

State of Oklahoma
Office of Management and Enterprise Services

ADDENDUM 1 TO
STATE OF OKLAHOMA CONTRACT WITH AT RAPISCAN SYSTEMS
RESULTING FROM SOLICITATION NO. 0900000369 FOR SW0243

This Addendum 1 ("Addendum") is an Amendment to the Contract awarded to Rapiscan Systems ("Vendor") in connection with Solicitation #0900000369 ("Solicitation") and is effective May 23, 2019.

Purpose

The State issued a Solicitation for proposals to provide Security Screening Equipment and Services, SW0243, as more particularly described in the Solicitation. Rapiscan Systems submitted a proposal which contained exceptions to the Solicitation terms and various other Contract Documents. The State and Rapiscan Systems have negotiated the final terms under which Rapiscan Systems will perform the Services under the Contract and this Addendum memorializes the agreement of the parties with respect to negotiated terms of the Contract that is being awarded to Rapiscan Systems as of even date with execution of this Addendum.

Now, therefore, in consideration of the foregoing and the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

1. **Work Commencement.**

The parties agree that Supplier has not yet begun performance of work contemplated by the Solicitation.

2. **Negotiated Documents of the Contract.**

The parties have negotiated certain exceptions to the Solicitation as contained in Attachment A to this Addendum titled Warranty Terms and Conditions and Maintenance Agreement, attached hereto and incorporated herein.

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**SIGNATURE PAGE TO ADDENDUM 1 TO
STATE OF OKLAHOMA CONTRACT WITH RAPISCAN SYSTEMS
RESULTING FROM SOLICITATION NO. #0900000369 FOR SW0243**

STATE OF OKLAHOMA

By: S-D-R

Name: Sam DuRegger

Title: Purchasing Director

Date: 8-14-19

RAPISCAN SYSTEMS

By: Lakisha Byrd

Name: Lakisha Byrd

Title: Sr. Contracts Administrator

Date: 8/12/2019

**ATTACHMENT A TO
ADDENDUM 1 TO
STATE OF OKLAHOMA CONTRACT WITH RAPISCAN SYSTEMS, INC.
RESULTING FROM SOLICITATION NO. 0900000369, SW0243**

Negotiated Exceptions to Contract Resulting from Solicitation No. 0900000369

The negotiated exceptions to Solicitation No. 0900000369, SW0243 set forth below hereby supersede the exceptions set forth on pages 62-65, 89-101 and 101-116 of Rapiscan Systems, Inc. Proposal, which pages shall be deemed not to constitute a portion of the Contract.	
Term & Section	Language
Section Five - Bidder Agreements, page 62 to 65 of response/proposal. (Section E.11.5., page 23)	Section Five - Bidder Agreements, Standard Warranty, pages 62 through 65 of the proposal, Section E.11.5., page 23 is replaced in its entirety. “Effectively” Replaced by: Rapiscan-StdWarrantyTerms_Sect-5 FINAL.docx (attached)
Section Five - Bidder Agreements, page 89 to 101 of response/proposal. (Section E.11.5., page 23)	Section Five - Bidder Agreements, Software License Agreement, pages 89 through 101 of the proposal, Section E.11.5., page 23 is replaced in its entirety. “Effectively” Replaced by: Rapiscan-G306_RSI_Software Lic Agrmt FINAL.docx (attached)
Section Five - Bidder Agreements, page 101 to 116 of response/proposal. (Section E.11.5., page 23)	Section Five - Bidder Agreements, Service Level Agreement, pages 101 through 116 of the proposal, Section E.11.5., page 23 is replaced in its entirety. “Effectively” Replaced by: Rapiscan-Service TCs G502 FINAL.docx (attached)

Standard Warranty Terms

5. Warranty.

5.1. **Warranty Terms.** Rapiscan warrants to Buyer (and to no other party) that that the Product(s) are merchantable and shall conform substantially to Rapiscan's then-current applicable specifications for the Product(s). Unless otherwise agreed in the Rapiscan Sale Document, the warranty period expires on the one-year anniversary of delivery of the Product. Supplies, accessories and service parts, including used Products, shall be free from defects in material and workmanship for a period of 90 days from delivery. Defects in a repaired or replaced Product or part shall be covered to the extent of the unexpired term of the applicable warranty period.

5.2. **Limitations.** The warranty set forth above shall not apply if (i) Rapiscan is unable to reproduce the defect or error reported by Buyer; (ii) Buyer has failed to use the Product 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 Product generally; (iii) Buyer has failed to report a defect or error within ten (10) days of its first occurrence and in accordance with the procedures established by Rapiscan to identify and report such problems to Rapiscan's Customer Service Department; (iv) a Product has been moved, without Rapiscan's written consent, from its original installation location (note that prior to the performance of on-site, in-warranty labor for handheld and mobile-type inspection systems, Rapiscan may require that Buyer deliver the system to a location that Rapiscan deems logistically convenient for repair); (v) the area in which the Product is located is not, in Rapiscan's opinion, a safe and clean operating environment; (vi) Rapiscan is not granted prompt access to the Product upon arrival of Rapiscan's service engineer; (vii) the Product 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); (viii) the Product has been damaged by neglect, misuse, mishandling, failure of electrical power, user error, liquids, or as a result of any other cause external to Product; (ix) Buyer is requesting a password re-set; (x) Buyer has failed to timely pay, in whole or in part, any invoice issued by Rapiscan; or (xi) Buyer is in breach of the 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).

5.3. **Exclusive Remedies.** Buyer must report to Rapiscan in writing any breach of the warranties contained in this Section 5 during the relevant warranty period. With respect to Products (other than Metor® and Trace Detection Products) installed in the United States and Canada, Buyer's sole and exclusive remedies, and Rapiscan's entire liability, shall be to correct the error or defect that caused the breach of warranty or, if Rapiscan is unable to make the Product operate as warranted, the replacement of the defective Product or return of the purchase price (at Rapiscan's election). With respect to Products installed outside of the United States and Canada (and also with respect to Metor and Trace Detection Products located both inside and outside of the United States and Canada), Buyer's sole and exclusive remedies, and Rapiscan's entire liability, shall be to provide Buyer with replacement parts to the extent such replacement parts are required by a Rapiscan-certified service technician to correct the error or defect or, if Rapiscan is unable to provide such replacement parts, the replacement of the defective Product or return of the purchase price (at Rapiscan's election). Therefore, with respect to Products installed outside of the United States and Canada (and also with respect to Metor and Trace Detection located both inside and outside of the United States and Canada), Buyer shall be responsible for obtaining the services of a Rapiscan-certified technician to remove defective parts, install replacement parts, and perform all other related warranty service work. If any service is performed or attempted by an individual that is not, at the time that service is performed, certified by Rapiscan's Customer Service Department to perform such work, then Rapiscan shall no longer have any further warranty obligations with respect to such Product (see Section 5.2(vii)). Buyer acknowledges and agrees that Rapiscan-certified service technicians that are not, at the time of the performance of service, the employees of Rapiscan, are not the agents or partners of Rapiscan. Such service technicians (including their employers) have no right or authority, express or implied, to assume or create any obligation of any kind on behalf of Rapiscan, to make any representation or warranty on behalf of

Rapiscan or to bind Rapiscan in any respect whatsoever. If any dispute of any kind (whether based in contract, tort or otherwise) arises between Buyer and such service technician (or between Buyer and the employer of such service technician), Buyer acknowledges and agrees that it shall look exclusively to such service technician (and the employer of such service technician, if appropriate) for all remedies to such dispute and shall have no right to pursue Rapiscan in connection with such dispute. Notwithstanding anything to the contrary, this section shall be construed to release Rapiscan from its warranty obligations under this Agreement.

5.4. Disclaimer of Warranties. EXCEPT AS SET FORTH IN THIS SECTION 5, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, RAPISCAN DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, 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 PRODUCTS WILL OPERATE AS REQUIRED WITHOUT INTERRUPTION, DELAY OR ERROR. RAPISCAN DOES NOT WARRANT ANY "UP-TIME" OR "DOWN-TIME" OF THE EQUIPMENT.

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. 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 US\$250 per day for each day beyond such five-day period that the Loaner returned to Rapiscan.

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 deemed 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 23.4 (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) 30 days 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 1.5% 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. To the extent allowable by Oklahoma law.

16.4. **Late Payment:** Pursuant to 74 O.S. §85.44(B), invoices will be paid in arrears after products have been delivered or services provided. Payment terms will be net 45. Title 62 § 34.72. **Interest Payment:** The Director of the Office of Management and Enterprise Services shall establish a procedure to assess and pay interest for the late payment of an invoice, which interest shall be calculated beginning the thirtieth day after receipt by the designated office of a proper invoice for which payment has not been mailed, transmitted, or delivered to a vendor by the close of business on the forty-fifth day. Such interest shall be at an annualized rate based on an average of the interest rate for thirty-day time deposits of state funds during the last calendar quarter of the last preceding fiscal year, as reported by the State Treasurer.

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.

23. **Miscellaneous Provisions.**

23.1. **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.

23.2. **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.

23.3. **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).

23.4. **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, in data sheets, pamphlets, and brochures. **Rights. Language needs to be added.** No press releases or marketing materials shall be used by Rapiscan that indicates or infers a recommendation of these services by the State of Oklahoma

23.5. **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.

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

23.7. **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.

23.8. **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.

23.9. **Governing Law.** This Agreement shall be construed in accordance with and governed by the *State of Oklahoma*. 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.

23.10. **Venue.** Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration in the *State of Oklahoma*.

23.11 **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 after a 30 day cure period, in whole or in part, or to suspend the performance of

Services, in whole or in part, in its sole discretion, deems appropriate to ensure full payment by Buyer for the Services.

23.12. **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.

23.13. **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.

23.14 **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.

23.15. **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.

23.16. **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]

SOFTWARE LICENSE AGREEMENT G306

1. Agreement.

1.1. **Agreement.** Buyer has entered into an agreement with Rapiscan Systems, Inc. or one of its subsidiaries or affiliates (as applicable, "Seller") under which Seller is to deliver software to Buyer (the "Agreement"). This Software License Agreement G306 ("License Agreement") is entered into by and between Seller (hereinafter referred to as "Licensor") and Buyer (hereinafter referred to as "Licensee") and governs the use of such software ("Software"). The Software may consist of Licensor's software products, software installed by Licensor on the security inspection equipment that Licensor has sold or delivered to Licensee, and software features and options, together with new versions or updates to any of the foregoing made available or delivered by Licensor to Licensee (the "Software").

1.2. **Precedence.** With respect to Licensee's use of the Software, in the event of any conflict between the terms of the Agreement and the terms of this License Agreement (including without limitation the warranty provisions), the terms and conditions of the State of Oklahoma shall take precedence.

1.3. **Entire Agreement.** This License Agreement constitutes the entire agreement between Licensor and Licensee with respect to the subject matter of this License Agreement and may not be modified except in a writing signed by a duly authorized employee of Licensor and Licensee.

2. Software License. Subject to the terms of this License Agreement, Licensor grants to Licensee a perpetual, non-exclusive License to operate the Software, subject to the following limitations:

2.1. **Internal Purposes Only.** Licensee shall use the Software for its internal purposes only and only on the security inspection equipment for which it has been designed.

2.2. **No Transfer.** The license covered by this License Agreement is non-transferable except as appurtenant to a sale of the security inspection equipment on which it has been rightfully installed and provided that, in the event of any such transfer, Licensee shall ensure that the transferee agrees to be bound by this License Agreement.

2.3. **Single Terminal.** Licensee is entitled to use the Software only on a single computer or terminal at any one time.

2.4. **No Copies.** Licensee shall not copy the Software, except as required by normal installation procedures specified by Licensor.

2.5. **No Modification.** Except to the extent permitted by applicable law notwithstanding this restriction, Licensee shall not modify, translate, decompile, disassemble or otherwise reverse engineer, or otherwise determine or attempt to determine source code or protocols from, the executable code of the Software, or create any derivative works based upon the Software, and Licensee shall not permit or authorize anyone else to do so.

2.6. **Software Updates.** Should Licensor provide Licensee with any new Software versions or updates to a previous version of such Software, such new versions or updates of the Software shall be the only version that Licensee is entitled to use unless otherwise agreed in writing by Licensor, and Licensee covenants that it shall destroy or erase all

Software program material and related documentation relating to the previous Software version.

3. **Delivery and Acceptance.**

3.1. **Delivery.** Licensee's license to operate the Software shall commence upon the delivery of the Software from Licensor to Licensee.

3.2. **Dates.** Licensor's delivery dates are estimates only. Licensor will use commercially reasonable efforts to deliver in accordance with the delivery or performance dates specified in the Agreement, but may change those dates as it deems necessary. Licensor shall not be liable for failure to deliver or perform by such dates.

3.3. **Acceptance.** The Software shall be deemed accepted by Licensee upon delivery.

4. **Testing and Installation.** If testing (e.g., factory acceptance testing, site acceptance testing) and installation of the Software is included in the Agreement, Licensor shall perform such testing and installation in accordance with Licensor's standard testing and installation procedures for the Software in effect on the date of testing/installation.

5. **Warranty.**

5.1. **Warranty Terms.** Licensor warrants to Licensee (and to no other party) that the Software shall perform substantially in accordance with the specifications contained in Licensor's Software manual for the Software when the specified equipment on which the Software is installed is operated in accordance with Licensor's operating instructions. This warranty shall apply for a period of 90 days from initial delivery.

5.2. **Limitations.** The warranty contained in Section 5.1(Warranty Terms) above shall not apply if (i) Licensor is unable to reproduce the defect or error reported by Licensee; (ii) Licensee has failed to use the Software in accordance with Licensor's manuals, instructions and/or other procedures that Licensor has made available to Licensee or that it makes available to licensees of the Software generally; (iii) Licensee has failed to report a defect or error within ten (10) days of its first occurrence and in accordance with the procedures established by Licensor to identify and report such problems to Licensor's Customer Service Department; (iv) the equipment on which the Software has been installed has been moved, without Licensor's written consent, from its original installation location (note that prior to the performance of on-site, in-warranty labor for handheld and mobile-type inspection systems, Licensor may require that Licensee deliver the system to a location that Licensor deems logistically convenient for service); (v) the area in which the equipment on which the Software has been installed is located is not, in Licensor's opinion, a safe and clean operating environment; (vi) Licensor is not granted prompt access to the equipment on which the Software has been installed upon arrival of Licensor's service engineer; (vii) the Software has been installed or modified without Licensor's prior written consent (e.g., by a technician that is not, at the time of such modification, certified by Licensor's Customer Service Department to perform such work); (viii) Licensee is requesting a password re-set; (ix) the defect or error was caused, in whole or in part, by a product, software or part not originating from Licensor; (x) the defect or error was caused, in whole or in part, by a failure to install Licensor's most recent software update within 30 days of its release by Licensor; (xi) Licensee has failed to timely pay, in whole or in part, any invoice issued by Licensor; or (xii) Licensee is in breach of the Agreement, this License Agreement or any other agreement between Licensee and Licensor (this statement shall not be construed to limit any other rights or remedies available to Licensor for any such breach).

5.3. **Exclusive Remedies.** Licensee must report to Licensor in writing any breach of the warranties contained in this Section 5(Warranty) during the 90-day warranty period. Licensee's sole and exclusive remedies, and Licensor's entire liability, shall be to correct the error or defect that caused the breach of warranty or, if Licensor is unable to make the Software operate as warranted, the replacement of the defective Software or return of the license price attributable to the Software.

5.4. **Disclaimer of Warranties.** **LICENSOR DOES NOT WARRANT THAT THE SOFTWARE WILL OPERATE AS REQUIRED WITHOUT INTERRUPTION, DELAY OR ERROR.**

6. **Ownership.**

6.1. **Ownership of the Software.** Licensor retains all right, title and interest, including, without limitation, all patent rights, copyrights, trademarks and trade secrets, in and to the Software and any portion thereof, including, without limitation, any copy or derivative work of the Software (or any portion thereof) and any update thereto. Licensee agrees to take any action reasonably requested by Licensor to evidence, maintain, enforce or defend the foregoing. Licensee shall not take any action to jeopardize, limit or interfere in any manner with Licensor's ownership of and rights with respect to the Software, or any derivative work thereof or update thereto. Licensee shall have only those rights in or to the Software and any derivative work thereof or update thereto granted to it pursuant to this Agreement.

6.2. **Other Software.** The Software may utilize or incorporate code under license from third parties. The license of such third-party code to Licensee from Licensor is made subject to the terms of the license granted by the original licensor. Licensee hereby acknowledges and agrees to be bound by the terms of the license granted by the original licensor. Shrink wrap software or software licensed directly by a third party to Licensee is subject only to the license terms provided with such software.

6.3. **Data Formats.** With respect to Software which has such capability, when Licensor provides the tools, training or assistance to Licensee to create new or modify existing forms, report formats, screen files, system tables, plans of care and other methods for recording and reporting information (collectively, "Data Formats"), it is Licensor's policy to share such Data Formats with other customers for their mutual benefit by including them (when possible and useful) in the Software files in the Software and Software updates and upgrades licensed to other licensees. Licensee hereby agrees to this policy and grants permission and a worldwide, unrestricted, perpetual, royalty-free license to Licensor to so provide such Data Formats to Licensor's other licensees at Licensor's discretion with the Licensee having no right or claims whatsoever thereto.

7. **Confidentiality.**

7.1. **Confidential Information.** The Software contains proprietary and confidential information of Licensor and its suppliers and is considered by Licensor and its suppliers to constitute valuable trade secrets. Licensee agrees that it will keep confidential the contents of the Software (including all related manuals and other documentation) and will not sell, publish, display, disclose or otherwise make the Software available to any third party except to Licensee's employees who use it on Licensee's behalf and who have agreed to maintain the confidentiality of such information on terms at least as restrictive as those contained in this License Agreement. Licensee agrees to notify Licensor of the circumstances surrounding any unauthorized access to, possession or use of any part of the Software. If any unauthorized access, possession or use occurs, Licensee covenants

that it shall take, at Licensee's expense, all steps necessary to recover the Software and to prevent its subsequent unauthorized access, possession or use, including availing itself of actions for seizure and injunctive relief. If Licensee fails to take these steps in a timely and adequate manner, Licensor may take them in its own or Licensee's name and at Licensee's expense.

7.2. **Other Confidentiality Agreements.** Notwithstanding Section 7.1 (Confidential Information) immediately above, if Licensor and Licensee have entered into a separate confidentiality or non-disclosure agreement designed to protect proprietary or confidential information of either party that is expected to be transmitted under or in connection with the performance of this License Agreement, then the terms of Section 7.1 immediately above shall be deemed to supplement and enhance such agreement and shall not be deemed to supersede or replace any of the terms and conditions of such separate agreement, which agreement shall remain in full force and effect.

8. **Price and Payment.**

8.1. **Price.** The price(s) for the license covered by this License Agreement are those prices set forth in the Agreement or, if there are no prices are set forth therein, then the prices shall be as set forth on Licensor's then-current applicable standard price list applicable to Licensee under Licensor's pricing policies.

8.2. **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 to the extent allowable by Oklahoma law.

8.3. **Charges.** Pursuant to §74-85.44B Payment for products or services pursuant to a contract executed by a state agency, whether or not such state agency is subject to the Oklahoma Central Purchasing Act, Section 85.1 et seq. of this title, shall be made only after products have been provided.

8.4. **Currency.** Licensee shall pay all amounts due in U.S. dollars, unless otherwise provided in the Agreement.

8.5. **Late payment.** Interest on late payments made by the State of Oklahoma is governed by 62 O.S. §34.71 and 62 O.S. §34.72.

8.6. **Notice of Payment Dispute.** Subject to applicable law, if Licensee intends to dispute any amount due under or related to this License Agreement, Licensee must notify Licensor in writing within 30 days of the date such payment is originally due. Licensee 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.

9. **Cancellation/Delay.**

9.1. **Cancellation by Either Party.** Either party may terminate or cancel this License Agreement immediately upon written notice to the other party if the other party fails to perform any of its duties or obligations hereunder and fails to cure such default within thirty

(30) days after receipt of written notice from the non-defaulting party specifying the occurrence or existence of the default. If Licensee is in default, Licensor reserves the right, in addition to all other rights and remedies it may have, to withhold further performance of its obligations under this License Agreement and to repossess the Software and all related equipment and documentation.

9.2. **Excusable Delay.** Licensor 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 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 (including delays or failures by any government to grant export licenses), fire, explosions, sabotage, the elements, epidemics, quarantine restrictions, strikes, lockout, embargoes, severe weather, delays in transportation, airline schedule, fuel shortages, or delays of suppliers or subcontractors.

9.3. **Effect of Cancellation.** Upon the termination or cancellation of this License Agreement for any reason, or of any licenses granted hereunder, (i) the provisions of Sections 6, 7, 8, 9, 10, 11, 12, 13, 14 and 15 shall survive and (ii) Licensee shall promptly remove all affected Software from all memory locations, return all related documentation to Licensor, and execute and deliver to Licensor a certificate stating that all copies of the affected Software have been removed and returned or destroyed.

10. **Limitation of Liability.** LICENSOR'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS LICENSE AGREEMENT SHALL BE LIMITED TO THE TOTAL PRICE ACTUALLY PAID BY LICENSEE FOR THE SOFTWARE LICENSE COVERED BY THIS LICENSEE AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION 10 AND IN THE OTHER PROVISIONS OF THIS LICENSE AGREEMENT AND THE ALLOCATION OF RISK HEREIN ARE AN ESSENTIAL ELEMENT OF THE BARGAIN BETWEEN THE PARTIES, WITHOUT WHICH LICENSOR WOULD NOT HAVE ENTERED INTO THE LICENSE AGREEMENT. LICENSOR'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.

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

12. **Miscellaneous Provisions.**

12.1. **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 License Agreement or in any manner whatsoever.

12.2. **Notice.** Any notice (other than routine reports regarding Software delivery and performance) required or permitted hereunder shall be in writing, shall reference this License 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 Licensor shall be sent to the address to which Licensor regularly invoices Licensee or, at Licensor's election, to Licensee's address set forth in the Agreement. All notices sent by Licensee shall be sent to the Licensor address set forth in the Agreement, ATTN: VP Sales, with a copy to VP Finance at the same address, or to such other address or person as may be designated by Licensor by giving written notice to Licensee pursuant to this Section.

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

12.4. **No Amendment.** This License Agreement may not be modified or amended except pursuant to a writing, signed by a duly authorized employee of each of Licensor and Licensee.

12.5. **Remedies.** The remedies described in various sections of this License Agreement shall not be deemed the exclusive remedies available to Licensor and Licensor shall, in addition to all such remedies, be entitled to all other remedies available to it under law.

12.6. **Governing Law.** This License Agreement shall be construed in accordance with and governed by the State Oklahoma.

14.7. **Venue.** Except for matters of injunctive relief, for which either party may initiate proceedings in any court of competent jurisdiction, any controversy or claim arising out of or relating to this License 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 the State of Oklahoma.

12.8. **Disputes with U.S. Government.** If Licensee is an executive agency of the United States Government, Section 15.9 (Venue) shall not apply and this License Agreement shall instead be subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 7101-7109). Failure of the parties to this License Agreement to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this License Agreement shall be a dispute to be resolved in accordance with FAR 52.233-1 (Disputes) which is incorporated herein by reference.

12.9. **Licensee's Credit.** Licensor's performance under this License Agreement shall at all times be subject to Licensor's approval of Licensee's credit. Without limiting its other rights and remedies available under this License Agreement or pursuant to law, Licensor shall be permitted to suspend delivery and installation and to suspend the performance of services (including warranty services or otherwise, and whether required by the terms of this License Agreement or under any other agreement between Licensor and Licensee) and shall be permitted to impose such other terms and conditions or security arrangements as Licensor, in its sole discretion, deems appropriate to ensure full payment by Licensee for its license of the Software and any other amounts due.

12.10. **Commercial Items.** The Software and any data relating thereto or derived therefrom are "commercial items" as defined in the U.S. Code of Federal Regulations (48 C.F.R. 2.101), consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. If the Licensee is a U.S. Government agency, department, or instrumentality, then the use, duplication, reproduction, release, modification, disclosure or transfer of the Software and any data relating thereto or derived therefrom, is restricted in accordance with 48 C.F.R. 12.211, 48 C.F.R. 12.212, 48 C.F.R. 227.7102-2 and 48 C.F.R. 227.7202, as applicable. This Section 12.10(Commercial Items) of this License Agreement is in lieu of, and supersedes, any U.S.

Federal Acquisition Regulations, Defense Federal Acquisition Regulations Supplement, or other clause or provision that addresses United States Government rights in computer software or technical data.

12.11.**No Waiver**. The waiver by either party of a breach of or a default under any provision of this License 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 License 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.

12.12.**Severability**. If for any reason a court or arbiter of competent jurisdiction finds any provision of this License 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 License Agreement shall continue in full force and effect.

12.13.**Construction**. This License Agreement shall be interpreted fairly in accordance with its terms and without any construction in favor of or against either party.

End of Software License Agreement