

DATASCOPE WMS SOFTWARE LICENCE AGREEMENT – TERMS AND CONDITIONS

(Version 1/2007 effective from 21 September 2007)

1. PREAMBLE

- 1.1. The Terms and Conditions that follow apply to Software Licence Agreements entered into with Datascope Consulting cc, registration number CK1995/036751/23, situated at 24 Havelock Street, Central, Port Elizabeth, South Africa (“we”, “us” or “our”).
- 1.2. This version of the Terms and Conditions contains a version number as well as the date from which these Terms and Conditions will be effective.
- 1.3. We reserve the right to change these Terms and Conditions at any time. Whenever we change an existing version of the Terms and Conditions, a new version of the Terms and Conditions will be published on this website. All previous versions will be archived by version number and their effective dates and a link to the archived versions will be made available for viewing on this website.
- 1.4. The version of the Terms and Conditions that will apply to your Software Licence Agreement (“this Agreement”) will be the version that is effective at the date that you sign the Signature Schedule.

2. AGREEMENT

- 2.1. We hereby grant to you a personal, non-transferable and non-exclusive licence to use the Software identified in the Schedule of Modules in accordance with the Terms and Conditions of this Agreement.
- 2.2. This Agreement constitutes the entire agreement between you and us with respect to the Software and neither you nor we are bound by any representations or warranties that are not recorded in this Agreement.
- 2.3. If you or we fail to exercise or fail to timeously exercise your or our rights under this Agreement, you or we will not be prevented from exercising such rights at a later stage.
- 2.4. Should any of the Terms and Conditions of this Agreement be held to be invalid, unlawful or unenforceable, such Terms and Conditions will be severable from the remaining Terms and Conditions, which will continue to be valid and enforceable.
- 2.5. The laws of the Republic of South Africa govern this Agreement and you and we submit to the exclusive jurisdiction of the Courts of law of the Republic of South Africa.

3. DEFINITIONS

To make this Agreement easily understandable, we have defined the following terms :-

- 3.1. **“this Agreement”** means this version of the Terms and Conditions, the Signature Schedule and the Schedule of Modules hereto;
- 3.2. **“ALF”** means the Annual Licence Fee that you pay to us in advance for use of the Software for periods of 12 months at a time. Each ALF period will run from the date of delivery of the Software to you until 31 October and thereafter from 1 November to 31 October;
- 3.3. **“ILF”** means the Initial Licence Fee that you pay to us when we first grant you the right to use the Software;
- 3.4. **“Location”** means the physical address of the server on which the single instance of the Datascope WMS database is installed, as set out in the Signature Schedule. You can change the Location at any time during the currency of this Agreement, provided that you advise us in writing of the physical address of the new Location within 7 days of changing the Location;
- 3.5. **“Registration Number”** means the product authorisation key that we provide to you so that you can use the Software;

- 3.6. **"Related Companies"** means those companies that, in terms of the Companies Act 61 of 1973, as amended, are your subsidiary companies or your holding company and are managed and controlled from the same continent where you are managed and controlled;
- 3.7. **"Schedule of Modules"** means the document entitled "Schedule of Modules" that forms part of this Agreement, is initialled by you and us and records the details of the Software that we are licensing to you and the specific terms relating to the licence;
- 3.8. **"Signature Schedule"** means the document entitled "Signature Schedule" that forms part of this Agreement, is signed by you and us and records your details;
- 3.9. **"Software"** means the computer programmes, in object code form only, that we have licensed to you, as listed in the Schedule of Modules. It includes associated documentation and new releases, updates or revisions to the computer programmes;
- 3.10. **"Users"** means the persons (being your employees or persons under contract to you) who are authorised to access and use the Software. The number of Users is recorded in the Schedule of Modules;

4. THE LICENCE

- 4.1. The Licence that we have granted to you allows you to install the Software, create one Datascope WMS database and to use the Software for your internal business purposes. You will be responsible for the installation and implementation of the Software unless you and we specifically agree otherwise in writing. If we recommend an implementation partner, we do not accept any responsibility for the performance or obligations of such implementation partner and by recommending such implementation partner, we do not warrant or make any representations in respect of the capability or performance of such implementation partner.
- 4.2. You must comply with the restriction on the number of Users who may have access to the Software.
- 4.3. You may not use the Software to provide marketing, training, consulting or any other commercial services related to the Software. You may not host the Software or any part thereof for or on behalf of any third parties nor may you offer any unauthorised users access to the Software or any part thereof over the internet or by any other means.
- 4.4. You may not copy the Software in any circumstances except to make a reasonable number of backup copies. You must keep the backup copies in a secure place under your control and you must mark them clearly with our proprietary notices. You may only use **one** copy of the Software at any one time.
- 4.5. If, for purposes of your internal business, your backup procedure entails running a second live server concurrently with your primary server, we will allow you to create a second Work Directory on your backup server provided that you only use one Work Directory at any one time. You must keep us advised of the Location of the backup server, which we will have access to in terms of clause 4.9 below.
- 4.6. To commence your use of the Software, you must provide us with such information as we require to issue the Registration Number. Upon receipt of such information, we will issue and send the Registration Number to you. The date on which we send the Registration Number to you will be the date of delivery of the Software.
- 4.7. At the end of each ALF period and after you have paid us the ALF for the next ALF period, we will issue and send you a further Registration Number to allow you to use the Software for next ALF period.
- 4.8. If you want your Related Companies to use the Software you must apply in writing to us, advising us of the relationship between you and the Related Company, the Related Company's registration number, registered name and address and any other information that we may request from you. Should we approve your application, we will issue to you a Registration Number for the Related Company. The Related Company will then join you as a party to this Agreement so that you and any Related Companies that are party to this Agreement will have the benefit of and will be jointly and severally bound by this

Agreement, and therefore jointly and severally liable for your and the Related Companies' performance in terms of this Agreement. References in this Agreement to "you" will be interpreted as references to you and the Related Companies. You must ensure that, for the purposes of each Related Company becoming bound by this Agreement, you are authorised to contract on behalf of the Related Company and your application for a Registration Number for the Related Company will be deemed as your warranty to us that you are so authorised. If any Related Company that is party to this Agreement ceases to be a Related Company at any time, it will immediately cease to be a party to this Agreement and you must ensure that it immediately ceases all use of the Software.

- 4.9. You hereby agree to allow us or our representatives full access to the Location and all sites where the Software is accessed or used during your working hours and on us giving you reasonable notice so that we can verify your compliance with your obligations under this Agreement. We agree to comply with your reasonable health and safety rules when on your premises.
- 4.10. If we establish that you have breached the terms of your licence resulting in more users accessing and/or using the Software than permitted by your licence, we reserve the right, in addition to the other rights that we have in terms of this Agreement, to invoice you for the additional users at our prevailing rates for the period that such users have had and continue to have access to and/or use the Software. Our invoices will be payable within 30 days from the date of each invoice.

5. PAYMENT

- 5.1. You agree to pay us:-
- 5.1.1. the ILF set out in the Schedule of Modules and the ALF for the period from delivery of the Software up to and including 31 October, on delivery of the Software to you;
- 5.1.2. the ALF for every period of 12 months thereafter in advance before 1 November of each year;
- 5.1.3. other fees and charges, as agreed in writing between you and us, that arise from this Agreement within 30 days from the date of our invoice.
- 5.2. We reserve the right to increase the ALF at the beginning of each ALF period, however the increase will not exceed the greater of 10% of our then current selling prices for the Software or a percentage equal to the weighted Consumer Price Index for the previous 12 months.
- 5.3. All payments due by you to us exclude any taxes and/or levies due as a result of a requirement by any governmental organisation (which shall include but not be limited to any value added tax, importation tax and general sales tax) and all these taxes and/or levies shall be paid by you at the then prevailing rate. If any payments due by you to us are subject to withholding tax, you shall pay us an additional amount so that we receive the full payment that is due to us.
- 5.4. You are not allowed to withhold or delay payment of any amounts due to us or to set-off such payments against any amounts that we may owe you or any claims that you may have against us.

6. WARRANTIES

6.1. OUR WARRANTIES

- 6.1.1. We warrant that for a period of 60 days from the date of delivery of the Software to you the Software will function substantially in accordance with the applicable Software product description published by us on our website. If it does not, you may return the Software and all copies that you have made to us, accompanied by evidence showing that it does not conform substantially to the Software product description. If we are satisfied that this is the case, we will, at our sole discretion, replace the Software or terminate this Agreement and refund you all monies that you have paid us in respect of the Software. This warranty only applies to the initial delivery of the Software and not to updates or revisions.

- 6.1.2. We warrant that your use of unmodified Software in compliance with the terms and conditions of this Agreement does not infringe the intellectual property rights of any third party. If any third party succeeds in its claim for the infringement of its intellectual property rights, we will, at our sole discretion, replace or alter the Software or terminate this Agreement and refund to you the ALF that you paid to us for the ALF period during which the Agreement is terminated.
- 6.1.3. You agree that the remedies recorded in this clause are your sole and exclusive remedies in respect of a breach of the above warranties.

6.2. NO OTHER WARRANTIES

- 6.2.1. You hereby acknowledge that as it is not commercially possible to produce computer software products that are error free, we do not warrant that the Software, or any part of it, is error free or that your use of the Software will be uninterrupted or that the Software will meet your requirements. You assume full responsibility for the information and results obtained from the use of the Software and for the application of such information and results.
- 6.2.2. Except for the express warranties given in this clause, we give no other warranties or representations and any further warranties or conditions, express or implied, statutory or otherwise, with regard to the Software, are excluded.

6.3. LIMITATION OF LIABILITY

Always excluding our liability for personal injury or death, in no event shall we be liable to you:-

- 6.3.1. for any direct damages or loss, whether arising in contract, delict, by statute or otherwise, being loss which is reasonably foreseeable by you and us at the time of entering into this Agreement, in excess of the ALF that you paid us in respect of the Software for the ALF period during which the event giving rise to such claim occurred; nor
- 6.3.2. for any other form of loss or damage of whatsoever kind, whether arising in contract, delict, by statute or otherwise, including but without being limited to, indirect, special or consequential damages or loss, loss of anticipated profits, loss of business opportunity or loss of contracts by either you or any third party or claims or demands against either you or us by any third party or other like economic loss in connection with or arising out of this Agreement.

7. **OWNERSHIP AND RESTRICTIONS**

- 7.1. You acknowledge that the Software is confidential material containing our and our licensors' valuable trade secrets and we and our licensors hold all title and ownership to the Software, including all trade names, trade marks, copyright and other intellectual property rights, whether capable of registration or not. You agree to take all steps to ensure that you use the Software in such a manner that protects all of our rights and the rights of our licensors in and to the Software. You will not during or at any time after termination of this Agreement acquire or be entitled to claim any right or interest in the Software and you are prohibited from actually or attempting to sell, lease, licence, sub-licence, distribute or to grant any interest in the Software in whatever form to or for the benefit of any other party.
- 7.2. You agree not, directly or indirectly, to reverse engineer the Software, including the use of any reverse compilation, decompilation or disassembly techniques or similar methods, to determine any design structure, concepts and methodology behind the Software, whether to incorporate it into any product of your own creation or for any other purpose.

8. **TERM, BREACH & TERMINATION**

- 8.1. Except as otherwise provided in this Agreement, this Agreement will commence on the date of delivery of the Software to you and will continue until:-
 - 8.1.1. we give you 12 months written notice of our intention to terminate this Agreement, which notice period will run concurrently with an ALF period; or

- 8.1.2. you give us written notice of your intention to terminate this Agreement at least 30 days before the start of the next ALF period,

in which event this Agreement will terminate at the end of the ALF period in which the notice is given.

- 8.2. Should you fail to pay any charges or fees to us within the periods set out in this Agreement, or should you attempt to use, copy, modify, licence or transfer the Software or any component thereof in breach of the provisions of this Agreement or should you breach any other material provision of this Agreement or should you be placed into liquidation or under judicial management, whether provisional or final, or should you commit an act of insolvency, we have the right, without prejudice to any other rights that we have in law, to :-

8.2.1. enforce your specific performance; or

8.2.2. immediately terminate this Agreement,

and in both cases we will be able to claim from you whatever damages or loss we have suffered.

- 8.3. On the termination of this Agreement, for whatever reason, you will lose your right to use the Software. You must therefore delete the Software from your system and return **ALL COPIES** of the Software to us within 14 days of date of termination or you may, with our written permission, destroy **ALL COPIES** of the Software and provide us with a certificate confirming that you have done so. You will not be entitled to any refunds of any fees of whatsoever nature paid to us.

9. **THIRD PARTY SOFTWARE**

- 9.1. If we supply you with certain computer software products that are owned by other parties and are used in conjunction with the Software ("Third Party Software"), you agree to use the Third Party Software in accordance with the end user licence agreement associated with the Third Party Software or concluded between you and the applicable licensor of the Third Party Software.
- 9.2. Where we have referred to our rights in the Software in this Agreement, the reference to Software must be understood to exclude Third Party Software.
- 9.3. You agree to assume full responsibility for the information and results obtained from the use of the Third Party Software and for the application of such information and results. You accept that we give you no warranties or representations, whether express or implied, statutory or otherwise, with regard to the Third Party Software.

10. **NOTICES**

- 10.1. We both select as our *domicilia citandi et executandi* the physical address and telefax numbers stipulated next to or under your and our signatures and names in the Signature Schedule for the purposes of giving or sending any notice provided for or required in terms of this Agreement. You or we can change your or our address or telefax number by giving the other party prior written notice of such change.
- 10.2. Any notice given in connection with this Agreement must be delivered by hand or be sent by prepaid registered post or be sent by telefax to the other party's domicilium.
- 10.3. The notice will be deemed to have been duly given if delivered, on the date of delivery; if sent by post, 6 business days after posting and if sent by telefax, on the day that the telefax is transmitted.