

## CONTRACT AND INTERPRETATION

### 1. Definitions

#### 1.1 In these Conditions:

“Affiliate” means, with respect to a Party or entity, any company or entity that (i) directly or indirectly controls that Party, (ii) is directly or indirectly controlled by that Party, or (iii) is directly or indirectly controlled by a person or entity which directly or indirectly controls that Party. Control means direct or indirect ownership of more than 50% of the nominal value of the issued equity share capital or more than 50% of the shares entitling the holders to vote for the election of the members of the board of directors or person performing similar functions.

“Business Day” means: with respect to the giving of any legal notice under the Contract, any day which is not a weekend day or public holiday in the town or city in which the recipient is located; or, with respect to the performance of any other obligation under the Contract, any day which is not a weekend day or public holiday in the place where the obligation is to be performed.

“these Conditions” means this document.

“Client Software” means any software (including firmware) installed on or integrated into the Hardware by or on behalf of DBS.

“Cloud Software” means the software and databases installed on servers operated or controlled by DBS Group (including the Website) by means of which DBS Group provides the GearWatch Service, excluding the Performance Data.

“Contract” means the contract for the provision of the Services and/or the supply of the Hardware by DBS to the Customer.

“Customer” the company or entity which contracts with DBS for the purchase of the Services and/or Hardware, being the company or entity named on the Order Confirmation.

“Customer Group” means collectively and individually Customer, its Affiliates, its customers and suppliers, End User, and each of their respective directors, officers, employees, workers and agents.

“DBS” means the David Brown Santasalo company or entity with which the Customer contracts for the provision of the Services and/or Hardware.

“DBS Group” means DBS, its Affiliates, its suppliers and subcontractors, and each of their respective directors, officers, employees, contract workers and agents.

“End User” means the person or entity which owns or controls the Monitored Equipment, whether that be the Customer or a third party.

“GearWatch Service” means the service provided by DBS to Customer under the ‘GearWatch’ brand, primarily via the Website, as described in clause 3.1 and in the Literature.

“Hardware” means proprietary equipment supplied by DBS to Customer to facilitate, enable or augment the functioning of the GearWatch service, with “the Hardware” meaning the particular Hardware specified on the Order Confirmation.

“Hardware Warranty Period” means the period of 24 (twenty four) months beginning on the date the Hardware is first activated (as confirmed by DBS’s server records) or 30 (thirty) months from delivery of the Hardware, whichever expires first.

“Installation Service” means the installation, configuration and/or setup services to be provided by DBS in respect of the Hardware, as described in the Order Confirmation.

“Intellectual Property Rights” means copyrights, patents, utility models, trademarks, rights in designs, rights protecting trade secrets and confidential information, know-how, semiconductor topography rights, and rights to apply to register any of the foregoing, anywhere in the world, whether pre-existing the making of the Contract or coming into being during the Contract’s lifetime.

## 合同与释义

### 1. 定义

#### 1.1 根据本条件：

“关联公司”是指：就某方或实体而言，(i) 直接或间接控制该方的，(ii) 由该方直接或间接控制的，或(iii) 由直接或间接控制该方的个人或实体直接或间接控制的。控制是指直接或间接拥有已发行股本面值 50% 以上或股份 50% 以上的所有权，此控制赋予持有人投票选举董事会成员或履行类似职能的权利。

“营业日”是指：就根据合同发出的法律声明而言，收件人所在的城镇或城市中除周末或公共假日之外的任何一天；或就履行合同规定的其他义务而言，在要履行义务地点除周末或公共假日之外的任何一天。

“本条件”是指本文档。

“客户端软件”是指由 DBS 或代表 DBS 安装或集成到硬件中的任何软件（包括固件）。

“云软件”是指 DBS 集团通过提供 GearWatch 服务而在由 DBS 集团运作或控制的服务器（包括网站）上安装的软件和数据库，性能数据除外。

“合同”是指 DBS 向客户提供服务和/或提供硬件的合同。

“客户”是与 DBS 签约购买服务和/或硬件的公司或实体，即订单确认书上指定的公司或实体。

“客户集团”是指集体和个人的客户，其关联公司，其客户和供应商，最终用户以及其各自的董事、高级职员、雇员、工人和代理人。

“DBS”是指 David Brown Santasalo 公司，或与客户签订服务和/或硬件供应合同的公司或实体。

“DBS 集团”是指 DBS，其关联公司，其供应商和分包商，及其各自的董事、高级职员、雇员、合同工人和代理人。

“最终用户”是指拥有或控制受监控设备的个人或实体，无论是客户或第三方。

“GearWatch 服务”是指 DBS 主要通过网站以“GearWatch”品牌向客户提供的服务，如第 3.1 条和文献中所述。

“硬件”是指 DBS 向客户提供的专用设备，用于促进、启用或增强 GearWatch 服务的功能，“硬件”是指订单确认书中指定的特定硬件。

“硬件保修期”是指从首次激活硬件（由 DBS 服务器记录确认）开始算起的 24（二十四）个月或从硬件交付之日起的 30（三十）个月，以先到期者为准。

“安装服务”是指 DBS 针对硬件提供的安装、配置和/或设置服务，如订单确认书中所述。

“知识产权”是指版权、专利权、实用新型、商标权、外观设计权、保护商业秘密和机密信息的权利、专有技术、半导体地貌权以及在全球任何地方申请注册上述任何一项的权利，无论该合同是预先存在的还是在合同有效期内形成的。

# GearWatch Terms and Conditions

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“Literature” means any written materials published, or supplied to the Customer, by DBS which describe the functionality, capabilities and/or limitations of the GearWatch Hardware or Services.

“Losses” means damages, claims, suits, losses, expenses (including reasonable attorneys’ fees), costs, and liabilities.

“Monitored Equipment” means the gearbox or other equipment to which the Hardware is, for the time being, applied.

“Order Confirmation” means the document issued by DBS confirming the details of Customer’s GearWatch order, in DBS’s standard form.

“Parties” means DBS and Customer.

“Party” means either DBS or Customer, as applicable.

“Performance Data” means data stored on DBS’s servers which originates from the Hardware and concerns the performance of the Monitored Hardware.

“Services” means the services to be provided by DBS under the Contract, being (as applicable) the GearWatch Service and for the Installation Service.

“Subscription Charges” means DBS charges for providing the GearWatch Service in respect of any Subscription Period.

“Subscription Period” means a period of time during which Customer Group is entitled to use and DBS is obliged to provide the GearWatch Service.

“Website” means the website operated by or on behalf of DBS with the domain name gearwatch.com or any other website notified to the Customer by DBS from time to time.

“文献”是指 DBS 集团出版或提供给客户的描述 GearWatch 硬件或服务的功能、能力和/或限制的书面材料。

“损失”是指损害、主张、诉讼、损失、费用（包括合理的律师费）、成本和负债。

“受监控设备”是指暂且应用了硬件的变速箱或其他设备。

“订单确认书”是指以 DBS 的标准格式，DBS 发出的用于确认客户 GearWatch 订单详情的文件。

“双方”是指 DBS 和客户。

“一方”是指 DBS 或客户（如适用）。

“性能数据”是指存储在 DBS 服务器上的数据，这些数据源自硬件，与受监视硬件的性能有关。

“服务”是指 DBS 根据合同提供的服务，即 GearWatch 服务和安装服务（适用时）。

“订阅费”是指 DBS 集团在订阅期内提供 GearWatch 服务的费用。

“订阅期”是指客户集团有权使用且 DBS 有义务提供 GearWatch 服务的时间段。

“网站”是指由 DBS 集团或代表 DBS 集团运营的网站，其域名为 gearwatch.com，或 DBS 集团不时告知客户的任何其他网站。

- 1.2 Furthermore, in these Conditions:
- (a) the singular shall import the plural and vice versa;
  - (b) the word “including” shall mean “including (without limitation)”;
  - (c) the masculine shall import the feminine and vice versa;
  - (d) an obligation not to do something imports an obligation not to encourage, give consent to, or acquiesce to such thing being done by a third party.

## 2. The Contract

- 2.1 These Conditions apply to contracts for supplies concerning David Brown Santasalo group’s GearWatch gearbox equipment condition monitoring system, which comprise the Hardware and the GearWatch Service.
- 2.2 DBS’s Order Confirmation constitutes an offer from DBS to the Customer to provide the Services and/or supply the Hardware (as applicable) to the Customer on the basis of these Conditions. No Contract shall result unless and until such offer is accepted by the Customer, either explicitly in writing or by doing any act or thing which implies its acceptance (including payment of any sum that would be payable under the Contract, taking delivery of the Hardware or logging in to the Website).
- 2.3 The Contract shall consist of the Order Confirmation, these Conditions, any documents referred to in the Order Confirmation and the Literature; to the exclusion of all other terms and conditions (including those that may be included on any purchase order issued at any time by the Customer and (to the fullest extent permitted by law) those implied by law. For the purposes of interpretation and resolving conflicts, the various parts of the Contract shall rank in the foregoing order, from highest to lowest.

### TERMS APPLICABLE TO THE GEARWATCH SERVICE

## 3. DBS’s obligations and responsibilities

- 3.1 Subject to the Customer paying the Subscription Charges in accordance with the Contract, and subject to the other terms and conditions of the Contract:
- (a) DBS grants Customer Group a non-exclusive, non-transferable, non-sublicensable license to use and benefit from the GearWatch Service in respect of the Hardware, during the prevailing Subscription Period, strictly for the purposes of monitoring the condition, durability and performance of, maintaining, and repairing the Monitored Equipment;
  - (b) DBS will, on demand by Customer, create one or more user accounts in order to enable Customer Group to access and use the Website, provided that DBS reserves the right to require that multiple Customer Group members working for the same company or organisation share the same user account;
  - (c) DBS will, at no additional cost to the Customer (unless the Order Confirmation states otherwise), provide the Customer with DBS’s standard customer and technical support services by email, in accordance with the Literature, during the normal business hours of DBS or its Affiliate providing the support (usually between the hours of 8am to 4pm in Helsinki, Finland, Mondays to Fridays); and
  - (d) DBS will, at no extra cost to Customer (except in the case of GearWatch Pro systems, in which case at the price specified in the Order Confirmation or, if not specified there, the price quoted to the Customer by DBS) set the alarm/notification thresholds in respect of the various parameters capable of being measured by the Hardware. Customer will provide DBS with such information concerning the Monitored Equipment as DBS may reasonably request for that purpose.
- 3.2 The Customer may purchase enhanced support services separately at DBS’s then current rates, in which case these Conditions shall also apply to such enhanced support services. The scope and price of such enhanced support services shall be set forth in an Order Confirmation issued by DBS.

## 4. Customer’s obligations and responsibilities

- 4.1 Throughout the prevailing Subscription Period, the Customer:

- 1.2 此外，在本条件下：

- (a) 单数词包含复数词的含义，反之亦然；
- (b) “包括”一词的意思是“包括（但不限于）”；
- (c) 阳性词包含阴性词的含义，反之亦然；
- (d) 不做某事的义务包含不鼓励、不同意或不默许第三方从事某事的义务。

## 2. 合同

- 2.1 这些条件适用于与 David Brown Santasalo 集团的 GearWatch 变速箱 设备状态监视系统有关的物资合同，这些监视系统包括硬件和 GearWatch 服务。
- 2.2 DBS 的订单确认书构成 DBS 向客户提供的根据本条件向客户提供服务和/或提供硬件（如适用）的要约。除非且直到客户以书面形式明确表示或采取任何暗示接受的要约（包括支付根据合同项应支付的任何款项、收取硬件或登录网站）。
- 2.3 合同包括订单确认书、本条件、订单确认书及文献中提及的任何文件；排除所有其他条款和条件（含客户在任何时候发布的订购单中可能包含的条款和条件，以及在法律允许的最大范围内）法律暗示的条款和条件。出于释义和解决冲突的目的，合同的各个部分按照从高到低的前述顺序来排列。

### GEARWATCH 服务的条款

## 3. DBS 的义务和责任

- 3.1 在客户根据合同支付订阅费，并遵守合同的其他条款和条件的情况下：
- (a) DBS 授予客户集团非排他性的、不可转让的、不可再许可的许可，在当前的订阅期内，严格地出于监视受监控设备的状况、耐用性和性能、维护和修理设备的目的，在硬件上使用 GearWatch 服务并从中受益。
  - (b) 只要 DBS 保留要求同一公司或组织的多个客户集团成员共享同一用户账户的权利，DBS 将应客户的要求创建一个或多个用户帐户，以使让客户集团能够访问和使用网站。
  - (c) 在 DBS 或其关联公司的正常工作时间内（通常在芬兰赫尔辛基的周一至周五的上午 8 点至下午 4 点之间），DBS 将根据文献通过电子邮件向客户提供 DBS 的标准客户和技术支持服务，不向客户收取任何额外费用（除非订单确认书另有规定）；和
  - (d) DBS 将免费为客户设置有关硬件可测量的各种参数的警报/通知阈值（GearWatch Pro 系统除外，在这种情况下，按订单确认书中指定的价格，或者，如订单确认书未指定，则以 DBS 向客户报价的价格为准）。客户应向 DBS 提供 DBS 为此可能合理要求的有关受监控设备的信息。
- 3.2 客户可以按照 DBS 当时的价格分别购买增强型支持服务，在这种情况下，本条件也适用于此类增强型支持服务。此类增强型支持服务的范围和价格会在 DBS 发出的订单确认书中注明。

## 4. 客户的义务和责任

- 4.1 在当前的订阅期间，客户：

- (a) will ensure that Customer Group uses the GearWatch Service in accordance with these Conditions and that it shall be responsible for any breach of the Contract by any member of Customer Group;
- (b) will ensure Customer Group keeps all passwords and other security/login credentials secure and does not disclose them to anyone else (except other members of Customer Group with whom DBS has expressly permitted them to share a user account);
- (c) shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the GearWatch Service and, in the event of any such unauthorised access or use, promptly notify DBS.

## 5. Cellular data connections

- 5.1 If DBS supplies both Hardware capable of connecting to the internet over cellular data networks and a SIM card enabling that functionality, Customer shall not use that SIM card in any hardware or equipment and shall not use that cellular data connection for any purpose other than that of enabling data to flow between the Hardware and DBS's servers.

## 6. Subscription and pricing

- 6.1 Customer Group's use of the GearWatch Service shall depend upon the Customer first purchasing a subscription for the Subscription Period. The first Subscription Period ("Initial Period") shall begin on the earlier of the date on which any member of Customer Group first logs-in to the Website or the date on which DBS's servers first start receiving data transmissions from the Hardware applied to Monitored Equipment (in each case "first" meaning "first time after formation of the Contract"). The Initial Period shall then continue for such period of time as is stated on the Order Confirmation. The Subscription Charge for the Initial Period shall be the price stated on the Order Confirmation or, if no price is stated, the price stated in the Literature. If the Customer is purchasing Hardware under the Contract, it shall be competent for the Order Confirmation or Literature to state that Customer's subscription for the Initial Period is free of charge or included in the price of the Hardware, in which case Customer shall be deemed to have purchased a subscription for that period.
- 6.2 In order to continue to use the Service after the expiry of the first Subscription Period the Customer must purchase subscriptions for successive Subscription Periods (each a "Renewal Period"). DBS use reasonable endeavours to send Customer a "Renewal Notice" at least 60 days before the prevailing Subscription Period expires, informing the Customer of its options as to the various lengths of Renewal Periods for which Customer may purchase a subscription and the corresponding Subscription Charges. Customer may purchase a subscription for a Renewal Period by notifying DBS in writing (including email) at least 2 (two) Business Days prior to expiry of the Initial Period or prevailing Renewal Period (as applicable). Any purchase order or analogous document issued by Customer in relation to the purchase of any Renewal Period subscription shall be deemed to be merely confirmatory of the Customer's agreement to renew but any terms and conditions which purport to vary or contradict those of this Contract shall be null and void. Notwithstanding the foregoing, DBS shall be under no obligation to invite the Customer to renew its subscription and may refuse renewal without the need to give a reason, at any time prior to the renewal date.

## 7. Payment

- 7.1 The Subscription Charges for each Subscription Period shall be payable in advance and shall be invoiced by DBS in such instalments and at such times as may be specified on the Order Confirmation or Renewal Notice (as applicable). Such invoices must be paid by Customer within 30 (thirty) days of issue.

## 8. Performance Data

- 8.1 All Intellectual Property Rights in the Performance Data shall vest in the Customer or the End User, as determined by applicable laws.
- 8.2 Customer grants, and shall ensure that other members of Customer Group grant, to DBS and its Affiliates an irrevocable, perpetual, non-exclusive, sublicensable, worldwide, royalty free license to use, store, process, copy, and distribute the

- (a) 将确保客户集团根据本条件使用 GearWatch 服务，并对客户集团任何成员的任何违约行为负责；
- (b) 将确保客户集团安全保管所有密码和其他安全性/登录凭证，且不向其他任何人（除 DBS 明确允许共享用户帐户的客户集团其他成员外）透露；
- (c) 应尽一切合理努力防止任何未经授权的访问或使用 GearWatch 服务，如发生未经授权的访问或使用，应立即通知 DBS。

## 5. 蜂窝数据连接

- 5.1 如果 DBS 提供能够通过蜂窝数据网络连接到互联网的硬件以及支持此功能的 SIM 卡，则客户不得在任何硬件或设备中使用该 SIM 卡，且不得将蜂窝数据连接用于除以下目的之外的用途：使数据能够在硬件与 DBS 服务器之间交流。

## 6. 订阅和定价

- 6.1 客户集团对 GearWatch 服务的使用取决于客户在订阅期内先购买订阅。首个订阅期（“初始期”）应于客户集团成员首次登录网站之日的较早日期开始，或 DBS 的服务器首次开始从应用于受监视硬件接收数据传输之日开始（在每种情况下，“首次”是指“合同订立后的第一次”）。然后，初始期将按照订单确认书中规定的时间继续。初始期的订阅费为订单确认书中规定的价格，或者，如未注明价格，则为文献中规定的价格。如果客户根据合同购买硬件，则订单确认书或文献应有权声明客户对初始期的订阅为免费或包含在硬件价格中，在这种情况下，客户应被视为已购买了此期间的订阅。
- 6.2 为了在首个订阅期到期后继续使用服务，客户必须购买连续订阅期（每个“续订期”）。DBS 将尽一切努力，在现有订阅期到期至少 60 天之前向客户发送“续订通知”，告知客户可选择的不同续订期限长度以及相应的订阅费用。客户可在初始期或现有续订期（如适用）到期之前至少 2（两）个工作日以书面形式（包括电子邮件）通知 DBS，购买续订。客户发出的与购买续订期有关的任何订阅单或类似文件应被视为仅为客户续订确认的协议，但任何旨在改变或与本合同相抵触或违反本合同的条款和条件均无效。尽管有上述规定，DBS 没有义务在续订期之前的任何时间邀请客户续订，且无需给出理由就可以拒绝续订。

## 7. 付款

- 7.1 每个订阅期的订阅费须预先支付，由 DBS 按订单确认书或续订通知中指定的分期和时间开具发票（如适用）。客户须在发票发出后的 30（三十）天内支付。

## 8. 性能数据

- 8.1 根据适用法律的规定，性能数据中的所有知识产权均归客户或最终用户所有。
- 8.2 客户授予并确保客户集团其他成员向 DBS 及其关联公司授予不可撤销的，永久的，非排他性的，可再许可的，全球范围内的免版税使用、存储、处理、复制和分发性能数据的许可，此许可用于

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Performance Data for the purposes of: performing the GearWatch Service and/or the Contract; offering, marketing or performing any other product or service for Customer Group (including, for example, maintaining and repairing the Monitored Equipment); developing or improving the GearWatch Service or Hardware; market intelligence and competitive analysis; educating and training their own workforce; and/or researching and developing other products and services.

以下目的：执行 GearWatch 服务和/或合同；为客户集团提供、营销或执行任何其他产品或服务（包括，如维护和维修受监控设备）；开发或改善 GearWatch 服务或硬件；市场情报和竞争分析；教育和培训自己的劳动力；和/或研究和开发其他产品和服务。

8.3 Subject to clause 9 (Data Retention) below, DBS shall provide the Customer with a copy of the Performance Data stored on DBS's servers within a reasonable time of receiving a written request from Customer to do so. DBS shall provide the data in any format, and by using any storage media or data transmission technology, that DBS in its sole discretion (acting reasonably) considers convenient. DBS reserves the right to charge a reasonable fee which is reflective of the costs of providing such a copy.

8.4 DBS and its Affiliates reserve the right to disclose Performance Data relating to the Hardware to other members of Customer Group.

## 9. Data Retention

9.1 Customer acknowledges and agrees:

- (a) that unless it purchases additional data storage services, DBS will have the right (but not the obligation) to purge all Performance Data after twelve (12) months have elapsed since the expiry of the last Subscription Period;
- (b) regulations may mandate specific data retention requirements with regard to data, and it is Customer's sole responsibility to understand those requirements, and to export and archive the Performance Data if the data retention period offered by DBS is not sufficient; and
- (c) from time to time, DBS may offer new types of data services, and such new data services may have different data retention periods, to be defined in a corresponding service specification for that offering.

## 10. Intellectual Property in the GearWatch Service

10.1 All Intellectual Property Rights in the GearWatch Service, including the Cloud Software, shall belong to DBS, its Affiliates or their respective third party suppliers (as the case may be).

10.2 The Customer shall not, and shall procure that Customer Group does not, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the Parties and except to the extent expressly permitted under these Conditions:

- (a) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Cloud Software or Website in any form or media or by any means; or
- (b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Cloud Software; or
- (c) access all or any part of the GearWatch Service in order to build a product or service which competes with the GearWatch Service; or
- (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the GearWatch Service or non-public parts of the Website available to any third party; or
- (e) attempt to obtain, or assist third parties in obtaining, access to the Services, other than as expressly provided under Clause 3.

## 11. Limitations of the GearWatch Service

11.1 The Customer acknowledges and agrees that:

- (a) DBS is not responsible for ensuring that End Users have adequate maintenance, repair and inspection programs and systems for the Monitored Equipment;
- (b) that the Hardware and GearWatch Service are merely designed and intended to supplement and enhance those programs and systems, not to act as a substitute for them or as a failsafe or "last line of defence" warning system;
- (c) DBS does not accept any liability for the accuracy, completeness or reliability of the Performance Data, or for any action or inaction by Customers, End Users or any third party in reliance upon such data;
- (d) the provision of the GearWatch Service by DBS is dependent upon the Hardware being properly installed and configured, having a working internet connection and there being successful data transmission between that Hardware and DBS's servers;

8.3 在遵守下述第 9 条 (数据保留) 的情况下, DBS 应在收到客户书面要求的合理时间内, 向客户提供一份存储在 DBS 服务器上的性能数据。DBS 可自行决定 (采取合理措施) 使用任何存储介质或以任何数据传输技术向客户提供任何格式的数据。DBS 保留收取合理费用的权利, 该费用反映了提供此类副本的成本。

8.4 DBS 及其关联公司保留向客户集团其他成员披露与硬件有关的性能数据的权利。

## 9. 数据保留

9.1 客户承认及同意:

- (a) 除非已购买额外的数据存储服务, 否则 DBS 将有权 (但无义务) 在自上次订阅期到期后 12 (十二) 个月后清除所有性能数据;
- (b) 法规可能对数据保留有强制的特定要求, 如果 DBS 提供的数据保留期不够长, 则客户有责任了解这些要求, 导出和存储这些性能数据; 和
- (c) DBS 可能会不时提供新类型的数据服务, 此类新数据服务可能具有不同的数据保留期限, 这将在该服务的相应服务规范中进行定义。

## 10. GearWatch 服务中的知识产权

10.1 GearWatch 服务中的所有知识产权 (包括云软件) 均属于 DBS、其关联公司或其各自的第三方供应商 (视情况而定)。

10.2 除非任何适用法律允许双方之间无法通过协议将其排除在外, 且在本条件明确允许的范围内, 客户不得, 也不得促使客户集团做出如下事项:

- (a) 试图以任何形式、媒介或用任何方式, 以对云软件或网站的全部或任何部分进行拷贝、修改、复制、创建衍生作品、构图、镜像、重新发布、下载、展示、传输或分发; 或
- (b) 试图对云软件的全部或任何部分进行反编译、反向编译、反汇编、反向工程或以其他方式简化为人类可理解的形式; 或
- (c) 访问 GearWatch 服务的全部或任何部分, 以构建可与 GearWatch 服务竞争的产品或服务; 或
- (d) 许可、出售、出租、租赁、转移、转让、分发、展示、披露或以其他方式进行商业利用、或以其他方式使 GearWatch 服务或网站的非公开部分可供任何第三方使用; 或
- (e) 试图获得或协助第三方获得对服务的访问 (除了第 3 条明确规定的內容以外)。

## 11. GearWatch 服务的局限性

11.1 客户承认及同意:

- (a) DBS 不负责确保最终用户对受监控设备进行充分维护、维修和装备检查程序及系统;
- (b) 硬件和 GearWatch 服务旨在补充和增强这些程序及系统, 而非替代它们或充当故障保障或“最后防线”警告系统;
- (c) 对于性能数据的准确性、完整性或可靠性, 或者客户、最终用户或任何第三方依赖此类数据的作为或不作为, DBS 一概不承担责任;
- (d) DBS 提供 GearWatch 服务取决于硬件的正确安装和配置、互联网的连接正常以及硬件与 DBS 服务器之间能够成功进行数据传输;

- (e) that, subject to clause 5.1, DBS is not responsible for providing an internet connection or networking equipment enabling use of an internet connection for the Hardware;
- (f) DBS hereby excludes all responsibility and liability for any degradation, interruption or deprivation of Customer's benefit of the Hardware or the GearWatch Service attributable to adverse events, circumstances, conditions and issues affecting computing and network equipment not owned or controlled by DBS;
- (g) all alarm notifications via SMS or e-mail are provided only once for each alert case, and DBS shall not be liable for any damages or losses incurred by the Customer or End User due to the fact that the Customer or End User does not react to notifications provided by the GearWatch Service;
- (h) DBS neither monitors the End User's reaction to such notifications nor reviews the status of the alerts or any other data available in the Website; and
- (i) the GearWatch Service is provided "as is" and that DBS offers no warranty, representation or guarantee in respect of the GearWatch Service or the Website. Without prejudice to the generality of the foregoing, DBS does not guarantee that Customer Group shall have uninterrupted access to the GearWatch Service or Website.

## 12. Changes to the GearWatch Service

- 12.1 DBS reserves the right to make changes to the look, feel, functionality and capabilities of the GearWatch Service at any time and without any need to notify or inform the Customer.

## 13. Disposal or relocation of the Hardware

- 13.1 If, during any Subscription Period, the identity of the End User changes then the Customer shall inform DBS without delay, including the identity and contact details of the new End User.
- 13.2 Customer's obligations (including any obligation to pay Subscription Charges) in respect of the GearWatch Service shall be unaffected by any sale, letting, parting with possession or disposal of the Hardware by the Customer or any End User.
- 13.3 Customer shall inform DBS without delay if the Hardware is moved or material changes are made to the Monitored Equipment (especially if the Hardware is transferred to a different piece of equipment).

## 14. Changes to these terms

- 14.1 DBS reserves the right to update these Conditions insofar as they relate to the GearWatch Service at any time, upon giving the Customer notice. Customer Group's continued use of the GearWatch Service shall be taken to be an acceptance of the updated version of these Conditions. However, Customer may terminate its subscription for the GearWatch Service without fault by giving notice to DBS, provided that such notice is given within 14 (fourteen) days of being notified by DBS of the updated version of these Conditions. Any subscription fees already paid in advance at the time of termination will be refunded on a pro rata basis.

### TERMS APPLICABLE TO THE SUPPLY OF HARDWARE

## 15. Applicability

- 15.1 The terms and conditions of this section only apply if the Order Confirmation specifies that DBS is to supply Hardware.

## 16. Price

- 16.1 The prices for the Hardware shall be the prices specified on the Order Confirmation. Unless the Order Confirmation explicitly states otherwise, such prices are exclusive of the costs of packing, delivery, installation, setup and the provision of the Services.

## 17. Delivery

- 17.1 The Hardware shall be delivered to the place of delivery stated on the Order Confirmation, or such other place of delivery subsequently agreed in writing by the parties prior to dispatch. For domestic deliveries, the Customer shall be liable for the associated costs of packaging and transportation. In the case of international deliveries, delivery shall be made in accordance with the version of the INCOTERMS 2010 specified in the Order Confirmation (or, if not specified, EXW).

- (e) 根据第 5.1 条的规定，DBS 不负责提供能让硬件使用互联网连接的互联网连接设备或联网设备；
- (f) 对于因不良事件、情况、状况和问题影响非 DBS 拥有或控制的计算和网络设备，而导致客户对硬件或 GearWatch 服务的利益的降级、中断或剥夺，DBS 一概不承担责任；
- (g) 对于每个警报情况，通过 SMS 或电子邮件发送的警报通知仅提供一次，对于客户或最终用户不对 GearWatch 服务所发通知作出反应而造成的客户或最终用户的任何损坏或损失，DBS 一概不承担责任；
- (h) DBS 既不监督最终用户对此类通知的反应，也不查看警报的状态或网站上可获得的其他数据；和
- (i) GearWatch 服务“按原样”提供，DBS 不对 GearWatch 服务或网站提供任何保证、背书或担保。在不影响上述规定的一般性的前提下，DBS 不保证客户集团可连续访问 GearWatch 服务或网站。

## 12. GearWatch 服务的更改

- 12.1 DBS 保留权利随时更改 GearWatch 服务的外观、感觉、功能和性能，而无需另行通知客户。

## 13. 处置或搬迁硬件

- 13.1 如果在订阅期内最终用户的身份发生变化，则客户须立即通知 DBS，并附上新的最终用户的身份和联系方式。
- 13.2 客户对 GearWatch 服务的义务（包括支付订阅费用的义务）不受客户或最终用户对硬件的销售、出租、放弃管有权或处置的影响。
- 13.3 如果移动了硬件或对受监控设备进行了重大更改（特别是将硬件转移到另一台设备上），则客户须立即通知 DBS。

## 14. 本条款的变更

- 14.1 在通知客户之后，DBS 保留权利随时更新与 GearWatch 服务相关的条款。客户集团继续使用 GearWatch 服务将被视为接受本条款和条件的更新版本。但是，客户可以通过向 DBS 发出通知而终止对 GearWatch 服务的订阅，只要该通知是在 DBS 的条件更新通知发出后的 14（十四）天内发出的。终止时已预先支付的订阅费将按比例退还。

### 适用于硬件供应的条款

## 15. 适用性

- 15.1 如订单确认书指明 DBS 提供硬件时，本节的条款和条件才适用。

## 16. 价格

- 16.1 硬件的价格为订单确认书中指定的价格。除非订单确认书中另有明确规定，否则这些价格将不包含包装、交付、安装、设置和提供服务的费用。

## 17. 交付

- 17.1 硬件交付至订单确认书上指定的交付地点，或在递送前双方最终书面同意的其他交付地点。对于国内交付，客户承担包装和运输的相关费用。如果是国际交付，则按订单确认书中 INCOTERMS 2010 版本（或者，如果未指定，则为 EXW）进行交付。

17.2 Time shall not be of the essence for delivery. Any dates or timescales quoted by DBS for delivery shall be indicative only, not legally binding.

## 18. Transfer of title and risk

18.1 Risk in the Hardware shall pass to the Customer: in the case of domestic deliveries, upon delivery; or, in the case of international deliveries, in accordance with the applicable Incoterms.

18.2 Title to the Hardware shall transfer when DBS has received full payment for it.

## 19. Installation and configuration

19.1 Unless the Order Confirmation states otherwise (in which case, see section entitled "Terms applicable to Installation Service" below), the installation, configuration and activation of Hardware is the sole responsibility of the Customer, and may include connecting the Hardware to the internet by means of the Customer's own computer network and internet connection or a cellular data connection.

19.2 DBS shall supply or publish reasonably detailed instructions in relation to the installation, configuration and activation of the Hardware but shall not otherwise have any obligation to supervise Customer Group's Hardware installation, configuration or activation activities. However, where DBS or its representatives volunteer any information, advice or recommendations in relation to such activities, Customer relies upon same entirely at its own risk.

19.3 Customer Group shall ensure that the Hardware is installed (at its own expense) in accordance with DBS's instructions, and exclusively in such places and locations where the Hardware can at all times be operated in a safe manner and comply with all local legal regulations and provisions.

## 20. Hardware Warranties

20.1 DBS warrants that:

- (when delivered, the Hardware will conform with any description in the Literature;
- during the Hardware Warranty Period, the Hardware (excluding any Client Software) will be free from material defects in design, workmanship and materials; and
- during any period for which Customer subscribes to the GearWatch Service, the Client Software will be free from any bugs or defects that substantially deprive Customer Group of the benefit or utility of the Hardware or the GearWatch Service.

20.2 Customer's sole remedy for breach of the warranties above shall be for DBS to remedy the breach by (at DBS's election) either repairing or replacing the Hardware in question. In the context of Client Software issues, "repair" may involve DBS providing a software update or patch. If DBS requests that it do so, the Customer shall return the defective Hardware to DBS's nominated location at the Customer's own cost. DBS shall not be responsible or liable for any installation or removal, connection or disconnection, mounting or dismounting, commissioning or decommissioning, or configuration or reconfiguration activities that may be necessary in respect of the Hardware or the Monitored Equipment in connection with DBS's performance of its obligations under this clause 20.2.

## 21. Intellectual Property in the Hardware

21.1 DBS or relevant third parties shall remain the owners of all Intellectual Property Rights inherent in or relating to the Hardware (including the Client Software).

21.2 The Customer shall not, except as may be allowed by any applicable law which is incapable of exclusion by agreement between the Parties:

- attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Client Software in any form or media or by any means; or
- attempt to de-compile, reverse de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Client Software.

17.2 时间不是交付的实质要素。DBS 提供的交付日期或时间仅供参考，不具有法律约束力。

## 18. 所有权和风险的转移

18.1 就国内交付而言，硬件的风险在交付时转移给客户；如果是国际交付，则按照适用的国际贸易术语解释通则。

18.2 当 DBS 收到全额付款后，即应转让硬件的所有权。

## 19. 安装和配置

19.1 除非订单确认书另有说明（在此情况下，请参阅下面标题为《适用于安装服务的条款》一节），否则客户承担硬件的安装、配置和激活的全部责任，这可包括通过以下方式将硬件连接到互联网：客户自己的计算机网络和互联网连接或蜂窝数据连接。

19.2 DBS 提供或公布有关硬件的安装、配置和激活的合理详细说明，但无义务监督客户集团对硬件的安装、配置或激活活动。但是，如果 DBS 或其代表自愿提供与此类活动有关的任何信息、建议或推荐，而客户依赖此信息、建议或推荐，则完全自负风险。

19.3 客户集团应确保按照 DBS 的指示安装硬件（自行承担费用），且仅在可以始终安全操作硬件并遵守所有当地法律法规和规定的地方和位置进行安装。

## 20. 硬件保修

20.1 DBS 保证：

- （交付时，硬件符合文献中的描述；
- 在硬件保修期内，硬件（不含客户端软件）将不会出现设计、工艺和材料方面的重大缺陷；和
- 在客户订阅 GearWatch 服务的任何期间内，客户端软件不会出现会严重剥夺客户集团硬件或 GearWatch 服务的利益或使用的错误或缺陷。

20.2 客户获得对违反上述保证的唯一补救措施是 DBS 通过（由 DBS 选择）修复或更换有问题的硬件来补救此违约行为。在客户端软件出现问题的情况下，“修复”可能涉及 DBS 提供软件更新或补丁。如果 DBS 要求这样做，客户应将缺陷的硬件退回 DBS 指定的地点，费用由客户自行承担。根据本条款 20.2 规定的义务，对于因硬件或受监控设备的性能而对 DBS 的性能进行必要的安装或拆卸、连接或断开、装上或卸下、调试或退役、配置或重新配置活动，DBS 一概不承担责任。

## 21. 硬件的知识产权

21.1 DBS 或相关第三方仍是硬件（含客户端软件）固有的或与之相关的所有知识产权的所有者。

21.2 除非双方均无法通过协议排除的任何适用法律允许，否则客户不得：

- 试图以任何形式、媒介或用任何方式，以对客户端软件的全部或任何部分进行拷贝、修改、复制、创建衍生作品、构图、镜像、重新发布、下载、展示、传输或分发；或
- 试图对客户端软件的全部或任何部分进行反编译、反向编译、反向编译、反汇编、反向工程或以其他方式简化为人类可理解的形式。

## 22. Applicability

- 22.1 The terms and conditions of this section only apply if the Order Confirmation specifies that DBS is to provide the Installation Service.

## 23. Customer obligations

- 23.1 Customer shall ensure that DBS's representatives are granted access to any location at which the Installation Service is to be performed at the appointed time, provided that DBS has given Customer reasonable notice of its visit.
- 23.2 Customer shall ensure that DBS's representatives are given access to and use of any electricity, water, compressed air and gas supplies that they might reasonably require to perform the Installation Service, free of charge. Similarly, Customer shall (at no charge to DBS) provide or enable DBS to use any cranes, ladders or lifts that might reasonably be required DBS's personnel to access the equipment on which the Installation Services are to be performed or to enable the installation of the Hardware. If the Installation Service is to be performed on any premises not owned or controlled by DBS, Customer will be responsible for informing DBS's personnel of, and training them on (at no cost to DBS), any site-specific health, safety, security or environmental rules or regulations with which they will be obliged or expected to comply.
- 23.3 Customer shall use reasonable endeavours to ensure that DBS's performance of the Installation Service is not prevented or unduly hindered by the activities of Customer Group.
- 23.4 Unless explicitly stated on the Order Confirmation, Customer shall be responsible for carrying out any preparatory work necessary for the carrying out of the Installation service including: disconnecting the relevant customer equipment from any other equipment or apparatus, and reconnecting and recommissioning the equipment after completion of the Installation Service.

## 24. Charges for the Installation Service

- 24.1 DBS's charges for the Installation Service shall be those stated on the Order Confirmation are exclusive of travel, subsistence and accommodation costs for DBS's representatives. The Customer shall be liable to promptly reimburse DBS for such costs, provided DBS provides evidence of their incurrence.

## 25. Time for performance

- 25.1 Time shall not be of the essence in respect of any obligation relating to DBS's performance of the Installation Service. Any relevant timescales quoted or advised by DBS Group shall be indicative only and not legally binding.

## 26. Warranties

- 26.1 DBS warrants to Customer that the Installation Service will be provided with reasonable skill and care. In the event of a breach of this warranty, Customer's sole remedy shall be that DBS shall be obliged to either (at DBS's election):
- reperform the relevant activities and/or such additional services as may be necessary to cure the breach; or
  - promptly refund an equitable portion of the charges paid for the Installation Service.
- 26.2 DBS also warrants that any parts, materials or equipment provided by DBS in the course of performing the Installation Service will be free from defects in design, workmanship and materials. In the event of a breach of this warranty, Customer's sole remedy will be that DBS will be obliged to (at DBS's election) repair or replace the relevant item at its own expense within a reasonable time. If DBS requests that it do so, the Customer shall return the defective item to DBS's nominated location at the Customer's own expense. DBS shall not be responsible or liable for any installation or removal, connection or disconnection, mounting or dismounting, commissioning or decommissioning, or configuration or reconfiguration activities that may be necessary, in respect of anything other than the defective item, for DBS to perform its obligations under this clause 26.2.

## GENERAL PROVISIONS

### 27. Taxes

## 2.2 适用性

- 22.1 如订单确认书指明 DBS 提供按照服务时，本节的条款和条件才适用。

## 23. 客户的义务

- 23.1 只要 DBS 已向客户发出访问的合理提前通知，客户应确保 DBS 代表在指定时间内被授予访问安装服务地点的权限。
- 23.2 客户应确保向 DBS 代表免费提供合理需要的电力、水、压缩空气和天然气，以便进行安装服务。同样，客户应（DBS 不承担费用）提供或允许 DBS 使用合理需要的起重机、梯子或升降梯，以便让 DBS 人员可接触到要执行安装服务的设备或进行硬件安装。如果在非 DBS 拥有或控制的场所执行安装服务，客户将负责通知和培训 DBS 人员（DBS 不承担费用）必须或预期遵守的任何特定场所的健康、安全、保障或环境法规。
- 23.3 客户应采取合理措施来确保客户集团的活动不会阻止或不适当地阻止 DBS 执行安装服务。
- 23.4 除非在订单确认书中明确说明，否则客户应负责执行安装服务所需的准备工作，这包括从其他设备断开与客户设备的连接，并在完成安装服务后重新连接并重新调试设备。

## 24. 安装服务费用

- 24.1 DBS 对安装服务的收费会在订单确认书中注明，这不包括 DBS 代表的差旅、津贴和住宿费用。如果 DBS 提供产生费用的证据，则客户有责任即时向 DBS 偿还此笔费用。

## 25. 执行时间

- 25.1 与 DBS 执行安装服务有关的义务中，时间不是至关重要的。DBS 集团引述或建议的相关时间仅作参考指示性质，不具法律约束力。

## 26. 保证

- 26.1 DBS 向客户保证，将以合理的技能和谨慎方式提供安装服务。如果违反此保证，则客户唯一的补救措施是 DBS 有义务（由 DBS 选择）：
- 重新执行补救此违反保证可能需要的相关活动和/或此类额外服务；或
  - 即时退还部分客户已支付的安装服务费用。
- 26.2 DBS 还保证，在执行安装服务过程中，DBS 提供的零件、材料或设备不存在设计、工艺和材料方面的缺陷。如果违反此保证，则客户唯一的补救措施是 DBS 有义务（由 DBS 选择）在合理的时间范围内自费修复或更换相关物品。如果 DBS 要求这样做，客户应将缺陷的物品退回 DBS 指定的地点，费用由客户自行承担。根据本条款 26.2 规定的义务，对于有缺陷的物品以外的其他必要的安装或拆卸、连接或断开、装上或卸下、调试或退役、配置或重新配置活动，DBS 一概不承担责任。

## 一般条款

### 27. 税收

- 27.1 All sums to be paid by Customer to DBS under or in connection with the Contract are exclusive of any Value Added Tax and other revenue taxes which may be imposed by any taxing authority of competent jurisdiction on such sums, in which case Customer shall also be liable to pay such Value Added Tax or revenue tax.
- 27.2 The Parties' respective liabilities for all levies, duties, customs charges, tariffs and other taxes relating to the import or export of goods, equipment or materials shall be, in the case of supply of Hardware, determined in accordance with the applicable Incoterms or, in all other cases, be the liability of the Customer (on a reimbursement basis in the case of levies, duties etc. which necessarily must be initially incurred and paid by DBS Group).
- 27.3 Should any taxing authority of competent jurisdiction impose a withholding tax on any sum to be paid by Customer to DBS under or in connection with the Contract, the Customer shall pay such additional sum as will ensure that the sum received by DBS is the same as the amount it would have received had no withholding tax been imposed.

## 28. Indemnities

- 28.1 DBS shall indemnify Customer Group against any Losses suffered or incurred by Customer Group resulting from any claim, suit, action or allegation made against the Customer Group that the Services, Hardware, Client Software, Cloud Software or Website infringes the Intellectual Property Rights of any third party (meaning a person or entity which is not a member of Customer Group).
- 28.2 Customer shall indemnify DBS Group against any Losses suffered or incurred by DBS Group resulting from or arising out of:
- acts or omissions by other members of Customer Group which would have constituted a breach of the Contract had they been directly party to it in the role of the Customer;
  - claims, suits, actions or allegations by other members of Customer Group arising out of or connected to the Contract, excluding proven or admitted claims for indemnification under clause 28.1, or proven or admitted claims for death, personal injury or property damage caused by the negligence of DBS Group; and/or
  - claims, suits, actions or allegations that DBS Group's use, sharing, storage, copying, analysis, collection or exploitation of the Performance Data as permitted by the Contract infringes the Intellectual Property Rights of Customer Group.

## 29. General limitations of DBS's liability

- 29.1 DBS Group's liability under the Contract or in connection with the supply of the Hardware or performance of the Services (whether founded in contract (including contractual indemnities), tort, statute or under any other theory of liability) shall be limited in accordance with this clause 29 and any specific limitations under other sections of these Conditions, provided that nothing in these Conditions or the Contract generally shall limit its liability for death, personal injury, fraud or any other liability that cannot be lawfully limited or excluded.
- 29.2 DBS's entire aggregate liability to Customer Group shall not exceed:
- for damage to property, breaches of confidentiality or violation or third party Intellectual Property Rights, €250,000 (Two Hundred and Fifty Thousand Euros) or equivalent in DBS's local currency on the date of the event or circumstance giving rise to the relevant liability (the "Relevant Date");
  - for all other liabilities, the higher of:
    - the aggregate of all sums paid by Customer for the purchase of Hardware or Services under the Contract in the 12 (twelve) month period preceding Relevant Date; and
    - €10,000 (ten thousand Euros) or equivalent in DBS's local currency on the Relevant Date.
- 29.3 DBS shall have no liability to Customer Group for any loss of anticipated profits, loss of anticipated production, loss of business, loss of reputation or goodwill, loss of anticipated savings, loss of management time, loss of use, loss or corruption of data or information, pure economic losses, punitive or exemplary damages, or for any indirect, special or consequential losses.

- 27.1 客户根据合同或与合同有关应支付给 DBS 的所有款项，不包括管辖区下税务机关可能对这些款项征收的增值税 (VAT) 和其他所得税。在此情况下，客户还须支付此类增值税或所得税。
- 27.2 双方对于与进出口货物、设备或材料有关的所有征费、税费、海关费用、关税和其他税费的各自赋税责任，在提供硬件的情况下，根据适用的国际贸易术语解释通则确定，或在所有其他情况下，由客户承担责任 (在征税、关税等情况下，由 DBS 先支付，客户随后偿还)
- 27.3 如果具有管辖权的税务机关对客户根据合同或与合同有关应支付给 DBS 的任何款项征收预扣税，则客户应支付额外的款项，以确保 DBS 收到的款项与无预扣税本应收到的金额一样。

## 28. 赔偿

- 28.1 对于因客户集团因服务、硬件、客户端软件、云软件或网站侵犯任何第三方 (指不属于客户集团成员的个人或实体) 的知识产权而提出的主张、诉讼、法律行动或指控，DBS 应赔偿客户集团遭受的任何损失或损害。
- 28.2 客户应赔偿 DBS 集团因以下原因而蒙受或遭受的任何损失：
- 如果客户集团的其他成员直接作为客户的当事方，构成违反合同的行为或不作为；
  - 客户集团的其他成员因合同引起的或与合同有关的主张、诉讼、法律行动或指控，但不包括根据第 28.1 条已证明或认可的赔偿要求，或因 DBS 集团的疏忽造成的有关死亡、人身伤害或财产损失的已证明或认可的赔偿要求；和/或
- 主张、诉讼、法律行动或指控 DBS 集团在合同允许的范围内使用、共享、存储、复制、分析、收集或利用性能数据侵犯了客户集团的知识产权。

## 29. DBS 责任的一般限制

- 29.1 根据本条款，DBS 集团根据合同或与提供硬件或提供服务有关的责任 (不论是基于合同 (包括合同赔偿)、侵权、成文法或其他任何责任理论)，应根据第 29 条和本条件其他条款下的特定限制进行限制，只要本条件或合同中的任何内容一般不限制其对死亡、人身伤害、欺诈或任何其他无法合法限制或排除责任的赔偿责任。
- 29.2 DBS 对客户集团的全部总责任不得超过：
- 对于财产损失、违反机密性或侵犯第三方知识产权的行为，为 25 万欧元；或在事件发生或情况引起相关责任之日 DBS 当地货币的等值 ("相关日期")；
  - 对于所有其他赔偿责任，以下情况的较高者：
    - 在相关日期之前的 12 (十二) 个月内，客户根据合同购买的用于购买硬件或服务的所有款项之和；和
    - 1 万欧元或在相关日期 DBS 当地货币的等值。
- 29.3 对于预期的利润损失、预期的生产损失、业务损失、声誉或商誉损失、预期储蓄损失、管理时间损失、使用损失、数据或信息丢失或损坏、纯经济损失、惩罚性或示范性损失、或任何间接/特殊或后果性损失，DBS 对客户集团概不负责。

- 29.4 DBS shall have no liability and shall be released from any obligation (including contractual warranties or indemnities) to the extent that the liability or obligation arises out of, is attributable to or is exacerbated by any of the following factors, events or circumstances:
- (a) failures by anyone other than DBS Group to use, operate, install, commission, package, transport, maintain, repair, store, uninstall or handle the Hardware or GearWatch Service in accordance with DBS Group's or the relevant manufacturer's instructions or, in absence of such instructions, in accordance with good industry practice;
  - (b) compliance by DBS Group with any instruction or request made or on behalf of Customer Group;
  - (c) defects, deficiencies, cosmetic blemishes and non-conformities of the Hardware which constitute normal wear and tear;
  - (d) use of the Hardware for any purpose or within any operating environment which it (or the relevant part of it) is not designed;
  - (e) use by DBS Group of, or compliance by DBS Group with, any design, schematic or specification provided by or on behalf of Customer Group;
  - (f) modifications or changes to the Hardware or Client Software made by anyone other than DBS Group without DBS Group's prior authorisation;
  - (g) in the case of liabilities relating to infringement or alleged infringement of third party intellectual property rights, use or exploitation of the Hardware, Client Software, Website or Cloud Software, or any part of it for a purpose which could not have reasonably been contemplated by DBS at the time the Contract was made; and/or
  - (h) the fault, negligence or breach of duty (contractual, statutory or otherwise) of Customer Group.
- 29.5 DBS's indemnity obligations shall be subject to the following conditions:
- (a) if the indemnitee believes that it has suffered, incurred or become subject to any Losses which might qualify for indemnification under the Contract, it shall notify DBS promptly in writing describing such Losses, the amount thereof, if known, and the method of computation of such Losses which shall have occurred. If any claim, action at law or suit in equity is instituted by a third party with respect to which the indemnitee intends to claim indemnification, the indemnitee shall promptly notify DBS of same.
  - (b) DBS shall have the right to conduct and control, through counsel of its own choosing, any third party claim, action or suit, but the indemnitee may, at its election, participate in the defence of any such claim, action or suit at its sole cost and expense; provided that if DBS shall fail to defend any such claims, action or suit, then the indemnitee may retake control and defend, through counsel of its own choosing, such claim, action or suit and (so long as it gives DBS at least 30 (thirty) days' notice of the terms of the proposed settlement thereof) settle such claim, action or suit, and to recover from DBS the amount of such settlement or of any judgment and the cost and expenses of such defence. Neither party shall compromise or settle any third party claim, action or suit without the prior written consent of the party which, for the time being, has control of the claim, action or suit.
  - (c) The indemnitee shall give full authority, information and assistance to DBS in the defence of any claim or proceeding.
  - (d) The indemnitee shall take all reasonable steps to mitigate all Losses.
- 29.4 DBS 不承担责任，并免除以下任何因素、事件或情况引起的可归因于或加剧的责任（包括合同保证或赔偿）：
- (a) 除 DBS 集团以外的任何人未按 DBS 集团或相关制造商的说明使用或操作、安装、调试、包装、运输、维护、修理、存储、卸载或处理硬件或 GearWatch 服务，或者，在没有此类说明的情况下，不遵守良好的行业惯例；
  - (b) DBS 集团遵守客户提出的任何指示或要求；
  - (c) 构成正常磨损的硬件缺陷、不足、外观瑕疵和不合格；
  - (d) 出于任何目的或在其（或其相关部分）非设计的操作环境中使用硬件；
  - (e) 由 DBS 集团使用或由 DBS 集团遵守由客户集团提供或代表客户集团提供的任何设计、示意图或规格；
  - (f) 未经 DBS 集团事先授权，非 DBS 集团的任何人针对硬件或客户端软件进行的修改或更改；
  - (g) 如果涉及与侵犯或涉嫌侵犯第三方知识产权有关的责任，出于 DBS 无法合理预期的目的而使用或利用硬件、客户端软件、网站或云软件或在订立合同时其他部分的责任；和/或
  - (h) 客户集团的过失、疏忽或违反职责（合同、法定或其他）
- 29.5 DBS 的赔偿责任应满足以下条件：
- (a) 如果受偿方认为其遭受、招致或蒙受可能根据合同有资格获得赔偿的任何损失，则应立即以书面形式通知 DBS，告知其损失、金额（如果已知）以及计算方法。如果受偿方打算就赔偿要求由第三方提出主张、法律行动或衡平法诉讼，则受偿方应立即通知 DBS。
  - (b) DBS 有权通过自己选择的律师进行和控制第三方的主张、法律行动或诉讼，但受偿方可选择自行承担费用参加针对此类主张、法律行动或诉讼的辩护。但前提是，如果 DBS 未能为任何此类主张、法律行动或诉讼进行辩护，则受偿方可以通过自己选择的律师重新控制并为此类主张、法律行动或诉讼进行辩护，并且只要给予 DBS 至少 30（三十天）通知其拟议解决方案的条款来解决此类主张、法律行动或诉讼，并从 DBS 处索回该解决方案或任何判决的金额以及辩护的费用和支出。未经目前控制主张、法律行动或诉讼的一方的书面同意，任何一方均不得妥协或解决任何第三方的主张、法律行动或诉讼。
  - (c) 在为任何主张或法律程序进行辩护时，受偿方应向 DBS 提供全部权限、信息和协助。
  - (d) 受偿方应采取一切合理步骤减轻所有损失。

- 29.6 The warranties, representations and assurances given by DBS in the Contract are the only ones given by it in respect of the Hardware, Client Software, Cloud Software and Services. All other warranties, representations, guarantees and assurances which may be implied by statute, common law, trade custom, course of dealings, or otherwise (including those relating to merchantability, condition, quality, fitness for purpose, durability, performance capabilities, the degree of skill and care with which any work is to be performed and suchlike) are hereby excluded to the fullest extent permitted by law. Where the Contract provides a remedy for any breach of contract (including breach of warranty), act of negligence or any other cause of action, that remedy shall be Customer Group's sole remedy for such cause of action, provided that nothing in this clause shall prevent Customer Group from availing itself of any rights and remedies available to it at law in order to enforce any obligation of the Contract for which no contractual remedy is specified or in order to enforce performance of any contractually specified remedy.
- 29.7 Any claims to be made by Customer Group under or in connection with the Contract must be made in writing, giving DBS or the relevant member of DBS Group (as applicable) sufficient detail as to enable it to properly investigate and assess the claim, within 6 (six) months of the event, act or omission giving rise to the relevant liability.

## 30. Suspension

- 30.1 Without prejudice to its other rights and remedies under the Contract or at law, DBS shall be entitled to suspend performance of all or any of its obligations under the Contract, without any liability to Customer Group for doing so:
- if Customer becomes overdue for payment in respect of any sum due to be paid to DBS under the Contract; and/or
  - if DBS is entitled to terminate the Contract (in whole or part).

## 31. Termination

- 31.1 Notwithstanding any other termination rights available to either Party under these Conditions or the applicable law, either Party may terminate the Contract or any Service for cause forthwith by written notice to the other Party, if:
- such other Party shall become involved in and does not within 30 days vacate, any bankruptcy, composition with creditors, liquidation (except voluntary liquidation for purpose of reorganisation) or controlled administration proceedings;
  - such other Party materially breaches the Contract and, in the case of a breach capable of remedy, fails to cure such breach within 60 (sixty) days of being requested to do so by the innocent Party;
  - an Event of Force Majeure shall continuously prohibit the other Party to render performance under the Contract for a period of more than 60 (sixty) days.
- 31.2 Without prejudice to its other rights and remedies under the Contract or at law, DBS shall be entitled to terminate the Contract or any Service by giving notice to the Customer (with termination taking immediate effect or effect from such other date as may be specified in the termination notice):
- any sum payable by the Customer under Contract becomes more than 30 (thirty) days overdue, despite Customer having been warned of that fact;
  - Customer infringes any Intellectual Property Rights of DBS Group with respect to the Hardware, Cloud Software, Client Software or Website; and/or
  - breaches its obligations under clause 10.2.
- 31.3 Upon termination of this Contract or the GearWatch Service for any reason:
- Customer's right to access and use the GearWatch Service shall immediately cease; and
  - DBS shall be entitled to prevent members of Customer Group from logging into the Website.

## 32. Force Majeure

- 32.1 "Event of Force Majeure" means an event beyond the control of a Party and which prevents it from complying with any of its obligations (excluding payment obligations) under the Contract, including but not limited to:

- 29.6 DBS 在合同中提供的有关硬件、客户端软件、云软件和服务的担保、背书和保证是合同中仅有的保证。法规、普通法、行业惯例、交易过程或其他可能暗示的所有其他保证、背书和担保（包括与适销性、状况、质量、目标适用性、耐用性、性能、应进行任何工作的技能和谨慎程度等相关的内容），特此在法律允许的最大范围内将其排除在外。如果合同针对任何违反合同（包括违反担保）、疏忽行为或任何其他诉讼因由提供的补救措施，则该补救措施应是客户集团对此类诉讼因由的唯一补救措施。前提是，本条款中的任何规定均不得阻止客户集团依法行使其可获得的任何权利和补救措施，以执行未指定合同补救措施的义务，或为了执行合同规定的补救措施。
- 29.7 客户集团根据合同或与合同有关的任何主张必须以书面形式提出，并在引起相关责任的事件、作为或不作发生的 6 (六) 个月内向 DBS 集团或 DBS 集团相关成员 (如适用) 提供足够的详细信息，以使其能够正确地调查和评估该主张。

## 30. 暂停

- 30.1 在不损害其在合同或法律下的其他权利和补救措施的情况下，DBS 有权暂停履行其在合同下的全部或任何义务，而客户集团对此不承担责任：
- 如果客户未能根据合同向 DBS 支付款项；和/或
  - DBS 有权终止合同（全部或部分）。

## 31. 合同终止

- 31.1 尽管任何一方可根据本条件或适用法律获得其他终止权利，但在以下情况下，任何一方均可立即书面通知另一方以终止本合同或服务：
- 该另一方进行破产，与债权人的和解、清算（为重组目的的自愿清算除外）或受控清盘管理程序，且不在 30 天之内撤出；
  - 该另一方实质上违反了合同，并且在能够补救违约的情况下，未能在无辜方要求的 60 (六十) 天内解决该违约行为；
  - 不可抗力事件持续禁止另一方在超过 60 (六十) 天的期限内履行合同。
- 31.2 在不损害其在合同或法律下的其他权利和补救措施的情况下，DBS 有权向客户发出终止通知，以终止合同或服务（终止自合同规定的其他日期起立即生效）：
- 尽管已获警告，但客户依合同应支付的款项逾期超过 30 (三十) 天；
  - 客户侵犯 DBS 集团有关硬件、云软件、客户端软件或网站的知识产权；和/或
  - 违反了第 10.2 条规定的义务。
- 31.3 由于任何原因终止本合同或 GearWatch 服务：
- 客户访问和使用 GearWatch 服务的权利立即终止；和
  - DBS 有权阻止客户集团成员登录网站。

## 32. 不可抗力

- 32.1 “不可抗力事件”是指一方无法控制且阻止其履行合同规定的义务（不包含付款义务）的事件，包括但不限于：

- (a) act of God (such as, but not limited to, fires, explosions, earthquakes, drought, tidal waves and floods);
- (b) war, hostilities (whether war be declared or not), invasion, act of foreign enemies, mobilisation, requisition, or embargo;
- (c) rebellion, revolution, insurrection, or military or usurped power, or civil war;
- (d) contamination by radio-activity from any nuclear fuel, or from any nuclear waste from the combustion of nuclear fuel, radioactive toxic explosive, or other hazardous properties of any explosive nuclear assembly or nuclear component of such assembly;
- (e) riot, commotion, strikes, go slows, lock outs or disorder, unless solely restricted to employees or workers of DBS, its subcontractors or suppliers; or
- (f) acts or threats of terrorism.
- 32.2 Should a Party be prevented from performing any obligation because of an Event of Force Majeure, that Party shall not be considered in breach of the Contract and any time for performance of the obligation shall be extended by a period equal to the duration of the Event of Force Majeure, provided that the Party notifies the other Party of the occurrence of the Event of Force Majeure without undue delay and takes reasonable steps to mitigate the effects of the Event of Force Majeure.
- 32.3 When the Event of Force Majeure is over, the Party affected shall without prompt advise the other Party and resume performance of its obligations.
- 32.4 Should the Event of Force Majeure continue for more than 60 (sixty) days, the unaffected Party shall be entitled to exercise its termination right under clause 31.1(c)

### 33. Confidentiality

- 33.1 To the extent allowed by law, each Party shall retain in confidence and shall only use for the purposes of negotiating, performing or enjoying the benefit of the Contract, all information received from the other Party that the disclosing Party identifies as being proprietary and/or confidential or that, by the nature of the information or circumstances surrounding its disclosure, ought in good faith to be treated as such ("Confidential Information"). In no event shall either Party employ less than a reasonable degree of care in protecting the Confidential Information, which includes, but shall not be limited to: pricing, business plans, customer lists, operational and technical data and product plans. The receiving Party's obligations under this clause shall extend for five (5) years following the disclosure of the Confidential Information.
- 33.2 Confidential Information does not include information that:
- (a) is or becomes publicly known through no fault of the receiving Party;
- (b) was known to the receiving Party before it was disclosed under the Contract;
- (c) was disclosed to the receiving Party by someone else having no confidentiality obligation to the other Party; or
- (d) is independently developed by the receiving Party without using the other's Confidential Information.

If either of the Parties relies upon the exceptions above, its business records must support that reliance.

- (a) 上帝的行为 (例如, 包括但不限于火灾、爆炸、地震、干旱、潮汐和洪水);
- (b) 战争、敌对行动 (无论是否宣战)、入侵、外国敌人的行动、动员、征用或禁运;
- (c) 叛乱、爆发革命、暴动、军事或篡夺政权或内战;
- (d) 核燃料或核燃料燃烧产生的核废料、放射性有毒炸药或爆炸性核组件或核组件的其他危险特性所产生的放射性污染;
- (e) 暴动、骚乱、罢工、怠工、停工或混乱, 除非仅限于 DBS 集团的雇员或工人、其分包商或供应商; 或
- (f) 恐怖主义行为或威胁。

- 32.2 如果由于不可抗力事件而阻止一方履行义务, 则不视为该方违反了合同, 并且履行义务的时间应延长与不可抗力事件持续时间相等的期限, 前提是, 该方立即将不可抗力事件的发生通知另一方, 并采取合理措施减轻不可抗力事件的影响。
- 32.3 当不可抗力事件结束后, 受影响方应立即通知另一方并恢复履行其义务。
- 32.4 如果不可抗力事件持续超过 60 (六十) 天, 未受影响方应有权行使第31.1(c)条规定的终止权。

### 33. 保密

- 33.1 在法律允许的范围内, 各方保留从另一方收到的披露方确定为专有和/或机密的所有信息, 或根据披露信息的性质或情况, 真诚地将其视为专有和/或机密的信息 ("机密信息"), 且仅用于商谈、履行或享受合同利益的目的。任何一方在任何情况下均不得以低于合理程度的谨慎程度来保护机密信息, 其中包括但不限于: 定价、业务计划、客户清单、运营和技术数据以及产品计划。接收方在机密信息披露后根据本条承担的保密义务延续 5 (五) 年。
- 33.2 机密信息不包括以下信息:
- (a) 非接受方的过错而为公众所知;
- (b) 在根据合同披露之前已被接受方知悉;
- (c) 对另一方没有保密义务的其他人披露给接收方, 或
- (d) 由接收方独立开发, 无需使用对方的机密信息。

如果任何一方依赖上述例外, 则其业务记录必须支持此类依赖。

- 33.3 Either Party may disclose any Confidential Information of the other Party if required by court or government order or otherwise required by law, so long as such Party notifies the other as soon as possible (if legally permitted) and cooperate to secure a protective order or otherwise protect the Confidential Information.
- 33.4 Nothing in this clause shall prejudice DBS Group's rights in relation to Performance Data under clause 8 (Performance Data) above.

## 34. Data Protection

- 34.1 In order to provide the Services, the processing of personal data (as defined in the European Union's General Data Protection Regulation 2016/679 ("GDPR")) by DBS in GearWatch might be necessary.
- 34.2 Both Parties shall act in accordance with applicable data protection laws, include those of GDPR. In particular, to the extent the Customer, directly or indirectly, shares any "personal data" (as defined in GDPR) shall ensure that it is entitled to share any personal data of its employees, agents and sub-contractors with DBS Group for the purpose of using GearWatch. Customer shall indemnify DBS Group against all claims, liabilities, losses, damages and expenses suffered or incurred by DBS Group as a result of DBS Group's "processing" (as defined in GDPR) of personal data in violation of GDPR to the extent the violation results from Customer's failure to obtain consent to such processing from the "data subject" (as defined in GDPR).

## 35. Entire Agreement

- 35.1 No amendments or additions to the Contract, including any waiver of this requirement for the written form, shall have any validity unless made in writing.

## 36. Severability

- 36.1 If any provision of the Contract is held to be illegal, invalid or unenforceable, the legality, validity and enforceability of the remaining provisions of the Contract shall not be affected or impaired thereby and the Parties shall endeavour in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions.

## 37. Assignment and subcontracting

- 37.1 DBS shall be entitled to freely subcontract its obligations under the Contract and shall be entitled to assign or novate its rights and obligations to any of its Affiliates or any third party which purchases substantially the whole of the business and assets of DBS.
- 37.2 Customer shall not be permitted to subcontract, assign, novate or transfer any of its rights or obligations under the Contract.

## 38. Notices

- 38.1 Notices to be given under the Contract shall be in writing, delivered by registered post, courier or email, and addressed to the recipient Party at any address specified on the Order Confirmation or any other address subsequently provided by that party for the receipt of notices. Notices sent by registered post shall be deemed to have been given at the time the courier's delivery records show it to have been delivered. Notices delivered by registered post shall be deemed to have been received 2 (two) Business Days after posting. Notices sent by email shall be deemed to have been received 1 (one) Business Day after successful transmission.

## 39. Governing Law

- 39.1 The Contract shall be interpreted and construed in accordance with laws of China, to the exclusions of the UN Convention on Contracts for the International Sale of Goods (CISG).

## 40. Jurisdiction/Arbitration

- 40.1 All disputes arising out of or in connection with the Contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules. The award rendered by the arbitrator shall be final and binding upon the Parties. The language of the arbitral proceedings shall be Mandarin.

## 41. Supremacy

- 33.3 如果法院或政府命令要求或法律另有要求，任何一方均可披露另一方的机密信息，只要该方尽快通知另一方（如果法律允许）并合作以确保保护性命令或以其他方式保护机密信息。

- 33.4 本条款中的任何规定均不损害 DBS 集团根据上述第 8 条（性能数据）享有的与性能数据有关的权利。

## 34. 数据保护

- 34.1 为了提供服务，DBS 的 GearWatch 服务可能需要处理个人数据（如 2016/679《欧盟通用数据保护条例》（“GDPR”）所定义）。
- 34.2 双方均应按照适用的数据保护法律（包括 GDPR 的法律）行事。尤其是，在直接或间接共享任何“个人数据”（如 GDPR 定义）的范围内，为了使用 GearWatch，客户应确保有权与 DBS 集团共享其雇员、代理商和分包商的个人数据。客户应赔偿 DBS 集团因违反《通用数据保护条例》对个人数据进行“处理”（如 GDPR 定义）而让 DBS 集团遭受或招致的所有主张、责任、损失、损害和费用，违反 GDPR 是由于客户未能获得“数据主体”对此类处理的同意而导致的（如 GDPR 定义）。

## 35. 完整协议

- 35.1 除非以书面形式进行，否则对合同的任何修改或补充（包括对书面要求的放弃）均不具有任何效力。

## 36. 可分割性

- 36.1 如果合同中的任何条款被认定为非法、无效或不可执行，则合同中其余条款的合法性、有效性和可执行性不会因此受到影响或损害，各当事方应尽力进行真诚的谈判，以用有效的规定代替非法、无效或无法执行的规定，而有效规定的经济效果应尽可能接近非法、无效或无法执行的规定。

## 37. 转让和分包

- 37.1 DBS 有权自由转包其在合同下的义务，并有权将其权利和义务转让或更新给其实质上购买 DBS 全部业务和资产的关联公司或第三方。
- 37.2 客户不得分包、转让、更新或转移其在合同下的权利或义务。

## 38. 通知

- 38.1 根据合同发出的通知应以书面形式，通过挂号信、快递或电子邮件方式发送，并以订单确认书上指定的地址或接收方随后提供的其他地址发送给接收方。通过挂号信发送的通知在快递员交付记录显示的时间被视为已收到。通过挂号邮递方式发送的通知在邮寄后 2（两）个工作日内被视为已收到。通过电子邮件发送的通知在成功传输后的 1（一）个工作日内被视为已收到。

## 39. 适用法律

- 39.1 合同应受中国法律管辖并依其进行解释，但不包含《联合国国际货物销售合同公约》（CISG）。

## 40. 管辖权/仲裁

- 40.1 由合同引起的或与合同有关的所有争议由国际商会仲裁根据规则指定一名仲裁员来最终解决。仲裁员作出的裁决为终局裁决，对双方均具有约束力。仲裁程序的语言为中文普通话。

## 41. 优先原则

# GearWatch Terms and Conditions

Version 1.1



David Brown Santasalo

41.1 In the event of a conflict or ambiguity between the English and Finnish words of this document, the English shall prevail.

41.1 如果本文档的英语和芬兰语版本之间存在冲突或歧义，则以英语为准。