DATASCOPE WMS SOFTWARE LICENCE AGREEMENT – TERMS AND CONDITIONS (hereinafter referred to as "Terms and Conditions" or "these Terms and Conditions")

(Version 3/2015 effective from 1 December 2015)

It is agreed and acknowledged that signature by the Customer of Datascope WMS Software Licence Agreement Signature Schedule constitutes acceptance of Datascope's schedule of modules and these Terms and Conditions with combinedly constitutes the Datascope WMS Software Licence Agreement concluded between Datascope and the Customer ("the SLA"). These Terms and Conditions are available on Datascope's website: www.datascope.co.za/legal or should you not have internet access a copy of which will be provided to you by sending an e-mail request to admin@datascope.co.za or upon request from your Datascope VAR) as binding upon the Customer and the signatory on its behalf hereof. It is further confirmed that the attention of the signatory hereof on behalf of the Customer has been drawn to this clause and these Terms and Conditions and that the signatory understands the contents hereof and accepts the full consequences of this clause and these Terms and Conditions as binding upon the Customer and the signatory of the signature schedule which shall be so binding as from the date of signature of the signature schedule.

1.   **PREAMBLE**

1.1. What follows hereunder applies to all Software Licence Agreements entered into with Datascope Consulting CC, registration number CK1995/036751/23 ("Datascope"), situated at 24 Havelock Street, Central, Port Elizabeth, South Africa and the Customer.

1.2   This version of these Terms and Conditions contains a version number as well as the date from which these Terms and Conditions will be effective.

1.3. Datascope reserves the right to change these Terms and Conditions at any time. Whenever Datascope changes an existing version of these Terms and Conditions, a new version of these 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 the Customer's SLA will be the version that is effective at the date that the Customer signs the Signature Schedule.

1.5 To the extent that any of these Terms and Conditions may be in conflict with any SLA entered into between the Customer and Datascope Consulting CC, these Terms and Conditions shall prevail.

2. **AGREEMENT**

2.1. Datascope hereby grants to the Customer a personal, non-transferable and non-exclusive licence to use the Software identified in the Schedule of Modules in accordance with these Terms and Conditions.

2.2. The SLA constitutes the entire agreement between the Customer and Datascope with respect to the Software and neither the Customer nor Datascope are bound by any representations or warranties that are not recorded in this SLA.

2.3. If the Customer or Datascope fails to exercise or fails to timeously exercise any of their rights under the SLA, neither the Customer nor Datascope will be prevented from exercising such rights at a later stage.

2.4. Should any of these Terms and Conditions 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 the Customer and Datascope submits to the exclusive jurisdiction of the Courts of law of the Republic of South Africa.

3. **DEFINITIONS**

To make this SLA easily understandable, the following terms are defined:-

3.1. "**SLA**" 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 Datascope 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 the Customer until 31 October and thereafter from 1 November to 31 October;

3.3. "**ILF**" means the Initial Licence Fee that the Customer pays to Datascope when Datascope first grants the Customer 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. The Customer can change the Location at any time during the currency of this SLA, provided that the Customer advises Datascope 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 Datascope provides to the Customer so that the Customer can   use   the Software;

3.6. "**Related Companies**" means those companies that, in terms of the Companies Act 61 of 1973, as amended, are the Customer's subsidiary companies or its holding company and are managed and controlled from the same continent where the Customer is managed   and controlled;

3.7. "**Schedule of Modules**" means the document entitled "Schedule of Modules" that forms part of this SLA, is initialled by the Customer and Datascope and records the details of the Software that Datascope is licensing to the Customer and the specific terms relating to the licence;

3.8. "**Signature Schedule**" means the document entitled "Signature Schedule" that forms part of this SLA, is signed by the Customer and Datascope and records the Customer's details;

3.9. "**Software**" means the computer programmes, in object code form only, that Datascope has licensed to the Customer, 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 the Customer) who are authorised to access and use the

Software. The authorised number of Users for the Customer is recorded in the Schedule of Modules;

4. THE LICENCE

4.1. The Licence that Datascope has granted to the Customer allows the Customer to install the Software, create one Datascope WMS database and to use the Software for its internal business purposes. The Customer will be responsible for the installation and implementation of the Software unless the Customer and Datascope specifically agree otherwise in writing. If Datascope recommends an implementation partner, Datascope does not accept any responsibility for the performance or obligations of such implementation partner and by recommending such implementation partner, Datascope does not warrant or make any representations in respect of the capability or performance of such implementation partner and the Customer will have no claim of whatsoever nature (including but not limited to direct or indirect damages) against Datascope in respect of any acts or omissions which may have caused the Customer to suffer any loss of whatsoever nature including but not limited to costs, expenses, claims or liabilities.

4.2. The Customer must comply with the restriction on the number of Users who may have access to the Software.

4.3. The Customer may not use the Software to provide marketing, training, consulting or any other commercial services related to the Software. The Customer may not host the Software or any part thereof for or on behalf of any third parties nor may it offer any unauthorised users access to the Software or any part thereof over the internet or by any other means.

4.4. The Customer may not copy the Software in any circumstances except to make a reasonable number of backup copies. The Customer must keep the backup copies in a secure place under its control and it must mark them clearly with Datascope's proprietary notices. The Customer may only use one copy of the Software at any one time.

4.5. If, for purposes of the Customer's internal business, its backup procedure entails running a second live server concurrently with its primary server, the Customer will be entitled to create a second Work Directory on its backup server provided that the Customer only uses one Work Directory

at any one time. The Customer must keep Datascope advised of the Location of the backup server, which Datascope shall be entitled to have access to in terms of clause 4.9 below.

4.6. To commence its use of the Software, the Customer must provide Datascope with such information as Datascope requires to issue the Registration Number. Upon receipt of such information, Datascope will issue and send the Registration Number to the Customer. The date on which Datascope sends the Registration Number to the Customer will be the date of delivery of the Software.

4.7. At the end of each ALF period and after the Customer has paid Datascope the ALF for the next ALF period, Datascope will issue and send you a further Registration Number to allow the Customer to use the Software for the next ALF period.

4.8. If the Customer wants your Related Companies to use the Software the Customer must apply in writing to Datascope, advising Datascope of the relationship between it and the Related Company, the Related Company's business registration number, registered name and address and any other information that Datascope may request from the Customer. Should Datascope approve the Customer's application, Datascope will issue to the Customer a Registration Number for the Related Company. The Related Company will then join the Customer as a party to this Agreement so that the Customer and any Related Companies that are party to this SLA will have the benefit of and will be jointly and severally bound by this SLA, and therefore jointly and severally liable for the Customer and the Related Companies' performance in terms of this SLA. References in this SLA to "the Customer" will be interpreted as references to the primary customer and any of its Related Companies. The Customer must ensure that, for the purposes of each Related Company becoming bound by this SLA, it is authorised to contract on behalf of the Related Company and its application for a Registration Number for the Related Company will be deemed as its warranty to Datascope that it is so authorised. If any Related Company that is party to this SLA ceases to be a Related Company at any time, it will immediately cease to be a party to this SLA and the Customer must ensure that it immediately ceases all use of the Software.

4.9. The Customer hereby agrees to allow Datascope or our representatives full access to the Location and all sites where the Software is accessed or used during the Customer's working hours and upon Datascope giving the Customer reasonable notice so that Datascope can verify the Customer's compliance with its obligations under this SLA. Datascope agrees to comply with the Customer's reasonable health and safety rules when on the Customer's premises.

4.10. If the Customer for any reason discontinues its use of the Software or this Agreement terminates for any reason whatsoever, Datascope shall be entitled to enter into the Location during reasonable business hours and without notice for purposes of removing the Software from the servers of the Customer wheresoever situated.

4.11 If Datascope establishes that the Customer has breached the terms of its licence resulting in more users accessing and/or using the Software than permitted by its licence, Datascope reserves the right, in addition to the other rights that Datascope has in terms of this SLA, to invoice the Customer for the additional users at Datascope's prevailing rates for the period that such users have had and continue to have access to and/or use the Software. Datascope's invoices will be payable within 30 days from the date of each invoice.

5. **PAYMENT**

5.1. The Customer agrees to pay Datascope:-

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 the Customer;

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 the Customer and Datascope, that arise from this SLA within 30 days from the date of Datascope's invoice.

5.2. Datascope reserves the right to increase the ALF at the beginning of each ALF period, however the increase will not exceed the greater of 10% of Datascope's 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 the Customer to Datascope excludes any taxes and/or levies due as a result of a requirement by any sphere of government, organ of state or 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 the Customer at the then prevailing rate. If any payments due by the Customer to Datascope are subject to withholding tax, the Customer shall pay Datascope an additional amount so that Datascope receives the full payment that is due to it.

5.4. The Customer is not allowed to withhold or delay payment of any amounts due to Datascope or to set-off such payments against any amounts that Datascope may owe the Customer or any claims that the Customer may have against Datascope. Accordingly, any payments due by the Customer to Datascope shall be free from set-off deduction, taxes and/or bank charges.

6. **WARRANTIES**

6.1. <u>OUR WARRANTIES</u>

6.1.1. Datascope warrants that for a period of 60 days from the date of delivery of the Software to the Customer the Software will function substantially in accordance with the applicable Software product description published by Datascope on their website. If it does not, the Customer may return the Software and all copies that it has made to Datascope, accompanied by evidence showing that it does not conform substantially to the Software product description.

If Datascope is satisfied that this is the case, Datascope will, at its sole discretion, replace the Software or terminate this SLA and refund the Customer all monies that it has paid Datascope 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. Datascope warrants that the Customer's use of unmodified Software in compliance with these terms and conditions and the

SLA 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, Datascope will, at its sole discretion, replace or alter the Software or terminate this SLA and refund to the Customer the ALF that it paid to Datascope for the ALF period during which the SLA is terminated.

6.1.3. The Customer agrees that the remedies recorded in this clause are its sole and exclusive remedies in respect of a breach of the above warranties.

6.2. <u>NO OTHER WARRANTIES</u>

6.2.1. The Customer hereby acknowledges its understanding and acceptance that it is not commercially possible to produce computer software products that are error free and the Customer accepts unconditionally that Datascope does not warrant that the Software (or any part thereof), are error free or that the Customer's use thereof will be uninterrupted or that the Software will meet the Customer's requirements. The Customer therefore assumes 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. Datascope does not warrant or represent that the functions contained in the Software will meet the Customer's requirements or will operate in the combination selected by the Customer or that the operation of the Software will be error free and Datascope makes no representations or warranties, express or implied, or of any other kind whatsoever and there shall be excluded from these Terms and Conditions and the SLA any warranties or conditions, whether express or implied, statutory or otherwise other than those contained in these Terms and Conditions;

6.2.3 Without prejudice to the generality of the aforegoing, no implied warrant of quality, merchantability or fitness for a particular purpose are given in terms of the Software and no implied warranty arising by usage or trade, course of dealing, or course

of performance is made by Datascope nor shall any such implied warranty arise by the Customer and/or Datascope's conduct in relation to the Software, these Terms and Conditions or to each other and in no event shall Datascope be liable on any such warranty with respect to any part or all of the Software or any services provided by Datascope to the Customer, whether in terms of these Terms and Conditions, the SLA or any other agreement of whatsoever nature.

6.3. <u>LIMITATION OF LIABILITY</u>

6.3.1   In no event shall Datascope be liable to the Customer (or any party claiming through or on behalf of the Customer) for any incidental, indirect, special or consequential damages, costs, expenses or otherwise (including but not limited to loss of profit or interruption of business) arising out of or relating to these Terms and Conditions and/or the SLA or the use of any Software whether by the Customer, or any other third party or for any claim by any third party against the Customer including liability for personal injury or death.

6.3.2   Notwithstanding the provisions of clause 6.3.1 above and in the event that for whatsoever reason Datascope may incur any liability for any damage, loss, claim, expense or cost of whatsoever nature (whether arising in contract, delict, by statute or otherwise during the currency of these Terms and Conditions and the SLA or following or arising out of the termination of these Terms and Conditions and/or the SLA as against the Customer) of any Customer such shall be limited to the amounts paid to Datascope by the Customer for the particular Software in any given year during which the claim arose.

7.   **OWNERSHIP AND RESTRICTIONS**

7.1. The Customer acknowledges that the Software is confidential material containing Datascope's and its licensors' valuable trade secrets and Datascope and its licensors hold all title and ownership to the Software, including all trade names, trademarks, copyright and other intellectual property rights, whether capable of registration or not. The Customer

agrees to take all steps to ensure that the Customer uses the Software in such a manner that protects all of Datascope's rights and the rights of its licensors in and to the Software. The Customer will not during or at any time after termination of this SLA acquire or be entitled to claim any right or interest in the Software and the Customer is 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   The Customer agrees 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 the Customer's own creation or for any other purpose.

8.   <u>TERM, BREACH & TERMINATION</u>

8.1.   Except as otherwise provided in this SLA, this SLA will commence on the date of delivery of the Software to the Customer and will continue until:-

8.1.1. Datascope gives the Customer 12 months written notice of its intention to terminate this SLA, which notice period will run concurrently with an ALF period; or

8.1.2. the Customer gives Datascope written notice of its intention to terminate this SLA at least 30 days before the start of the next ALF period,

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

8.2.   Should the Customer fail to pay any charges or fees to Datascope within the periods set out in this SLA, or should the Customer attempt to use, copy, modify, licence or transfer the Software or any component thereof in breach of the provisions of this SLA or should the Customer breach any other material provision of this SLA or should it be placed into liquidation, whether provisional or final, or business rescue, 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 SLA,

And in both cases Datascope will be able to claim from the Customer whatever damages or loss Datascope has suffered.

8.3. On the termination of this SLA, for whatever reason, the Customer will lose its right to use the Software. The Customer must therefore delete the Software from its system and return **ALL COPIES** of the Software to Datascope within 14 days of date of termination or the Customer may, with Datascope's written permission, destroy **ALL COPIES** of the Software and provide Datascope with a certificate confirming that the Customer has done so. The Customer will not be entitled to any refunds of any fees of whatsoever nature paid to Datascope.

9. **THIRD PARTY SOFTWARE**

9.1. If Datascope supplies the Customer with certain computer software products that are owned by other parties and are used in conjunction with the Software ("Third Party Software"), the Customer agrees to use the Third Party Software in accordance with the end user licence agreement associated with the Third Party Software or concluded between the Customer and the applicable licensor of the Third Party Software.

9.2 Where Datascope has referred to its rights in the Software in this SLA, the reference to Software must be understood to exclude Third Party Software.

9.3. The Customer agrees 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. The Customer accepts that Datascope gives it no warranties or representations, whether express or implied, statutory or otherwise, with regard to the Third Party Software.

10. **NOTICES**

10.1. Datascope and the Customer both select as their domicilia citandi et executandi the physical addresses and telefax numbers stipulated next to or under their signatures and names in the Signature Schedule for the purposes of giving or sending any notice provided for or required in terms

of this SLA or for the service of any court process. Datascope or the Customer's can change their physical address or e-mail address by giving the other party at least 5 (five) business days written notice of such change.

10.2 Any notice given in connection with this SLA must be delivered by hand or be sent by registered post or e-mail 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, 5 business days after posting and if sent by e-mail, on the day that the e-mail is transmitted.