

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.

“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.

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:

- (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 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.
- 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 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:
- DBS is not responsible for ensuring that End Users have adequate maintenance, repair and inspection programs and systems for the Monitored Equipment;
 - 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;
 - 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;
 - 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;
 - 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;
 - 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;
 - 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;
 - 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
 - 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).

- 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, DBS 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:

- (a) 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
- (b) 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.

TERMS APPLICABLE TO THE INSTALLATION SERVICE

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):

- (a) reperform the relevant activities and/or such additional services as may be necessary to cure the breach; or
- (b) 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, DBS shall return the defective item 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 anything other than the defective

item, for DBS to perform its obligations under this clause 26.2.

GENERAL PROVISIONS

27. Taxes

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:

- (a) 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;
- (b) 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
- (c) 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:

- (a) 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");
- (b) for all other liabilities, the higher of:
 - (i) 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
 - (ii) €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.

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 by 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 for 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.
- 29.6 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:

- (a) if Customer becomes overdue for payment in respect of any sum due to be paid to DBS under the Contract; and/or
- (b) 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:

- (a) 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;
- (b) 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;
- (c) 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):

- (a) any sum payable by the Customer under Contract becomes more than 30 (thirty) days overdue, despite Customer having been warned of that fact;
- (b) Customer infringes any Intellectual Property Rights of DBS Group with respect to the Hardware, Cloud Software, Client Software or Website; and/or
- (c) breaches its obligations under clause 10.2.

31.3 Upon termination of this Contract or the GearWatch Service for any reason:

- (a) Customer's right to access and use the GearWatch Service shall immediately cease; and
- (b) 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:

- (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.
- 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 the country, state, region, canton and/or municipality (as applicable) in which DBS is incorporated, to the exclusion 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 English.