process the information on Google's behalf. Google will not associate your IP address with any other data held by Google. You may refuse the use of cookies by selecting the appropriate settings on your browser, however please note that if you do this you may not be able to use the full functionality of this website. By using this website, you consent to the processing of data about you by Google in the manner and for the purposes set out above.

### **13. INDEMNIFICATION.**

To the extent permitted by Applicable Law, You will indemnify, hold harmless, and defend DGAssistant and its affiliates, and its and their respective officers, directors, employees, and agents from and against any and all claims, lawsuits, and proceedings (collectively "Claims"), and all expenses, costs (including attorney's fees), judgments, damages, settlements, penalties, fines, and other liabilities resulting from such Claims, that arise or result from: (i) Your breach of this Agreement; (ii) Your / Your Licensed Users' use of the DGAssistant Software Service and/or DGAssistant Products; (iii) Your violations of Applicable Laws or obligations of privacy to any third party; (iv) any representations and warranties made by You concerning any aspect of the DGAssistant Software Service or DGAssistant Products to any third party; and/or (v) any claims with respect to acts or omissions of any third party in connection with the DGAssistant Software Service or DGAssistant Products.

DGAssistant will provide You with written notice of any Claim. You shall have the right to control and direct the defense of such Claim. You shall not agree to any settlement or consent to judgment that requires any admission of liability or payment of monies by DGAssistant without DGAssistant's prior written consent. DGAssistant shall have the right, at its expense, to retain counsel and participate in defense of the Claim strictly on a monitoring basis.

Notwithstanding the foregoing, if You fail to respond in writing within ten (10) days after receiving notice of a Claim from DGAssistant, stating that You will fulfill Your obligations pursuant to this Section, then DGAssistant shall have the right to assume the exclusive defense of the Claim (including, without limitation, the investigation, trial, settlement, appeal, and payment of any Losses) solely at Your expense. You will fully cooperate in the defense of any Claim.

DGAssistant may modify the terms of this Agreement, including any Additional Terms or any other terms that apply to the DGAssistant Software Service or DGAssistant Products to, for example, reflect changes to the law or changes to the DGAssistant Software Service. You should look at the terms of this Agreement regularly. If You use the DGAssistant Software Service after changes are posted, You will be deemed to have accepted them. If You do not agree to the modified terms of the Agreement or changes to other policies, You should discontinue Your use of the DGAssistant Software Service, which termination is Your sole and exclusive remedy.

### **14. WARRANTY DISCLAIMER.**

YOUR USE OF THE DGAssistant SOFTWARE SERVICE IS AT YOUR SOLE RISK. THE DGAssistant SOFTWARE SERVICE IS PROVIDED "AS IS," "WITH ALL FAULTS" AND "AS AVAILABLE." YOU BEAR THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY, AVAILABILITY OF APPLICATIONS AND CONTENT FROM THE DGAssistant SOFTWARE SERVICE. DGAssistant MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE DGAssistant SOFTWARE SERVICE OR SUPPORT SERVICES (IF ANY). YOU UNDERSTAND THAT DGAssistant USES AFFILIATES, THIRD-PARTY VENDORS AND HOSTING PARTNERS TO PROVIDE THE NECESSARY HARDWARE, SOFTWARE, NETWORKING, AND RELATED TECHNOLOGY REQUIRED TO



RUN THE DGAssistant SOFTWARE SERVICE. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, DGAssistant DISCLAIMS ANY AND ALL REPRESENTATIONS OR WARRANTIES, EXPRESS, STATUTORY, AND IMPLIED, INCLUDING, WITHOUT LIMITATION, REPRESENTATIONS OR WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT, AVAILABILITY, ERROR-FREE OR UNINTERRUPTED OPERATION, AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. TO THE EXTENT THAT DGAssistant MAY NOT AS A MATTER OF APPLICABLE LAW DISCLAIM ANY IMPLIED WARRANTY, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER APPLICABLE LAW.

#### **15. LIMITATION OF LIABILITY.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL DGAssistant BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OF OR INABILITY TO USE THE DGAssistant SOFTWARE SERVICE, OR OTHERWISE ARISING UNDER THE TERMS OF THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES, EVEN IF ADVISED OF THE POSSIBILITY THEREOF, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT, OR OTHERWISE) UPON WHICH THE CLAIM IS BASED. IN ANY CASE, DGAssistant'S ENTIRE LIABILITY UNDER ANY PROVISION OF THE TERMS OF THIS AGREEMENT, INCLUDING ANY ADDITIONAL TERMS, SHALL NOT EXCEED, IN THE AGGREGATE, THE SUM OF THE FEES PAID BY YOU TO DGAssistant OVER THE PROCEEDING TWELVE MONTH PERIOD UNDER THIS AGREEMENT, NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS EXCLUSION AND LIMITATION MAY NOT BE APPLICABLE TO YOU. DGAssistant IS NOT RESPONSIBLE FOR ANY LIABILITY ARISING OUT OF APPLICATIONS OR DATA PROVIDED BY YOU, YOUR LICENSED USERS, OR A THIRD PARTY THAT IS ACCESSED THROUGH THE DGAssistant SOFTWARE SERVICE. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE LIMITATIONS AND EXCLUSIONS OF LIABILITY IN THIS SECTION ARE REASONABLE AND THAT THE PROVISIONS OF THIS SECTION ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN DGAssistant AND LICENSEE, AND THE PARTIES HAVE RELIED UPON THE LIMITATIONS SET FORTH HEREIN IN DETERMINING WHETHER TO ENTER INTO THIS AGREEMENT. THE REMEDIES PROVIDED TO LICENSEE IN THIS AGREEMENT ARE EXCLUSIVE.

#### **16. THIRD PARTY BENEFICIARY**

Notwithstanding anything to the contrary, including any terms or conditions and privacy policy posted on the Web Site, DGASSISTANT shall have no obligation, responsibility or liability to End User arising out of or related to Service, or the operation or use thereof, or any ancillary products or services provided by Reseller. In particular, the only obligations and responsibility to End User regarding the Service shall be those by Reseller as expressly set forth in this End User Agreement. END USER AGREES THAT IT, AND ITS AFFILIATES AND USERS, SHALL NOT ASSERT OR BRING ANY CLAIM OR ACTION AGAINST DGASSISTANT OR ITS AFFILIATES IN CONNECTION WITH THE PRODUCT, THE WEB SITE, OR THE PERFORMANCE OR USE THEREOF, WHETHER BASED UPON THIS END USER AGREEMENT OR OTHERWISE, INCLUDING FOR ANY FAILURE OF THE PRODUCTS AND INCLUDING BASED UPON ANY ANCILLARY OR RELATED PRODUCTS OR SERVICES. Notwithstanding the foregoing, DGASSISTANT is and shall be a third party beneficiary of, with the power to enforce, this End User Agreement (including without limitation any disclaimers and limitations of liability) against the End User. No terms or conditions in this End User Agreement shall limit any remedies available to DGASSISTANT.

## **17. LINKS TO THIRD-PARTY SITES.**

The DGAssistant Software Service may include links to third-party sites. DGAssistant does not control such sites and is not responsible for the content of any linked site, any links contained in a linked site, or any changes or updates to such sites. DGAssistant is not responsible for any form of transmission received from any linked site. You acknowledge and agree that DGAssistant is not liable for any loss or damage which may be incurred by You as a result of the availability of third-party vendor resources or external sites.

## **18. INTELLECTUAL PROPERTY.**

All title and ownership rights in and to the DGAssistant Software Service, which includes the Software, Data and all Intellectual Property rights therein, and any trademarks or service marks of DGAssistant that are used in connection with the DGAssistant Software Service are and shall at all times remain exclusively owned by DGAssistant and its affiliates and licensors. Licensee shall not (and shall ensure that Third Parties do not) challenge, or assist any person or entity in challenging, DGAssistant's right, title, and interest in the DGAssistant Intellectual Property. Any open source software that may be delivered by DGAssistant embedded in or in association with DGAssistant Service is provided pursuant to the open source license applicable to the software and subject to the disclaimers and limitations on liability set forth in such license.

## **19. PUBLICITY.**

DGAssistant may, in its sole discretion, publicize Your use of the DGAssistant Software Service, and You license to DGAssistant (and its affiliates and necessary sublicensees), all Intellectual Property or other rights required to allow DGAssistant to use Your name, trade name(s), trademark(s), service mark(s), logo(s), and domain name(s) in connection therewith.

## **20. GOVERNING LAW.**

This Agreement is governed by the law of Spain, without regard to the conflict of laws principles thereof. If any dispute, controversy, or claim cannot be resolved by a good-faith discussion between the parties, then it shall be submitted for resolution to the Spanish court of Burgos and the parties hereby irrevocably and unconditionally agree to submit to the exclusive jurisdiction and venue of such court. The Uniform Computer Information Transactions Act and the United Nations Convention on the International Sale of Goods shall not apply to this Agreement. If any provision of this Agreement is to be held unenforceable, such holding will not affect the validity of the other provisions hereof. Failure of a party to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision.

## **21. CONSENT AND AGREE.**

YOU CONSENT AND AGREE THAT YOUR CLICKING OF THE "I ACCEPT" BUTTON CONSTITUTES YOUR ELECTRONIC SIGNATURE, ACCEPTANCE, AND AGREEMENT UNDER THE SPANISH LEGISLATION AND THAT SUCH ELECTRONIC SIGNATURE WILL MEET THE REQUIREMENTS OF AN ORIGINAL SIGNATURE AS IF ACTUALLY SIGNED BY YOU IN WRITING. FURTHER, YOU AGREE THAT NO CERTIFICATION AUTHORITY OR OTHER THIRD-PARTY VERIFICATION IS NECESSARY TO THE ENFORCEABILITY OF YOUR SIGNATURE. AT OUR REQUEST, ANY ELECTRONICALLY SIGNED DOCUMENT MUST BE RE-EXECUTED IN ORIGINAL FORM BY YOU. NO PARTY HERETO MAY RAISE THE USE OF AN ELECTRONIC SIGNATURE AS A DEFENSE TO THE ENFORCEMENT OF THIS AGREEMENT OR ANY AMENDMENT OR OTHER DOCUMENT EXECUTED IN COMPLIANCE WITH THIS AGREEMENT

## **22. ENTIRE AGREEMENT.**

This Agreement shall constitute the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous communications regarding the subject matter hereof. Use of any purchase order or other Licensee document in connection herewith shall be for administrative convenience only and all terms and conditions stated therein shall be void and of no effect. The terms and conditions contained in this Agreement shall prevail over any inconsistent provisions in any form or other paper submitted by Licensee.

## **23. NO ASSIGNMENT.**

You may not assign, sublicense, sub-contract, or otherwise transfer this Agreement, or any rights or obligations under it, without DGAssistant's prior written consent.

## **24. SURVIVAL.**

Any provisions of this Agreement containing license restrictions, warranties and warranty disclaimers, confidentiality obligations, limitations of liability, and/or indemnity terms, and any term of the Agreement which, by its nature, is intended to survive termination or expiration, shall remain in effect following any termination or expiration of this Agreement.

## **25. SEVERABILITY.**

If a particular provision of this Agreement is terminated or held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, this Agreement shall remain in full force and effect as to the remaining provisions.

## **26. FORCE MAJEURE.**

Neither party shall be deemed in default of this Agreement if failure or delay in performance is caused by an act of God, fire, flood, severe weather conditions, material shortage or unavailability of transportation, government ordinance, laws, regulations or restrictions, war or civil disorder, or any other cause beyond the reasonable control of such party.

## **27. CONTENT.**

- (i) **Storage of Content.** DGAssistant allows You/Your Licensed User(s) to store, process, access, and query Content in the DGAssistant Services, provided You comply with the Terms of this Agreement. You agree that You are solely responsible for (and that DGAssistant has no responsibility to You or to any third party for) any Content that You/Your Licensed User(s) upload, create, transmit or display while using the DGAssistant Services and for the consequences of Your/Your Licensed User(s) actions (including any loss or damage which DGAssistant may suffer) by doing so. You are solely responsible for the backup of Your Content and acknowledge that You/Your Licensed User(s) upload Content at Your own risk. The DGAssistant Services may be periodically inaccessible for reasons including maintenance updates, power outages, system failures, extended downtime and other interruptions. During such periods, You/Your Licensed User(s) may be unable to access or use all or a portion of the DGAssistant Services and some or all of Your Content may be deleted. If DGAssistant determines that an outage or interruption may cause risk to the DGAssistant Services, DGAssistant may suspend the DGAssistant Services.

- (ii) **Transmission of Content.** You understand that the technical processing and transmission of the DGAssistant Services, including Your Content, may be transferred unencrypted and involve: (i) transmissions over various networks; and (ii) changes to conform and adapt to technical requirements of connecting networks or devices. You understand that DGAssistant uses third party vendors and hosting partners to provide the necessary infrastructure, hardware, software, networking, storage, and related technology required to run the DGAssistant Service.
- (iii) **Content Removal.** DGAssistant does not pre-screen Content, but DGAssistant and its designees have the right (but not the obligation) in their sole discretion to refuse, remove or delete any Content, without notice, that it determines in its sole discretion is unlawful, offensive, threatening, libelous, defamatory, pornographic, obscene or otherwise objectionable or violates any party's intellectual property rights or the terms of this Agreement. You may backup Your Content to Your own or a third party system, but otherwise DGAssistant has no obligation to hold, export, or return any Content. In the event that this Agreement is terminated (for any reason), DGAssistant will, upon written request, make available one backup copy of Your Content. DGAssistant has no liability for the deletion of Content that remains in DGAssistant's control more than thirty (30) days after termination of this Agreement.

## **28. SECURITY.**

DGAssistant may apply security technologies and procedures to help protect against unauthorized access or use of the Services. DGAssistant does not guarantee the success of such technologies and procedures. You are solely responsible for the security, protection and backup of Your Content, and any other Content or software You/Your Licensed User(s) use in connection with the Services.

## **29. DGASSISTANT SOFTWARE S.L.U LEGAL INFORMATION**

DGAssistant Software S.L.U. TAX CODE: ES-B09545245. Address: Plaza Infanta Doña Elena S/N, Burgos, Spain. Registered at the Burgos Business Register in volume 664, section 8, sheet BU-14973, registration 1.

The DGAssistant Software web site is <http://www.dgassistant.com>