

## SOFTWARE LICENSE AGREEMENT

Entered into between

**DATATILL Proprietary Limited**

(Registration number 2015/020006/07)

(hereinafter referred to as the “**Licensor**”)

and

---

(Registration number \_\_\_\_/\_\_\_\_/\_\_\_\_)

(hereinafter referred to as the “**Licensee**”)

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**1. INTERPRETATION**

1.1 In this Agreement –

- 1.1.1 Clause headings are for convenience only and reference thereto shall not be used in the interpretation of nor modify nor amplify the terms of this Agreement nor any clause hereof.
- 1.1.2 Unless a contrary intention clearly appears, words importing –
  - 1.1.2.1 the singular includes the plural and *vice versa*;
  - 1.1.2.2 a natural person includes an artificial or juristic person and *vice versa*;
  - 1.1.2.3 any one gender includes the other genders, as the case may be.

1.2 In this Agreement, unless inconsistent with or otherwise indicated by the context, the following expressions shall have the meanings assigned to them hereunder and cognate expressions shall have corresponding meanings, namely –

- 1.2.1 "**AFSA**" means the Arbitration Foundation of Southern Africa;
- 1.2.2 "**Agreement**" means the agreement recorded in this document, including all Annexures hereto;
- 1.2.3 "**Monthly Subscription**" means the monthly license fee payable by the Licensee to the Licensor as further defined in clause 6.1;
- 1.2.4 "**Business Day**" means any day other than a Saturday, Sunday or gazetted national public holiday in the Republic of South Africa;
- 1.2.5 "**Commencement Date**" means, notwithstanding the Signature Date, the date defined in item 7 of **Annexure A**;
- 1.2.6 "**Confidential Information**" means –
  - 1.2.6.1 any information of whatsoever nature, which has been or may be obtained by a Party from the other, whether in writing or in electronic form or pursuant to discussions between the Parties, or which can be obtained by examination, testing, visual inspection or analysis, including scientific, business or financial data, know-how, formulae, processes, designs, sketches, photographs, plans, drawings, specifications, sample reports, models, customer lists, price lists, studies, findings, computer software, inventions or ideas; and
  - 1.2.6.2 analyses, concepts, compilations, databases, studies and other material prepared by or in possession or control of a Party which contains or otherwise reflects or is generated from any information belonging to the other Party, but excluding any information which is lawfully in the public domain;

- 1.2.7 "**Copyright**" means all rights of copyright whether in existence or in the future in and to the Software, including drawings, sketches, flow charts, designs and the format or layout of computer generated files relating thereto;
- 1.2.8 "**Designated Location**" means the location where the dedicated server, as defined in item 9 of **Annexure A**, is situated and which is the delivery and installation address for the Software;
- 1.2.9 "**Enhancement**" means a significant change to the Software resulting in the addition of a feature or capability not present in the Software prior to the introduction of the change, as well as, any change to the Software designed to permit the use of the Software on hardware and/or in conjunction with operating system software other than that for which the Software was initially designed to interact with;
- 1.2.10 "**Intellectual Property Rights**" means all present and future rights in and to the Software, as well as, all other ancillary rights which may in the future be based thereon, including the Copyright;
- 1.2.11 "**Licensee**" means \_\_\_\_\_, the further details of which are contained in **Annexure A** hereof;
- 1.2.12 "**Licensor**" means DATATILL Proprietary Limited, a private company, with the registration number 2015/020006/07, registered in accordance with the company laws of the Republic of South Africa;
- 1.2.13 "**Modification**" means the change, improvement or customisation of the Software at the time of installation or thereafter;
- 1.2.14 "**Parties**" means the parties to this Agreement, being the Licensor and the Licensee; and "**Party**" means any one of them, as the context may require;
- 1.2.15 "**Prime Rate**" means the publicly quoted basic rate of interest, compounded monthly in arrears and calculated on a 365 (three hundred and sixty-five)-day year irrespective of whether or not the year is a leap year, from time to time published by First National Bank, a division of First Rand Limited, as being its prime overdraft rate, as certified by any manager of that bank whose appointment and designation it will not be necessary to prove;
- 1.2.16 "**Signature Date**" means the date on which the last of the Parties signs this Agreement;
- 1.2.17 "**Software**" means the software as described and itemised in **Annexure B** hereof, and which includes any one or more modules of the software presently available, as well as, future Upgrades, Modifications and Enhancements made thereto, or other improvements to the software and/or the Software Documentation as may be the case;
- 1.2.18 "**Software Documentation**" means the written documentation containing detailed instructions pertaining to the use, implementation and operation of the Software;
- 1.2.19 "**Term**" means the period contemplated in clause 4 hereof;

- 1.2.20 "**Upgrade**" means a change or improvement to the Software, which relates to or affects the operating performance or any aspect thereof, but which does not alter the inherent basic operation and/or functioning of the Software;
- 1.2.21 "**VAT**" means value-added tax levied in terms of the Value-added Tax Act No. 89 of 1991.
- 1.3 Any reference to any statute, regulation or other legislation shall be a reference to that statute, regulation or other legislation as at the Signature Date, and as amended or substituted from time to time.
- 1.4 The words "include", "including" and "in particular" shall be construed as being by way of example or emphasis only and shall not be construed, nor shall they take effect, as limiting the generality of any preceding word/s;
- 1.5 The words "other" and "otherwise" shall be construed *eiusdem generis* with any preceding words if a wider construction is possible.
- 1.6 Where any term is defined within the context of any particular clause in this Agreement, the term so defined, unless it is clear from the clause in question that the term so defined has limited application, shall bear the meaning assigned thereto for the purposes of this Agreement, notwithstanding that the term has not been defined in this clause 1.
- 1.7 If any provision in this clause 1 is a substantive provision conferring a right or imposing an obligation on any Party then, notwithstanding that such provision is contained in such clause, effect shall be given thereto as if such provision were a substantive provision in the body of the Agreement.
- 1.8 When any number of days is prescribed in this Agreement, same shall be reckoned exclusively of the first and inclusively of the last day, unless the last day falls on a day which is not a Business Day, in which case the last day shall be the next succeeding Business Day.
- 1.9 Where the day upon or by which any act is required to be performed is not a Business Day, the Parties shall be deemed to have intended such act to be performed upon or by the next succeeding Business Day.
- 1.10 The expiration or termination of this Agreement shall not affect those provisions of this Agreement which expressly provide that they will operate after any such expiration or termination, or which, of necessity, must continue to have effect after such expiration or termination, notwithstanding the fact that the clauses themselves do not expressly provide for this.

**2. INTRODUCTION**

- 2.1 The Licensor is the owner of the Software.
- 2.2 The Licensee wishes to obtain a license to use the Software.
- 2.3 The Licensor has agreed to grant the Licensee a license to use the Software subject to the terms and conditions set out herein.

**3. GRANT OF LICENSE**

The Licensor hereby grants the Licensee a non-exclusive and non-transferable right to utilise the Software for the period described herein and at the Designated Location.

**4. COMMENCEMENT AND DURATION**

This Agreement shall commence on the Commencement Date and shall endure for a period of one month (“**Term**”). Thereafter, and provided that neither Party has given a minimum of 1 (one) months’ written notice to the other informing of its intention to terminate the Agreement, the Term will automatically renew for an additional month (“**Renewal Period**”) with the provisions of this Agreement applying *mutatis mutandis* to each Renewal Period.

**5. SCOPE OF LICENSE AND UNDERTAKINGS OF THE LICENSEE**

- 5.1 The license, granted herein, authorises the Licensee to use the Software, for the purpose of enhancing and assisting its internal business structure, subject to its utilisation being compliant with the Software Documentation provided.
- 5.2 The Licensee acknowledges that the license, granted in terms hereof, limits it to installing, utilising, accessing and/or displaying a single copy of the Software per single server utilised by it in its business operations, such as a Linux host or other similar device (“**Host Computer**”). The Licensee further acknowledges and undertakes to ensure that a single Software license shall not be utilised by more than one Host Computer at any given time.
- 5.3 The Licensee is permitted to only use the Software at the Designated Location/s as defined in **Annexure A** hereof.
- 5.4 The license undertakes to adhere to the minimum system requirements as set out in **Annexure B**.
- 5.5 The Licensee undertakes not to permit any third party, to use the Software (the licensee’s own employees and customers are excluded from this limitation of use provided that the use is in accordance to the stipulations of this agreement). The Licensee furthermore undertakes not to permit an unauthorised third party to make any duplications of the Software provided. In furtherance hereof, the Licensee undertakes not to sub-license or transfer the Software, in any

additional manner, to another and acknowledges that it has no right, in terms of this Agreement, to do so.

- 5.6 The Licensee acknowledges that it is permitted to make a copy of the Software for back-up and/or archival purposes only and acknowledges that, should it be found guilty of copying the Software for any alternative purpose, it will be in breach of this Agreement and liable for any contractual relief available to the Licensor in terms hereof.
- 5.7 The Licensee furthermore undertakes not to modify, decompile, disassemble or otherwise reverse-engineer the Software, or attempt to do so, where such decompiling is not permitted by law.
- 5.8 The Licensee undertakes to permit the Licensor access to the Designated Location, or other relevant premises as the case may be, upon reasonable notice being given to it by the Licensor, in order for the latter to audit the Licensee's compliance with the provisions of this Agreement.
- 5.9 The Licensee undertakes to ensure its own compliance with the relevant Regulatory bodies of the country in which it operates. The Licensor will not be liable for the Licensee's failure to adhere to the regulations of the industry in which it operates.

**6. FEES**

- 6.1 In return for the issuing of a Software license, the Licensee shall be liable to pay a monthly license fee, the amount of which is determined in **Annexure A** hereof, to the Licensor subject to annual review and/or increase.
- 6.2 The first monthly license fee shall be payable one Calendar month after date of installation . Thereafter, the said fee shall be payable on or before the 1<sup>st</sup> day of each succeeding month for the Term of this Agreement.
- 6.3 The Licensor shall furnish the Licensee with a VAT invoice, by the 26<sup>th</sup> last day of each month, stipulating the license fee payable in relation to the month specified therein.
- 6.4 Payment of all Payment of all amounts outstanding to the Licensor, in terms of this Agreement, shall be effected by means of **debit order**, unless where both parties have in writing, agreed to another method of payment, such as Electronic Fund Transfer (free of bank exchange, set-off and all other deductions) into the nominated bank account of the Licensor, the details of which will be provided to the Licensee in writing.
- 6.5 Any outstanding amounts owed to the Licensor and which are not settled timeously, as defined in terms of this Agreement, shall bear interest at Prime Rate, compounded monthly, until such time as, the said outstanding amount has been settled in full.

**7. OBLIGATIONS OF LICENSOR**

- 7.1 In terms of this Agreement, the Licensor undertakes to do the following, in relation to:

**7.1.1 Installation**

to install the Software at the Designated Location as defined in **Annexure A** hereof, subject to access thereto and a suitable operational environment being provided as further defined in **Annexure B**.

**7.1.2 Technical overview**

at the commencement of this Agreement, the Licensor undertakes to provide technical overview, and materials in relation to the use of the Software, to nominated employees of the Licensee, such overview and materials to be determined at the discretion of the Licensor.

**7.1.3 Technical support services**

to provide timeous support to technical queries regarding installation, configuration and/or set-up of the server which the Licensee may have from time to time. Such support shall be available to the Licensee from 08h00 until 17h00 during Business Days.

**7.1.4 Maintenance support services**

Not included in this agreement.

**7.1.5 New releases**

to issue new releases of the Software to the Licensee when Enhancements thereto become available. The licensor undertakes to notify the licensee in advance should any existing functionality be modified to the extent that it no longer forms part of the product or is no longer supported by the licensor. The Licensor furthermore undertakes to, provide the Licensee with the technical overview and manuals required in order for it to make optimal use of the Enhancements made, determined at the discretion of the Licensor.

**7.1.6 Additional technical support and/or training services**

Not included in this agreement.

**8. WARRANTIES PROVIDED BY THE LICENSOR**

8.1 The Licensor warrants to the Licensee that the Software shall perform largely in accordance with the applicable specifications, as defined in terms of the Software Documentation and/or as otherwise defined **Annexure B** hereof.

8.2 In the event that the Licensee alleges that the Software is failing to perform in accordance with the terms, as specified in clause 8.1, the Licensor shall, notwithstanding the foregoing, not be held liable for such a claim should it arise on account of one of the following factors being present–

8.2.1 An unauthorised modification has been made, by or for the benefit of the Licensee, to the Software;



- 8.2.2 damage has been sustained to the Software programming which has resulted from the unauthorised acts of the Licensee or person acting on its behalf;
  - 8.2.3 neglect of the Host Computer or system, on which the Software operates, or disregard for the operating procedures prescribed by the Licensor in the Software Documentation;
  - 8.2.4 malfunctioning occurring in relation to the Host Computer or system on which the Software operates;
  - 8.2.5 damage caused to the Software on account of an electrical failure or surge of electrical power sustained by the Host Computer or system on which the Software operates;
  - 8.2.6 utilisation of the Software for a purpose other than that for which it was intended and as defined in the Software Documentation provided; or
  - 8.2.7 damage sustained on account of, the use of a combination of computer hardware and/or software application, which function in conjunction with the Software, and where such computer hardware and/or software application has not been approved in writing by the Licensor as being compatible with the operation of the Software.
- 8.3 In the event that the Licensor is found liable for a breach of the warranties provided in terms hereof it shall, in exercising its sole discretion, remedy the said breach by either–
- 8.3.1 replacing the Software with other related software which performs substantially the same function as that of the Software; or
  - 8.3.2 refund the Licensee with the monthly license fee paid by it during the period in which the liability arose.
- 8.5 Save for those explicitly provided for in clause 8.1 and to the extent permissible by law, the Licensor shall not be bound by any express, implied or tacit term, representation, warranty, promise or the like not recorded herein, whether it induced the contract and/or whether it was negligent or not. To this extent the Licensor specifically disclaims any implied warranties or conditions of merchantability, satisfactory quality and/or fitness for any particular purpose.

**9. LIMITATION OF LIABILITY**

- 9.1 In the event that the Licensor is found liable, on account of damages being sustained by the Licensee, which are attributable to the faulty execution and/or malfunctioning of the Software, such liability shall be limited to the Licensor timeously rectifying such malfunction, without any additional charge being levied in respect thereof. Such liability shall further be conditional upon the Licensor being notified immediately of the damage suffered.
- 9.2 In the event that the Licensor is found to be liable in terms of clause 9.1 above, such liability shall be excluded if the Licensee has attempted to rectify the malfunction experienced with

the Software, or has allowed a third party to correct or attempt to correct such, before notifying the Licensor thereof.

9.3 In all other respects, not covered in terms of clause 9.1 above and in relation to the remaining clauses of this Agreement, the Licensor shall not be held liable. Without limiting the generality of the foregoing, the Licensor shall not be liable for any delay, failure, breakdown, damage or injury caused by –

9.3.1 software, programs and/or support services obtained from third parties by the Licensee without the consent or knowledge of the Licensor; or

9.3.2 the actions or requirements of any telecommunications authority or a supplier of telecommunications services or software.

9.4 To the extent permitted by law, the Licensor shall not be liable to the Licensee or other third party for any loss of profits, indirect, consequential, punitive or special damages which may arise out of or in connection with the terms of this Agreement or in relation to the utilisation of the Software provided pursuant thereto. To this extent the Licensee acknowledges its responsibility to arrange for suitable insurance coverage to ensure the continued protection its business interests in the event of a loss being suffered.

9.5 Notwithstanding any other provision in this Agreement, the Licensor's cumulative liability towards the Licensee, in respect of direct damages under or in connection with this Agreement, shall not exceed the value equivalent to one monthly license fee.

## 10. TITLE

10.1 The Licensee acknowledges and agrees that –

10.1.1 The ownership in and to the Software shall remain, at all times, vested in the Licensor. To this extent the Licensee shall acquire no rights or title to the Software, other than the right to utilise it, subject to the terms and conditions set out herein; and

10.1.2 all the Intellectual Property Rights used, embodied or connected to the Software remain the property of the Licensor, regardless of whether such has been registered or not.

## 11. CONFIDENTIALITY

11.1 Both Parties agree and undertake:

11.1.1 except as permitted by this Agreement, not to disclose or publish any Confidential Information, including this Agreement, without the prior written consent of the other Party;

11.1.2 except as permitted by this Agreement, not to use the Confidential Information for any purpose whatsoever without the prior written consent of the other Party;

- 11.1.3 to restrict the dissemination of the Confidential Information to only those of its employees who are actively involved in activities for which use of the Confidential Information is authorised and then only on a 'need to know' basis and to take all practical steps, both before and after disclosure, to impress upon its employees who are given access to Confidential Information, the secret and confidential nature thereof.
- 11.2 The Parties acknowledge that the Confidential Information disclosed by one Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**") or which otherwise comes to the knowledge of the Receiving Party, the Disclosing Party has not conferred any rights of whatever nature in such Confidential Information on the Receiving Party.
- 11.3 Confidential Information excludes information which is lawfully in the public domain at the time of disclosure or subsequently becomes lawfully part of the public domain or becomes available to the Receiving Party from a source other than the Disclosing Party or is disclosed pursuant to a requirement or request by operation of law, regulation or court order.
- 11.4 The onus to establish whether the Confidential Information falls within the exclusions referred to in clause 11.3 shall rest on the Receiving Party. The information disclosed in terms of this Agreement shall not be deemed to be within the foregoing exclusions merely because such information is embraced by more general information in the public domain or in a Party's possession. Any combination of features will not be deemed to be within the foregoing exclusions merely because individual features are in the public domain or in a Party's possession but only if the combination itself is in the public domain or in a Party's possession.
- 11.5 The Receiving Party shall protect the Confidential Information in the manner, and with the endeavour of a reasonable person protecting his own Confidential Information.
- 11.6 The Parties record that this clause 11 shall not be applicable where either Party discloses Confidential Information to its attorneys or auditors, provided that such disclosure is reasonably required by the Disclosing Party for the purposes of conducting its business activities.
- 11.7 This clause 11 is severable from the rest of the Agreement and shall remain valid and binding on the Parties for a period of one (1) year after the termination or expiration of the Agreement.
- 11.8 The Parties acknowledge and agree that, for the purposes of Section 64(1) of the Promotion of Access to Information Act, No. 2 of 2000, the Confidential Information is provided in confidence by the Parties.

**12. CESSION AND DELEGATION**

- 12.1 Save as expressly provided elsewhere, the Licensee shall not be entitled to cede its rights or assign its rights and obligations hereunder to any third party without the prior written consent of the Licensor. The Licensor shall be entitled to cede its rights or assign its rights and obligations hereunder to any third party without the prior written consent of the other Party.

**13. FORCE MAJEURE**

- 13.1 Neither Party shall be liable for any losses which are a result of any default or delay in the performance of its obligations under this Agreement if, and to the extent, such default or delay is caused, directly or indirectly, by the occurrence of a *force majeure* event or any other cause beyond its reasonable control.
- 13.2 The Parties further acknowledge that if any event under clause 13.1 substantially prevents, hinders or delays the other's performance of its contractual obligations, the period within which it is required to perform its obligations shall be extended by a period equal to the amount of time by which its performance of the affected obligation has been delayed.
- 13.3 A Party affected by a *force majeure* event shall, as soon as is reasonably practical, give written notice of the occurrence thereof to the other Party. Such notice shall provide adequate information regarding the circumstances, giving rise thereto and shall provide an indication as to the predicted duration and extent to which the affected Party is prevented or delayed in performing its obligations, as a result thereof.

**14. BREACH**

- 14.1 If a Party breaches a material provision or term of this Agreement and fails to remedy such breach within 10 (ten) Business Days of written notice to do so, the aggrieved Party may exercise its rights in terms of this clause (provided that if the breach cannot reasonably be remedied within 10 (ten) Business Days, the Party in default shall be entitled to an extension, not exceeding a further 10 (ten) Business Days, to remedy the breach, on condition that such Party provides evidence to the reasonable satisfaction of the other Parties within the 10 (ten) Business Days that effective steps to remedy the breach have been initiated and continues to provide such evidence on an on-going basis that the steps are being expeditiously pursued, but despite the extension of time still fails to remedy the breach), alternatively, if the provision or term is not material, but a breach thereof has been repeatedly committed after 2 (two) warnings from the aggrieved Party, then the aggrieved Party shall be entitled, without notice, in addition to any other remedy available to it at law or under this Agreement, including obtaining an interdict, to cancel this Agreement or to claim specific performance of any obligation whether or not the due date for performance has arrived, in either event without prejudice to the aggrieved Party's right to claim damages in which event the aggrieved Party shall be entitled to retain on account of such damages, all amounts paid by the defaulting Party to it in terms of this Agreement
- 14.2 Notwithstanding the above a Party shall be entitled to terminate this Agreement, without prejudice to its rights to claim damages, by written notice to the other Party if the latter commits an act of insolvency, or is placed under provisional or final liquidation proceedings or

under judicial management per order of court as further defined in term of the Insolvency Act 34 of 1936.

**15. POSITION ON TERMINATION**

Upon termination of this Agreement, for whatever reason –

- 15.1 the license herein granted shall immediately cease to be of any force and effect;
- 15.2 the Licensee shall, within 5 (five) Business Days of termination, return to the Licensor all copies of the Software, as well as, all additional material received by it, including but not limited to, the Software Documentation and any additional manuals and/or additional instructions. In the event that, the Licensee fails to comply with the terms of this provision within the period stated, it shall be held liable for the total destruction of all such material within its possession and shall furnish the Licensor with proof thereof to the latter’s satisfaction;
- 15.3 the Licensor shall have the right to access the Designated Location and/or any other relevant premises in order to satisfy itself that the Licensee has complied with the obligations imposed upon in terms of this clause 15; and
- 15.4 all amounts outstanding by the Licensee shall, notwithstanding anything to the contrary herein contained, become immediately due and payable. The Licensee shall be prevented from claiming any refund, rebate or *pro rata* repayment of any portion of the amount due and/or any amount paid in terms of this Agreement.

**16. DISPUTE RESOLUTION**

- 16.1 In the event of there being any dispute or difference between the Parties arising out of this Agreement, the said dispute or difference shall, on written demand by either Party, be submitted to arbitration in Cape Town in accordance with the AFSA rules, which arbitration shall be administered by AFSA.
- 16.2 Should AFSA, as an institution, not be operating at that time or not be accepting requests for arbitration for any reason, then the arbitration shall be conducted in accordance with the AFSA rules for commercial arbitration (as last applied by AFSA) before an arbitrator appointed by agreement between the Parties to the dispute or failing agreement within 10 (ten) business days of the demand for arbitration, then any Party to the dispute shall be entitled to forthwith call upon the chairperson of the Cape Bar Council to nominate the arbitrator, provided that the person so nominated shall be an advocate of not less than 10 (ten) years standing as such. The person so nominated shall be the duly appointed arbitrator in respect of the dispute. In the event of the attorneys of the Parties to the dispute failing to agree on any matter relating to the administration of the arbitration, such matter shall be referred to and decided by the arbitrator whose decision shall be final and binding on the Parties to the dispute.

- 16.3 Any Party to the arbitration may appeal the decision of the arbitrator or arbitrators in terms of the AFSA rules for commercial arbitration.
- 16.4 Nothing herein contained shall be deemed to prevent or prohibit a Party to the arbitration from applying to the appropriate court for urgent relief or for judgment in relation to a liquidated claim.
- 16.5 Any arbitration in terms of this clause 16 (including any appeal proceedings) shall be conducted in camera and the Parties shall treat as confidential details of the dispute submitted to arbitration, the conduct of the arbitration proceedings and the outcome of the arbitration.
- 16.6 This clause 16 will continue to be binding on the Parties notwithstanding any termination or cancellation of the Agreement.
- 16.7 The Parties agree that the written demand by a Party to the dispute in terms of clause 16.1 that the dispute or difference be submitted to arbitration, is to be deemed to be a legal process for the purpose of interrupting extinctive prescription in terms of the Prescription Act, 1969.

**17. NOTICES AND DOMICILIA**

17.1 The Parties select as their respective *domicilia citandi et executandi* the following addresses, and for the purposes of giving or sending any notice provided for or required under this Agreement:

**17.1.1 LICENSOR:**

Physical: Shop 49, Eden Meander Lifestyle Centre, Knysna Road, George,  
6529

Postal: Shop 49, Eden Meander Lifestyle Centre, Knysna Road, George,  
6529

Email: info@datatill.com

**17.1.2 LICENSEE:**

Physical: \_\_\_\_\_

Postal: \_\_\_\_\_

Email: \_\_\_\_\_

17.2 Any notice or communication required or permitted to be given in terms of this Agreement shall be valid and effective only if in writing, but it shall be competent to give notice by e-mail.

- 17.3 Any Party may by notice to any other Party change the physical address chosen as its *domicilium citandi et executandi vis-à-vis* that Party to another physical address where postal delivery occurs in South Africa or e-mail address, provided that the change shall become effective vis-à-vis that addressee on the 7th (seventh) business day from the receipt of the notice by the addressee.
- 17.4 Any notice to a Party –
- 17.4.1 sent by prepaid registered post (by airmail if appropriate) in a correctly addressed envelope to it at an address chosen as its *domicilium citandi et executandi* to which post is delivered shall be deemed to have been received on the 7th (seventh) business day after posting (unless the contrary is proved);
  - 17.4.2 delivered by hand to a responsible person during ordinary business hours at the physical address chosen as its *domicilium citandi et executandi* shall be deemed to have been received on the day of delivery; or
  - 17.4.3 sent by e-mail to its chosen e-mail address stipulated in clause, shall be deemed to have been received on the date of despatch (unless the contrary is proved).
- 17.5 Notwithstanding anything to the contrary herein contained, a written notice or communication actually received by a Party shall be an adequate written notice or communication to it notwithstanding that it was not sent to or delivered at its chosen *domicilium citandi et executandi*.

**18. APPLICABLE LAW AND JURISDICTION**

- 18.1 This Agreement shall in all respects be governed by and construed under the laws of the Republic of South Africa.
- 18.2 Subject to clause 16, the Parties hereby consent and submit to the non-exclusive jurisdiction of the Western Cape High Court, Cape Town in any dispute arising from or in connection with this Agreement.

**19. INDEPENDENT ADVICE**

The Licensee hereby acknowledges that –

- 19.1 it has had the opportunity to secure independent legal and other professional advice (including financial and taxation advice) as to the nature and effect of all of the provisions of this Agreement and has either taken such independent advice or has dispensed with the necessity of doing so; and
- 19.2 all of the provisions of this Agreement are fair and reasonable in light of the circumstances.

**20. GENERAL**

- 20.1 This Agreement constitutes the whole of the agreement between the Parties relating to the matters dealt with herein and, save to the extent otherwise provided herein, no undertaking, representation, term or condition relating to the subject matter of this Agreement not incorporated in this Agreement shall be binding on either of the Parties.
- 20.2 This Agreement supersedes and replaces any and all agreements between the Parties (and other persons, as may be applicable) and undertakings given to or on behalf of the Parties (and other persons, as may be applicable) in relation to the subject matter hereof.
- 20.3 No addition to or variation, deletion, or agreed cancellation of all or any clauses or provisions of this Agreement will be of any force or effect unless in writing and signed by the Parties.
- 20.4 No latitude, extension of time or other indulgence which may be given or allowed by any Party to the other Party in respect of the performance of any obligation hereunder, and no delay or forbearance in the enforcement of any right of any Party arising from this Agreement and no single or partial exercise of any right by any Party under this Agreement, shall in any circumstances be construed to be an implied consent or election by such Party or operate as a waiver or a novation of or otherwise affect any of the Party's rights in terms of or arising from this Agreement or estop or preclude any such Party from enforcing at any time and without notice, strict and punctual compliance with each and every provision or term hereof. Failure or delay on the part of any Party in exercising any right, power or privilege under this Agreement will not constitute or be deemed to be a waiver thereof, nor will any single or partial exercise of any right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 20.5 No waiver, suspension or postponement by any Party of any right arising out of or in connection with this Agreement shall be of any force or effect unless in writing and signed by such Party. Any such waiver, suspension or postponement will be effective only in the specific instance and for the purpose given.
- 20.6 All provisions and the various clauses of this Agreement are, notwithstanding the manner in which they have been grouped together or linked grammatically, severable from each other. Any provision or clause of this Agreement which is or becomes unenforceable in any jurisdiction, whether due to voidness, invalidity, illegality, unlawfulness or for any other reason whatever, shall, in such jurisdiction only and only to the extent that it is so unenforceable, be treated as *pro non scripto* and the remaining provisions and clauses of this Agreement shall remain of full force and effect. The Parties declare that it is their intention that this Agreement would be executed without such unenforceable provision if they were aware of such unenforceability at the time of execution hereof.
- 20.7 The expiration or termination of this Agreement shall not affect such of the provisions of this Agreement as expressly provide that they will operate after any such expiration or termination



or which of necessity must continue to have effect after such expiration or termination, notwithstanding that the clauses themselves do not expressly provide for this.

- 20.8 This Agreement may be executed in one or more counterparts, each of which shall be deemed to be the original, and which when signed by all the Parties will together constitute one and the same agreement.

**For and on behalf of the LICENSOR:**

Signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 2019.

Signature: \_\_\_\_\_ (who warrants that he/she is duly authorised thereto)

Name: \_\_\_\_\_

Witness:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

**For an on behalf of the LICENSEE:**

Signed at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ 2019.

Signature: \_\_\_\_\_ (who warrants that he/she is duly authorised thereto)

Name: \_\_\_\_\_

Witness:

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

1.	(a) <b>Company name</b>	
	(b) <b>Registration number</b>	
	(c) <b>VAT number</b>	
2.	<b>Physical address</b>	
3.	<b>Postal address</b>	
4.	<b>Telephone number</b>	
5.	<b>Email address</b>	
6	<b>Contact person</b>	
7	<b>Commencement date of Agreement</b>	
8	<b>Monthly license fee (excluding VAT) Determined by Annexure C</b>	Package Selected: Optional Modules: R
9.	Server Details (Physical Install):	Username:
	(a) <b>SSH Username and Password</b>	Password:
	(b) <b>Public IP address</b>	
	(c) <b>DNS Record (ie company url)</b>	

## DESCRIPTION AND ITEMISATION OF SOFTWARE

The **DataTill** software solution is a Bandwidth Data Management Platform for ISPs, handling tasks including sales, billing, monitoring, tickets, reporting, customer self-service, and VoIP importing & billing. **DataTill** furthermore provides integrations with third party tools and services such as standard ISP tools, payment gateways, and SMS gateways.

## MINIMUM SYSTEM REQUIREMENTS

### Physical Install

1. Ubuntu 14.04 server

An Ubuntu 14.04 server base/vanilla install. Backups will be the customer's own responsibility.

2. SSH Access

SSH access to the said server with a username that has root access.

3. DNS Record

A DNS record pointing to the server, e.g. portal or clientzone.yourdomainname.com pointing to your IP address.

4. Port 22 and port 80

**Port 22, 80** must be opened for the initial install.

**Port 80** must remain open after the install.

**Port 22** can be closed later once you have signed off the server but may be required in the future for troubleshooting.

**Port 443** must be open on the server to use an SSL certificate with the server.

5. Outgoing mail server

Provide us with your outgoing SMTP server details such as the server name, username, password, server port and if SSL is required .

(if you need us to help you set it up.)
















### Virtual Machine

- 4 GB RAM (501 to 1000 users)
- 50 GB (Dynamic up to 500GB)

Please note these are VM Specs, System will need to be upgraded to go live.

**PRICING GUIDE**

The monthly subscription is calculated according to the following DataTill Packages:

MODULES	LITE EDITION	STANDARD EDITION	PROFESSIONAL EDITION	ENTERPRISE EDITION
<p><b>Base system</b></p> <p>User usage notifications via sms &amp; email, as well as user self service via web portal.</p> <p>Styled in your company’s branding. Includes remote installation &amp; configuration.</p>				
<p><b>Radius Module</b></p> <p>Manage FreeRadius users &amp; packages from within the app.</p> <p>Allow customer self-service &amp; realtime usage views for support &amp; admin staff</p>	75 accounts	250 accounts	750 accounts	2,500 + accounts
<p><b>Hotspot Module</b></p> <p>Manage Mikrotik hotspots (landing page branding, free trial details, sponsorship, etc).</p> <p>Create and manage prepaid vouchers and sell vouchers online.</p>	10 hotspots	50 hotspots	150 hotspots	500 hotspots
<p><b>Asset Tracking Module</b></p> <p>Track details (original invoice, warranty, supplier, etc) of all equipment installed at client sites.</p> <p>Installers can add detailed notes and pictures to customer records.</p>				
<p><b>Device monitoring</b></p> <p>Log and summarise various device usage, including weather stations, asterisk extensions, hotspots and wireless client radios.</p> <p>Compatible with asterisk, Mikrotik, Ubiquity, RaspberryPi, Micro Instruments and Vantage Pro</p>				
<p><b>Netflow Log Analyzer</b></p> <p>Process detailed data usage logs &amp; summarize usage</p>				

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by category. Show detailed data usage records to users.				
<b>Helpdesk Module</b> Administrators can create, view, manage and escalate support tickets.				
<b>Billing Module</b> Generate invoices & statements and sync with SageOne, reconcile payments & pull age analysis. Export costing summary to Excel. Generate SagePay Direct Debit batches.	Optional (R 1,500 Monthly)	Optional (R 1,500 Monthly)	Optional (R 1,500 Monthly)	Optional (R 1,500 Monthly)
<b>Sales Module</b> (Sales cannot be used without the billing module enabled) Capture Sales leads via inbound mails, contact forms or directly, and process via workflow all the way through to invoicing	Optional (R 250 Monthly)	Optional (R 250 Monthly)	Optional (R 250 Monthly)	Optional (R 250 Monthly)
<b>Mobile App</b> (Still in development) Will be available for iOS & Android. (Currently not available) User self-service. Users can view phone & data usage, request topups & package changes.	Optional (R 500 Monthly)	Optional (R 500 Monthly)	Optional (R 500 Monthly)	Optional (R 500 Monthly)
Monthly Software License Subscription excluding optional Modules  This fee includes all future updates.	R 500	R 1,500	R 2,500	R 3,500
Physical Installation Fee  Once off fee to install DataTill per server. (Please note the installation fee falls away if a self-install is done)	R 2,500	R 2,500	R 2,500	R 2,500

**Pricing shown in South African Rand and excludes VAT (15%)**

**Additional chargeable services (All excluding VAT):**

Additional Install: R 2 500.00

Additional Monthly Licence Subscription fee for Additional Installs: R 500.00

Hourly Rate to setup and/or recover redundancy / replication: R 450.00

Please note that the LTE integration is only available on the enterprise monthly subscription.