

## Service Terms and Conditions E502

### 1. **Agreement.**

1.1. **Agreement.** These Terms and Conditions (“Terms”) have been incorporated by reference into a quotation, order, order confirmation, contract, agreement or other written instrument issued or signed by an authorized employee of Rapiscan (each, a “Rapiscan Sale Document”) regarding:

1.1.1. The sale of supplies, parts, consumables, accessories or components (“Parts”); and/or

1.1.2. The provision of maintenance, repair, installation, de-installation, radiation survey, testing, training, system move or similar services (“Services”) for the equipment described in the Rapiscan Sale Document (“Equipment”) at the location(s) described in the Rapiscan Sale Document (“Location(s)”).

These Terms and the Rapiscan Sale Document issued by Rapiscan to Buyer shall be collectively referred to herein as the “Agreement.”

1.2. **Precedence.** In the event of any conflict between the terms of the Rapiscan Sale Document and these Terms, these Terms shall take precedence.

1.3. **Entire Agreement.** Except as set forth in Section 18.3 (Other Confidentiality Agreements), this Agreement, including any attachments, exhibits or other written documents that are explicitly incorporated by the text of the Agreement, constitutes the entire agreement between Rapiscan and Buyer regarding the subject matter of this Agreement and may not be modified except in a writing signed by a duly authorized employee of Rapiscan and Buyer.

1.4. **Buyer Documents.** Rapiscan shall not be bound by the terms or conditions of any purchase order, order confirmation, acceptance or other instrument issued by Buyer (each, a “Buyer Document”), unless such Buyer Document is counter-signed by an authorized employee of Rapiscan. Rapiscan’s performance under this Agreement shall not, under any circumstances, be deemed Rapiscan’s acceptance of any of the terms or conditions contained in a Buyer Document. If Buyer issues a Buyer Document to procure the Parts or Services described in a Rapiscan Sale Document, then such issuance shall be deemed to constitute Buyer’s acceptance of the terms and conditions of this Agreement, but all other terms and conditions contained in the Buyer Document shall be of no force or effect and shall not be deemed to supersede, replace, modify, augment, enhance, delete, remove, amend or otherwise alter any of the terms and conditions of this Agreement. Acceptance of or payment for any of the Parts or Services shall also be deemed to constitute Buyer’s acceptance of all of the terms and conditions of this Agreement.

2. **Parts.** If the Rapiscan Sale Document includes the sale of Parts, Buyer agrees to purchase the Parts from Rapiscan and Rapiscan agrees to sell the Parts to Buyer, all in accordance with the terms and conditions of this Agreement.

2.1. **Delivery and Risk of Loss; Title.** Unless otherwise provided in the applicable Rapiscan Sale Document, all Parts shall be delivered Free Carrier (FCA) at Rapiscan’s manufacturing facility (Incoterms 2010). Title and risk of loss or damage to Parts pass to Buyer at such facility.

2.2. **Delivery Dates.** Rapiscan’s delivery dates are estimates only. Rapiscan will use commercially reasonable efforts to deliver Parts in accordance with the delivery dates specified in the Rapiscan Sale Document, but may change those dates as it deems necessary. Rapiscan shall not be liable for failure to deliver by such dates.

### 3. **Parts Warranty.**

3.1. **Parts Warranty Terms.** Rapiscan warrants to Buyer (and to no other party) that the Parts shall conform substantially to Rapiscan’s then-current applicable specifications for the Parts. Parts shall be free from defects in material and workmanship for a period of 90 days from delivery. Defects in a repaired or replaced Part shall be covered to the extent of the unexpired term of the applicable warranty period.

3.2. **Limitations.** The Parts warranty set forth in Section 3.1 (Parts Warranty Terms) shall not apply if (i) Rapiscan is unable to reproduce the defect or error reported by Buyer; (ii) Buyer has failed to use the Part in accordance with Rapiscan’s manuals, instructions and/or other procedures that Rapiscan has made available to Buyer or that it makes available to purchasers of the Part generally; (iii) Buyer has failed to timely report a defect or error in accordance with the procedures established by Rapiscan to identify and report such problems to Rapiscan’s Customer Service Department; (iv) the Part has been installed, repaired or modified without Rapiscan’s prior written consent (e.g., by a technician that is not, at the time of such modification, certified by Rapiscan’s Customer Service Department to perform such work); (v) the Part has been damaged by neglect, misuse, mishandling, failure of electrical power, user error, liquids, or as a result of any other cause external to the Part; (vi) Buyer has failed to timely pay, in whole or in part, any invoice issued by Rapiscan; or (vii) Buyer is in breach of this Agreement or any other agreement between Buyer and Rapiscan (this statement shall not be construed to limit any other rights or remedies available to Rapiscan for any such breach).

3.3. **Exclusive Remedy.** Buyer must report to Rapiscan in writing any breach of the warranty contained in this Section 3 (Parts Warranty) during the relevant warranty period. Buyer's sole and exclusive remedy, and Rapiscan's entire liability, shall be to provide Buyer with replacement Parts or, if Rapiscan is unable to provide such replacement Parts, the return of the purchase price paid by Buyer for the Parts.

3.4. **Returns.** Prior to returning any Part, Buyer must obtain Return Material Authorization (RMA) documentation from Rapiscan's Customer Service Department. Thereafter, Buyer must ship such Parts Delivery Duty Paid (DDP) (Incoterms 2010) to Rapiscan's facility set forth in the RMA, accompanied by such RMA documentation. Rapiscan reserves the right to charge a re-stocking fee of 20% of the original Parts price for all returned Parts that are not accompanied by RMA documentation and/or are not covered by the warranty set forth in Section 3.1 (Parts Warranty Terms) above, including, if such warranty has been voided as a result of any one or more of the conditions set forth in Section 3.2 (Limitations) above.

4. **Service Plans.** If the Rapiscan Sale Document includes reference to a Platinum (24x7), Gold (8x5), Silver or Bronze Service Plan, then Rapiscan shall provide the following Services to Buyer: (i) Telephone Support, (ii) Preventative Maintenance and (iii) System Repairs (each as individually defined below).

4.1. **Telephone Support.** "Telephone Support" consists of responding to telephone and email inquiries received by Rapiscan's Customer Service Department (24 hours per day, every day of the year) from Buyer regarding Equipment Errors. "Equipment Errors" means a reproducible failure of the Equipment to operate in accordance with such Equipment's published specifications.

4.2. **Preventative Maintenance.** "Preventative Maintenance" consists of performing visual, electrical, image quality, and radiation checks necessary to confirm that the Equipment is performing, at the time of such checks, in accordance with its technical specifications. The frequency of Preventative Maintenance visits shall be as set forth in the Rapiscan Sale Document or, if not set forth therein, then in accordance with Rapiscan's standard Preventative Maintenance frequency schedule for each Equipment type.

4.3. **System Repairs.** "System Repairs" consists of onsite remedial maintenance performed by Rapiscan to repair Equipment and shall, include the furnishing of necessary replacement Parts except (i) for consumable Parts such as air filters, batteries, belts, dopants, lead curtains, detector membranes, sample traps and other items that Rapiscan determines degrade from ordinary wear and tear ("Consumable Parts") or (ii) if Parts are not included under the Service Plan description below.

4.3.1. **Platinum (24x7) Service Plan.** If Buyer has selected the Platinum (24x7) Service Plan, (i) System Repairs shall be initiated within 24 hours of Buyer's request, (ii) System Repair work shall be available 24 hours per day, every day of the year, and (iii) Rapiscan shall ship replacement Parts to the Location by air or ground transportation, whichever is fastest.

4.3.2. **Gold (8x5) Service Plan.** If Buyer has selected the Gold (8x5) Service Plan (i) System Repairs shall be initiated within two business days of Buyer's request, (ii) System Repairs shall be performed between the hours of 8:00a.m. and 5:00p.m. (Location time), excluding weekends and Rapiscan holidays, and (iii) Rapiscan shall ship replacement parts to the Location by air or ground transportation, at Rapiscan's election.

4.3.3. **Silver Service Plan.** If Buyer has selected the Silver Service Plan (i) System Repairs shall be initiated within two business days of Buyer's request, (ii) System Repairs shall be performed between the hours of 8:00a.m. and 5:00p.m. (Location time), excluding weekends and Rapiscan holidays, but (iii) Buyer shall be required to purchase from Rapiscan (in accordance with Sections 2 (Parts) and 3 (Parts Warranty) above) any Parts that are required by Rapiscan to perform the System Repairs.

4.3.4. **Bronze Service Plan.** If Buyer has selected the Bronze Service Plan, System Repairs shall not be performed at Buyer's request, but shall instead be considered Additional Services (defined in Section 16 (Additional Services) below).

5. **Preventative Maintenance Services.** If the Rapiscan Sale Document includes reference to a Preventative Maintenance Only Service Plan, the Services shall consist only of Preventative Maintenance and shall not consist of Telephone Support or System Repairs.

6. **Depot Repair/Return-to-Base Services.** If the Rapiscan Sale Document includes reference to a Depot Repair Service Plan or a Return-to-Base Service Plan, then Rapiscan shall provide the following Services to Buyer: (a) Telephone Support and (b) Depot Return Repairs. "Depot Return Repairs" consists of remedial maintenance performed at a Rapiscan-authorized service facility to repair Equipment and shall include the furnishing of necessary replacement Parts except for Consumable Parts. If, during Telephone Support, Rapiscan determines that an item of Equipment covered by a Depot Repair Service Plan or a Return-to-Base Service Plan requires repair, Rapiscan shall issue RMA documentation to Buyer and Buyer shall then take the following actions:

6.1. **Equipment with Radioactive Source.** For Equipment that utilizes a radioactive source, Rapiscan's RMA documentation shall provide Buyer with the contact information for a Rapiscan-authorized service firm or technician who will provide instructions and assistance required to ship such Equipment to Rapiscan's facility in accordance with applicable regulations for the safe transportation of radioactive materials.

6.2. **Equipment without Radioactive Source.** For Equipment that does not utilize a radioactive source, Buyer shall ship such Equipment DDP (Incoterms 2010) to Rapiscan's facility set forth in the RMA, accompanied by such RMA documentation. In the event that the Equipment was originally sold to Buyer with a protective case (e.g., trace detection products), Buyer must ship the Equipment in its original, protective case. (Buyer shall purchase a replacement case from Rapiscan if Buyer no longer has a case or if its case has become damaged.) Rapiscan shall use commercially reasonable efforts to repair returned Equipment, but Rapiscan shall not be responsible (or may charge additional amounts) for repairing Equipment that has been damaged during shipment to the Rapiscan repair facility or that is delivered to the Rapiscan repair facility without all required RMA documentation. In addition, if, upon delivery to the Rapiscan repair facility the Equipment is found in good working order, Rapiscan shall be entitled to charge Buyer for all shipping and handling expenses incurred by Rapiscan in connection with returning the Equipment, plus a fee of 20% of the original Equipment price (for testing and re-stocking). Following repair, Rapiscan shall return the Equipment to Buyer. Return delivery shall be made by ground transportation DDP (Incoterms 2010) to the Buyer Location, and Buyer shall be responsible for re-installing the repaired Equipment, unless Buyer has also engaged Rapiscan to perform installation services (see Section 9 (Move/Add/Change Services) below). If Buyer requests expedited return delivery (e.g., by air), Rapiscan shall be entitled to invoice Buyer for all return shipping and handling expenses.

7. **Loaner Services.** If the Rapiscan Sale Document includes reference to Loaner Services, Rapiscan shall provide replacement Equipment (same/similar model) to Buyer on a temporary basis ("Loaner Equipment") for use by Buyer while Buyer's Equipment is undergoing Depot Return Repairs. Delivery of Loaner Equipment shall be made by Rapiscan DDP (Incoterms 2010) to the Buyer Location. Title to Loaner Equipment shall remain with Rapiscan at all times. The Loaner Equipment shall be considered bailed property from the time of its delivery to Buyer until its return to Rapiscan. Buyer must store, protect, maintain and operate the Loaner Equipment at Buyer's sole cost and expense and shall comply with all Loaner Equipment storage, handling, use, maintenance, packing and return shipping instructions provided by Rapiscan. Buyer shall bear all risk of theft, loss and damage to Loaner Equipment, however caused, until the Loaner Equipment is returned to Rapiscan. Software (defined in Section 17 below) installed on Loaner Equipment is licensed to Buyer, not sold. Use of such Software is provided subject to the terms set forth in Section 17 (Software License) below. Buyer shall return the Loaner Equipment to Rapiscan within five days of receipt by Buyer of the Equipment that had been undergoing Depot Return Repairs. Return delivery shall be made by ground transportation DDP (Incoterms 2010). Rapiscan shall be entitled to charge Buyer GBP250 per day for each day beyond such five-day period that the Loaner Equipment is not returned to Rapiscan.

8. **Metor Services.** If the Rapiscan Sale Document includes reference to a Metor Service Plan, the Services shall consist of Telephone Support and Metor Repairs only. "Metor Repairs" consists of repair or replacement of the MELS Electronics Unit ("MELS Unit") of the Equipment. If, during Telephone Support, Rapiscan determines that the MELS Unit of any item of Equipment requires repair or replacement, Rapiscan shall issue RMA documentation to Buyer. Following the issuance of RMA documentation, Rapiscan shall deliver to Buyer, within five business days, a replacement MELS Unit. Delivery shall be DDP (Incoterms 2010) Location. Upon receipt, Buyer shall carefully remove the replacement MELS Unit and then, within two business days of its arrival at the Location, use the same packaging to return the non-working MELS Unit to Rapiscan. Delivery shall be made DDP (Incoterms 2010) to the Rapiscan address as set forth in the RMA documentation. Buyer shall be responsible for installing the replacement MELS Unit. If the non-working MELS Unit is not returned to Rapiscan within five business days of the delivery to Buyer of the replacement MELS Unit, Rapiscan shall be entitled to invoice Buyer for the replacement MELS Unit (at Rapiscan's then-current Parts pricing). In addition, if, upon return to Rapiscan, a MELS Unit is found in good working order, Rapiscan shall be entitled to charge Buyer for all shipping and handling expenses incurred by Rapiscan in connection with delivering the replacement MELS Unit, plus a fee of 20% of the MELS Unit price (for testing and re-stocking).

9. **Move/Add/Change Services.** If the Rapiscan Sale Document includes reference to installation, de-installation and/or system move services, then the Services shall consist of the performance of such services, as described in the Rapiscan Sale Document and such other additional forms as Rapiscan may require Buyer to complete.

10. **Radiation Survey Services.** If the Rapiscan Sale Document includes reference to radiation survey services, then the Services shall consist of the performance of such services, as described in the Rapiscan Sale Document.

11. **Testing and Installation.** If testing (e.g., factory acceptance testing, site acceptance testing) or installation is included as part of the Services, Rapiscan shall perform such testing and installation in accordance with Rapiscan's standard testing and installation procedures in effect on the date of testing/installation.

12. **Training.** If the Rapiscan Sale Document includes reference to operator training, service training, image analysis training, online, classroom or hands-on training, or any other training course or services, including any combination thereof (collectively, "Training"), then the Services shall consist of the performance of such Training, as described in the

Rapiscan Sale Document. Unless otherwise agreed in writing by Rapiscan, the Training, including all Training course content, presentations, test and other materials (collectively, "Training Materials"), will be provided in the English language at a time and location selected by Rapiscan. Online Training must be completed within the time period(s) specified in the Rapiscan Sale Document. Access to and use of online Training by Buyer or any of Buyer's employees shall, in addition to these Terms, also be governed by the "Terms of Use" contained on the online training platform website. Buyer covenants that it shall require all of its employees that access online training to review and agree to such Terms of Use prior to their use of the online training platform website. Unless otherwise set forth in the Rapiscan Sale Document (e.g., training may be included as part of product sales price at no additional cost to Buyer), Buyer shall pay Rapiscan, at Rapiscan's then-current training rates and materials fees, for each Training course/slot set forth in the Rapiscan Sale Document, and whether or not an attendee initiates or completes the course, attends all sessions or passes all required tests. Buyer shall be responsible for all travel, lodging, meal and other expenses incurred by Buyer's personnel to attend Training courses. If Rapiscan provides training at a location (other than a Rapiscan facility), Buyer shall, if invoiced by Rapiscan, also reimburse Rapiscan for all travel, lodging, meal and other expenses incurred by Rapiscan's instructors and other personnel to perform such training. Rapiscan retains the right to refuse training or to dismiss from training any individual who does not follow all safety, attendance and other guidelines required by Rapiscan, causes disruption during any Training class, poses a threat of harm to others, or appears incapable, in the opinion of the instructor, of successfully completing the course and all required testing. Rapiscan reserves the right to revoke Training certifications that may be granted upon the successful completion of any Training course if the recipient of such certification fails to follow Rapiscan's written guidelines and service procedures or acts in a way that could damage Rapiscan's reputation, the reputation of Rapiscan's products, or relations between Rapiscan and its customers or potential customers. Training certifications shall be deemed to have been automatically revoked, without any further action by Rapiscan, if the recipient of a Training certification leaves the employment of Buyer for any reason or Buyer is no longer authorized by Rapiscan to perform the services for which the Training certification was granted.

**13. Term and Termination.** The term of this Agreement ("Term") shall expire on the later of (a) the expiration of the Parts warranty set forth in Section 3.1 (Parts Warranty Terms) for Parts delivered under the Rapiscan Sale Document and (b) the period of performance for the Services set forth in the Rapiscan Sale Document. Either party may terminate this Agreement for material breach following delivery of written notice describing the nature of such breach and giving 90 days' opportunity to cure such breach.

**14. Access to Location(s).** Buyer agrees to grant Rapiscan prompt access to enter the Location(s), at any time during the Term, for the purpose of performing the Services. Buyer warrants that it is either the owner of the Location(s) or that it has the authority to grant Rapiscan such access. If Buyer is not the owner, Buyer is responsible for obtaining all necessary approvals from the owner of the Location(s) in order to allow Rapiscan into the Location(s) to perform the Services. Buyer shall indemnify, defend and hold harmless Rapiscan, including its affiliates, subcontractors and agents, and its and their officers, directors, shareholders, managers and employees, from and against any demand, claim, action, liability, loss (including, without limitation, interest, penalties, attorney fees and expenses) asserted against, relating to, imposed upon or incurred by any of the foregoing by reason of or resulting from any injury to any Rapiscan employee, subcontractor or other party engaged by Rapiscan to perform Services, if such injury was caused or contributed to by a dangerous condition or event at a Location.

**15. Service Limitations.** Rapiscan reserves the right to refuse to perform any Services, or charge additional amounts, if: (i) an item of Equipment was not in good operating condition prior to the commencement of the Term; (ii) Buyer has failed to use the Equipment in accordance with Rapiscan's manuals, instructions and/or other procedures that Rapiscan has made available to Buyer or that it makes available to purchasers of the Equipment generally; (iii) Buyer has failed to timely report an Equipment Error in accordance with the procedures established by Rapiscan to identify and report Equipment Errors to Rapiscan's Customer Service Department; (iv) an item of Equipment is moved from its Location; (v) a Location is not, in Rapiscan's opinion, a safe or clean operating environment; (vi) Rapiscan is not granted prompt access to a Location upon arrival to perform Services; (vii) an item of Equipment has been modified without Rapiscan's prior written consent; (viii) unauthorized Parts (including Consumable Parts) have been installed on or used with the Equipment; (ix) an item of Equipment has been damaged by neglect, misuse, mishandling, failure of electrical power, user error, liquids, or as a result of any other cause external to the Equipment; (x) an item of Equipment covered by a Depot Repair Service Plan or a Return-to-Base Service Plan was damaged during shipment from Buyer to Rapiscan; (xi) an item of Loaner Equipment was damaged during return of such Equipment from Buyer to Rapiscan; (xii) Buyer has failed, during the Term, to timely pay, in whole or in part, any invoice issued by Rapiscan; or (xiii) Buyer is in breach of this Agreement or any other agreement with Rapiscan (this statement shall not be construed to limit any other rights or remedies available to Rapiscan for any such breach). Rapiscan also reserves the right to refuse to perform any Services if, due to the age of an item of Equipment, Rapiscan is unable to procure, unable to timely procure, or unable to procure at a reasonable price, through Rapiscan's regular supply channels, the Parts required to perform a Service. In such event, Rapiscan shall notify Buyer and thereupon such item of Equipment shall no longer be Equipment covered by this Agreement. Rapiscan shall also calculate the portion of the Service pricing attributable to such item of Equipment and shall not charge or shall return to Buyer (as applicable) a prorated amount, calculated based on the number of days remaining in the Term or period of performance (as applicable) for such item of Equipment. If such Equipment is the only Equipment covered by this

Agreement, the Agreement shall terminate, without further notice. If, on the other hand, such Equipment is not the only Equipment covered by the Agreement, the Agreement shall not terminate and the pricing due in future performance periods shall be automatically reduced by that portion of such pricing that was attributable to the item of Equipment that is no longer covered by the Agreement.

16. **Additional Services.** If Rapiscan agrees to perform any services not covered by the Services (“Additional Services”), such Additional Services shall be billable at Rapiscan’s then-current time and materials rate in effect for the region in which the Services will be performed. Additional Services include, but are not limited to, System Repairs performed under a Bronze Service Plan, performance of Services outside of Rapiscan’s regularly-scheduled business hours and performance of any services excluded under Section 15 (Service Limitations).

17. **Software License.** Rapiscan grants to Buyer a license to use the software that has been installed by Rapiscan on Parts or Equipment (“Software”), together with new versions or updates to such Software made available by Rapiscan to Buyer, in object code form only and subject to the terms of the Software License Agreement G306 (available at <http://www.rapiscansystems.com/termsandconditions>) and incorporated herein by reference.

#### 18. **Confidentiality.**

18.1. **Confidential Information.** By virtue of this Agreement, the parties may have access to information that is confidential to the other. For purposes of this Agreement, the term “Confidential Information” shall mean the Service pricing under this Agreement (unless disclosed in accordance with Section 26.4 (Marketing Rights)) and all information clearly marked at the time of its original disclosure from one party to the other as confidential. A party’s Confidential Information shall not be deemed to include information that: (i) is or becomes generally known to the public through no act or omission of the other party; (ii) was in the other party’s lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (iii) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (iv) is independently developed by the other party without use of or reference to the disclosing party’s Confidential Information.

18.2. **Restrictions on Disclosure and Use.** Each party shall hold the other party’s Confidential Information in strict confidence. Each party agrees, unless required by law, not to make the other party’s Confidential Information available in any form to any third party for any purpose and to treat Confidential Information of the other party with the same degree of care with which it would treat its own confidential information of a like nature, and in no case with less than a reasonable degree of care. Each party agrees not to use the other party’s Confidential Information for any purpose other than the performance of this Agreement. Each party agrees to limit the disclosure of Confidential Information to those of its officers, directors, employees, consultants, attorneys and other professional advisors who (i) have a need to know and (ii) are subject to an ongoing legal obligation to maintain all Confidential Information on terms at least as restrictive as those contained in this Agreement. Each party agrees to ensure full compliance with the terms of this Agreement by all such parties to whom it provides Confidential Information. It will not be a breach of this Section if Confidential Information is disclosed pursuant to a subpoena or other compulsory judicial or administrative process, provided the party served with such process promptly notifies the other party and provides reasonable assistance so that the other party may seek a protective order against public disclosure.

18.3. **Other Confidentiality Agreements.** Notwithstanding Sections 18.1 and 18.2 above, if Rapiscan and Buyer have entered into a separate confidentiality or non-disclosure agreement designed to protect the confidential information of either party that is expected to be transmitted under or in connection with the performance of this Agreement, then the terms of Sections 18.1 and 18.2 above shall not be deemed to supersede, replace, modify, augment, enhance, delete, remove, amend or otherwise alter any of the terms and conditions of such separate agreement, which agreement shall remain in full force and effect and which agreement shall be deemed to supersede Sections 18.1 and 18.2 above.

#### 19. **Price and Payment.**

19.1. **Price.** The price(s) for the Parts and Services covered by this Agreement are those prices that are set forth in the Rapiscan Sale Document or, if no prices are set forth therein, then the price(s) for the Parts and Services covered by this Agreement shall be established by Rapiscan’s Customer Service Department by reference to its standard rates for the sale of the same or similar parts and the performance of the same or similar services in the region(s) in which the Parts covered by this Agreement are to be delivered and the Services covered by this Agreement are to be performed.

19.2. **Charges.** All amounts charged by Rapiscan under this Agreement shall be due on the earlier of (i) the date(s) specified in the Rapiscan Sale Document and (ii) 30 days after the date of each Rapiscan invoice therefore. All amounts past due shall incur a late payment charge that shall accrue at the rate of 4% per year above the Bank of England’s base rate from time to time, but at 4% per year for any period when that base rate is below 0%, calculated from the date due until such amount is paid.

19.3. **Taxes.** Buyer shall, in addition to any other amounts payable under this Agreement, pay all sales, use and other taxes, federal, state, local or otherwise, which are levied or imposed by reason of the Parts sold or Services performed under this Agreement.

19.4. **Notice of Payment Dispute.** Subject to applicable law, if Buyer intends to dispute any amount due under or in connection with this Agreement, Buyer must notify Rapiscan in writing within 30 days of the date such payment is originally due. Buyer waives its right to dispute such amounts or to bring or participate in any legal action involving a dispute of such amounts if not reported within such period.

20. **Cancellation/Delay.**

20.1. **No Cancellations or Delays by Buyer.** Buyer may not cancel, delay, reschedule or otherwise vary the terms of any delivery of Parts or performance of Services without Rapiscan's written consent. Such consent may be granted or withheld in Rapiscan's sole discretion. Such consent may be conditioned by Rapiscan on, among other things, prompt payment by Buyer to Rapiscan for direct or indirect amounts arising under or related to the cancellation, delay, rescheduling or other variation.

20.2. **Excusable Delay.** Rapiscan shall not be responsible for any delay or non-performance of its obligations hereunder to the extent and for such periods of time as such delay or non-performance, defective performance or late performance is due to causes beyond its control. Excusable delays include, but are not limited to, acts of God, war, acts of any government in either its sovereign or contractual capacity, fire, explosions, sabotage, the elements, epidemics, quarantine restrictions, strikes, lockout, embargoes, unusually severe weather, delays in transportation, airline schedule, fuel shortages, or delays of suppliers or subcontractors for like causes.

21. **Disclaimer of Warranties.** EXCEPT AS STATED IN SECTION 3 (PARTS WARRANTY) ABOVE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, RAPISCAN DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, AND WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE OR SAMPLES SUPPLIED. RAPISCAN DOES NOT WARRANT THAT THE SERVICES WILL BE ERROR-FREE OR THAT THE EQUIPMENT WILL OPERATE AS REQUIRED WITHOUT INTERRUPTION, DELAY OR ERROR. RAPISCAN DOES NOT WARRANT ANY "UP-TIME" OR "DOWN-TIME" OF THE EQUIPMENT.

22. **Limitation of Liability.** NOTHING IN THIS AGREEMENT SHALL LIMIT OR EXCLUDE THE LIABILITY OF EITHER PARTY FOR: (I) DEATH OR PERSONAL INJURY RESULTING FROM NEGLIGENCE; (II) FRAUD OR FRAUDULENT MISREPRESENTATION; (III) BREACH OF THE TERMS IMPLIED BY SECTION 12 OF THE SALE OF GOODS ACT 1979; OR (IV) ANY OTHER LIABILITY AND/OR OBLIGATION WHICH CANNOT BE LIMITED OR EXCLUDED BY THE LAWS OF ENGLAND AND WALES. SUBJECT TO THE FOREGOING, RAPISCAN'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL BE LIMITED TO THE PRICE SET FORTH IN THE RAPISCAN SALE DOCUMENT. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION 22 AND IN THE OTHER PROVISIONS OF THIS AGREEMENT AND THE ALLOCATION OF RISK HEREIN ARE AN ESSENTIAL ELEMENT OF THE BARGAIN BETWEEN THE PARTIES, WITHOUT WHICH RAPISCAN WOULD NOT HAVE ENTERED INTO THIS AGREEMENT. RAPISCAN'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.

23. **No Indirect or Consequential Damages.** RAPISCAN SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR DAMAGES FOR LOSS OF PROFITS, REVENUE, BUSINESS, SAVINGS, DATA, USE OR COST OF SUBSTITUTE PROCUREMENT, INCURRED BY BUYER OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT, TORT OR OTHERWISE, EVEN IF RAPISCAN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE FORESEEABLE.

24. **Reciprocal Waiver of Claims.** As the Parts and/or Services may be deployed in defense against or to assist in the detection of an Act of Terrorism (as such term is defined under the Support Anti-terrorism by Fostering Effective Technologies Act of 2002) before it occurs, Rapiscan and Buyer each agree to waive all claims against the other (including those of or against their officers, directors, employees, subsidiaries, affiliates, agents, subcontractors or other representatives) for losses, including business operation losses, resulting from or related to such Act of Terrorism.

25. **Indemnification.** Buyer shall indemnify and hold harmless, and at Rapiscan's request defend, Rapiscan and its subsidiaries and affiliates (and its and their officers, directors, shareholders, managers, employees and agents) from and against any and all demands, claims, actions, losses, liabilities, damages, settlements, expenses and costs (including, without limitation, attorneys' fees and court costs) which arise out of or relate to (i) any breach (or claim or threat thereof that, if true, would be a breach) of this Agreement by Buyer, including, without limitation, any breach or alleged breach of any representation or warranty of Buyer, (ii) any negligence or intentional misconduct of Buyer or any officer, director, employee or agent of Buyer or (iii) the negligence or intentional misconduct of any operator (or supervisor(s) of any operator) of any Equipment.

26. **Miscellaneous Provisions.**

26.1. **Independent Contractors.** Each of Rapiscan and Buyer is an independent contractor and neither party's personnel are employees or agents of the other party. This Agreement shall not be construed as creating an agency, partnership, joint venture or any other form of association, for tax purposes or otherwise, between the parties. Except as expressly agreed by the parties in writing, neither party shall have any right or authority, express or implied, to assume or create any obligation of any kind, or to make any representation or warranty, on behalf of the other party or to bind the other party in any respect whatsoever.

26.2. **No Third Party Beneficiaries.** It is not the intention of the parties to confer a third party beneficiary right of action upon any third party or entity whatsoever, and nothing in this Agreement will be construed to confer upon any third party other than the parties hereto a right of action under this Agreement or in any manner whatsoever. Specifically, unless expressly stated, this Agreement does not give rise under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement.

26.3. **Proprietary Rights.** Rapiscan retains all rights, title and interest in and to the Intellectual Property Rights in the Equipment, Parts, Software and Services (including Training Materials) and any derivative works thereof. Buyer does not acquire any other rights, express or implied, in the Equipment, Parts, Software or Services (including Training Materials). "Intellectual Property Rights" means patent, copyright, trademark, trade secret and any other intellectual property rights. Buyer acquires no rights in Rapiscan Confidential Information (as defined in Section 18.1).

26.4. **Marketing Rights.** Rapiscan shall have an unfettered right to issue press releases and other marketing materials regarding the provision of Parts and Services covered by this Agreement, including disclosing pricing, the Equipment, the Parts, the Services, the Location(s), Buyer's name, and any other information deemed appropriate, in Rapiscan's sole discretion, for the purposes of marketing the Equipment and Services to investors, customers and potential customers (collectively, "Information"). Such disclosure(s), if made by Rapiscan, shall not be deemed a breach of Section 18 (Confidentiality). Buyer acknowledges and agrees that Rapiscan's use of the Information (including images) is unrestricted and therefore may be published for any purpose whatsoever and in any media and in any manner throughout the world, including, without limitation, reproduction, distribution, modification and public performance and display of any works that incorporate the Information, including on Internet websites, on television, on radio, in data sheets, pamphlets, and brochures.

26.5. **No Buyer Press Release.** Buyer shall issue no press release or other public statement of any kind regarding the Equipment, Parts, Services or terms of this Agreement without Rapiscan's express written consent.

26.6. **Notice.** Any notice (other than routine reports regarding Equipment Errors) required or permitted hereunder shall be in writing, shall reference this Agreement and shall be deemed to be properly given: (i) when delivered personally; (ii) two days after deposit with a private industry express courier, for next day delivery, with written confirmation of delivery; or (iii) four days after having been sent by registered or certified mail, return receipt requested, postage prepaid. All notices sent by Rapiscan shall be sent to the address to which Rapiscan regularly invoices Buyer or, at Rapiscan's election, to Buyer's address set forth in the Rapiscan Sale Document. All notices sent by Buyer shall be sent to the Rapiscan address set forth in the Rapiscan Sale Document, ATTN: VP Worldwide Customer Service, with a copy to Senior Director of Service at the same address, or to such other address or person as may be designated by Rapiscan by giving written notice to Buyer pursuant to this Section.

26.7. **No Assignment.** Buyer shall not be permitted to assign this Agreement, by operation of law or otherwise, without the express written consent of Rapiscan.

26.8. **No Amendment.** This Agreement may not be modified or amended except pursuant to a writing, signed by a duly authorized officer of each of Rapiscan and Buyer.

26.9. **No Solicitation; No Hire.** During the Term and for twelve months thereafter, Buyer agrees that it shall not, and will ensure that its agents and affiliates do not, directly or indirectly, hire or solicit or attempt to solicit for employment any persons employed by Rapiscan or its affiliates or any party contracted by Rapiscan to provide Services to Buyer.

26.10. **Governing Law.** This Agreement shall be construed in accordance with and governed by the internal laws of England and Wales. This Agreement shall not be governed by the U.N. Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.

26.11. **Venue.** Except for matters of injunctive relief, for which either party may seek arbitration or initiate proceedings in any court of competent jurisdiction, any controversy or claim arising out of or relating to this Agreement, or the breach thereof, shall be finally and exclusively determined by binding arbitration. The number of arbitrators shall be one. The place of the arbitration shall be London, England. If Buyer is headquartered in the United Kingdom, the arbitration shall be administered by the International Chamber of Commerce in accordance with its Rules of Arbitration. The Emergency Arbitrator Provisions shall not apply. If Buyer is headquartered outside of the United Kingdom, the arbitration shall be administered by the International Centre for Dispute Resolution in accordance with its International

Rules. Judgment on the award rendered by the arbitration proceeding may be entered in any court of competent jurisdiction. Notwithstanding the foregoing, Rapiscan shall have the right, but not the obligation, to undertake legal proceedings in a court of Buyer's domicile, main place of business or any other jurisdiction where Buyer has assets sufficient to meet its obligations under the disputed claim in whole or in part to (i) settle any issue or dispute arising out of or relating to monies due by Buyer to Rapiscan; (ii) protect or enforce any patent, trademark, copyright or other intellectual property right, confidential information or trade secrets; or (iii) proceed in connection with a dispute commenced by a third party.

26.12. **Buyer's Credit.** Rapiscan's performance under this Agreement shall at all times be subject to Rapiscan's approval of Buyer's credit. Without limiting its other rights and remedies available under this Agreement or pursuant to law, Rapiscan shall be permitted to terminate this Agreement with immediate effect (*i.e.*, without giving Buyer opportunity to cure such breach), in whole or in part, or to suspend the performance of Services, in whole or in part, and shall be permitted to impose such other terms and conditions or security arrangements as Rapiscan, in its sole discretion, deems appropriate to ensure full payment by Buyer for the Services.

26.13. **Costs of Collection and Other Legal Fees.** Buyer shall reimburse Rapiscan, upon demand, for all expenses incurred by Rapiscan in collecting any amounts past due under or related to this Agreement, including, without limitation, collection agency fees, attorneys' fees and arbitration or court costs. If any legal action, including, without limitation, an action for arbitration or injunctive relief, is brought relating to this Agreement or the breach thereof, the prevailing party in any final judgment or arbitration award, or the non-dismissing party in the event of a voluntary dismissal by the party instituting the action, shall be entitled to the full amount of all expenses, including all court costs, arbitration fees and attorneys' fees paid or incurred.

26.14. **Export Administration.** Buyer acknowledges that export and re-export of the Equipment, including Parts as well as related Software, technical data and documentation, is subject to compliance with export control laws, including, but not limited to, the Export Administration Act, the Arms Export Control Act, the International Traffic in Arms Regulations (ITAR) and other export controls of the United States of America as amended from time to time, the Export Control Act 2002, the Export Control Order 2008, EU Regulation 428/2009 and the Customs and Excise Management Act 1979 and other export controls of the United Kingdom as amended from time to time, and the Strategic Trade Act 2010 and other export controls of Malaysia as amended from time to time (collectively, the "Export Laws"). Buyer covenants that it shall complete, sign and deliver all documents necessary to facilitate the issuance of any export licenses required for any delivery, export and re-export of the Equipment, including Parts, and related Software, technical data and documentation. In addition, Buyer covenants that it shall comply with all export-related instructions provided to it by Rapiscan regarding the receipt, handling, use and storage of such items. Buyer shall not export or re-export any Equipment, including Parts and related Software, technical data and documentation to any country or person to which export or re-export of such items is prohibited by any of the Export Laws without first obtaining the written permission of Rapiscan and from the U.S., U.K. and/or Malaysian government(s) (as applicable). Rapiscan shall have the right to delay shipments, the performance of Services, and/or terminate this Agreement with immediate effect, in whole or in part, and without liability, should Rapiscan not obtain in a timely way all required export licenses and approvals necessary to export Equipment or Parts, related Software, technical data, documentation or the like. Shipment and delivery timing is also conditioned upon Buyer obtaining, and providing requested evidence to Rapiscan of all licenses, permits and other governmental authorizations required to receive, handle, use and store any such items (including all radiation producing Parts or sources) that are required by the countries or local territories through which any such items (including all radiation producing Parts or sources) may transit, be stored, operated or otherwise used. Buyer represents and warrants that its export privileges are not, and have not within the last five years been, denied, suspended, or revoked in whole or in part by any government, including any agency or department of the U.S., U.K. or Malaysian government. Buyer further represents and warrants that its name (including any former name) and the name of any current or former director, officer or employee of Buyer, do not appear, and have not within the last five years appeared, on any lists maintained by the U.S., U.K. or Malaysian governments identifying parties who are subject to export denial orders or who are otherwise restricted or prohibited by such governments from engaging in export transactions.

26.15. **Permits and Licenses.** Buyer shall be required to obtain and maintain all registrations, licenses, permits and/or approvals from relevant authorities, as may be necessary to store and operate the Parts supplied by and the Equipment serviced by Rapiscan.

26.16. **Suspended or Debarred Parties.** Buyer represents, warrants and covenants that it, including its consultants and agents and its and their officers, directors and employees, are not presently, and have not within the past five years, been debarred, suspended or proposed for debarment by any agency or department of the United States Government or otherwise declared ineligible by any agency or department of the United States Government for award of contracts or subcontracts. Buyer covenants that it shall provide Rapiscan immediate written notice if Buyer, including any of its consultants or agents or any of its or their officers, directors or employees, hereafter become debarred, suspended or proposed for debarment by any agency or department of the United States Government or otherwise declared ineligible for award of contracts or subcontracts by any agency or department of the United States Government.



26.17. **No Waiver.** The waiver by either party of a breach of or a default under any provision of this Agreement shall not be effective unless in writing and shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this Agreement, nor shall any delay or omission on the part of either party to exercise any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.

26.18. **Severability.** If for any reason a court or arbiter of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision shall be enforced to the maximum extent permissible so as to effectuate the intent of the parties, and the remainder of this Agreement shall continue in full force and effect.

26.19. **Construction.** This Agreement has been negotiated by the parties and shall be interpreted fairly in accordance with its terms and without any construction in favor of or against either party.

**[End of Terms]**