

RADAR ACCESS AGREEMENT Terms and Conditions

RADAR Access Agreement between Safety Performance Solutions, Inc. & SPS Customer

When the Customer uses the RADAR software, it implies acceptance of these terms and conditions. In this document, Safety Performance Solutions is referred to as the “Provider” and “Customer” refers to the Company using RADAR.

RECITALS

- A. The Customer is a corporation organized under the laws of the State of **XXXX** who operates an **XXXXX** company.
- B. The Provider is a corporation organized under the laws of the State of Virginia providing behavior-based safety implementation services and products, including RADAR, to companies worldwide.
- C. The Customer wishes to purchase RADAR access from the Provider.
- D. The Customer wishes to purchase the RADAR workshop.
- E. In purchasing RADAR access, the Company has unlimited use of the RADAR application for as long as the yearly maintenance fee is paid.
- F. The Provider will also supply limited technical support as needed to one designated “Point of Contact” of the Customer. Such designated Point of Contact shall attend the accompanying RADAR workshop.

NOW THEREFORE, the parties hereto, intending to be legally bound by the terms hereof, hereby enter into the following agreements:

ARTICLE I AGREEMENT TO PROVIDE SERVICES

- 1.1 Requests For Services. The Provider will provide RADAR access and training to the Customer, thereby allowing the Customer to manage observation data for their behavior-based safety process. This service is singularly limited to the Customer’s site. Other organizations (within or outside of the Customer’s company) shall NOT have access to RADAR as purchased by the Customer under penalty of law.
- 1.2 Request for Services Subject To Agreement. Only such Request for Services documents that are signed by both parties shall become subject to this Agreement. The parties shall endeavor in good faith regarding such Request for Services. Upon agreement of the parties concerning the terms and scope of work, such Request for Services shall be executed by each party and shall become an exhibit to this Agreement.
- 1.3 Commencement of Project Work. Upon execution by both parties of the Request for Services, the Customer is authorized to purchase RADAR access and RADAR training subject to final agreement as described below.

ARTICLE II DEPLOYMENT COORDINATION

- 2.1 Appointment of Point of Contact. Once purchased, the Customer will select a “Point of Contact” to work with the Provider to initiate RADAR access, RADAR training, and for managing RADAR on an ongoing basis. In the event of a Corporate Licensing Fee, the Customer shall appoint one Point of Contact for the entire corporation.
- 2.2 Functions of Point of Contact. The Customer’s Point of Contact shall be the ONLY contact between the parties relative to all RADAR issues, including RADAR access and RADAR training as well as managing RADAR on an ongoing basis.

- 2.3 Technical Lead & Support. The Provider agrees to offer limited technical support to the Customer for RADAR. The Customer may receive technical support by either voice or email. Technical support issues shall be responded to within three (3) business days of the inquiry.

For extensive support such as setting up additional reports and checklists, the Customer will be charged \$85/hour.

- 2.4 Project Timetable and Scheduling. Once purchased, the Provider will provide RADAR access and RADAR training at a time mutually agreed.

ARTICLE III ACCESS COSTS AND FEES

- 3.1 Access Pricing. For each individual site, the Customer will pay a one-time initial set-up fee of \$5000 for RADAR access plus a yearly maintenance fee (currently billed at \$597 for the first 1000 employees onsite and \$199 for the next 1000 employees thereafter). The yearly RADAR Maintenance Fees are subject to increase overtime due to upgraded services and enhancements. The Customer will also pay \$2950 for one day of onsite training (i.e., data entry training, creating simple reports, setting up users), and travel expenses billed at-cost. Limited on-going technical support is included in the initial set-up fee, as well as the yearly maintenance fee.
- 3.2 Invoicing For Services and Payment of Invoices. The Provider shall provide written invoices of any amounts due under the applicable Request for Services. All payments shall be due within 30 days of invoice date. Late fees (5% of total cost of services per month) will be assessed if no payment is received by the Provider from the Customer within 60 days of invoice date.
- 3.3 Recovering Deleted Data. Some data deleted from the RADAR database may be recoverable. If Customer wishes deleted data recovered, a minimum fee of \$1000 will be assessed for finding, testing, and restoring recovered data. This recovery process in no way assumes the integrity of such recovered data, but every effort will be made to restore recovered data to the satisfaction of the Customer.

ARTICLE IV COMPLETION OF SERVICES

- 4.1 Delivery. Upon completion of the RADAR set-up and RADAR Workshop, Customer will provide payment for services.

ARTICLE V PROPRIETARY RIGHTS

- 5.1 Provider Ownership. Payment to the Provider does not constitute ownership of RADAR. The initial set-up fee and yearly maintenance fees allows access to the RADAR application. The Customer will not resell or repackage RADAR for other sites within, or outside, their organization or with any outside agencies under penalty of law.

ARTICLE VI CONFIDENTIALITY

- 6.1 Customer. Customer shall not, at any time, disclose or disseminate the trade secrets embodied in RADAR or any supporting program documentation to any other person, firm, organization, or employee who does not need to obtain access, thereto consistent with Customer's rights under this Agreement. Customer shall devote Customer's best efforts to ensure that all persons afforded access to the Subject Programs and all supporting program documentation protect Provider's trade secrets against unauthorized use, dissemination, or disclosure under penalty of law.

6.2 Provider. The Provider shall not, at any time, disclose or disseminate data collected through RADAR or any other Customer documentation or information shared through interactions from Customer under this Agreement.

ARTICLE VII EMPLOYEE ACCESS

7.1 Provider Employees. The Provider shall enter and maintain in full force and effect agreements with all of its employees in which the employees acknowledge that all confidential information, including the Customer's data, in the course of the deployment of RADAR are the property of the Customer.

7.2 Customer Employees. The Customer shall enter and maintain in full force and effect, agreements with all of its employees in which the employees acknowledge that all work performed in the course of the deployment of RADAR are the property of the Provider.

ARTICLE VIII REPRESENTATIONS AND WARRANTIES OF THE PROVIDER

8.1 Performance. Provider represents and warrants that services provided by the Provider shall be performed in a workmanlike manner consistent with industry standards, that all Deliverables shall function substantially in compliance with agreed specifications, and that it shall perform all development tasks in compliance with all applicable state, federal and local laws, rules and regulations.

8.2 Warranty Disclaimers. Other than as specifically set forth in this Agreement, THE DELIVERABLES ARE DELIVERED TO CUSTOMER ON AN "AS IS" BASIS, WITHOUT ANY WARRANTIES OR REPRESENTATIONS EXPRESS, IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, QUALITY, PERFORMANCE OR NONINFRINGEMENT UPON THE RIGHTS OF ANY OTHER PARTY. PROVIDER MAKES NO WARRANTY THAT THE DELIVERABLES WILL MEET CUSTOMER'S SPECIFIC OBJECTIVES OR NEEDS OR THAT THE DELIVERABLES WILL BE FREE FROM ERRORS OR BUGS. PROVIDER MAKES NO WARRANTY THAT THERE WILL BE UNINTERRUPTED OPERATION OF THE DELIVERABLES. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE FOREGOING EXCLUSIONS AND DISCLAIMERS OF WARRANTIES ARE AN ESSENTIAL PART OF THIS AGREEMENT AND FORMED THE BASIS FOR DETERMINING THE PRICE CHARGED FOR THE PRODUCTS.

8.3 Limitation On Damages. In no event will Provider be liable for any incidental, special or consequential damages in spite of the fact that the Customer acknowledges that Customer has been fully advised that such damages are possible. Under no circumstances will damages assessed against Provider exceed the deployment fee (exclusive of costs and expenses) actually paid to the Provider for the specific requested services out of which potential damages arose.

8.4 Third Party Claims. Provider shall not liable for claims made against the Customer or the Provider arising out of Customer's use or ownership of the Deliverables and Customer hereby indemnifies and holds the Provider harmless from and against any and all claims, of every nature or type that may be brought or asserted by any other party.

ARTICLE IX TERM AND TERMINATION

9.1 Term. This Agreement shall be effective upon initial set-up and use of RADAR by both parties and shall remain in full force as long as the yearly maintenance fee is paid. The Customer may terminate use of RADAR at any time. Termination of RADAR use would void the initial setup fee or any remaining yearly maintenance fees.

9.2 Ownership of Customers Data. Upon termination of Provider services, Customer data stored in the RADAR application can be obtained at an additional cost to be determined at the time of termination of the contract.

ARTICLE X
MISCELLANEOUS PROVISIONS

10.1 Excusable Delays. Any delay or nonperformance of any provision of this Agreement caused by conditions beyond the reasonable control of Provider shall not constitute a breach of this Agreement, provided that Provider has taken reasonable efforts to rectify the nonperformance in accordance with this Agreement notwithstanding such conditions. Conditions beyond a party's reasonable control include, but are not limited to, customer-side applied firewalls, white lists, or other web filtering applications, natural disasters, acts of government after the date of the Agreement, power failure, fire, flood, acts of God, labor disputes, riots, acts of war and epidemics.

10.2 Notices. Any notification or written communication required by or contemplated under the terms of this Agreement shall be in writing and shall be deemed to be delivered if transmitted via Email at the Email addresses listed below, except for any notice of termination of this Agreement which shall be in writing and sent by United States Mail, Certified Mail, Return Receipt Requested and shall be deemed to have been delivered five (5) business days after the date of mailing. Addresses and Email addresses for such notices shall be:

If To Provider:

Safety Performance Solutions
610 North Main Street, Suite 228
Blacksburg, VA 24060 Phone: 540.951.7233 Safety@SafetyPerformance.com

If To Customer:

XXX

10.3 No Assignment. The Services to be performed by Provider hereunder are personal in nature, and Customer has engaged Provider as a result of Provider's unique expertise relating to such Services. Neither this Agreement nor any right, interest, duty or obligation hereunder may be assigned, transferred or delegated by Provider without the express written consent of Customer which consent may be withheld in the discretion of the Customer.

10.4 Arbitration. Except as specifically provided in this Agreement, the parties agree that any dispute or controversy arising out of, relating to or in connection with the interpretation, validity, performance, breach or termination of this Agreement shall be submitted to binding arbitration to be held in Virginia in accordance with the rules of the American Arbitration Association (the "Rules"). The decision of the arbitrator shall be final, conclusive and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court of competent jurisdiction. The parties shall each bear their own attorney fees with respect to such Arbitration but shall share equally the other costs and expenses of arbitration.

10.5 Controlling Law. In interpreting the terms of this Agreement, the parties agree that the laws of the State of Virginia shall be applicable. All suits permitted to be brought in any court shall be venued in the State of Virginia.

10.6 RADAR Access Agreement. This Agreement contains the entire agreement and understanding of the parties with respect to the subject matter hereof, supersedes, and replaces all prior discussions, agreements, proposals, understandings, Terms & Conditions whether orally or in writing, between the parties related to the subject matter of this RADAR Agreement. This Agreement may be changed, modified or amended only in a written agreement that is duly executed by authorized representatives of the parties. If any provisions hereof are deemed illegal or unenforceable by a court of competent jurisdiction, the enforceability of effectiveness of the remainder of the Agreement shall not be affected and this Agreement shall be enforceable without reference to the unenforceable provision. No party's waiver of any breach or accommodation to the other party shall be deemed to be a waiver of any subsequent breach.