

**Media Recovery, Inc. and its Subsidiaries**  
**STANDARD TERMS AND CONDITIONS FOR SALE OF COMMERCIAL PRODUCTS**  
Effective as of August 2009

**1. Applicability:** These Terms and Conditions are an essential part of the offer to sell equipment or services by Media Recovery, Inc. and its subsidiaries, DataSpan, Inc., ShockWatch, Inc. and MRI DPC, Inc. (hereinafter referred to as "**SELLER** "). Such offer to sell is expressly conditioned upon the acceptance of these Terms and Conditions by the purchaser (hereinafter referred to as the "**Buyer**") of such equipment or services. The Terms and Conditions of any sale of equipment or services under any agreement resulting from the acceptance by Buyer of such offer are expressly limited to these Terms and Conditions, unless overridden by a writing signed by SELLER, and any additional or inconsistent terms and conditions on Buyer's written expression of acceptance, purchase order, or any other document issued by Buyer, are rejected by SELLER and shall not apply to such sale.

**2. Acceptance of Offer; Change Orders.** Buyer may accept SELLER's offer to sell equipment or services to which these Terms and Conditions are attached in any written form, including, but not limited to, telegraphic or facsimile communications, which specifically refer to SELLER's offer. Any such acceptance of SELLER's offer shall result in an agreement (hereinafter referred to as the "**Agreement**") of sale of the equipment or services specified in the offer; and any such acceptance is subject to the provisions of Section 1 hereof. Any requested changes to an order of new or used non-custom equipment must be received by SELLER no later than thirty (30) days prior to shipping. If such requested changes are accepted by SELLER, the changes shall be subject to these Terms and Conditions. Buyer shall not be entitled to change any orders for custom equipment without the prior written consent of SELLER, and if such consent is given, such consent shall be subject to these Terms and Conditions and any other terms required by SELLER.

**3. Delivery.** The delivery terms of equipment purchased pursuant to the Agreement shall be designated in SELLER's offer. Insurance for equipment shipped to Buyer, and the cost and risk of loss incurred by shipment, shall be at Buyer's sole expense and risk.

**4. Acceptance of Equipment.** Buyer, or any user receiving shipment on behalf of Buyer, shall inspect all equipment immediately upon receipt. If Buyer does not notify SELLER in writing within thirty (30) days of delivery of any defect, shortage, or other failure to conform to the terms of the Agreement, the equipment shipped shall be deemed to have fulfilled the terms of the Agreement and to have been accepted by Buyer as delivered.

**5. Deposit; Payments.** Buyer agrees to pay a deposit to Seller at the time an order for equipment is delivered and in the amount required by Seller. The deposit will be applied against the purchase price, subject to these Terms and Conditions. Buyer agrees to pay SELLER the full amount set forth on each invoice submitted by SELLER for any amounts due hereunder within thirty (30) days of invoice date, without setoff or deduction. Any amounts outstanding after the stated due date, which is net 30 days of invoice date, will be subject to a 6% per annum interest charge.

**6. Cancellations of an Order.** Unless Buyer's order for equipment is a custom order, Buyer may cancel an order without payment of cancellation charges by written notice to Seller if the order is cancelled no later than thirty (30) days before shipment. If Buyer's order is a custom order, Buyer may not cancel the order without Seller's prior written consent. If consent to the cancellation of a custom order is given, Buyer agrees to pay a cancellation charge in an amount that will be determined by Seller in accordance with the status of the job at the time of cancellation, ranging from 20% to 75% of the purchase price as determined by Seller, but in no event less than \$1,000. A "custom order" is any order for equipment that does not involve the sale of stocked pre-manufactured inventory.

**7. Returns.**

**A.** Buyer may not return custom-made equipment. For orders of new non-custom equipment, Buyer may return the equipment after acceptance on the following conditions: (1) Buyer notifies the Seller of the return and ships the equipment to Seller or as directed by Seller, at Buyer's sole expense and risk, no later than thirty (30) days after Seller's delivery of the equipment; (2) Buyer pays a restocking charge equal to 15% of the purchase price of the equipment no later than the date the equipment is returned; and (3) Buyer either returns the equipment in its original shipping crating in reusable condition or pays an additional restocking charge to cover Seller's cost of replacing the original crating. If the purchase price has been paid in full, the foregoing charges and any other amounts owed by Buyer to Seller will be deducted from the purchase price and the remaining amount will be promptly remitted to Buyer.

**B.** For orders of used non-custom equipment, Buyer may not return the equipment unless Seller's consents, but if consent is given, the return is subject to the following conditions: (1) Buyer must ship the equipment to Seller or as directed by Seller, at Buyer's sole cost and risk, no later than thirty (30) days after Seller's delivery of the equipment; (2) Buyer pays a restocking charge equal to 50% of the purchase price of the equipment no later than the date the equipment is returned; and (3) Buyer either returns the equipment in its original shipping crating in reusable condition or pays an additional restocking charge to cover Seller's cost of replacing the original crating.

**C.** This section does not affect the warranties under Section 6 above.

**8. Liability.** NOTWITHSTANDING ANY OTHER PROVISION OF THE AGREEMENT, SELLER SHALL NOT BE LIABLE FOR ANY LOSS, DAMAGE, OR LIABILITY INCURRED BY BUYER OR BY ANY USER OF THE EQUIPMENT, DOCUMENTATION (WHETHER CERTIFIED OR NOT), OR SERVICES FURNISHED BY SELLER OR ITS AGENTS OR CONTRACTORS ARISING OUT OF THE USE OF SUCH EQUIPMENT, DOCUMENTATION, OR SERVICES, AS APPLICABLE, WHETHER DUE TO THE NEGLIGENCE OF SELLER OR ANY OTHER PERSON OR ENTITY. SELLER's liability for any defect or malfunction in any equipment or services rendered shall be limited exclusively to repair or replacement of equipment as provided by Section 6 herein. In the event a court of competent jurisdiction should rule that SELLER is answerable in damages notwithstanding the warranty and limitation of liability set forth herein, SELLER's liability shall not exceed the total of all payments made by Buyer to SELLER under the relevant quote for the equipment. **SELLER SHALL IN NO EVENT BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES FOR ANY FAILURE OR DELAY IN FURNISHING EQUIPMENT, DOCUMENTATION, OR SERVICES, OR OCCASIONED BY THE INSTALLATION, OPERATION, MAINTENANCE, USE, MALFUNCTION, OR FAILURE OF ANY EQUIPMENT, DOCUMENTATION, OR SERVICE FURNISHED BY SELLER OR ANY OTHER PERSON OR ENTITY.** The foregoing shall survive any warranty period set forth herein and any termination of this Agreement.

**9. Patents.** SELLER shall, at its own expense, defend any suits that may be instituted against the Buyer for alleged infringement of United States patents relating to equipment which SELLER manufactures and which is sold pursuant to the Agreement, provided such alleged infringement consists only in the use of such equipment itself and not as a part of any combination with other devices and parts, and provided the Buyer gives SELLER immediate notice in writing of any alleged infringement and of the institution of any such suit and permits SELLER, through its counsel, to answer the allegation of infringement and to defend such suit, and provided the Buyer gives all information, assistance, and authority required to enable SELLER to so answer and defend. In case of a final award of damages in any suit SELLER defends pursuant to this Section 11, SELLER will pay such award, provided, however, that SELLER shall not be responsible for any settlement compromise made without its written consent.

**10. Taxes.** No provision has been made in the price under the Agreement for taxes, tariff, duties, or imposts of any kind. The amount of any and all present or future taxes or other charges by any government upon the production, shipment, installation, or sale of the equipment or services sold under the Agreement, including sales, use, occupation, or possessor taxes, or export or import tariffs or duties, may be added to the price and paid by the Buyer; or, in lieu thereof, the Buyer shall, prior to shipment, furnish SELLER with tax-exemption certificates acceptable to the taxing authorities. If any tax due is not added to the price, but is later discovered at any time to have been due, Buyer shall promptly pay such tax and any penalties for non-payment.

**11. Proprietary Information.** All information, written or oral, provided by SELLER to Buyer relating to the equipment sold or services furnished pursuant to the Agreement is proprietary to SELLER whether so marked or not, and shall not be reproduced or duplicated by Buyer without the prior written consent of SELLER except as provided in this Section 13. Buyer shall prevent the disclosure of any such information to any third party, and shall disclose such information only to those employees of Buyer whose function necessitates their knowledge of such information.

**12. Governing Law; Venue; Waiver of Jury Trial.** THIS AGREEMENT IS GOVERNED IN ITS INTERPRETATION,

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**PERFORMANCE, AND ENFORCEMENT BY THE LAWS OF THE STATE OF TEXAS.** Any action or proceeding arising hereunder may be brought in any state or federal court in Harris County, Texas, and Buyer and Seller each agree to submit to the nonexclusive jurisdiction of such courts and waive any objection it may now or hereafter have as to the venue of any such action or proceeding brought in any such court or that any such court is an inconvenient forum. Any action or proceeding by the Buyer against the Seller shall be brought only in a court located in Harris County, Texas.

**TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BUYER AND SELLER HEREBY IRREVOCABLY AND EXPRESSLY WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY INDEMNITY, OR ANY OF THE SERVICES TO BE PROVIDED HEREUNDER.**

**13. Force Majeure.** Any delay by SELLER in furnishing equipment or services pursuant to the Agreement or in performing any of its obligations hereunder shall be excused and shall not allow the Buyer to terminate the Agreement, nor to delay payment or performance, nor to take any other contractual action, including imposition of liquidated or actual damages, if such failure to perform arises out of causes beyond the control of SELLER. Such causes include, but are not limited to, acts of God or of the public enemy, acts of any foreign or domestic government body in either the sovereign or contractual capacity, war, fires, earthquakes, floods, epidemics, labor disturbances, strikes, freight embargoes, severe weather, mobilization or military call-up, confiscation, revolt or riot, or delays or defaults of subcontractors. In the event of a delay as described in this Section 13, an appropriate adjustment of the delivery schedule set forth in the Agreement shall be made. In the event the delay described continues for a period of six (6) months or more, SELLER may terminate this Agreement without further liability to SELLER, subject to any terms hereof that survive termination.

**13. Buyer's Default.** In the event Buyer fails to pay or perform any of its obligations under the Agreement, advises SELLER of its intention not to pay or perform any of such obligations, or otherwise appears unable to so pay or perform, SELLER may give Buyer written notice of default. If, within ten (10) days of receipt of such notice, Buyer has not corrected such failure to pay or perform or has not otherwise given SELLER adequate assurance of payment or performance, SELLER may, in its sole discretion, declare the Agreement terminated (subject to the survival of any provisions hereof which survive termination), stop all further performance, and elect either of the following remedies:

**A.** Hold Buyer liable for (i) all costs committed or incurred by SELLER up to the date of termination, (ii) all costs incurred by SELLER in connection with or as a result of such termination, (iii) the profit which SELLER would have realized on completion of performance (such profit shall be calculated from actual costs incurred plus SELLER's estimated cost to complete its performance of the Agreement; if such computation results in a projected loss, zero profit shall be assumed and no reduction of the sums set forth in (i), (ii), and (iii) shall be made), and (iv) all fees and expenses, including reasonable attorney's fees, incurred by SELLER in the collection of this amount. Buyer, upon payment of the assessments set forth above, shall be entitled to possession of any hardware items which are complete on the date of such termination. All incomplete hardware and all data and software shall remain the property of SELLER; or

**B.** Retain all equipment, data and software manufactured as of the date of termination. In such event, SELLER's damages will be difficult or impossible to determine, and in lieu of any actual damages, Buyer shall pay to SELLER, as liquidated damages and not as a penalty, a sum equal to ten percent (10%) of the total contract price, plus any and all fees and expenses, including attorney's fees, incurred by SELLER in the collection of such sum.

Nothing in the Agreement or in this Section 13 shall be construed as limiting SELLER's remedies for breach, and SELLER may, in addition to the remedies set forth in this Section 13, exercise any and all other rights and pursue any and all other remedies available under applicable law.

**14. Assignment.** Buyer shall not assign the Agreement or any rights or obligations under the Agreement without the prior written consent of SELLER, and no purported assignment by Buyer shall be binding on SELLER without such prior consent.

**15. Publicity.** Buyer shall not make or authorize any news release, advertisement, or other disclosure using SELLER's name without SELLER's prior written approval.

**16. Separability.** If any portion of the Agreement is found by any court or other judicial or administrative authority to be unenforceable or otherwise void, the remaining provisions of the Agreement shall not be affected thereby, and shall remain in full force and effect.

**17. Waiver.** The failure of SELLER to insist on the performance of any obligation of Buyer hereunder shall not be construed as a waiver by SELLER of such obligation or any other obligation of Buyer hereunder, and the same shall remain an obligation of Buyer.

**18. Complete Agreement.** There are no oral agreements between the parties. This Agreement and any other written agreements between the parties shall constitute the entire understanding of the applicable parties as to the subject matter thereof and shall replace and supersede all prior or contemporaneous agreements, written or oral, as to such subject matter. No addition to or modification of the Agreement or of these Terms and Conditions shall be binding upon SELLER unless in writing and signed by an authorized representative of SELLER.

**19. Headings.** The headings to the foregoing paragraphs are for convenience or reference only and do not form a part of the Agreement and shall not in any way affect the interpretation thereof.

**20. Notices.** Unless otherwise expressly agreed in writing, all notices and other communications provided for hereunder shall be in writing (including by facsimile transmission) and mailed, faxed or delivered, to the address, facsimile number specified for notices in the purchase order or quote executed by Buyer and Seller or such other address as shall be designated by such party in a notice to the other party. All such notices shall be deemed to have been given or made upon the earliest to occur of (i) actual receipt by the intended recipient or (ii) (A) if delivered by hand or courier, when signed for by the designated recipient; (B) if delivered by mail, four business days after deposit in the mail, postage prepaid; and (C) if delivered by facsimile when sent and receipt has been confirmed by telephone. Electronic mail (email) shall be allowed only for routine communications and not for any other purpose.