

CONTRACT APPROVAL FORM

(Contract Management Use only)

CONTRACT
TRACKING NO.
CM2454

17 AUG 21
4:10:34
CONTRACTOR INFORMATION

Name: Rapiscan Systems

Address: 2805 Columbia Street Torrance CA. 90503

City State Zip

Contractor's Administrator Name: Roxanne Ring Title: Contracts Administrator

Tel#: (310) 355-2888 Fax: _____ Email: rRING@rapiscansystems.com

CONTRACT INFORMATION

Contract Name: Annual Service Agreement Contract Value: _____

Brief Description: Service Agreement for the X-ray machine at the Justice Center

Contract Dates : From: 10/1/17 to: 9/30/18 Status: _____ New ☒ Renew _____ Amend# _____ WA/Task Order


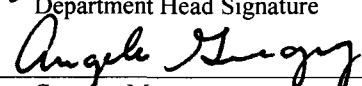

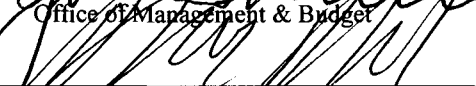
How Procured: ☒ Sole Source _____ Single Source _____ ITB _____ RFP _____ RFQ _____ Coop. _____ Other _____

If Processing an Amendment:

Contract #: _____ Increase Amount of Existing Contract: _____

New Contract Dates: _____ to _____ TOTAL OR AMENDMENT AMOUNT: _____

APPROVALS PURSUANT TO NASSAU COUNTY PURCHASING POLICY, SECTION 6

1.		<u>8-17-17</u>	<u>Facilities Maintenance</u>
	Department Head Signature	Date	Submitting Department
2.		<u>8/21/17</u>	<u>01074712-546020</u>
	Contract Management	Date	Funding Source/Acct #
3.		<u>8/22/17</u>	
	Office of Management & Budget	Date	
4.		<u>9/21/17</u>	
	County Attorney (approved as to form only)	Date	

Comments: _____

COUNTY MANAGER – FINAL SIGNATURE APPROVAL

 _____ 8-24-17

Shanea D. Jones Date

RETURN ORIGINAL(S) TO CONTRACT MANAGEMENT FOR DISTRIBUTION AS FOLLOWS:

Original: Clerk's Services; Contractor (original or certified copy)

Copy: Department

Office of Management & Budget

Contract Management

Clerk Finance



Service Contract Quote

Page 1

Service Plan Type 8X5
Contract No. CS003551
Accept Before 09/15/17
Starting Date 10/01/17
Expiration Date 09/30/18
Invoice Period Year
Next Invoice Date 10/01/17
Annual Amount 5,060.00

Rapiscan Systems Inc
2805 Columbia Street
Torrance, California 90503

Phone No. +1 310-978-1457
Fax No. +1 310-349-2492

Buyer
Nassau County
Facilities Maintenance Dept.
Bill Howard
76347 Vertrans Way
YULEE, FL 32097
United States of America

Invoice-to
Nassau County
Facilities Maintenance Dept.
76347 Vertrans Way
YULEE, FL 32097
United States of America

Buyer Address
NASSAU COUNTY MAINTENANCE DE
Bill Howard
45195 MUSSELWHITE ROAD
CALLAHAN, FL 32011
United States of America

Phone No. 904.530-6120
E-Mail bhoward@nassaucountyfl.com

Service	Item No.	Description	Item No.	Serial No.	Unit of Measure	Response Time (Hour)	Service Period	Line Value
	FSI00159	RAPISCAN 515, X-RAY SYST	515115	60605N12	FT.	48	1Y	5,060.00

Sub-Total 5,060.00
Discount

Total USD : 5,060.00

Prepared by: Angela Christensen

This Service Contract Quote is subject to Rapiscan Service Terms and Conditions G502 (the "Service Terms"), available at www.rapiscansystems.com/termsandconditions. By accepting this Service Contract Quote and/or our performance hereunder, Buyer agrees to be bound by the Service Terms.

Buyer
Signature: _____
Name: _____
Title: _____
Date: _____

Rapiscan[®] systems

An OSI Systems Company

June 1, 2016

Valued Customer
To Whom It May Concern:

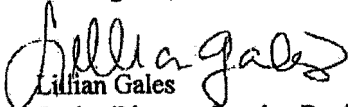
Dear Sir/Madam,

Rapiscan Systems maintains proprietary ownership over all intellectual concepts pertaining to its manufactured products. As such Rapiscan products may only receive service from Rapiscan trained, and authorized individuals. Any service to Rapiscan products by an un-authorized individual will result in voiding of any and all warranty privileges associated with purchase and may result in non-serviceable equipment.

Rapiscan Service Engineers are strategically positioned all over the world to ensure that prompt, quality service solutions are accessible to all Rapiscan Customers.

Please feel free to call me at our toll free number (888) 258-6684 to answer any additional questions and or to schedule your service needs.

Best regards,



Lillian Gales
Senior Director Service Business Development,
Planning and Administration
Phone: 310-349-2341
Fax: 310-349-2641

2805 Columbia St. Torrance, California 90503 USA
Telephone +1 310-978-1457 Facsimile +1 310-349-2491

www.rapiscansystems.com

Sole Source/Single Source Certification Form

Vendor Name: Rapiscan Systems Inc. Department: Facilities Maintenance
Address: 2805 Columbia St, Torrance, Ca. 90503 Department Head Signature: *Suzanne H. Font*
Phone: 310-349-2467 Date: 9-19-16
Contact Name: Lillian Gales Account: 01074712 - 546020

Description of Commodity:
Service agreement for Rapiscan Xray machine.

Check one (1) of the following two (2) choices:

- ☒ Sole Source: The required goods or services can only be procured from one vendor.
- ☐ Single Source: The required goods or services can be purchased from multiple vendors, but in order to meet certain functional or performance requirements only one economically feasible source exists.

Please check all of the following that apply:

- ☒ Purchase can only be obtained from original manufacturer-not available through distributors.
- ☒ Only authorized area distributor of the original manufacturer.
- ☒ Parts/Equipment are not interchangeable with similar parts of another manufacturer.
- ☒ This is the only known source that will meet the specialized needs of this department or perform the intended function.
- ☒ This source must be used to meet warranty or service maintenance requirements.
- ☐ This source is required for standardization.
- ☐ None of the above apply.

Comments/Explanations: (required)

The Rapiscan X-ray machine can only be serviced by Rapiscan as the software and diagnostic tools for the machine are proprietary and are not available to other X-ray service contractors.

Approval:

[Signature] 9/29/16
County Manager Date:



Service Agreement Number CS003551

Service Agreement

Date of Agreement 10/01/17
Term Commencing on the Date of Agreement and Ending on 09/30/18
Company RAPISCAN SYSTEMS INC
Company Address 2805 COLUMBIA STREET, TORRANCE, CALIFORNIA, 90503, USA
Buyer C001580 Nassau County
Buyer Address Bill-to
76347 Vertrans Way
YULEE
FL, 32097
USA
Buyer Contact Bill Howard
Buyer Phone 904-548-4969
Service Plan 8X5
Pricing 5,060.00
Special Terms

Equipment

Location	Model	Serial #
YULEE, FL	RAPISCAN 515, X-RAY SYST	60605N12

This Service Agreement ("Agreement") is entered into as of the Date of Agreement, by and between Rapiscan and Buyer. Buyer engages Rapiscan, and Rapiscan accepts such engagement, to perform maintenance services in connection with the Equipment, on the terms of this Agreement. This Agreement is subject to Service Terms & Conditions version G502.

In Witness Whereof, each of Rapiscan and Buyer has caused this Agreement to be signed by its duly authorized representative as of the Date of Agreement.

RAPISCAN SYSTEMS INC

Signature

Name :

Title :

Date :

Buyer

Signature:

Name:

Title :

Date :

Shamea Jones

County Manager

8/25/17

Service Terms and Conditions G502

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, accessories or components ("Parts"); and/or

1.1.2. The provision of maintenance, repair, installation, de-installation, radiation survey, testing, 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 15.3 (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 (collectively, "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 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 to Rapiscan's manufacturing facility DDP (Incoterms 2010), accompanied by such RMA documentation. Rapiscan reserves the right to charge a twenty percent (20%) restocking fee 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: (a) Telephone Support, (b) Preventative Maintenance and (c) 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 for (i) consumable items such as belts, lead curtains and other items that Rapiscan determines degrade from ordinary wear and tear.

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 13 (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. **Metor Services.** If the Rapiscan Sale Document includes reference to a Metor Service Plan, the Services shall consist of Telephone Support and Metor Repairs, but shall not consist of System Repairs or Preventative Maintenance. "Metor Repairs" consists of 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 to Buyer a return materials authorization ("RMA") number. Following the issuance of an RMA number, Rapiscan shall deliver to Buyer, within five business days, a replacement MELS Unit. Delivery shall be DDP Location (Incoterms 2010). 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 to the Rapiscan address as set forth in the RMA (Incoterms 2010). 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 spare Parts pricing). In addition, if, upon return to Rapiscan, a MELS Unit is found in good working order, Rapiscan shall be entitled to invoice 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).

7. **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.

8. **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.

9. **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.

10. **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 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.

11. **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, 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.

12. **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) 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; (ix) Buyer has failed, during the Term, to timely pay, in whole or in part, any invoice issued by Rapiscan; or (x) 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.

13. **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 12 (Service Limitations).

14. **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.

15. **Confidentiality.**

15.1. **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 24.4 (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.

15.2. **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.

15.3. **Other Confidentiality Agreements.** Notwithstanding Sections 15.1 and 15.2 immediately 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 15.1 and 15.2 immediately 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 15.1 and 15.2 immediately above.

16. **Price and Payment.**

16.1. **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.

16.2. **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) 45 days per Florida Statute 218.74 of the date of each Rapiscan invoice therefore. All amounts past due shall incur a late payment charge that shall accrue at the rate of 1%

per month, or the maximum rate permitted by law, whichever is lower, calculated from the date due until such amount is paid.

16.3. **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.

16.4. **Late Payment.** All amounts past due shall incur a late payment charge that shall accrue at a rate of 1% per month per Florida Statute 218.74 or the highest rate permitted by applicable law, whichever is less, calculated from the date due until such amount is paid.

16.5. **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.

17. Cancellation/Delay.

17.1. **No Cancellations or Delays by Buyer.** Buyer may not cancel, delay, reschedule or otherwise vary 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.

17.2. **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.

18. **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 EQUIPMENT WILL OPERATE AS REQUIRED WITHOUT INTERRUPTION, DELAY OR ERROR. RAPISCAN DOES NOT WARRANT ANY "UP-TIME" OR "DOWN-TIME" OF THE EQUIPMENT.

19. **Limitation of Liability.** 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 19 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.

20. **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 OR TORT, EVEN IF RAPISCAN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE FORESEEABLE.

21. **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.

22. **RESERVED**

23.

24. Miscellaneous Provisions.

24.1. 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.

24.2. 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.

24.3. Proprietary Rights. Rapiscan retains all rights, title and interest in and to the Intellectual Property Rights in the Parts and Services and any derivative works thereof. Buyer does not acquire any other rights, express or implied, in the Parts or Services. "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 15.1).

24.4. 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, desirable 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 15 (Confidentiality). Buyer's 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 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, or in data sheets, pamphlets, and brochures.

24.5. 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.

24.6. 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.

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

24.8. 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.

24.9. No Solicitation; No Hire. During the Term and for five years 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.

24.10. Governing Law. This Agreement shall be construed in accordance with and governed by the internal laws of the State of California, U.S.A., without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of California to the rights and duties of the parties. 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.

24.11. 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 Nassau County, Florida. If Buyer is headquartered in the

United States, the arbitration shall be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. If Buyer is headquartered outside of the United States, 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.

24.12. **Buyer's Credit.** Rapiscan's performance under this Agreement shall at all times be subject to Rapiscan's approval of Buyer's credit. 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.

24.13. **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 this Agreement, including, without limitation, collection agency and attorneys' fees.

24.14. **Export Administration.** Buyer acknowledges that export and re-export of the Equipment, including Parts and components 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 components, 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 components, 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, components or sources) that are required by the countries or local territories through which any such items (including all radiation producing Parts, components 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.

24.15. **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.

24.16. **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.

24.17. **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.

24.18. **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.

24.19. **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]