

TERMS AND CONDITIONS

1. Definitions

Unless a contrary intention is clear, the terms below (and cognate expressions thereof) shall bear their assigned meanings –

- 1.1. "Agreement" means the agreement between the Parties which consists of:
 - 1.1.1. these terms and conditions ("T&Cs");
 - 1.1.2. the Proposal to which these terms and conditions are attached; and
 - 1.1.3. the EULA; all of which are incorporated herein by this reference;
- 1.2. "Business Day" means any day other than a Saturday, Sunday, or national public holiday in the Republic of South Africa;
- 1.3. "Client" means the client indicated as such on the Proposal;
- 1.4. "Client Data" means all data furnished to Datchi by Client, or generated in the course of the provision of the Services, but excludes any derivative data which is created by Datchi for its own internal purposes, or which is proprietary or confidential to Datchi or its suppliers;
- 1.5. "Client Environment" means, if applicable, the minimum technology configuration and operating conditions to be provided and maintained by Client for the proper operation of the Software as specified in the associated Proposal and/or notified in writing by Datchi from time to time;
- 1.6. "Commencement Date" means the commencement date indicated on the Proposal, failing which the date of Client's written acceptance of the Proposal, subject always to Datchi's written confirmation thereof;
- 1.7. "Confidential Information" means data of any nature, tangible or intangible, oral or in writing and in any format or medium, which by its nature or content is or ought reasonably to be identifiable as confidential and or proprietary to either Party provided or disclosed in confidence, or which may come to the knowledge of the other Party by whatsoever means;
- 1.8. "Data Template" refers to the Datchi Data Template document which prescribes the precise format in which Client must provide input data.
- 1.9. "EULA" means Datchi's End User Licence Agreement, in terms of which it provides the Software and certain related services to its clients, located at <https://datchi.co.za/> or available on request, as updated and amended from time to time;
- 1.10. "Datchi" means Datchi (Pty) Ltd, a private company incorporated in South Africa with registration number 2026/055625/07 and having its registered office address at 54 Via Salara Crescent, Irene Corporate Corner, Centurion;

- 1.11. "IP" means any and all means any creation of the mind that is recognised and/or capable of being protected in terms of the laws of any country, from use by any other person and includes but is not limited to any confidential and/or proprietary information and intellectual property that Datchi has created, acquired or otherwise has rights in and may, in connection with the performance of Datchi's obligations under the Agreement, employ, provide, modify, create or otherwise acquire rights in and includes all concepts; ideas; methods; methodologies; procedures; processes; know-how; techniques; function, process, system and data models; templates; the generalised features of the structure, sequence and organisation of software, user interfaces and screen designs; general purpose consulting and software tools, utilities and routines; and logic, coherence and methods of operation of systems;
- 1.12. "Parties" means Datchi (Pty) Ltd and Client collectively and "Party" means either one of them;
- 1.13. "Personal Information" has the meaning ascribed to in terms of the Protection of Personal Information Act 4 of 2013;
- 1.14. "Personnel" means a Party's employees, directors, agents, independent contractors, sub-contractors or other representatives;
- 1.15. "Proposal" means the Datchi proposal document (regardless of the form or title thereof) accepted by the Parties, regulating an engagement in respect of the supply of the Services to Client, which incorporates these terms and conditions, and which describes the Services and estimated consideration payable by Client;
- 1.16. "Services" means the services to be rendered to Client by Datchi (or on its behalf) pursuant to the Agreement, as more clearly set out in the Proposal, and which includes access to the Software on the terms herein contained; and
- 1.17. "Software" means the proprietary software applications or solutions developed and/or licensed by Datchi (as the case may be), as described in the Proposal, as it may be updated by Datchi at its sole discretion from time to time.
- 1.18. "Written" or "In Writing" means any communication recorded in a readable and reproducible form, including electronic communications such as emails, electronic documents and electronically signed communications, subject to applicable law and any specific signature requirements stipulated in this Agreement.
- 1.19. "Quotation Validity" means the period during which a quotation issued by Datchi remains valid for acceptance by the Client, being thirty (30) calendar days from the date of issue, unless a different validity period is expressly stipulated in the quotation or otherwise agreed in writing by Datchi.

2. Appointment, duration and structure

- 2.1. With effect from the Commencement Date, Client appoints Datchi, and Datchi accepts such appointment, to

provide the Services to the Client in accordance with the terms of the Agreement.

2.2. The Agreement shall continue indefinitely, unless or until terminated in accordance with its terms.

2.3. Client acknowledges that:

2.3.1. these terms and conditions shall apply in addition to the EULA; and

2.3.2. its access to and use of the Software shall at all times be and remain conditional upon its acceptance of the EULA.

3. Software

3.1. Subject to the Client's:

3.1.1. Continued compliance with its payment obligations under the Agreement; and

3.1.2. acceptance of the EULA;

Datchi shall grant Client a licence to access and use the Software for Client's internal business and data processing purposes, subject to the terms, conditions and restrictions contained in the EULA.

3.2. Where the Client, in the course of conducting its business, grants its Personnel access to the Software, the Client shall ensure that such Personnel comply with all applicable terms and conditions of this Agreement, including the End User Licence Agreement (EULA), as if such Personnel were the Client. The Client shall remain responsible for the acts and omissions of its Personnel in connection with their access to and use of the Software. The Client shall indemnify and hold Datchi harmless against any direct losses, damages, liabilities, claims and reasonable costs incurred by Datchi arising from a breach of this Agreement by the Client's Personnel, to the extent caused by such breach and subject to the limitations of liability set out in Clause 10 and applicable law.

4. Services

4.1. Datchi agrees to provide the Services on the basis contemplated in the Proposal.

4.2. Notwithstanding anything to the contrary in the Agreement, Datchi may modify, amend, enhance, update or provide an appropriate replacement for any of the Services or the Software, or any element thereof, at any time; provided that Datchi shall not materially reduce the functionality, availability or reliability of the affected Services or Software.

4.3. Should Client require any additional services which:

4.3.1. are not expressly included in the Services, then such additional services shall be provided subject to the terms and conditions of a separate agreement which shall be concluded between the Parties; or

4.3.2. exceed the volumes indicated in the Proposal, then such additional services/volumes shall be provided by Datchi at Client's request and paid for separately by

Client at Datchi' standard time and material rates, on the terms and conditions of clause 7.

4.4. Data display, historical storage, archiving and backups are subject to the services and retention periods specified in the accepted Proposal. Backups are intended for system recovery and do not extend the Client's agreed data retention period.

4.5. Datchi does not guarantee uninterrupted Services, continuous connectivity or real-time data transmission unless expressly agreed in a written Service Level Agreement.

4.6. The Software provides operational monitoring, reporting and decision-support functionality and is not intended to replace certified safety systems, protective controls or emergency shutdown mechanisms.

4.7. Any additions, modifications, deviations or requirements outside the scope of the accepted Proposal, including additional data points, dashboards, integrations, hardware, installation or development work, shall be subject to a separate written quotation or change request specifying any additional costs and revised timelines. Such changes must be approved in writing by duly authorised representatives of both Parties before implementation. Datchi shall not be obliged to perform any additional or amended work without such written approval.

4.8. Client-Caused Delays - Where delays arise from the Client's failure to provide access, information, approvals, infrastructure or other requirements necessary for the performance of the Services, Datchi shall be entitled to a reasonable extension of time and to recover reasonable additional costs incurred, including standing time, storage, remobilisation and rescheduling costs, provided such costs are communicated to the Client.

4.9. Installation and Commissioning - Installation and commissioning shall be limited to the scope specified in the accepted Proposal. The Client shall inspect and notify Datchi in writing of any material defects or outstanding installation requirements within five (5) business days following notification of completion. Where no such notification is received, the installation shall be deemed accepted for contractual completion purposes, without affecting any applicable statutory rights or warranty obligations.

4.10. Third-Party Services and Connectivity - Unless expressly included in the accepted Proposal, internet connectivity, mobile data, SIM cards, telecommunications services and other third-party services required for the operation of Datchi's solutions shall be the Client's responsibility and expense. Datchi shall not be responsible for interruptions or failures attributable to such third-party services, except to the extent caused by Datchi's breach or negligence.

5. Intellectual Property

5.1. All right, title and ownership of any code, forms, algorithms, methodologies, frameworks or materials developed by or for Datchi or Client independently and

outside of the Agreement and provided during the course of the Agreement ("Existing Material") shall remain the sole property of the Party providing the Existing Material.

5.2. Ownership of Intellectual Property

- 5.2.1. Datchi shall retain all right, title and interest in and to its pre-existing intellectual property, proprietary Software, source code, algorithms, methodologies, frameworks, templates, standard modules, widgets, calculations, tools and technology developed or acquired independently of the Client, including any improvements or enhancements thereto, except where expressly agreed otherwise in writing signed by both parties.
- 5.2.2. Where the Client provides its own intellectual property, including proprietary calculations, formulas, methodologies, processes, designs, technical specifications or other confidential business information, for incorporation into or use in the Software or Services, such intellectual property shall remain the exclusive property of the Client. The Client grants Datchi a limited right to use such intellectual property solely to the extent necessary to perform its obligations under the Agreement, unless otherwise agreed in writing.
- 5.2.3. Where the Client specifically commissions and pays additional development fees for a customised module, widget, calculation, algorithm or other development intended exclusively for that Client, ownership of the specifically commissioned intellectual property shall vest in the Client, provided that such ownership and exclusivity have been expressly agreed in writing by the Parties prior to commencement of development and recorded in the accepted Proposal, Scope of Work or separate development agreement.
- 5.2.4. Any development identified as Client-owned intellectual property under Clause 5.2.3 shall not be sold, licensed, distributed, reproduced or otherwise made commercially available by Datchi to other clients or third parties without the Client's prior written consent.
- 5.2.5. Where the Client requires exclusive ownership of any specific development, functionality, widget, calculation or other intellectual property, such requirement must be disclosed, negotiated and agreed in writing before development commences. The agreement shall clearly identify the intellectual property concerned, the ownership rights, any applicable exclusivity restrictions and the associated development fees.
- 5.2.6. Unless expressly agreed otherwise in writing, payment for development, configuration, customisation or integration services shall not, in itself, transfer ownership of Datchi's pre-existing intellectual property, standard Software, underlying platform, development tools or reusable technology to the Client.
- 5.2.7. Unless expressly agreed otherwise in writing, payment for development, configuration, customisation or integration services shall not, in itself, transfer

ownership of Datchi's pre-existing intellectual property, standard Software, underlying platform, development tools or reusable technology to the Client.

- 5.3. Unless otherwise expressly agreed in writing, Datchi shall retain ownership of all developments, adaptations, enhancements, modifications, adjustments and derivative works created by Datchi in connection with its intellectual property. Notwithstanding the above, where specific developments or derivative works are commissioned by the Client and expressly designated as Client-owned intellectual property in accordance with Clause 5.2, ownership of such agreed developments shall vest in the Client, subject to the agreed contractual terms. Nothing in this clause shall transfer ownership of Datchi's pre-existing intellectual property, underlying Software, platform, standard functionality or reusable development tools to the Client.

6. Clients Obligations

- 6.1. Client shall at its own cost and throughout the term of the Agreement procure and maintain in good working condition and operation the Client Environment and all telecommunications links necessary for the proper performance of the Services and Client's use of the Software.
- 6.2. In addition to any responsibilities or obligations of Client set out in the Proposal, Client has the sole responsibility for –
 - 6.2.1. the transfer of its work onto and proving the operation and the use of the Software in its business and operations;
 - 6.2.2. use of the Software, including audit controls, operating procedures, restart and recovery routines, security and accuracy of input and output data, and any other procedures necessary for Client's intended use of the Software;
 - 6.2.3. ensuring the accuracy, correctness and completeness of all Client Data provided to or collected through the Software, including data originating from the Client's equipment, sensors, systems and infrastructure. The Client shall remain responsible for verifying the suitability and accuracy of such data before relying on it for operational or business decisions. Datchi shall not be liable for inaccuracies arising from incorrect, incomplete or unreliable Client Data, except to the extent caused by Datchi's own breach, negligence or failure to perform the Services in accordance with the Agreement.
- 6.3. To enable Datchi to provide the Services, Client agrees to provide ongoing assistance, liaison, input, support and full co-operation to the extent required by Datchi and at Clients cost, which may include without limitation:
 - 6.3.1. obtaining and maintaining necessary licences and consents and rendering all decisions and approvals required as soon as is reasonably possible;

- 6.3.2. making available sufficiently authorised and qualifies Client Personnel and ensuring that they are available for workshops, group discussions and specific task execution as and when required;
- 6.3.3. notifying Datchi as soon as reasonably possible of any issues, concerns or disputes;
- 6.3.4. ensuring that no malicious software is introduced into Client's or Datchi's systems by its Personnel or any third party.
- 6.4. Datchi may, if and to the extent indicated in a Proposal, provide training and support to Client regarding its access to and use of the Software. Save where expressly agreed to the contrary, any and all such support shall be provided at Datchi standard time and material rates and shall be payable as set out in clause 7 below.
- 6.5. Client warrants that: (i) it has not been induced to enter into the Agreement by any prior representations, warranties or guarantees (whether oral or in writing), except as expressly contained in the Agreement, (ii) by entering into the Agreement Client is not acting in breach of any agreement to which Client is a party, and (iii) the use of Client Data by Datchi does not and will not infringe the intellectual property rights of any other person, and Client hereby indemnifies and holds Datchi harmless from any claim for damages by any third party as a result of the breach of these warranties, including all legal costs incurred on an attorney-and-own-client basis.
- 6.6. Client acknowledges and agrees that (i) the Software and Services, and any results or deliverables they produce, rely on the Client Data and provided by Client; and (ii) Datchi shall have no obligation or liability for, or arising from, any possible falsity, inaccuracy, incompleteness or unavailability of the Client Data or any deliverables or results based on the Client Data or the incorrect input of Client Data onto the Software.
- 6.7. The Client shall maintain suitable connectivity, power supply, compatible equipment, network access and infrastructure necessary for the effective operation of the Services.
- 6.8. The Client shall promptly notify Datchi of any changes to sensors, PLCs, data loggers, network configurations or equipment that may affect data accuracy, connectivity or system performance.
- 7. Consideration and payment terms**
- 7.1. Fees and Charges - In consideration for the equipment, hardware, installation and Services supplied by Datchi, the Client shall be liable for the fees and charges stipulated in the accepted Proposal, which shall be exclusive of the following, unless expressly stated otherwise:
- 7.1.1. value-added tax ("VAT") which shall be charged in addition, at the rate and in the manner for the time being prescribed by law;
- 7.1.2. Any other applicable taxes, duties, levies or charges imposed by a relevant revenue authority. Where foreign withholding taxes are required to be deducted from payments to Datchi, the amount payable shall be adjusted to ensure that Datchi receives the full amount invoiced, to the extent permitted by applicable law;
- 7.1.3. Telecommunications, internet connectivity, mobile data, SIM card charges and other third-party connectivity costs, unless expressly included in the accepted proposal; and
- 7.1.4. Additional Services requested by the Client, including additional technical support, training, development, integrations, dashboard customisation and other work outside the agreed scope, which shall be subject to separate quotation and approval.
- 7.2. Hardware, Equipment and Installation Payments:
- 7.2.1. Unless otherwise expressly agreed in a written agreement signed by both Parties, all hardware, equipment, consumables, installation and commissioning costs shall be payable 100% upfront, prior to procurement, delivery or commencement of work.
- 7.2.2. Datchi shall not be obliged to procure equipment, commence installation or perform related work until the required payment has been received in full.
- 7.3. Subscription Fees and Monthly Debit Orders
- 7.3.1. Recurring subscription fees shall be calculated according to the packages, services and number of data points selected by the Client at the applicable agreed rates.
- 7.3.2. Subscription fees shall be payable monthly in advance by debit order at the beginning of each calendar month. The Client shall provide the necessary debit order authorisation and ensure that sufficient funds are available for payment.
- 7.3.3. Subscription fees shall commence on the date specified in the accepted Proposal. Where activation or commissioning is delayed due to the Client's failure to provide the required access, information, infrastructure or approvals, Datchi may commence billing from the agreed commencement date, provided Datchi is ready and reasonably able to perform its obligations.
- 7.3.4. Any approved changes to subscription packages, data points, dashboards, integrations, storage, retention periods or additional Services shall be charged at the applicable rates agreed at the time of the change.
- 7.4. Non-Payment and Suspension of Services
- 7.4.1. Should any monthly subscription payment remain outstanding for seven (7) calendar days after its due date, Datchi shall be entitled, following electronic written notice to the Client, to suspend access to the affected sites, dashboards, Software and associated Services until all outstanding amounts have been settled.

7.4.2.	Suspension may include the discontinuation of data collection, transmission, processing, hosting and storage services associated with the affected sites, where technically feasible and permitted by applicable law.	restore historical data that has been lawfully deleted in accordance with clause 7.5.
7.4.3.	Datchi shall not be liable for loss of access, interruption of monitoring or unavailability of data arising from a suspension lawfully implemented in accordance with this clause, subject to applicable law.	
7.4.4.	Suspension of Services shall not relieve the Client of any outstanding payment obligations.	
7.5.	Historical Data Retention and Deletion Following Non-Payment	
7.5.1.	Where subscription fees remain unpaid for thirty (30) calendar days after the applicable payment due date, Datchi may, following prior written notice to the Client, discontinue the associated hosting, storage and data processing services and permanently delete historical Client Data relating to the affected sites, subject to applicable law and any binding data retention obligations.	
7.5.2.	The Client shall remain responsible for requesting and arranging the export of any Client Data it wishes to retain before the notified deletion date. Any such export shall be subject to technical feasibility, applicable charges and payment arrangements agreed in writing.	
7.5.3.	Datchi shall not be required to continue incurring hosting, storage, infrastructure or processing costs for unpaid Services beyond the applicable retention period, except where required by applicable law or expressly agreed in writing and paid for in advance by the Client.	
7.5.4.	Client Data lawfully deleted in accordance with this Agreement may be permanently irrecoverable. Datchi shall have no obligation to reconstruct, restore or recreate such data.	
7.6.	Business Continuity and Data Preservation	
7.6.1.	Unless expressly agreed otherwise in writing, Datchi shall not be responsible for maintaining Client Data beyond the agreed retention periods or for ensuring the Client's business continuity.	
7.6.2.	Subject to applicable law and the limitations of liability under Clause 10, Datchi shall not be liable for business interruption, operational losses or damages arising from the Client's failure to maintain adequate backups or from the lawful suspension, termination or deletion of data in accordance with the Agreement.	
7.7.	Restoration of Services	
7.7.1.	Following payment of all outstanding amounts and any applicable agreed reactivation charges, Datchi may restore access to the affected Services, subject to technical availability. Datchi shall not be obliged to	
7.8.	Annual Fee Review and Price Adjustments	
7.8.1.	Datchi's fees and charges shall be reviewed annually and may be subject to reasonable adjustments determined by Datchi. The Client shall be notified reasonably in advance of any adjustment.	
7.8.2.	Where material changes in supplier pricing, foreign exchange rates, import duties, telecommunications or cloud hosting costs occur, Datchi may propose reasonable adjustments to the affected charges. Any adjustment to an accepted fixed price shall require the Client's written agreement unless otherwise expressly provided for in the accepted Proposal or this Agreement.	
7.9.	Interest on Overdue Amounts	
7.9.1.	Amounts payable by the Client which remain unpaid after the applicable due date shall bear interest at the prime overdraft rate of Datchi's bankers, as published from time to time, calculated from the due date until payment in full, subject to applicable law.	
7.10.	Invoice Disputes	
7.10.1.	The Client shall notify Datchi in writing of any disputed invoice amount within seven (7) calendar days of receipt of the invoice, providing reasonable details of the dispute.	
7.10.2.	The Client shall remain responsible for payment of all undisputed amounts by the applicable due date. Any invoice dispute shall be addressed in good faith and shall not automatically suspend payment obligations relating to other undisputed amounts.	
7.11.	Additional Data Retention and Services	
7.11.1.	Additional data retention, cloud storage, customised data exports, integrations, dashboard development and related Services shall be subject to additional charges as specified in the accepted Proposal or otherwise agreed in writing.	
7.12.	Quotation Validity – All quotations issued by Datchi shall remain valid for the Quotation Validity period. Datchi reserves the right to revise pricing following expiry of this period.	
8.	Breach and Termination	
8.1.	Should either Party ("Defaulting Party") –	
8.1.1.	commit a material breach of the Agreement and fail to remedy the breach within 14 (fourteen) calendar days of having been called on in writing by the other Party to do so;	
8.1.2.	effect or attempt to affect a compromise or composition with its creditors;	

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| <p>8.1.3. be provisionally or finally liquidated or placed under judicial management; or</p> <p>8.1.4. commit a breach of the EULA;</p> <p>then the other Party ("Innocent Party") may, in its discretion and without prejudice to its rights in the Agreement or in law, terminate the Agreement to which the event relates on written notice to the Defaulting Party.</p> <p>8.2. Termination for Convenience - Subject to applicable law, either Party may elect not to renew the Agreement upon expiry of the current twelve (12) month subscription term. The Client may exercise this right through the cancellation procedure stipulated in Clause 8.6. Such cancellation shall not release either Party from obligations accrued before the effective cancellation date or prevent earlier termination where expressly permitted under this Agreement or applicable law.</p> <p>8.3. Should any licence, permit, certificate, consent, exemption or other legal requirement of a material nature without which Datchi is unable effectively to provide Services under the Agreement expire, terminate, not be renewed or be withdrawn or refused for any reason whatsoever, then Datchi may terminate the Agreement on 7 (seven) calendar days' written notice to Client.</p> <p>8.4. Notwithstanding anything to the contrary herein contained a Party may, by written notice served on the other Party terminate the Agreement with immediate effect if any one or more of the following events occur:</p> <p>8.4.1. the Services or any part thereof cease to be fit for use in the relevant territory or fail to meet the regulatory standards required under applicable law; and, in such an event, Datchi must be informed of such reasons in writing and a reasonable time of no must be given to Datchi to address the issues of which it was notified.</p> <p>8.5. Upon termination of this Agreement, the Client may request the export of Client Data remaining in Datchi's possession or control, provided that such data has not already been lawfully deleted in accordance with Clause 7.5, Clause 9.8 or applicable law. Datchi shall provide reasonable assistance with such export, subject to technical feasibility and applicable data protection obligations. Where termination results directly from Datchi's material breach, reasonable standard data export assistance shall be provided at Datchi's cost. In all other circumstances, additional migration, conversion, development or support services shall be charged to the Client at agreed rates. Nothing in this clause shall require Datchi to retain, reconstruct or restore data that has been lawfully deleted, or to continue providing unpaid hosting or storage services.</p> <p>8.6. Automatic Renewal and Cancellation of Subscription</p> <p>8.6.1. Initial Subscription Term – Unless otherwise stipulated in the accepted Proposal, the Client's subscription shall be subject to an initial fixed period of twelve (12) months commencing on the agreed Commencement Date, as provided for in Clause 2.2.</p> | <p>8.6.2. Automatic Renewal – Upon expiry of the initial subscription term, the subscription shall automatically renew for successive periods of twelve (12) months, unless cancelled in accordance with this clause, subject to applicable law.</p> <p>8.6.3. Subscription Fees – Subscription fees shall remain payable monthly in advance in accordance with Clause 7.3.2, notwithstanding the twelve (12) month contractual commitment.</p> <p>8.6.4. Cancellation of Subscription – The Client may submit a cancellation request at any time by selecting the "Cancel Subscription" button within the Datchi platform and completing the cancellation process.</p> <p>8.6.5. Effective Date of Cancellation – Unless otherwise agreed in writing or required by applicable law, cancellation submitted during a fixed subscription term shall take effect upon expiry of the current twelve (12) month term and shall prevent the subscription from renewing for a further term.</p> <p>8.6.6. Confirmation of Cancellation – Datchi shall provide electronic confirmation of the cancellation request, recording the date of submission and the effective cancellation date.</p> <p>8.6.7. Outstanding Payment Obligations – The Client shall remain responsible for subscription fees and other contractual obligations payable up to the effective cancellation date, subject to applicable law.</p> <p>8.6.8. Alternative Cancellation Method – Where the cancellation functionality is unavailable or inaccessible, the Client may submit a written cancellation request to Datchi through its designated support email address. Such request shall be treated as valid notice upon receipt by Datchi.</p> <p>8.6.9. Access to Services and Data – Following the effective cancellation date, Datchi may discontinue access to the affected subscription Services. Data retrieval, migration, retention and deletion shall be governed by Clauses 8.5 and 9.8, the Data Processing Addendum and applicable law.</p> <p>8.6.10. Statutory Rights – Nothing in this clause shall exclude or restrict any cancellation, renewal, notification or other rights afforded to the Client under applicable law. Where applicable law requires a different renewal arrangement, such requirements shall prevail.</p> <p>9. Confidentiality, privacy and personal information</p> <p>9.1. Without the prior written consent of the other Party, each Party will keep confidential and will not disclose to any person:</p> |
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- 9.1.1. The details of the Agreement, as well as the details of all the transactions or agreements contemplated in the Agreement; and
- 9.1.2. all information relating to the business, the operations, affairs, assets, and liabilities of any the Parties, together with the Confidential Information.
- 9.2. Datchi and the Client are each responsible for complying with their respective obligations under applicable privacy and protection of personal information laws governing the processing of Personal Information.
- 9.3. Both Parties shall take reasonable precautions to preserve the integrity of such Personal Information and to prevent any unauthorised access, corruption, or loss of such Personal Information.
- 9.4. Client Data - The Client retains ownership of its data and authorises Datchi to process, store and analyse such data for the provision, maintenance and improvement of its Services.
- 9.5. Data Accuracy - The Client remains responsible for the accuracy, completeness and lawful collection of its data. Datchi shall not be liable for inaccuracies originating from Client equipment, systems or information.
- 9.6. Data Retention – Datchi's standard subscription includes twelve (12) months of live historical data retention. Any data retention beyond this period shall be subject to additional charges calculated according to the number of data points retained in storage. Where the Client does not elect to pay for extended retention, data older than twelve (12) months may be permanently deleted from Datchi's database, subject to applicable law and the data deletion provisions of this Agreement.
- 9.7. Data Availability - Datchi shall not be liable for data loss, delays or interruptions caused by Client equipment, connectivity, power failures or third-party systems outside its reasonable control.
- 9.8. Client Data shall be retained for the period specified in the accepted Proposal, subject to Clauses 7.5 and 8.5, applicable law and any agreed data preservation arrangements. Upon expiry of the applicable retention period, lawful termination of the Agreement or deletion following non-payment, Datchi may securely delete or anonymise Client Data, subject to applicable legal retention obligations. Any data export, retrieval or migration shall be subject to technical feasibility and applicable agreed charges. Datchi shall not be obliged to retain Client Data beyond the applicable retention period unless expressly agreed in writing or required by law.
- 9.9. Industrial Data Disclaimer - The Services are intended for monitoring, reporting and decision support and shall not replace independent safety systems or operational controls. The Client remains responsible for operational decisions and site safety.

10. Limitation of liability

- 10.1. To the maximum extent permitted by applicable law, each Party's total aggregate liability arising out of or in

connection with this Agreement, whether in contract, delict, negligence, indemnity or otherwise, shall be limited to the total fees paid or payable by the Client to Datchi during the six (6) months immediately preceding the event giving rise to the claim. This limitation shall apply collectively to all claims arising from the Agreement and shall not constitute a separate limit for each claim or event.

- 10.2. To the maximum extent permitted by applicable law, neither Party shall be liable to the other for any indirect, incidental, special or consequential loss or damage, including loss of profits, revenue, production, business opportunities, goodwill, anticipated savings or business interruption, whether foreseeable or otherwise, arising out of or in connection with this Agreement. Datchi shall not be liable for operational decisions made by the Client based on information displayed through the Software or Services, except to the extent such liability cannot lawfully be excluded.
- 10.3. The limitations and exclusions contained in this Clause 10 shall apply to all claims and liabilities arising under or in connection with this Agreement, including claims relating to confidentiality, intellectual property, indemnification obligations, data loss and negligence, to the maximum extent permitted by applicable law. Nothing in this Agreement shall exclude or limit liability for fraud, wilful misconduct or any other liability that cannot lawfully be excluded or limited under applicable law. The limitations in this Clause 10 shall not restrict the Client's obligation to pay fees, charges, interest or other amounts properly due to Datchi under this Agreement.
- 10.4. Datchi shall not be liable for any loss or damage of whatsoever nature suffered by Client arising out of or in connection with any breach of the Agreement by Client or any act, misrepresentation, error or omission made by or on behalf of Client or Client's Personnel. Datchi accepts no liability whatsoever for service interruptions, accidents or any operational aspect of Client.
- 10.5. This clause 10 shall survive termination of the Agreement.

11. General

- 11.1. The Parties warrant to each other that they have taken or procured the taking of all steps, actions and corporate/executive proceedings needed for the Agreement to be binding on them. Except as expressly set forth in the Agreement, Datchi does not make any representations or warranties, express or implied, including but not limited to any warranties of merchantability or fitness for a particular purpose. Unless otherwise specifically stated, this Agreement supersedes and replaces all prior commitments, undertakings, warranties or representations, whether written or oral, between the Client and Datchi in respect of the subject matter hereof. Without limiting the foregoing, Datchi does not make any representations or warranties whatsoever regarding the accuracy, completeness or adequacy of the Services, the Software or any other information, materials, products or services provided under or in connection with the Agreement.

- 11.2. The Client shall indemnify and hold Datchi harmless against third-party claims, losses, damages, liabilities and reasonable legal costs arising from the Client's misuse of the Software or Services, inaccurate or unlawful Client Data, unauthorised modifications, breach of this Agreement, or negligent or unlawful acts or omissions by the Client or persons acting under its authority, except to the extent caused by Datchi's own breach, negligence or wilful misconduct, and subject to applicable law.
- 11.3. The Client acknowledges and agrees that, by accepting a Proposal or quotation, issuing a purchase order, placing an order for Services, or electronically accepting these Terms and Conditions through Datchi's website or Software, the Client accepts and agrees to be bound by these Terms and Conditions, provided that they have been made available to the Client before acceptance.
- 11.4. No amendment, variation, deviation or addition to the Agreement, accepted Proposal, Scope of Work, specifications, deliverables, timelines, pricing or any other agreed terms shall be valid or binding on Datchi unless recorded in writing and expressly approved by duly authorised representatives of both Parties. Any changes requested by the Client after acceptance of the Proposal shall be subject to Datchi's written approval and may result in additional fees, revised timelines or other adjustments, which must be agreed in writing before the changes are implemented. No verbal instruction, informal request or conduct by either Party shall constitute acceptance of any variation or additional work without such written approval.
- 11.5. No failure by a Party to enforce any provision of the Agreement shall constitute a waiver of such provision or affect in any way a Party's right to require the performance of such provision at any time in the future, nor shall a waiver of a subsequent breach nullify the effectiveness of the provision itself.
- 11.6. The Parties choose the addresses, which are set out opposite their names in the Proposal, as the addresses at which all notices, legal processes and other communications must be delivered, for the purposes of the Agreement.
- 11.7. Client may not assign or transfer any of its rights or obligations under the Agreement to any other party without the prior written consent of Datchi, which consent may not be unreasonably withheld.
- 11.8. Nothing in the Agreement shall constitute or be deemed to constitute a partnership between the Parties hereto and no Party shall have the authority to bind the other Party in any way, unless expressly authorised in terms of the Agreement.
- 11.9. The Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa.
- 11.10. Any dispute which arises between the Parties shall be dealt with as follows (on the basis that this clause 11.10 is severable from the rest of the Agreement and shall remain valid and binding on the Parties notwithstanding any termination of the Agreement:
- 11.10.1. in the first instance, it shall be addressed by means of joint cooperation or discussion between the individuals directly involved in the execution of the Agreement;
- 11.10.2. should the Parties be unable to resolve a dispute, the dispute will be finally resolved in accordance with the Rules of AFSA, by an arbitrator or arbitrators appointed by it. Either Party may demand that a dispute be referred to arbitration by giving written notice to that effect to the other Party.
- 11.10.3. the arbitration shall be held at Pretoria and in English;
- 11.10.4. the costs of any reference to arbitration will be borne by the unsuccessful Party, unless otherwise determined by the Parties or the arbitrator, irrespective of which Party referred the dispute to arbitration; and
- 11.10.5. nothing in this Agreement shall preclude either Party from obtaining interim relief on an urgent basis from a court of competent jurisdiction.
- 11.11. In the event of any inconsistency between the contractual documents, the following order of precedence shall apply: (i) the signed Proposal, in respect of commercial matters including pricing, payment arrangements, equipment, scope of Services and agreed service specifications; (ii) these Terms and Conditions; (iii) the Data Processing Addendum (DPA); and (iv) the End User Licence Agreement (EULA). Notwithstanding the above, the DPA shall prevail in matters relating to the processing and protection of Personal Information, to the extent required by applicable law. No provision of the Proposal shall override or amend the intellectual property rights, confidentiality obligations, indemnities, limitations of liability, data protection obligations or other legal protections contained in these Terms and Conditions unless the relevant amendment expressly identifies the clause being amended and is agreed to in writing by duly authorised representatives of both Parties.
- 11.12. Non-Solicitation - During the term of this Agreement and for twelve (12) months thereafter, the Client shall not knowingly solicit for employment or engagement any Datchi employee or contractor directly involved in providing Services to the Client, without Datchi's prior written consent. This restriction shall not apply to general recruitment advertisements not specifically directed at such persons or to persons who independently approach the Client.
- 11.13. Severability - Should any provision of this Agreement be found invalid, unlawful or unenforceable, the remaining provisions shall continue in full force and effect to the extent permitted by law.
- 11.14. Equipment and Software Ownership - The sale and payment of equipment or hardware shall not transfer ownership of Datchi's software, source code, intellectual property or proprietary technology to the Client. Access to and use of Datchi's software and platform shall remain subject to the applicable subscription, licence and End User Licence Agreement.
- 11.15. Interpretation of Agreement – Contra Proferentem

The Parties acknowledge that this Agreement is entered into on a commercial, business-to-business basis. Neither Party shall have fewer rights, greater obligations or be placed at a contractual disadvantage solely because it drafted, prepared or proposed this Agreement or any provision thereof.

The Parties expressly agree that the principle of contra proferentem, whereby an ambiguous contractual provision may be interpreted against the Party responsible for its drafting, shall not apply solely by reason of the identity of the drafting Party, to the extent permitted by applicable law.

12. Equipment, Hardware and Consumables

- 12.1. Supply of Equipment - Equipment, hardware and consumables supplied by Datchi shall be limited to the items expressly specified in the accepted Proposal.
- 12.2. Ownership of equipment and hardware shall remain with Datchi until payment has been received in full.
- 12.3. Risk of loss, theft or damage to equipment shall pass to the Client upon delivery, except where caused by Datchi's negligence or breach of contract.
- 12.4. The Client shall inspect equipment upon delivery and notify Datchi in writing of any visible damage, shortages or incorrect items within five (5) business days. Failure to provide such notification shall constitute acceptance of the apparent condition and quantity of the equipment, without prejudice to any latent defects, warranties or statutory rights.
- 12.5. Equipment and hardware shall be subject to the applicable manufacturer's warranty and any additional warranty expressly agreed in writing by Datchi. Nothing in this clause shall exclude or limit any statutory warranty or other rights that cannot lawfully be excluded.
- 12.6. Consumables, cables, connectors, batteries, replacement parts, repairs and maintenance shall be charged separately unless expressly included in the accepted Proposal.
- 12.7. Datchi shall not be responsible for equipment failure or damage arising from misuse, unauthorised modifications, unsuitable operating conditions, external electrical disturbances or incompatible Client infrastructure, except to the extent caused by Datchi's breach or negligence or where liability cannot lawfully be excluded.
- 12.8. Cancellation of Equipment Orders - Where the Client cancels an accepted order for equipment or hardware, Datchi may recover reasonable and demonstrable costs already incurred, including non-refundable supplier charges, specially ordered equipment and committed procurement costs, subject to applicable law. Any remaining prepaid amount shall be refunded after deduction of lawful charges.
- 12.9. Returns and Refunds - Returns of equipment or consumables not arising from defects or statutory rights shall require Datchi's prior written authorisation. Returned items may be subject to reasonable inspection, handling and restocking charges disclosed to and accepted by the

Client. Defective goods and applicable statutory remedies shall be dealt with in accordance with applicable law.

- 12.10. Client Specifications and Compatibility - Where equipment is selected or supplied based on specifications, drawings, technical information or existing infrastructure provided by the Client, the Client shall be responsible for the accuracy and completeness of such information. Datchi shall not be liable for incompatibility arising from inaccurate or incomplete Client information, except where Datchi has expressly undertaken responsibility for verifying compatibility or has acted negligently.
- 12.11. Alternative or Replacement Equipment - Where Datchi proposes alternative, replacement or equivalent equipment, the relevant specifications and any material differences shall be communicated to the Client for written approval before supply. Any resulting changes to price, functionality or delivery shall be agreed in writing.
- 12.12. Site Conditions - The Client shall ensure that the installation site is accessible, safe and reasonably suitable for the equipment, including the availability of required power, network connectivity and infrastructure. Additional work or materials required due to unsuitable site conditions shall be quoted separately and shall require the Client's approval.
- 12.13. Repairs and Onsite Support - Unless expressly included in the accepted Proposal or applicable warranty, onsite callouts, travel, fault investigations, repairs, replacement equipment and maintenance services shall be charged at Datchi's applicable rates, subject to prior agreement with the Client.

13. Resellers, Brokers and Intermediaries

- 13.1. Where the Client acts as a reseller, broker, agent or intermediary in supplying, promoting or facilitating Datchi's products or Services to a third party ("End Customer"), the Client shall remain responsible for all contractual and payment obligations owed to Datchi, unless otherwise agreed in writing.
- 13.2. The Client shall not make any representations, warranties, commitments or guarantees on behalf of Datchi beyond those expressly authorised by Datchi in writing.
- 13.3. Where Datchi's Software or Services are supplied through a reseller, broker or intermediary, the reseller shall ensure that the End Customer is provided with and expressly accepts Datchi's applicable Terms and Conditions, End User Licence Agreement (EULA) and Data Processing Addendum (DPA), where applicable, before accessing or using the Software or Services. The reseller shall incorporate this requirement into its quotations, proposals and contractual arrangements with the End Customer and shall retain reasonable evidence of such acceptance. Datchi reserves the right to require direct electronic acceptance of its applicable terms by the End Customer before activating or granting access to the Software or Services.

- 13.4. Datchi shall not be bound by any separate agreement between the Client and the End Customer unless Datchi expressly agrees to its terms in writing.
- 13.5. The Client shall indemnify Datchi against third-party claims, losses and reasonable costs arising from the Client's unauthorised representations, breach of this clause or failure to obtain required End Customer agreements, to the extent caused by the Client and subject to applicable law.
- 13.6. No commission, referral fee, discount, exclusivity or other intermediary entitlement shall arise unless expressly agreed in writing by Datchi.
- 13.7. Unless otherwise agreed in writing, the Client shall have no authority to bind Datchi contractually or to act as Datchi's legal agent.

14. Independence of Sites

- 14.1. Where Datchi provides Services to multiple sites under a single Client agreement, each site shall be treated as separate and independent for purposes of service performance, suspension, termination and liability. Any failure, interruption, dispute, suspension or termination affecting one site shall not automatically affect the Services or contractual obligations relating to any other site. Any liability arising from Services provided at a particular site shall be assessed independently and limited to that site, subject to the limitations of liability set out in Clause 10 and applicable law.

15. Advertising and Promotional Content

- 15.1. Datchi reserves the right to display advertisements, promotional material and third-party content within its Software and dashboards, provided that such content does not materially interfere with the agreed functionality of the Services or breach applicable confidentiality and data protection laws.