

# RAYSECUR TERMS AND CONDITIONS

[www.raysecur.com/terms-and-conditions](http://www.raysecur.com/terms-and-conditions)

The following (the "Agreement") states the terms and conditions applicable to orders by a customer ("Customer") to acquire or use Products provided by RaySecur Inc. ("RaySecur" or "Supplier"). "Product" means the equipment, software, and any associated trainings, certifications, policies, processes, and procedures, including standard operating procedures, and support services, including EODSecur support. "Purchase Order" means the purchase order or other document referring to this Agreement, specifying the kind and quantity of Products and pricing for such, and signed by both Customer and Supplier.

## 1. PRODUCT ACQUISITION

### **(a) Acquisition of Product; Delivery.**

Customer hereby agrees to acquire, and Supplier hereby agrees to supply to Customer, subject to the terms and conditions of this Agreement, the Product specified on the Purchase Order.

**(b) Rental vs. Purchased.** In the event the acquisition of the Product is described as "Third-Party Rental" Supplier agrees to supply the Product through a third-party rental agreement referred to herein (the "Rental Agreement") and Customer agrees to acquire the Product pursuant to the Rental Agreement; such Rental Agreement will provide for the acquisition of the Product by the rental company and provision by the rental company of the Product to the Customer. The provisions of Sections 2 through 9 of this Agreement shall apply except to the extent expressly overridden in the Rental Agreement. In the event the acquisition of Product is described as being "purchased", risk of loss and title to such Product will pass to Customer upon Supplier's delivery at Supplier's facility to a common carrier selected by Customer unless otherwise indicated in the Purchase Order. In the event the acquisition of Product is described as being "Rental" but not "Third Party Rental", Supplier agrees to loan and Customer agrees to accept the loan of the Product; risk of loss to equipment will pass to Customer upon Supplier's delivery at Supplier's plants to a common carrier selected by Customer unless otherwise indicated in the Purchase Order and shall be with Customer during the rental term; and at the end of the rental term, Customer shall either (a) acquire the equipment on mutually agreeable terms or (b) promptly return it to Supplier in the same condition as received, normal wear and tear excepted.

**(c) EODSECUR.** If so indicated in the applicable Purchase Order, Supplier shall provide the EODSecur service ("EODSecur") to Customer. EODSecur provides access to a subject matter expert ("Supplier SME") for second opinion related to potential chemical, biological, radiological, nuclear, or explosive (CBRNE) risks. If Customer initiates a request to EODSecur, the Supplier SME shall endeavor to provide a second opinion assessment based on the information shared with the Supplier SME by Customer's designated representative.

## 2. INSTALLATION AND TRAINING; COMMUNICATION FACILITIES.

**(a) Installation and Training.** Customer shall provide an acceptable installation environment and, except as specified in the applicable Purchase Order, shall furnish all labor and supplies required to install the Product. If so indicated in the applicable Purchase Order, Supplier may provide installation assistance comprised of installation, training and other services. Except as otherwise agreed in writing, Customer shall be solely responsible for supply and maintenance of an appropriate environment (including power, network and telephone connections, etc.) for the Product.

**(b) Communication Facilities.** Supplier may make requests for information, initiate a remote connection, and transfer data and information, whether by telephone, internet, wireless data transmission, or other means to and from Supplier equipment, applications, software, and related services installed or in use on Customer premises, under this Agreement. Customer shall provide and ensure an active internet connection at all times between Supplier equipment located on Customer premises and EODSecur (if contracted), or as required to perform equipment maintenance, calibration, and support work. Alternatively, Supplier may furnish a dedicated internet connection, independent of Customer's network, through cellular services or other means at Customer's request and expense.

## 3. LIMITED WARRANTY; MAINTENANCE AND OTHER SERVICES.

**(a) Limited Warranty.** Subject to Section 7, Supplier warrants that during the Warranty Period the Product shall perform substantially in accordance with its documentation. The "Warranty Period" is one (1) year after the delivery date; provided, it may be extended through the acquisition by Customer of an extended warranty, coterminous with an applicable service package term, as set forth in a Purchase Order. Supplier does not warrant that the operation of the Product will be uninterrupted or error free, or that all defects can be corrected. Customer's exclusive remedy and Supplier's sole liability under this warranty shall be for Supplier to, at its option, (1) provide replacement parts and service necessary to repair the Product, and use reasonable efforts to modify the Product to make it conform to its warranty, (2) replace the Product with comparable product or (3) refund the amount paid by Customer for the affected Product in exchange for the return of the Product.

In order to be entitled to the above warranty remedies, Customer must report the failure to Supplier within the Warranty Period and Customer, at Supplier's request, must provide Supplier with sufficient information (which may include access to the Product and Customer's systems used in connection with the Product) to reproduce the defect in question. In the event that Supplier cannot, after repeated efforts, remedy such failure, Supplier shall refund all fees received by Supplier from Customer hereunder for the Product in questions and terminate this Agreement, and Customer thereafter shall return all Product and copies of all software in its possession. This warranty is made solely to Customer and Customer shall be solely responsible for any warranty to, or claims by, third parties.

**(b) Service Package or Product Maintenance and Calibration.** If the Purchase Order specifies it includes a service package or that maintenance is included (or if the Product is acquired by Rental or Third-Party Rental), Supplier shall provide maintenance service on any of the Product, including system software updates, when available. In such case, Supplier will, upon Customer's request, provide ordinary maintenance, calibration, and

repair of the covered Product due to normal wear and tear and bear the expense thereof (except for those caused by Repair Exclusions). Ordinarily inspections shall be conducted remotely and will require the Product to be powered on with a stable internet connection. In the event that Supplier cannot, after repeated efforts perform any necessary maintenance, Customer's sole remedy shall be for Supplier to refund all pre-paid maintenance fees received by Supplier from Customer hereunder for the Product in questions and terminate the maintenance obligation.

**(c) Replacements.** Any replacement Product or components will be comparable in function and performance to the original Product, and be warranted for the remainder of the original warranty period, or for 90 days, whichever is greater. All replaced Product or components shall be returned to and become the property of Supplier. Any Product or portions thereof not received by Supplier within ten (10) business days will be invoiced to the Customer. Supplier may use new and reconditioned parts made by various manufacturers in performing Product warranty repairs and building replacement products. Supplier is responsible for shipping and insurance charges on replacements parts.

**(d) Repair Exclusion.** Errors or requirement for repair arising from the following conditions are excluded from warranty or maintenance ("Repair Exclusions"): (i) damage or extra service time resulting from accidents, acts of God, lightning, strikes, riots, floods, terrorism, acts of war, alteration, misuse, tampering or abuse, adjustments, repairs or maintenance not done by Supplier, or from parts, accessories, attachments or other devices not furnished by Supplier; (ii) Customer's improper operation per instructions; (iii) adjustments necessitated by video camera misalignment, improper monitor brightness and contrast tuning dials, or inadequate lighting on viewing area; (iv) trouble due to interruption of commercial power to the phone or internet service; (v) devices designed to fail in protecting the Product such as, but not limited to, fuse and circuit breakers; (vi) due to alterations in the Customer's premises, alterations of the system made at the request of the Customer, or made necessary by changes in the Customer's premises, damage to the premises or to the Supplier system, or to any cause beyond the control of Supplier. If Customer calls Supplier for service under the above warranty or maintenance provisions and upon inspection by Supplier's representative it is found that one of these Repair Exclusions has led to the inoperability or apparent inoperability of the system, a charge will be made for the service call of Supplier's representative whether or not he actually works on the system. Should it actually be necessary to make repairs to the system due to one of the Repair Exclusions, a charge will be made for such work at Supplier's then applicable rates for labor and material. Any service work will be furnished by Supplier either on-site or at Supplier facilities, at Supplier's option.

#### **4. LICENSE; EXCLUSIONS; OWNERSHIP OF THE PRODUCT.**

**(a) Software.** Supplier hereby grants to Customer, subject to the terms and conditions of this Agreement including without limitation payment of all applicable fees, a non-exclusive, non-transferable license for the period for which the Customer utilizes the Product hereunder to use any software (including software embedded in any equipment) solely in connection with the use of the Product. Licenses for software are for object

code only. Users may be required to agree to end user terms and conditions required by Supplier from time to time in order to access and use the software and Customer shall cooperate in enforcing such terms and conditions against its users.

**(b) License Exclusions.** Except as expressly authorized herein, the Customer shall not: (i) copy any software included in the Product; (ii) distribute, disclose, market, rent, lease or transfer to any third party any portion of the Product or documentation, or use the Product or documentation in any service bureau arrangement; (iii) disclose the results of the Product's performance benchmarks to any third party without Supplier's prior written notice; or (iv) use any third-party licensed software products or modules provided by Supplier to the Customer under this Agreement independently from the Product. Customer shall ensure that the Product is not modified, translated, examined, tested, subjected to simulated input, decompiled, reverse-engineered, or disassembled (including software "disassembly" by attempted recreation of source code) in any manner, for any reason including but not limited determining the mechanism, algorithms, processes or characteristics of the Product, provided that Customer may examine or test the Product only for authorized maintenance and error correction or otherwise solely as such access by Customer is required by applicable local law.

**(c) Ownership.** Customer agrees that Supplier (or its suppliers) are the sole and exclusive owner of all intellectual property rights in the Product, including all rights in software, and all intellectual property rights in the Product, and any modifications thereto, including all intellectual property rights associated therewith (including without limitation any inventions, creations and improvements whether or not patentable or copyrightable, conceived or made in connection with the performance of obligations hereunder), made or provided by Supplier pursuant to this Agreement, whether alone or with any contribution from Customer or its personnel, shall be owned exclusively by Supplier.

**(d) U.S. Government Rights.** The software is a "commercial item," as that term is defined in 48 C.F.R. 12.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sept. 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire the Product with only those rights set forth herein.

**5. FEES; TAXES.** Customer shall pay Supplier the fees set forth on the Purchase Order, and any license grant, services obligations or delivery obligation contained hereunder is conditional on payment by Customer of such amounts. Payment of monthly fees are due in advance paid via ACH direct debit or with credit card on file. Fees for Product sales and annual service fees are payable within 30 days of invoice date. Rental fees will be payable as indicated on the Purchase Order or otherwise agreed to between rental company and Customer. Rental terms begin upon delivery of the equipment. All fees are exclusive of any applicable taxes. Customer must pay, indemnify and hold Supplier harmless from all sales, use, value added or other taxes of any nature, other than personal property or taxes on or measured by Supplier's net or gross income, including penalties and interest, and

all government permit or license fees assessed upon or with respect to any fees paid by Customer.

## 6. CONFIDENTIALITY.

**(a) General.** "Confidential Information" means any proprietary information which is learned by one party about the other's business affairs, property, methods of operation, processing systems or other information which reasonably could be considered to have business or proprietary value or to be personal or otherwise confidential in nature, and the terms of this Agreement. Neither party's Confidential Information shall be disclosed by the other party to any third party except as permitted under this Agreement. Each party shall use such Confidential Information only to perform its obligations under this Agreement or as otherwise permitted under this Agreement. Nothing in this Agreement will in any way restrict the right of a receiving party to use, disclose, or otherwise deal with any information that: (a) was already known to the receiving party at the time of disclosure as evidenced by written documents in the receiving party's possession prior to disclosure; (b) was generally available to the public or becomes publicly known through no wrongful act of the receiving party; (c) was received by the receiving party from a third party who had a legal right to provide it; or (d) was developed independently of knowledge of Confidential Information received by the receiving party from the disclosing party. If either party is confronted with legal action to disclose any portion of the other party's Confidential Information, that party shall promptly notify and assist the other (at the other party's expense) in obtaining a protective order or other similar order, and shall thereafter disclose only the minimum of the other party's Confidential Information that is required to be disclosed in order to comply with the legal action, whether or not a protective order or other order has been obtained. Notwithstanding the foregoing, the parties may disclose the terms of this Agreement to its accountants, attorneys and potential investors, acquirers and financing partners in confidence.

**(b) Usage Data.** "Usage Data" means text, images, audio, video, photographs, and other content and material, in any format, that Customer or its users supply to Supplier in connection with the use of the Product. Customer grants to Supplier a nonexclusive royalty-free license to: (c) use Usage Data as required to provide the Product to Customer and to internally analyze, enhance or improve the performance of the Product; (d) disclose Usage Data as required by law or the operation of providing the Product; (e) use Usage Data to create Aggregated Data and provide Aggregated Data to third parties; and (f) disclose Usage Data to subcontractors (including their affiliates) and authorize their use of such Usage Data for the foregoing purposes (or for other activities expressly permitted under this Agreement). "Aggregated Data" means any aggregate information, analysis, rule, projection, statistic or similar summary or conclusion that Supplier has obtained through processing or analysis of any Usage Data (but excluding the original Usage Data); provided Aggregated Data shall not be in a form which could be used to identify Customer or any individual person. Customer obtains no ownership right, title or interest from Supplier in or to Aggregated Data.

## 7. LIMITATIONS.

**(a) General Disclaimer.** Supplier's services, systems and equipment do not cause and cannot eliminate

occurrences of the events they are intended to detect or avert.

SUPPLIER MAKES NO GUARANTY OR WARRANTY, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, THAT THE SERVICES, SYSTEM OR EQUIPMENT SUPPLIED WILL DETECT OR AVERT SUCH EVENTS OR THE CONSEQUENCES THEREFROM.

Customer and Supplier recognize that situations involving the utilization of Supplier's services, systems and equipment may require decisions and judgment regarding physical security and the possibility of death, personal injury or property damages. Supplier does not make those decisions or judgments itself; and it does not provide security services. Customers must obtain advice, make decisions and take actions based on their own professional training or the training of qualified security personnel. Supplier is not responsible for advice, actions or omissions, even if based in part on using the EODSecur service; or any action taken, or failed to be taken, related thereto, whether or not the EODSecur service provides accurate advice.

SUPPLIER SHALL HAVE NO LIABILITY FOR LOSS, DAMAGE OR INJURY DUE DIRECTLY OR INDIRECTLY TO EVENTS, OR THE CONSEQUENCES THEREFROM, WHICH THE SYSTEM OR SERVICES ARE INTENDED TO DETECT OR AVERT. CUSTOMER RELEASES AND WAIVES FOR ITSELF AND ITS INSURER ALL SUBROGATION AND OTHER RIGHTS TO RECOVER FROM SUPPLIER ARISING AS A RESULT OF PAYING ANY CLAIM FOR LOSS, DAMAGE OR INJURY OF CUSTOMER OR ANOTHER PERSON.

**(b) Limitation of Liability.** REGARDLESS OF WHETHER ANY REMEDY SET FORTH IN THIS AGREEMENT FAILS OF ITS ESSENTIAL PURPOSE, IN NO EVENT WILL SUPPLIER OR ANYONE ELSE WHO HAS BEEN INVOLVED IN THE CREATION, PRODUCTION OR DELIVERY OF THE PRODUCT BE LIABLE FOR ANY INDIRECT, SPECIAL, PUNITIVE, CONSEQUENTIAL, OR INCIDENTAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE) ARISING OUT OF THIS AGREEMENT OR THE USE OF OR INABILITY TO USE THE PRODUCT EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO CASE SHALL SUPPLIER'S AGGREGATE LIABILITY FOR ANY ONE MATTER ARISING OUT OF THE SUBJECT MATTER OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR OTHERWISE, EXCEED THE AMOUNT ACTUALLY RECEIVED BY SUPPLIER FROM CUSTOMER UNDER THIS AGREEMENT IN THE TWELVE (12) MONTHS PRECEDING THE OCCURRENCE OF SUCH MATTER, AND FOR ALL MATTERS, IN THE AGGREGATE, THE TOTAL AMOUNT ACTUALLY RECEIVED BY SUPPLIER FROM CUSTOMER UNDER THIS AGREEMENT.

**(c) SAFETY ACT WAIVER.** CERTAIN OF SUPPLIER'S SYSTEMS AND SERVICES HAVE RECEIVED DESIGNATION AS QUALIFIED ANTI-TERRORISM TECHNOLOGIES ("QATT") UNDER THE SUPPORT ANTI-TERRORISM BY FOSTERING EFFECTIVE TECHNOLOGIES ACT OF 2002, 6 U.S.C. §§ 441-444 (THE "SAFETY ACT"). AS REQUIRED UNDER 6 C.F.R. 25.5(E), TO THE MAXIMUM EXTENT PERMITTED BY LAW, SUPPLIER AND CUSTOMER HEREBY AGREE TO WAIVE THEIR RIGHT TO MAKE ANY CLAIMS AGAINST THE OTHER FOR ANY LOSSES, INCLUDING BUSINESS INTERRUPTION LOSSES, SUSTAINED BY EITHER PARTY OR THEIR RESPECTIVE

EMPLOYEES, RESULTING FROM AN ACTIVITY RESULTING FROM AN "ACT OF TERRORISM" AS DEFINED IN 6 C.F.R. 25.2, WHEN QATT HAVE BEEN DEPLOYED IN DEFENSE AGAINST, RESPONSE TO, OR RECOVERY FROM SUCH ACT OF TERRORISM.

## **8. TERM AND TERMINATION.**

**(a) Term.** The term of this Agreement shall commence on the earliest effective date of any Purchase Order and shall continue until terminated in accordance with this Section 8 or until there are no longer any outstanding rental items or subscription or maintenance terms.

**(b) Termination for Breach.** Supplier will have the right to terminate this Agreement immediately by delivery of written notice to Customer if the Customer is in material breach of any warranty, term, condition or covenant of this Agreement (including without limitation making any required payment hereunder), and the Customer has failed to cure that breach within thirty (30) calendar days after receiving written notice of that breach and of the non-breaching party's intention to terminate. Upon termination, Customer's right to use the any service provided hereunder by Supplier terminates and (in the case of equipment acquired by rental) Customer must immediately return the equipment to Supplier.

**(c) Effect of Termination.** Upon termination of this Agreement, the following sections of this Agreement will survive: 4(c), 5, 6, 7, 8 and 9. Termination does not relieve a party for breach occurring prior to termination. Termination of this Agreement does not terminate any Rental Agreement; the terms and conditions of the Rental Agreement govern the continuation or termination of that agreement. Termination of this Agreement by Supplier for breach by Customer does not terminate Customer obligation to make any remaining rental payments.

## **9. GENERAL.**

**(a) Non-solicitation.** During the term of this Agreement, absent Supplier's written approval, Customer shall not hire or solicit for employment, on behalf of itself or another party, any person employed by Supplier during such period; provided, however, that the foregoing shall not prohibit Customer from hiring any Supplier personnel who respond to a public job advertisement or other general, public solicitations such as a job fair, without active solicitation from Customer.

**(b) Notices.** All notices, demands, requests or other communications that may be or are required to be given, served or sent by any party pursuant to this Agreement will be in writing (and shall be deemed to have been duly given upon receipt or at such time as delivery is refused by the addressee upon presentation) by mail, courier delivery service or email, addressed to the address on the applicable Purchase Order. Each party may designate by notice in writing a new address to which any notice, demand, request or communication may thereafter be so given, served or sent.

**(c) Assignment.** The rights and liabilities of the parties hereto will bind and inure to the benefit of their respective permitted successors, executors and administrators, as the case may be; provided that (except as otherwise set forth herein) neither party may assign or delegate its obligations under this Agreement either in whole or in part, without the prior written consent of the other, except to a person or entity into which it has merged or which has otherwise succeeded to all or substantially all

of its business and assets to which this Agreement pertains, by purchase of stock, assets, merger, reorganization or otherwise, and which has assumed in writing or by operation of law its obligations under this Agreement; and further, Supplier may assign its rights to payment to a third party. No equipment acquired by rental may be or otherwise transferred or permitted to be used by anyone other than Customer unless Supplier approves of such assignment or other transfer in writing before it occurs. Any attempted assignment in violation of the provisions of this Section will be void.

**(d) Export Control.** Customer understands that Products provided under this Agreement may be subject to regulations by agencies of the United States Government as well as laws and regulations of other applicable countries which prohibit export or diversion of certain technical products to certain countries and individuals. Customer shall comply in all respects with all applicable export and re-export restrictions applicable to the Products or related materials.

**(e) Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts, excluding its choice of law provisions and, as to matters affecting copyrights, trademarks and patents, by U.S. federal law. The parties agree to exclusive personal jurisdiction and venue of the United States District Court for the District of Massachusetts (and any Massachusetts State court within that District) for that purpose. This Agreement will not be governed by the United Nations Convention on Contracts for the International Sale of Goods, the application of which is hereby expressly excluded.

**(f) Independent Contractors.** In making and performing this Agreement, Supplier and Customer act and shall act at all times as independent contractors and nothing contained in this Agreement shall be construed or implied to create an agency, partnership, joint venture, or employer and employee relationship between Supplier and Customer.

**(g) Entire Agreement, Delay, Severability, Amendment, etc.** This Agreement constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof and supersedes any prior or contemporaneous written or verbal communications or representations regarding its subject matter. Any terms or conditions appearing on the face or reverse side of any purchase order, acknowledgment, or confirmation that are different from or in addition to those required hereunder shall not be binding on the parties, even if signed and returned, unless both parties hereto expressly agree in a separate writing to be bound by such separate or additional terms and conditions. No delay or omission by either party in exercising any right or remedy under this Agreement or existing at law or equity shall be considered a waiver of such right or remedy. No waiver by either party of any right or remedy whether under this Agreement or otherwise shall be effective unless in writing. If any provision of this Agreement is held to be invalid or unenforceable, it will be construed to have the broadest interpretation that would make it valid and enforceable. Invalidity and unenforceability of one provision will not affect any other provision of this Agreement. No modification of this Agreement will be binding upon either party, unless evidenced by a writing duly signed by authorized representatives of the party against which enforcement is sought.