

SOFTWARE LICENSE

Agreement



Applicable to Software and Upgrades installed from and after September 30, 2014

IMPORTANT: THIS SOFTWARE LICENSE AGREEMENT (THE “AGREEMENT”) IS A LEGAL AGREEMENT BETWEEN YOU AND DIGITAL MONITORING PRODUCTS, INC. (“DMP”). READ THE AGREEMENT CAREFULLY BEFORE COMPLETING THE PURCHASE PROCESS AND USING THE SOFTWARE. THIS AGREEMENT PROVIDES A LICENSE TO USE THE SOFTWARE AND CONTAINS WARRANTY INFORMATION, LIABILITY DISCLAIMERS AND RISK ALLOCATION PROVISIONS.

THIS AGREEMENT WILL BECOME IMMEDIATELY EFFECTIVE AND BINDING UPON YOU AS OF THE FIRST OF THE FOLLOWING TO OCCUR: (1) YOU CLICK THE ACCEPT BUTTON, (2) YOU INSTALL THE SOFTWARE, AND/OR (3) YOU USE THE SOFTWARE IN ANY MANNER (THE TIME THAT THE FIRST EVENT OCCURS IS REFERRED TO AS THE “EFFECTIVE TIME”). BY DOING ANY OF THE ABOVE, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT AND TO ASSUME FULL LIABILITY FOR COMPLIANCE BY EACH OF YOUR AGENTS, EMPLOYEES AND REPRESENTATIVES WHO USES THE SOFTWARE.

IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, PLEASE EXIT THIS PAGE AND DO NOT CONTINUE WITH THE INSTALLATION OF THE SOFTWARE. YOU MAY RETURN THE SOFTWARE FOR A FULL REFUND PRIOR TO INSTALLATION.

BACKGROUND

You (the “Licensee”) desire to obtain a license to use DMP’s computer software known as SCS-VR that is used to facilitate communications between a central monitoring station and multiple control panels (the “Software”) and DMP agrees, in accordance with the terms of this Agreement, to (i) grant to Licensee a license to use the Software and (ii) provide Licensee with certain support and maintenance services related thereto.

AGREEMENT

NOW, THEREFORE, in consideration of the promises and covenants described herein, DMP and Licensee, intending to be legally bound, hereby agree as follows:

1. **License.** In consideration of the payment of the License Fee (as defined below) and the performance by Licensee of all of its obligations under this Agreement, DMP hereby grants to the Licensee a personal, non-exclusive, nontransferable, limited license to use the Software in the Licensee’s ordinary course of business as of the date hereof. Subject to the terms hereof, Licensee’s employees and agents may not change, modify, alter, or enhance the Software.
2. **Prohibited Acts and Uses.**
 - a. **Copying and Modifications.** Licensee may not use, copy or reproduce the Software or any copy, adaptation, transcription, or merged portion thereof except as expressly authorized herein or by DMP in writing. Specifically, but without limitation, Licensee may not change, modify, alter, or enhance the Software or the source code therefor, and may not reverse engineer or decompile the source code for the Software or delete any proprietary marks on the Software.
 - b. **Incorporation into other Products; Use by Third Parties.** Licensee may not permit others to incorporate the Software into other software products (other than as designated by DMP), and, except to the extent permitted in a separate written agreement with DMP, may not sell, donate, transfer, assign, or sublicense the Software (or any trade secrets embodied therein) and any derivations or adaptations thereof. Licensee shall not permit any third party to use the Software, directly or indirectly, and shall not publish, disclose, or allow access to the Software to anyone other than Licensee’s authorized employees or contractors.
 - c. **Backup Copies.** Licensee shall be permitted to make copies of the Software solely for backup and disaster recovery purposes. If Licensee desires to operate a backup computer server that is actually running the Software, Licensee may install the Software on a backup server so long as such server will manage the identical panel accounts as Licensee’s primary server.
3. **Obligations of DMP.** DMP shall:
 - a. Provide access to the Software either through delivery of physical media to Licensee or internet-based access through DMP’s network and infrastructure.
 - b. Provide the fault correction and other support and maintenance services described in Section 8 hereof (collectively, the “Services”).



4. **Proprietary Protection of Software.**

- a. Licensee acknowledges and agrees that DMP is the sole and exclusive owner of all right, title, and interest in and to the Software, and that DMP shall retain all copyrights in the Software and all trade secrets embodied in the Software. DMP reserves the right to grant additional licenses to use the Software to third parties. Furthermore, Licensee hereby transfers and assigns to DMP any and all rights in and to all modifications, enhancements, or amendments made to the Software by or on behalf of Licensee, whether or not authorized by DMP. Licensee shall promptly disclose to DMP any modifications, enhancements, or amendments to the Software.
- b. Licensee may not, at any time, disclose or disseminate the trade secrets embodied in the Software to any person or entity other than (i) Licensee's personnel whose duties to Licensee require them to have knowledge of such trade secrets and (ii) as necessary to fulfill Licensee's obligations hereunder. Licensee will use commercially reasonable best efforts to ensure that all of Licensee's personnel and all other persons afforded access to the Software (whether authorized or not) will protect DMP's trade secrets and copyrights against improper use, dissemination, or disclosure. Licensee assumes full responsibility and liability for any and all disclosures of the trade secrets embodied in the Software, and any or all unauthorized uses of the Software, by any entity or individual obtaining access to the copy of the Software (whether authorized or not) in the possession of Licensee.
- c. Licensee acknowledges that in the event of Licensee's breach or threatened breach of Sections 4(a) and 4(b) DMP will not have any adequate remedy in money damages. DMP shall therefore be entitled to obtain an injunction against such a breach or threatened breach from any court of competent jurisdiction immediately upon request without requirement of bond or other security. DMP's right to obtain injunctive relief shall (i) be cumulative with its other remedies available under this Agreement or at law or in equity and (ii) shall not limit its right to seek further remedies.
- d. Licensee shall promptly notify DMP in writing if Licensee becomes aware of any unauthorized use of the Software by any person or entity.

5. **Fees.**

- a. *License Fee.* For use of the Software during the term of this Agreement, the Licensee, shall pay to DMP the license fee (the "License Fee") specified on DMP's Invoice and/or standard Terms and Conditions delivered to Licensee.
- b. *Annual Support Fee.* For the Services, the Licensee shall pay to DMP the annual support and maintenance fee (the "Support Fee") specified on DMP's Invoice and/or standard Terms and Conditions delivered to Licensee. The Support Fee can be increased by DMP on an annual basis.

6. **Warranties; Limitation of Liabilities; Insurance.**

- a. *Services Warranty.* DMP warrants that it will use commercially reasonable efforts to perform the Services consistently with generally accepted industry standards; provided that:
 - i. the Software has not been modified, changed, or altered by anyone other than DMP;
 - ii. the Software is being used in conjunction with the environment of hardware and other software (collectively, the "Supported System") described on Exhibit A attached hereto;
 - iii. Licensee promptly notifies DMP of its need for service;
 - iv. Licensee provides adequate troubleshooting information and access so that DMP can identify and address problems; and
 - v. All Licensee Fees and Support Fees and any other compensation due to DMP have been paid.

In the event that one or more of the conditions described in clauses (i) through (v) have not been fulfilled by Licensee, then DMP shall, as applicable: (A) provide Licensee a reasonable time during which to fulfill such condition (provided that DMP reserves the right to withhold Services if Service Fees remain unpaid or are in arrears) or (B) upon Licensee's prior approval, assist Licensee in the fulfillment of such conditions on a time and materials or fixed price basis at DMP's then prevailing rates.

IF LICENSEE FAILS TO PAY THE SUPPORT FEE LICENSEE WILL NOT BE ENTITLED TO SERVICES FOR THE SOFTWARE, INCLUDING ANY UPDATES OR IMPROVEMENTS TO THE SOFTWARE UNTIL THE SUPPORT FEE IS PAID. IF DMP PROVIDES SUPPORT AND MAINTENANCE SERVICES TO LICENSEE NOTWITHSTANDING ANY FAILURE TO PAY THE SUPPORT FEE, SUCH SERVICES MAY BE TERMINATED BY DMP AT ANY TIME AND DMP SHALL BE ENTITLED TO EXERCISE ALL AVAILABLE LEGAL AND EQUITABLE REMEDIES TO COLLECT ANY UNPAID SUPPORT FEES FROM LICENSEE.

- b. *Disclaimer of Other Warranties.* THERE ARE NO OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THE SOFTWARE AND/OR THE SERVICES INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. LICENSEE'S SOLE AND EXCLUSIVE REMEDY IS TO TERMINATE THIS AGREEMENT PURSUANT TO THE TERMS OF THIS AGREEMENT. LICENSEE ACKNOWLEDGES AND AGREES THAT UNDER NO CIRCUMSTANCES SHALL DMP BE LIABLE FOR ANY LOSS, COST, EXPENSE, OR DAMAGE TO LICENSEE IN AN AMOUNT THAT COLLECTIVELY EXCEEDS THE SUM OF THE LICENSE FEES PAID TO DMP PRIOR TO THE DATE SUCH PROBLEM OCCURRED.



LICENSEE ACKNOWLEDGES AND AGREES THAT DMP SHALL NOT BE LIABLE TO LICENSEE FOR ANY INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL, CONSEQUENTIAL OR SIMILAR DAMAGES, INCLUDING ANY LOST PROFITS OR LOST DATA ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE EVEN IF DMP, ITS STAFF OR OTHER DELEGATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. Indemnification and Infringement.

- a. *By Licensee.* Licensee agrees to indemnify and hold harmless DMP and its affiliates and their respective officers, directors, managers, members, shareholders, employees and agents (collectively, the “DMP Parties”) from and against any and all claims, liabilities, damages, costs, losses and expenses (including reasonable attorneys’ fees) (collectively, “Losses”) incurred by any of the DMP Parties arising out of or in any way connected with: (i) the use of the Software by Licensee (or, if applicable, Licensee’s customers or other persons with which Licensee does business); (ii) the breach of any representations, warranties or covenants of Licensee contained herein, or any negligence or intentional act or omission of Licensee in connection with its activities under this Agreement; (iii) any claim by customers, or other persons with which Licensee does business (or any other third party) against DMP relating to the Software or services provided by Licensee.
- b. *By DMP.* If Licensee’s use of the Software under the terms of this Agreement is, or in DMP’s opinion is likely to give rise to, an infringement on the rights of any third party, then DMP may, at its sole option and expense, do one of the following:
 - i. procure for Licensee the right to continue using such Software under the terms of this Agreement;
 - ii. replace or modify the Software (or the infringing portions thereof) so that it is noninfringing and substantially equivalent in function to the infringing Software; or
 - iii. terminate this Agreement.

The foregoing options are DMP’s sole and exclusive obligations and the Licensee’s sole and exclusive remedies with respect to any claim that the Software infringes third party intellectual property.

- c. *Indemnification Procedures.* All claims by any indemnified party under this Section 7 shall be asserted and resolved as follows:
 - i. In the event that (A) any claim, demand or proceeding is asserted or instituted in writing by any person other than the parties to this Agreement or their affiliates which could give rise to Losses for which an indemnifying party could be liable to an indemnified party under this Agreement (such claim, demand or proceeding, a “Third Party Claim”) or (B) any indemnified party shall have a claim to be indemnified by any indemnifying party under this Agreement which does not involve a Third Party Claim (such claim, a “Direct Claim”), the indemnified party shall promptly send to the indemnifying party a written notice specifying the nature of such claim, together with information reasonably available to the indemnified party with respect to such claim (a “Claim Notice”); provided that a delay in notifying the indemnifying party shall not relieve the indemnifying party of its obligations under this Agreement except to the extent that such failure shall have caused actual prejudice to the indemnifying party.
 - ii. In the event of a Third Party Claim, the indemnifying party shall have 30 days after receipt of the Claim Notice relating to such Third Party Claim to elect to undertake, conduct and control, through counsel of its own choosing (provided that such counsel is reasonably acceptable to the indemnified party) and at its own expense, the settlement or defense of such Third Party Claim. If the indemnifying party elects to undertake such defense, it shall promptly assume and hold such indemnified party harmless from and against the full amount of any Losses resulting from such Third Party Claim to the extent provided herein. If the indemnifying party elects to undertake such defense, (A) the indemnified party agrees to cooperate with the indemnifying party in contesting such Third Party Claim (at the indemnifying party’s expense), and (B) such Third Party Claim may not be settled or compromised by the indemnified party without the prior written consent of the indemnifying party. If the indemnifying party does not notify the indemnified party of its election to undertake the defense of such Third Party Claim within 30 days after receipt of the Claim Notice relating to such Third Party Claim, the indemnified party shall have the right to contest, settle, compromise or consent to the entry of any judgment with respect to such Third Party Claim and in doing so shall not thereby waive any right to indemnity therefor pursuant to this Section 7; provided that at any time thereafter the indemnifying party may assume the defense of such Third Party Claim.
 - iii. In the event of a Direct Claim, the indemnifying party shall notify the indemnified party within 30 days after receipt of a Claim Notice whether or not the indemnifying party disputes such claim.
 - iv. From and after the delivery of a Claim Notice under this Agreement, at the reasonable request of the indemnifying party the indemnified party shall grant the indemnifying party and its representatives all reasonable access to the books, records, properties and personnel of such indemnified party to the extent reasonably related to the matters to which the Claim Notice relates.
- d. *Release of Insured Losses; Waiver of Subrogation.* To the fullest extent permitted by Licensee’s insurer, Licensee hereby waives and releases DMP and each of the DMP Parties for (i) all Losses covered by Licensee’s insurance and for all of Licensee’s insurance deductibles; and (ii) any rights Licensee’s insurer may have against DMP or any of the DMP Parties for money paid to or on behalf of Licensee.



e. *Time Limitation on Actions.* All claims for indemnification by Licensee against DMP under this Section 7 or otherwise must be commenced within one (1) year after the event, transaction or occurrence giving rise to such claim, or such claim shall be barred.

8. Support.

a. *General.* DMP shall provide the Services described in this Section 8 and on Exhibit B attached hereto.

b. *Definitions.* The following terms shall have the definitions set forth below for purposes of this Section 8 and Exhibit B:

- i. "Business hours" means 8:00 a.m. to 5:00 p.m. Central Time, Monday through Friday, exclusive of recognized bank holidays in the United States.
- ii. "Fault" means an error, defect, or "bug" in the Software that (i) can be reproduced by DMP and (ii) prevents the Software from performing substantially in accordance with the specifications therefor.
- iii. "Fault Correction" means any analysis and modification or addition to repair, correct or circumvent a Fault in the Software, so that the Software operates substantially in accordance with the specifications for the Software on the effective date of this Agreement.
- iv. "Upgrade" means and includes the modifications, error corrections, bug fixes, workarounds or revisions made to the Software provided by DMP.

c. *Fault Correction.*

- i. Upon notification to DMP by Licensee in accordance with the provisions of Section 8(d) below of any Fault in the Software, DMP shall promptly investigate the reported Fault and thereafter shall use its commercially reasonable efforts to provide Fault Correction services to Licensee in accordance with Exhibit B.
 - ii. With respect to each request for Services, Licensee shall provide DMP with descriptions of any Software problems in order to facilitate the repair or correction of the Software and shall cooperate with DMP in the requested repair or correction.
 - iii. To the extent reasonably practicable, DMP shall provide Fault Correction services over the telephone by providing verbal advice or remotely through the internet.
 - iv. Additional fees (at DMP's standard rates in effect from time to time) may be charged to Licensee (at DMP's option) for Fault Correction services provided outside Business Hours at Licensee's request or for Faults resulting, in whole or in part, from any one or more of the following (each, a "Service Exception"):
 - A. any failure by the Licensee to comply with its obligations contained in Section 8(f) below;
 - B. any failure, error or defect in the Supported System;
 - C. any modification of any portion of the Software, if such modification is made, in whole or in part, by Licensee or any person other than DMP or its authorized subcontractors;
 - D. any misuse of the Software or operator error;
 - E. any defects or errors caused by the use of the Software on or with equipment (other than the Supported System); or
 - F. any defects or errors caused by a condition of force majeure as provided in Section 16 below.
- d. *Notification.* All requests by Licensee for the provision of Services shall be made by telephone or email to DMP at such telephone number or email address as DMP may from time to time designate to Licensee in writing.
- e. *Upgrades.* DMP will make available to Licensee all Upgrades for the Software; provided that the provision of certain Upgrades may require the payment of an additional License Fee.
- f. *Service Related Obligations of Licensee.* Licensee acknowledges and agrees that the level of support that DMP can provide is dependent upon the Licensee's cooperation and the quantity of information that Licensee can provide. In light of the foregoing, Licensee shall:
 - i. Cooperate with and provide reasonable assistance to DMP's personnel in the diagnosis and correction of any Fault;
 - ii. Ensure that the Software is used in accordance with the terms of this Agreement and any instructions provided by DMP;
 - iii. Ensure that the Licensee's operating staff is adequately trained in the use of the Software;
 - iv. Not make any alteration, addition or modification to the Software in any way;
 - v. Notify DMP immediately upon the occurrence of a Fault and promptly provide DMP with adequate documentation of the notified Fault (with the adequacy of such documentation to be determined by DMP in its sole discretion);
 - vi. Use the Software in accordance with the terms and conditions of this Agreement and its documentation, including the installation of all available Upgrades;
 - vii. Permit DMP and its employees and agents to have such access to Licensee's Supported System, Software and personnel as DMP may reasonably require to carry out its obligations under this Agreement; and
 - viii. Make available to DMP free of charge all information, facilities and services reasonably required by DMP to enable DMP to provide the Services.

9. Additional Services. In the event that Licensee desires for DMP to perform any services outside the scope of those described in Section 8 hereof or on Exhibit B, Licensee shall enter into a separate Services Agreement with DMP in the form provided by DMP.



10. **Term and Termination.**

- a. The term of this Agreement shall commence at the Effective Time and shall continue until either party terminates the Agreement upon thirty (30) days prior written notice to the other party. Notwithstanding the foregoing, the license to the Software shall be perpetual upon payment in full of the License Fee; provided that such license shall terminate if this Agreement is terminated by DMP pursuant to Section 10(b).
- b. DMP shall be entitled to immediately terminate this Agreement in the event of any of the following:
 - i. a violation or breach by Licensee of any of the covenants or promises described herein, including a breach of those provisions relating to confidentiality or relating to the scope of use of the Software, which breach, if capable of being cured in the reasonable determination of DMP, is not cured within ten (10) days after receipt by Licensee of written notice of such breach;
 - ii. the use of the Software by an unauthorized third party; or
 - iii. the failure of the Licensee to pay any fees or other compensation due hereunder within ten (10) days after any such payment is due.
- c. DMP shall have the right to terminate the support Services provided pursuant to Section 8 and Exhibit B in the event that Licensee fails to pay any Support Fee and does not cure such default within a reasonable period of time following notice thereof by DMP. In such event, DMP shall have the right to require Licensee to enter into a separate support and maintenance agreement (and pay the fees required thereunder) as a condition to receiving support and maintenance for the Software.

11. **Rights and Obligations upon Termination.** Subject to Section 14 hereof, termination of this Agreement shall not affect any of the obligations of the parties that accrued prior to the effective date of termination. Upon the termination of this Agreement pursuant to Section 10(b), each party shall return to the other party all Confidential Information (as defined below) in its possession together with all extracts therefrom or copies thereof.

12. **Non-Solicitation.** Neither party shall without the prior written consent of the other at any time during the term of this Agreement and for a period of six (6) months after termination thereof, solicit or attempt to entice away from or discourage from being employed by the other party, or employ or offer to employ, any person employed by the other party. Nothing contained in this Section 12 shall limit a party's right to make general solicitations for employment that are not directed at employees of the other party.

13. **Independent Contractors.** The relationship between the parties hereto is one of independent contractors and nothing contained in this Agreement shall be construed as constituting or establishing any partnership or joint venture between the parties.

14. **Survival.** The provisions of Sections 2, 4, 6-7, 11-15, and 17-19 will survive the termination of this Agreement for any reason.

15. **Confidential Information.**

- a. Each party acknowledges that in performing this Agreement it may obtain or have access to confidential information relating to the other party, its business, finances and affairs ("Confidential Information") and the party receiving such Confidential Information (the "Receiving Party") shall at all times:
 - i. use the Confidential Information solely for the purposes of carrying out its obligations under this Agreement and shall not use the Confidential Information for its own gain or benefit or for the benefit of any person other than the other party; and
 - ii. keep the Confidential Information secret and confidential and, in particular, not divulge, publish or disclose the Confidential Information whether in whole or in part and whether directly or indirectly to any person other than in confidence and on a need to know basis to its employees, officers or agents who are subject to confidentiality obligations in respect thereof under their contracts of employment or engagement (as the case may be) with the Receiving Party.
- b. Notwithstanding anything to the contrary herein, "Confidential Information" shall not include any information that (i) is, or becomes by means other than disclosure by the Receiving Party, generally known or available by publication, commercial use, or otherwise to the public, (ii) is developed or discovered by the Receiving Party independently of any knowledge of the Confidential Information, or (iii) is already known by the Receiving Party prior to learning such information from the other party.

16. **Force Majeure.** Neither party shall be liable for any failure to perform or delay in performing its obligations under this Agreement if such failure or delay is caused by circumstances beyond its reasonable control, including acts of God, hurricanes, fire, explosion, civil commotion, insurrections, riots, strikes, industrial disputes of any kind (whether of its own or third party employees), inadequate performance by program suppliers, installation contractors or equipment suppliers, breakdown of facilities, microwave or other electrical, or physical signal interference, subject to the party being so delayed notifying the other party in writing of the reasons for the delay and the likely duration of such delay and such party shall be granted an extension of time for performance equal to the period of delay.



17. Dispute Resolution.

- a. Any dispute, claim or controversy arising out of or relating to this Agreement or the breach, termination, enforcement, interpretation or validity thereof, including the determination of the scope or applicability of this agreement to arbitrate, shall be determined by arbitration, before a single arbitrator. The arbitration shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures. Judgment on the arbitration award may be entered in any court having jurisdiction. This clause shall not preclude the parties from seeking provisional remedies in aid of arbitration from a court of appropriate jurisdiction. The arbitrator may, in the award, allocate all or part of the costs of the arbitration, including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party.
- b. Prior to the appointment of the arbitrator, and within 10 days after the date of commencement of the arbitration, the parties shall submit the dispute to JAMS for mediation. The Parties will cooperate with JAMS and with one another in selecting a mediator from a JAMS panel of neutrals, and in promptly scheduling the mediation proceedings. The parties covenant that they will participate in the mediation in good faith, and that they will share equally in its costs. All offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys, and by the mediator or any JAMS employees, are confidential, privileged and inadmissible for any purpose, including impeachment, in any arbitration or other proceeding involving the parties; provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation. If the dispute is not resolved within 30 days from the date of the submission of the dispute to mediation (or such later date as the parties may mutually agree in writing), the administration of the arbitration shall proceed forthwith. The mediation may continue, if the parties so agree, after the appointment of the arbitrators. Unless otherwise agreed by the parties, the mediator shall be disqualified from serving as arbitrator in the case. The pendency of a mediation shall not preclude a party from seeking provisional remedies in aid of the arbitration from a court of appropriate jurisdiction, and the parties agree not to defend against any application for provisional relief on the ground that a mediation is pending.

18. Export Regulation. Licensee shall not itself, or permit any other person to, export, re-export or release, directly or indirectly any Controlled Technology to any country, jurisdiction or person to which the export, re-export or release of Controlled Technology (a) is prohibited by applicable law or (b) without first completing all required undertakings (including obtaining any necessary export license or other governmental approval). "Controlled Technology" means any software, documentation, technology or other technical data, or any products that include or use any of the foregoing, the export, re-export or release of which to certain jurisdictions or countries is prohibited or requires an export license or other governmental approval, under any law, including the US Export Administration Act and its associated regulations.

19. General.

- a. Licensee is solely responsible for reporting and paying any taxes (including sales or use taxes and intangible taxes) resulting from the provision of the Software and Services pursuant to this Agreement (except for any tax based solely upon DMP's net income). DMP reserves the right to have Licensee pay any such taxes to DMP as they fall due for remittance to the appropriate authority. Licensee agrees to hold DMP harmless from all liability arising from the Licensee's failure to report or pay such taxes.
- b. This Agreement shall be governed by and construed in accordance with the laws of the State of Missouri without regard to any conflicts of laws principles or any rule of construction or interpretation based upon which party drafted this Agreement.
- c. Subject to the parties' obligation to submit disputes to arbitration and/or mediation under Section 17, the parties hereby agree and consent that (i) the exclusive venue for any dispute, claim or other legal action authorized or arising hereunder, or brought by either party against the other, whether based in contract, tort, or other theory under law or equity, shall be in Greene County, Missouri, and (ii) personal jurisdiction of the parties shall be vested in the state and federal courts located within the Western District of Missouri.
- d. No modification or amendment of this Agreement shall be binding unless it is in writing and signed by both parties.
- e. Any notice required or permitted under this Agreement shall be in writing and delivered in person (against receipt) or sent by certified mail, return receipt requested, with proper postage affixed to the following addresses Agreement or to such other address as a party shall have furnished to the other party in accordance with this Section:

If to DMP:

Digital Monitoring Products, Inc.
2500 North Partnership Boulevard
Springfield, MO 65803
FAX: 800.743.5724
Attention: Chief Financial Officer



If to Licensee:

The address given for Licensee on DMP's Invoice and/or the standard Terms and Conditions.

- f. If any provision of this Agreement is held by a court to be broader than permitted by applicable law, then such provision shall be reformed so that it is enforceable to the fullest extent permitted by applicable law. If any provision of this Agreement is held by any court or competent authority to be void or unenforceable, it shall be deemed deleted and all remaining terms of this Agreement shall remain in full force and effect.
- g. This Agreement together with its Exhibits is the complete and exclusive statement of DMP's obligations and responsibilities to Licensee, and supersedes any other price list, proposal, representation, or other communication by or on behalf of DMP relating to the subject matter of this Agreement. This Agreement together with the Background and the Exhibits is the entire understanding of the parties with respect to the subject matter of this Agreement and shall govern in the event any inconsistent terms and conditions are set forth in any price list, purchase order, confirmation, or memorandum.
- h. In the event that any litigation, arbitration, or controversy between the parties arises out of or relates to this Agreement, the prevailing party in such litigation, arbitration, or controversy shall be entitled to recover from the other party all reasonable attorneys' fees, expenses and suit costs, including those associated with any appellate proceedings or post-judgment collection proceedings.
- i. This Agreement shall be binding upon and shall inure to the benefit of the parties and their heirs, personal representatives, successors, and assigns (as the case may be) except as otherwise expressly provided for herein.
- j. Licensee may not assign this Agreement or sublicense the Software without the prior written consent of DMP. DMP may assign this Agreement to (i) an affiliate of DMP or (ii) a successor to its business, including as a result of any consolidation, merger, or other transfer of ownership, or to a purchaser of substantially all of its assets. Notwithstanding the foregoing, DMP may subcontract its obligation to perform all or any portion of the Services so long as the subcontractor is reasonably deemed qualified by DMP to fully and competently perform the Services.
- k. No waiver by any party of any breach or default in performance by any other party, and no failure, refusal or neglect to exercise any right, power or remedy given to any party hereunder or to insist upon strict compliance with or performance of all obligations under this Agreement, shall constitute a waiver of the provisions of this Agreement with respect to any subsequent breach or a waiver by such party of its right at any time thereafter to require exact and strict compliance with the provisions of this Agreement. Without limiting the generality of the foregoing, and for the avoidance of doubt, no course of dealing or other conduct of the parties that is not memorialized in a written amendment or waiver signed by the parties shall constitute an amendment, modification or waiver of this Agreement or any of its provisions.
- l. None of the provisions contained in this Agreement is for the benefit of or enforceable by any third parties (other than the DMP Parties entitled to indemnification hereunder).
- m. References in this Agreement to a "person" shall include individuals, corporations, partnerships, limited liability companies, trusts, and other entities. References to "a party" or "the parties" shall mean a party or the parties to this Agreement. The Background and the Exhibits and Schedules attached to this Agreement are hereby incorporated in and made a part of this Agreement by reference. References to this Agreement shall include the Background and any Exhibits.
- n. Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, references to the part include the whole; references to any gender include all genders; and use of the word "including" has the inclusive meaning frequently identified with the phrase "but not limited to". The section and other headings contained in this Agreement are for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation thereof in any respect. Section, subsection, clause, schedule and exhibit references are to this Agreement unless otherwise specified.



EXHIBIT A

Minimum Supported System

General Requirements

- ▶ 160GB Hard Drive
- ▶ 2 GB RAM memory
- ▶ CD Drive
- ▶ 10/100 Network Card
- ▶ Video Card

SCS-VR Computers

- ▶ Intel Core i3-540, 3.06 GHz with Windows Server 2008 Standard R2 or higher operating system
- ▶ SCS-VR Software Version 1.3.6 or higher (Displayed on the Configuration Tab of the SCS-VR Console)

SQL Server Computers

- ▶ Intel Core 2 Duo Processor E6300, 2.80 GHz with Windows Server 2008 Standard R2 or higher
- ▶ Microsoft SQL Server 2008 (Express or higher)
- ▶ .NET Framework 3.5 or higher
- ▶ Powershell 1.0 or higher
- ▶ Note: If using SQL Server 2008, verify that TCP/IP is enabled and the TCP port is set to 1433.

EXHIBIT B

Services

Response Time. During the term of this Agreement, and subject to payment of Support Fees, DMP shall use commercially reasonable efforts to Respond to Incidents reported by Licensee within the following timeframes:

- for a Severity Level One Incident, within six (6) hours after DMP's receipt of Licensee's notification on a 24/7 basis;
- for a Severity Level Two Incident, within twelve (12) hours after DMP's receipt of Licensee's notification on a 24/7 basis; and
- for a Severity Level Three Incident, within twenty-four (24) hours after DMP's receipt of Licensee's notification during Business Hours.

"Incident" means a support request that begins when Licensee contacts DMP to report one specific Fault and ends when DMP either: (a) Resolves the Fault; or (b) determines in its sole discretion that the Fault cannot be Resolved.

"Resolve" means the provision of: (a) Services that, in DMP's sole discretion, corrects the Fault; (b) information to Licensee that corrects the Fault; (c) information to Licensee on how to obtain a software solution that corrects the Fault; (d) notice to Customer that the Fault is caused by a known, unresolved issue or an incompatibility issue with the Software; (e) information to Licensee that identifies the Fault as being corrected by upgrading to a newer release of the Software; or (f) notice to Licensee that the Fault has been identified as arising out of or resulting from a Service Exception.

"Respond" means DMP's initial communication with Licensee, whether by telephone, e-mail or otherwise, acknowledging Licensee's request for Services in connection with a specific Fault. "Response" has a correlative meaning.

"Severity Level One Incident" means a Fault that causes the Software to not operate and has a critical impact on Licensee's business operations.

"Severity Level Two Incident" means a Fault that results in a lack of Software functionality and materially degrades significant aspects of Licensee's business operations.

"Severity Level Three Incident" means a Fault that impairs the performance of the Software, but does not substantially affect Licensee's business operations.

