

### 1. Definitions

- a. Unless otherwise defined below, defined terms used in these terms and conditions ("**Beta Terms**") shall have the meaning given to them in the Payments Agreement.
- b. The following definitions shall apply in these Beta Terms:
  - i. "**Albatros A9**" means the Albatros A9 software-as-a-service platform, which the Partner is licensed to use in accordance with the existing agreement entered into between the Partner and ADS or DGS (as relevant).
  - ii. "**Beta Period**" means the phase during which the Services are provided to customers on a limited basis for the purpose of being tested in production and further developed and improved prior to their general commercial release
  - iii. "**Beta Services**" means the Services provided during the Beta Period.
  - iv. "**Payments Agreement**" means the payments agreement as contained in Schedule 2 to the Payments Order Form.
  - v. "**Payments Documents**" means, together, the Payments Order Form, Beta Terms and the Payments Agreement.
  - vi. "**Payments Order Form**" means the payments order form setting out, amongst other things, the costs for the Services.

### 2. Participation

- a. The Beta Services are provided an "as is" basis and without warranty of any kind, either express or implied, including but not limited to any implied warranty of merchantability or fitness for a particular purpose or use. You acknowledge the Beta Services may contain bugs, errors and other problems.
- b. You agree to comply with these Beta Terms. Your use of the Beta Services is subject to the Payments Order Form and the Payments Agreement. Where there is any obvious conflict between the Payments Order Form, these Beta Terms and the Payments Agreement, then the priority of the documents is in accordance with the following sequence (1) Payments Order Form, (2) Beta Terms, and (3) Payments Agreement. Your A9 Agreement remains in full force and effect and is not varied by the Payments Documents.

### 3. Feedback

- a. You shall work collaboratively with DGS and shall regularly (and on request from DGS) provide feedback to DGS concerning the functionality and performance of the Beta Services, including, without limitation, identifying potential errors, ideas for improvements, modifications, bug fixes, or enhancements ("**Feedback**").
- b. Feedback and other information which is provided by the Partner (it's directors, employees, Golfers and any third-party acting on it's behalf including third-party administrators) to DGS may be used by DGS to improve or enhance the Beta Services and/or Services and, accordingly, the Partner grants DGS an exclusive, perpetual, irrevocable, royalty-free, worldwide right and licence to use, reproduce, disclose, sublicense, distribute, modify, and otherwise exploit such Feedback and information without restriction and for commercial gain.

### 4. Modification and Termination

- a. DGS reserves the right to modify or terminate the Beta Services, or your use of the Beta Services, to limit or deny access to the Beta Services at any time, in our sole discretion, for any reason, with or without notice and without liability to you.
- b. These Beta Terms will remain in effect until the end of the Beta Period, at which point they shall automatically terminate (for the avoidance of doubt, the Payments Agreement shall remain in full force and effect unless terminated in accordance with its terms).
- c. We may amend these Beta Terms at any time and without prior notice. A copy will be made available to you. Your continued use and access to the Beta Services after amendments to these Beta Terms have been made will constitute your acceptance of the changes.
- d. We may terminate the Beta Services and these Beta Terms at any time upon written notice and at our sole discretion.

### 5. Liability and Indemnity

- a. Nothing in these Beta Terms shall limit or exclude either party's liability for death, personal injury or damage to tangible property caused by a party's negligence, fraud, fraudulent misrepresentation or any other liability that cannot be excluded by applicable law.
- b. Notwithstanding any other rights a party may have under this payments agreement, unless specified otherwise neither party nor its affiliates will have any liability to the other party or any other person for any indirect, incidental, exemplary, special, punitive, reliance or consequential damages, including loss of profits, goodwill or reputation, arising out of or relating to this payments agreement, even if advised of the possibility of those damages, and whether arising out of breach of contract, tort or otherwise.
- c. The total aggregate liability of DGS to the Partner in respect of all other losses arising out of or related to these Beta Terms, whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall not exceed the aggregate amount of Fees paid or payable to DGS during the six (6) month period immediately preceding the event giving rise to the claim for liability.
- d. The Partner will indemnify DGS, its affiliates, and the directors, employees and agents of each for losses paid or incurred by DGS to the extent arising out of your (i) breach of these Beta Terms, and (ii) use of the Beta Services.

### 6. Confidentiality

- a. These Beta Terms and the Beta Services are confidential and shall not be disclosed by any Party, in particular to a third party, without the prior written consent of the other Party, except: (a) to a Party's Affiliates and its respective directors, employees, and legal advisors on a "need to know" basis only; or (b) as required to do so by law or by any governmental or regulatory authority or a court of competent jurisdiction.

## SCHEDULE 2: PAYMENTS AGREEMENT

IN CONNECTION WITH OTHER SERVICES BEING PROVIDED TO YOU ("PARTNER") BY US (DIGITAL GOLF SOLUTIONS SAS AND/OR ALBATROS DATENSERVICE GMBH AS APPLICABLE) THE TERMS AND CONDITIONS OF THIS PAYMENTS AGREEMENT TOGETHER WITH THE PAYMENTS ORDER FORM AND THE BETA TERMS (WHEN APPLICABLE) SHALL GOVERN THE PARTNER'S USE AND ACCESS TO THE PAYMENTS SOLUTION PROVIDED BY DIGITAL GOLF SOLUTIONS SAS.

### SERVICE TERMS

#### 1. OUR ROLE

- 1.1. The Payments Solution ("**Services**") is a payment processing service that enables the Partner to integrate with a payment processor (the "**Payment Processor**") as set out in this Payments Agreement, allowing the Partner to accept payments from Customers (as defined below).
- 1.2. Services are provided by Digital Golf Solutions SAS, of 29-31 Rue De Courcelles, 75008 Paris (RCS Paris: 534 820 956) ("**DGS**", "**Us**", "**We**").
- 1.3. The Partner is licensed to use the Albatros A9 software-as-a-service platform pursuant to an existing agreement ("**A9 Agreement**") entered into between the Partner and Albatros Datenservice GmbH ("**ADS**") or DGS (as relevant). DGS and ADS are affiliates, being direct subsidiaries of BRS Golf Limited (registered in Northern Ireland under registration number NI606497), which are part of the NBCUniversal, LLC group of companies.
- 1.4. DGS supply the Services in accordance with this Payments Agreement, and for the sake of completeness is not a bank, payment institution or money services business. By Accepting this Payments Agreement, the Partner acknowledges and agrees that DGS is the provider of the Services and that DGS will be designated as an authorised representative of the Partner towards the Payment Processor with respect to the Partner's use and access of the Services.

#### 2. THE PAYMENT PROCESSOR

- 2.1. The Payment Processor is Stripe Payments Europe Limited, a private limited company incorporated under the laws of Ireland, with registration number 513174.
- 2.2. The Payment Processor's role is to accept and process payments online, to enable the Partner to receive and accept online payments from its customers (which include member and visitor golfers) ("**Customers**") to compliment the Partner's business activities (such as tee time sales, membership payments and other similar payment), including Refunds and Disputes (as defined below) (collectively "**Transactions**").
- 2.3. The processing and settlement of your Transactions ("**Payment Processing**") are carried out by the Payment Processor under separate Payment Processor Terms (the "**Payment Processor Terms**"). By accepting this Payments Agreement, the Partner is also accepting and agreeing to be bound by the Payment Processor Terms.
- 2.4. In addition, by accepting this Payments Agreement and the Payment Processor Terms the Partner agrees to the creation of an account with the Payment Processor for payment processing (the "**Payment Processor Account**"). In the event of any inconsistency between the terms of this Payments Agreement and the Payment Processor Terms concerning payment processing or the Payment Processor Account, the Payment Processor Terms shall prevail.

#### 3. THE SERVICES

- 3.1. DGS shall:
  - 3.1.1. the Services necessary to enable access to the Payment Processing Services provided by the Payment Processor in order for the Partner to accept

online payments from Customers through its existing technology platforms;

- 3.1.2. notify the Partner in advance of any material updates regarding such services and provide the Partner with appropriate training and/or materials relating to such updates; and
- 3.1.3. provide the Partner with appropriate training opportunities (including access to remote training and online resources) and support in relation to the Services.

#### 4. LICENCE TERMS

- 4.1. DGS confirms it is the owner (except in relation to any third party or open source software, as set out in any applicable licence terms) of the Services or otherwise has the right to grant the Partner the licence granted herein for the purposes of delivering the Services.
- 4.2. DGS grants the Partner a limited, non-exclusive, non-transferable, revocable licence to use the Services (the "**Licence**"). The Licence shall remain effective until this Payments Agreement is terminated (howsoever caused) in accordance with Section 13. Neither the Licence nor any other provision shall grant any rights in the Services or other intellectual property rights except the limited License of use set out in this Section 4.
- 4.3. Notwithstanding any of the Partner's other obligations under this Payments Agreement, the Partner shall not:
  - 4.3.1. sell, sublicense, lend, transfer or provide access to any third party to access the Services, except
    - 4.3.1.1. as permitted in accordance with this Payments Agreement to carry out Transactions; or
    - 4.3.1.2. where the Partner has obtained written permission from a Vice President, Director or someone of equal authority and standing employed by DGS;
  - 4.3.2. create derivate works based on the Services;
  - 4.3.3. copy, frame or mirror any part of the content of the Services, other than copying or framing for internal business purposes;
  - 4.3.4. reverse engineer, disassemble, decompile or otherwise attempt to discover the source code or trade secrets for any of Services; or
  - 4.3.5. access the Services in order to build a competitive product or service.

### PARTNERS OBLIGATIONS

#### 5. REGISTRATION

- 5.1. To access the Services the Partner must:
  - 5.1.1. accept the Beta Terms (being the terms contained in Schedule 1 to the Payments Order Form, which are

only applicable during the Beta Period (as defined therein));

- 5.1.2. accept the terms of this Payments Agreement;
  - 5.1.3. accept the Payment Processor Terms; and
  - 5.1.4. provide information to DGS and allow DGS to share such information to the Payment Processor for the purposes of simultaneously creating a Services Account and a Payment Processor Account (together the "**Partner's Service Accounts**"). Such information includes: business owner information, company name, company registration number, location, email address, business registration information, VAT number and phone number and also you will be required to submit Identification (Passport and/or Driving licence) as part of the verification process.
- 5.2. DGS will review the information provided and allow the Partner to access the Services. Failure to provide the requisite information may prevent or delay the Partner from registering to receive the Services or upon review of the information the Partner may not be eligible or unable (for whatever reason) to receive the Services. The Partner accepts that DGS and/or the Payment Processor is not liable to the Partner, where it is prevented or is unable to register and/or received the Services.

## 6. PARTNER'S OBLIGATIONS AND WARRANTIES

- 6.1. Partner warrants that all the information provided to DGS is true and accurate and acknowledges that DGS is relying upon such information in relation to the provision of the Services.
- 6.2. Partner agrees to co-operate fully with DGS and provide any assistance required to supply the Services, in particular, the Partner (where applicable) shall do the following at its own expense:
  - 6.2.1. provide DGS with access to all of the internal and external systems (including third party systems licensed to Partner) necessary for DGS to provide the Services;
  - 6.2.2. not to do anything, or omit to do everything, which could or would detrimentally affect the performance of the Services;
  - 6.2.3. provide DGS and/or its agents with access at all reasonable times or as requested by DGS to the Partner's premises, to allow DGS to provide the Services;
  - 6.2.4. use the Services in a manner consistent with its intended use;
  - 6.2.5. only complete and accept Transactions from bona fide sales; and
  - 6.2.6. not use the services to engage in activities that fall within the restricted and prohibited uses (as set in Section 9 below) including but not limited to, facilitating and/or engaging in any fraudulent, unlawful, deceptive or abusive activity.

## 7. SECURITY

- 7.1. Partner acknowledges and warrants that it is responsible for the security of all data (which includes personal data) in its possession or control. When using data (including personal data) in conjunction with the Services, the Partner will only use such data as permitted by this Payments Agreement or other agreements between DGS and Partner.
- 7.2. Partner is responsible for preventing the compromise of the Partner's Service Accounts credentials, and for ensuring that the Partner's Service Accounts are not used, accessed or modified without authorisation. If DGS or the Payment Processor reasonably believes that an unauthorised access of the Partner's Service Accounts has occurred, the Partner will cooperate with DGS and/or the Payment Processor to provide information reasonably necessary to help mitigate the impact of any such access, and DGS and/or Partner may take such steps as are reasonable to address the unauthorised access. The Partner agrees that DGS and/or the Payment Processor are not liable for any losses, claims or damages arising from the Partner's failure

(including negligence) to comply with its obligations under Sections 5, 6 and 7.

- 7.3. If DGS and/or the Payment Processor believes that a security breach, personal data breach, or other compromise of data may have occurred, it may require you to have an approved third-party auditor conduct a security audit of your systems and facilities and issue a report to be provided to DGS, the Payment Processor, and any other relevant third party including law enforcement.

## 8. COMPLIANCE AND INFORMATION SHARING

- 8.1. Partner warrants that it shall comply with the requirements of all applicable laws, rules, regulations and orders of any governmental or regulatory body having jurisdiction applicable to the Partner's business and in connection with this Payments Agreement and the Payment Processor Terms.
- 8.2. Partner agrees that DGS is permitted to contact and share information about the Partner, its Service Accounts and Transactions with necessary third parties (including the Payment Processor) in order to perform the Services. This includes:
  - 8.2.1. for regulatory or compliance purposes;
  - 8.2.2. for use in connection with the management and maintenance of the Services;
  - 8.2.3. to create and update Customer records (where requested); and
  - 8.2.4. to conduct risk management processes.
- 8.3. It is your responsibility to obtain your Members' consent to be billed for each Transaction or, as the case may be, on a recurring basis, in compliance with applicable legal requirements and the Card Networks' payment rules (the "**Card Network Rules**").
- 8.4. The Card Networks have established guidelines, bylaws, rules, policies, procedures and regulations in the form of the Card Network Rules. You are required to comply with all applicable Card Network Rules. The Card Networks may amend the Card Network Rules at any time and without notice to us or to you. Insofar as the terms of this Payments Agreement and/or the Payment Processor Terms are inconsistent with the Card Network Rules, the Card Network Rules shall prevail. We reserve the right to amend this Payments Agreement at any time, with notice to you, as may be necessary to comply with the Card Network Rules. You agree that you will also comply with any and all confidentiality and security requirements under applicable law and, including but not limited to the Payment Card Industry Data Security Standard ("**PCI DSS**"), the Visa Cardholder Information Security Program, the MasterCard Site Data Protection Program and any other program or requirement that may be published and/or mandated by the Card Networks.

## 9. RESTRICTED AND PROHIBITED USES

- 9.1. The Partner is prohibited from using the Services and warrants that it will not use the Services to submit or accept Transactions, in connection with businesses, business activities or business practices as set out on the Payment Processor's Prohibited Businesses list.
- 9.2. In addition to any other requirements or restrictions set forth in this Payments Agreement, the Partner shall not:
  - 9.2.1. submit or knowingly submit any Transaction for processing that does not arise from sale of goods or services to a Customer;
  - 9.2.2. submit or knowingly permit any Customer or third party to submit any Transaction that is illegal or that the Partner should have known to be illegal or fraudulent; and
  - 9.2.3. use the Service, directly or indirectly, for any fraudulent undertaking or in any manner so as to interfere with the use of the Service.

## 10. SUSPICION OF UNAUTHORIZED OR ILLEGAL USE

- 10.1. Without prejudice to any other rights or remedies, DGS reserve the right to terminate suspend the Services in respect of any Transaction the Partner submits which is reasonably believed, in

DGS's sole discretion, to be in violation of this Payments Agreement, any other agreement including the Payment Processor Terms, or exposes the Partner, DGS or the Payment Processor or any other third party, to any actual or potential risk or harm. You agree that DGS may investigate and audit your Organisation's compliance with this Payments Agreement from time to time, and you agree to cooperate fully with us in any investigation or audit.

## 11. FEES AND PAYMENT TERMS

### Definitions:

**Card Network Fee** means Interchange, for Visa, Mastercard, American Express (and other Card Network issuers) Transactions.

**Financial Service Intermediaries** means entities involved in the authorisation, processing or settlement process for Transactions, and includes acquiring banks, payment service providers and gateways.

**Interchange** means the interchange fee charged by the Card Networks for the processing of Transactions, determined in accordance with the interchange rate tables made generally available by the Card Networks.

**Network Cost** means the Card Network Fees and all other amounts imposed by financial service intermediaries that are attributable to each Transaction. Network Cost includes any associated Taxes (as defined below).

**Foreign Exchange (FX)** means where a Transaction is made by an Customer in a different currency that is to be paid to the Partner. In such instance a FX charged is applied.

- 11.1. The Fees for the Services are set out in the Payments Order Form ("**Payments Service Fees**"). The Payment Service Fee is charged on a per Transaction basis.
- 11.2. The Payments Service Fees are inclusive of:
  - 11.2.1. fees that are due to the Payment Processor for Payment Processing. Any such fees owed to the Payment Processor shall be paid pursuant to the Payment Processor Terms ("**Payment Processor Fees**");
  - 11.2.2. Network Costs;
  - 11.2.3. FX;
  - 11.2.4. Payout fees;
  - 11.2.5. Payment Processor Account set up;
  - 11.2.6. verification fees; and
  - 11.2.7. administration and support.
- 11.3. DGS reserve the right to change (decrease or increase) the Fees at any time, subject to giving the Partner thirty (30) days' notice.
- 11.4. Unless otherwise stated, the Fees are exclusive of any applicable Value Added Tax (VAT), Goods and Service Tax (GST), sales, use or similar Tax (collectively "**Taxes**"). The Partner is responsible for determining what, if any, Taxes apply to the sale of its goods and services, made via the Services.

## 12. FEES INDEMNITY

- 12.1. DGS has agreed to indemnify and hold the Payment Processor harmless for some, and in some cases, all of the Partner's unpaid Payment Processor Fees and other liabilities occurring under Payment Processor Terms. In so far as DGS becomes liable to the Payment Processor or any other third party for any Fees or other liabilities under or in respect of the Payment Processor Terms or this Payments Agreement, the Partner shall be liable to pay DGS (on written demand) and indemnify DGS against any and all such liabilities.
- 12.2. Without prejudice to Section 12.1, acting reasonably DGS will hold funds in reserves in any amount and for any period of time at its discretion, which can be used to set aside any fees relating to Disputes (as defined below), Refunds (as defined below) or any

other payment obligations that the Partner owes under this Payments Agreement ("**Reserve Account**"). The Partner agrees that it is:

- 12.2.1. not entitled to any interest or other compensation associated with the funds held in the Reserve Account;
- 12.2.2. has no right to direct that account;
- 12.2.3. has no legal interest in those funds or that account; and
- 12.2.4. may not assign any interest in those funds or that account.

## DISPUTED TRANSACTIONS

- 12.3. Where a Customer cardholder cancels their payment (for whatever reason) with their bank and/or Card Network issuer, otherwise known as a chargeback ("**Dispute**"), the Partner will be granted the opportunity to contest the Dispute within fourteen (14) days of the Dispute being raised. DGS, will provide the Partner with assistance, including notifications and software to help contest the Disputes, but we do not assume any liability and shall not be liable for any loss incurred to the Partner as a result of such assistance.
- 12.4. The Partner grants DGS permission to share records or other information required with the Customer cardholder who has raised a Dispute, the Customer cardholder's financial institution, and any financial institution to help resolve any Dispute. The Partner acknowledges that its failure to provide DGS with complete and accurate information in a timely manner may result in the Dispute being assessed against the Partner.
- 12.5. If the Customer cardholder's issuing bank or the Card Network issuer does not resolve the Dispute in the Partner's favour or if the Dispute is not responded to, the Partner is liable to:
  - 12.5.1. pay back the amount paid by the Customer cardholder; and
  - 12.5.2. applicable Payment Processor Fees; and
  - 12.5.3. a Dispute Fee (the Dispute Fee depends on where the Partner is based but the rates are currently (subject to change at the discretion of DGS) £10 (ten pounds) in the UK and €10 (ten euros) in European countries).

## REFUNDS

- 12.6. A refund is defined as a payment that has been agreed by the Partner to be refunded or reversed back to the Customer cardholder (for whatever reason) ("**Refund**"). In the instance where a Refund occurs, the Partner is liable to pay the agreed amount back to the Customer cardholder, and a Payment Service Fee for the original Transaction (there will only be one (1) charge and not two (2) even though two (2) Transactions occur). For the sake of completeness, if the Customer cardholder raises a Dispute before the Partner agrees to issue a Refund, then this Section 12.6 does not apply.

## 13. TERM & TERMINATION

- 13.1. This Payments Agreement shall continue indefinitely until terminated (i) by either party in accordance with the conditions below, (ii) by either party giving the other at least thirty (30) days' notice in writing (to the Notice Email addresses noted in the Payments Order Form) or (iii) if the A9 Agreement is terminated for whatever reason.
- 13.2. Without affecting any other right or remedy available to it, either party may terminate this Payments Agreement immediately, by giving notice to the other, if the other party:
  - 13.2.1. commits a material breach of any term of this Payments Agreement which is irremediable or (if such breach is remediable) fails to remedy such breach



- 13.2.2. within thirty (30) days' of receiving written notice of such breach;
- 13.2.3. repeatedly breaches any of the terms of this Payments Agreement;
- 13.2.4. ceases, suspends, or threatens to cease or suspend, to carry on its business or payment of its debts; and/or is subject to a bankruptcy or winding up order or similar action
- 13.3. Without prejudice or affecting any other right or remedy available, DGS may terminate this Payments Agreement, without any liability to the Partner, if:
  - 13.3.1. any of the circumstances at Section 13.2 occur;
  - 13.3.2. the agreement between DGS and the Payment Processor is terminated (howsoever caused);
  - 13.3.3. the Payment Processor and/or DGS in its sole discretion reasonably believes that the Partner presents a significant credit or fraud risk; or
- 13.4. In addition to the foregoing and without prejudice or affecting any other right or remedy available, during the Beta Period (as defined in the Beta Terms) DGS shall have a general right to immediately terminate this Payments Agreement for convenience, without any liability to the Partner.

## 14. EFFECTS OF TERMINATION

- 14.1. Upon termination (howsoever caused) any Licences granted to the Partner under this Payments Agreement shall cease with immediate effect.
- 14.2. Upon termination (howsoever causes) the Partner will:
  - 14.2.1. immediately discontinue to access the Services and have no further rights or access to use the Services;
  - 14.2.2. cease from accepting any new Transactions through the Service;
  - 14.2.3. not be entitled to a refund or compensation for any payments for the Services made before the moment of termination of this Payments Agreement.
- 14.3. Upon termination (howsoever caused) DGS will complete all pending Transactions, but will have no obligation to process any new Transactions. DGS will return any funds held in the Reserve Account, after taking into account any applicable deductions.
- 14.4. Termination (howsoever caused) does not relieve the Partner from its obligations as defined in this Payments Agreement and the Payment Processor may elect to continue to hold any funds deemed necessary pending resolution of any other terms or obligations defined in this Payments Agreement, including but not limited to Fees, Disputes or Refunds, including any terms that survive in accordance with Section 20.5.
- 14.5. Unless determined otherwise, Termination of this Payments Agreement will not necessarily terminate any Agreement the Partner has with DGS and/or ADS (as applicable) for other services under the A9 Agreement, but may result in some Services being unavailable to the Partner.
- 14.6. For completeness, Termination of this Payments Agreement (howsoever caused) also terminates the agreement between Payment Processor and the Partner.

## 15. OWNERSHIP

- 15.1. The Service is licensed and not sold as set out in the Licence terms above. DGS reserve all rights not expressly granted to the Partner in this Payments Agreement.
- 15.2. Partner may choose to or DGS may invite the Partner (including its officers, employees, agents, subcontractors and Customers) to submit comments or ideas about the Service, including without limitation about how to improve the Service ("Ideas"). By submitting any Idea, Partner agrees that the disclosure of such Idea is gratuitous, unsolicited and without restriction and will not place DGS under any fiduciary or other obligation, and that DGS

are free to use the Idea without any additional compensation to the Partner.

## 16. WARRANTIES

- 16.1. Both parties represent and warrant that:
  - 16.1.1. they have the authority to enter into this Payments Agreement and that their signatories (or person accepting the terms of this Payments Agreement) are duly authorised and empowered to bind the party on their behalf; and
  - 16.1.2. they will comply with all applicable laws, ordinances, statutes, regulations and rules, and that they have the power to settle fully and completely all claims, causes of action, demands, charges and liabilities arising out of or relating to this Payments Agreement.
- 16.2. The Partner represents and warrants to DGS that any intellectual property provided to DGS by Partner (including without limitation, any photographs, drawings, or works of art) do not violate the rights of any third party. Partner agrees to indemnify and keep DGS indemnified for any alleged or actual breach of this warranty.
- 16.3. The Service and all accompanying documentation are provided on an "as is" and "as available" basis, without any warranties, either express, implied, or statutory, including without limitation any implied warranties of title, merchantability, fitness for a particular purpose, and non-infringement.
- 16.4. Without limiting the foregoing, DGS do not warrant that the Service will meet the Partner's requirements; that transactions will be processed within a set period of time; that the Service will be available at any particular time or location; that the Service will function in an uninterrupted manner or be secure; that any defects or errors will be corrected; or that the service is free of viruses or other harmful components. Any subject matter downloaded or otherwise obtained through the use of the Service is downloaded at the Partner's own risk and the Partner will be solely responsible for any damage to its property or loss of data that results from such download.

## 17. LIMITATION OF LIABILITY

- 17.1. Nothing in this Payments Agreement shall limit or exclude either party's liability for death, personal injury or damage to tangible property caused by a party's negligence, fraud, fraudulent misrepresentation or any other liability that cannot be excluded by applicable law.
- 17.2. Notwithstanding any other rights a party may have under this payments agreement, unless specified otherwise neither party nor its affiliates will have any liability to the other party or any other person for any indirect, incidental, exemplary, special, punitive, reliance or consequential damages, including loss of profits, goodwill or reputation, arising out of or relating to this Payments Agreement, even if advised of the possibility of those damages, and whether arising out of breach of contract, tort or otherwise.
- 17.3. DGS's total aggregate liability to the partner in respect of all other losses arising out of or related to this Payments Agreement, whether in contract, tort (including negligence), breach of statutory duty, or otherwise shall not exceed the aggregate amount of Fees paid or payable to DGS during the six (6) month period immediately preceding the event giving rise to the claim for liability.

## 18. RULES OF INTERPRETATION

- 18.1. Reference to a statute or statutory instrument is a reference to it as it is in force for the time being and includes reference to any amendment, extension, application or re-enactment and includes any subordinate legislation made under it.
- 18.2. Reference to one gender includes all genders, reference to the singular includes the plural and, in each case, vice versa, and

reference to a person includes companies, firms and corporations.

- 18.3. Any words following the terms "including", "include", "in particular", "for example" or any similar expression shall, except in relation to Section 18.1, be deemed to be followed by the words "without limitation", shall be construed as illustrative, and shall not limit the sense of the words, description, definition, phrase or term preceding such terms.
- 18.4. Headings do not affect the interpretation of the terms of this Payments Agreement.

## 19. INDEMNITY

- 19.1. The Partner will indemnify DGS, its Affiliates, and the directors, employees and agents of each for Losses paid or incurred DGS to the extent arising out of:
- 19.1.1. any Claim relating to any material breach of any of the Partner's representations, warranties or obligations under this Payments Agreement;
  - 19.1.2. Partner's use of the Services, including any refunds, reversals, disputes, and any fees, penalties or fines imposed by the Payment Processor or third party or government entity as a result of the Partner's use of the Services;
  - 19.1.3. Partner's failure to describe or deliver goods or services as required by applicable law (including contractual obligations to Customers); or
  - 19.1.4. Partner's negligence, wilful misconduct, or fraud.
- 19.2. Partner's indemnification obligations in this Section 19, do not apply to the extent a loss would not have occurred but for:
- 19.2.1. DGS's breach of this Payments Agreement; or
  - 19.2.2. DGS's negligence, fraud or wilful misconduct.

## 20. MISCELLANEOUS

- 20.1. This Payments Agreement shall constitute the entire understanding of the Parties and supersedes and extinguishes any and all prior understandings and agreements, whether written or oral, relating to its subject matter.
- 20.2. No variation requested by the Partner of this Payments Agreement shall be effective unless it is in writing and signed by

a director of DGS. DGS may vary these terms at its sole discretion provided it gives notice to the Partner of such variations.

- 20.3. Failure or delay by DGS to enforce, or partially enforce, any provision of this Payments Agreement shall not be construed as a waiver of any of its rights under this Payments Agreement. Any waiver by DGS of any breach of, or any default under, any provision of this Payments Agreement by the Partner shall be in writing and shall not be deemed to be a waiver of any subsequent breach or default and shall in no way affect the other provisions of this Payments Agreement.
- 20.4. If any term, is found by any court to be wholly or partly illegal, invalid, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, unenforceability or unreasonableness be deemed severable and the remaining term, and the remainder of such term, shall continue in full force and effect. In the event that such court decides that such term is not severable, the parties agree to substitute such term with a legal, valid, enforceable and reasonable term, which achieves, to the greatest extent possible, the same commercial effect as the original term.
- 20.5. Terms of this Payments Agreement which by their nature are intended to survive termination (including indemnification obligations and limitations of liability) will survive termination of this Payments Agreement.
- 20.6. No provisions of this Payments Agreement are enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person who is not a party to this Payments Agreement.
- 20.7. The formation, construction, performance, validity and all aspects of this Payments Agreement, including any dispute or claim arising out of or in connection with it or its subject matter (including non-contractual disputes or claims) shall be governed by and construed in accordance with English law. The parties agree that the courts of England & Wales shall have the non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Payments Agreement or its subject matter.