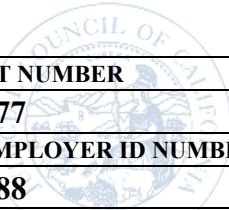


MASTER AGREEMENT

AGREEMENT NUMBER
LPA-84377
FEDERAL EMPLOYER ID NUMBER
95-4413488



- In this Master Agreement (“Agreement”), the term “Contractor” refers to **Rapiscan Systems, Inc.**, and the term “Establishing Judicial Branch Entity”, “Establishing JBE” or “Judicial Council” refers to the **Judicial Council of California**. This Agreement is entered into between Contractor and the Establishing JBE for the benefit of the Judicial Branch Entities (as defined in Exhibit A). Any Judicial Branch Entity that purchases goods or services from Contractor pursuant to this Agreement is a “Participating Entity” (collectively, “Participating Entities”). The Establishing JBE and the Participating Entities are collectively referred to as “JBEs” and individually as “JBE”).
- This Agreement is effective as of **September 15, 2022** (“Effective Date”) and expires on **September 14, 2025** (“Expiration Date”). This Agreement includes two (2) options of consecutive one-year periods (“Option Term(s)” or “Subsequent Term(s)”), which may be exercised and administered at the Establishing JBE’s sole discretion and as indicated in Exhibit D (General Provisions), which is attached hereto and incorporated herein.
- The title of this Agreement is: Master Agreement for **Security Screening Equipment and Maintenance**.

The title listed above is for administrative reference only and does not define, limit, or construe the scope or extent of this Agreement.

- The parties agree that this Agreement, made up of this coversheet, the exhibits listed below, and any attachments, contains the parties’ entire understanding related to the subject matter of this Agreement, and supersedes all previous proposals, both oral and written, negotiations, representations, commitments, writing and all other communications between the parties, and is mutually binding on the parties in accordance with its terms.

Exhibit A – Defined Terms

Exhibit E – Cost Proposal Form

Exhibit B – Goods and Services

Exhibit F – Unruh Civil Rights Act & FEHA Certification

Exhibit C – Payment Provisions

Exhibit D – General Provisions


ESTABLISHING JBE’S SIGNATURE	CONTRACTOR’S SIGNATURE
Judicial Council of California	CONTRACTOR’S NAME <i>(if Contractor is not an individual person, state whether Contractor is a corporation, partnership, etc., and the state or territory where Contractor is organized)</i> Rapiscan Systems, Inc., a corporation
BY <i>(Authorized Signature)</i> 	BY <i>(Authorized Signature)</i> 
PRINTED NAME AND TITLE OF PERSON SIGNING Stephen Saddler, Manager for Steve Bonde, Principal Manager	PRINTED NAME AND TITLE OF PERSON SIGNING
DATE EXECUTED December 29, 2022	DATE EXECUTED
ADDRESS Branch Accounting and Procurement 455 Golden Gate Avenue, 6th Floor San Francisco, CA 94102	ADDRESS 2805 Columbia Street Torrance, CA 90503

EXHIBIT A

DEFINED TERMS

As used in this Agreement, the following terms have the indicated meanings:

1. **“Agreement”** is defined on the Coversheet.
2. **“Contractor”** is defined on the Coversheet.
3. **“Confidential Information”** means: (i) any information related to the business or operations of each JBE, including information relating to its personnel and users; and (ii) all financial, statistical, personal, technical and other data and information of each JBE (and proprietary information of third parties provided to Contractor) which is designated confidential or proprietary, or that Contractor otherwise knows, or would reasonably be expected to know, is confidential. Confidential Information does not include information that Contractor demonstrates to the JBEs’ satisfaction that: (a) Contractor lawfully knew prior to the JBE’s first disclosure to Contractor, (b) a third party rightfully disclosed to Contractor free of any confidentiality duties or obligations, or (c) is, or through no fault of Contractor has become, generally available to the public.
4. **“Contract Amount”** means the contract amount of any Purchase Order.
5. **“Coversheet”** refers to the first page of this Agreement.
6. **“Effective Date”** is defined on the Coversheet.
7. **“Establishing JBE”** is defined on the Coversheet.
8. **“Expiration Date”** is the later of (i) the day so designated on the Coversheet, and (ii) the last day of any Option Term.
9. **“Goods”** is defined in Exhibit B.
10. **“Initial Term”** is the period commencing on the Effective Date and ending on the Expiration Date designated on the Coversheet.
11. **“JBEs”** and **“JBE”** are defined on the Coversheet.
12. **“Judicial Branch Entity”** or **“Judicial Branch Entities”** means the Establishing JBE and any other California superior or appellate court, the Supreme Court of California, the Judicial Council of California, and the Habeas Corpus Resource Center.
13. **“Judicial Branch Personnel”** means members, justices, judges, judicial officers, subordinate judicial officers, employees, and agents of a Judicial Branch Entity.
14. **“Notice”** means a written communication from one party to another that is (a) delivered in person, (b) sent by registered or certified mail, or (c) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address and recipient set forth in Exhibit D or in the JBE’s Purchase Order.
15. **“Option Term”** means a period, if any, through which this Agreement may be or has been extended by the Establishing JBE.
16. **“Purchase Order”** is defined in Exhibit B.
17. **“Participating Entities”** and **“Participating Entity”** are defined on the Coversheet.
18. **“PCC”** refers to the California Public Contract Code.
19. **“Services”** is defined in Exhibit B.

20. **“Term”** comprises the Initial Term and any Option Terms.
21. **“Work”** is defined in Exhibit B.

END OF EXHIBIT

EXHIBIT B

GOODS AND SERVICES

1. Background, Purpose, and Ordering.

- 1.1** This Agreement sets forth the terms and conditions that apply to Contractor's provision of Work to the JBEs. "Work" shall mean the Goods and Services as further described in Sections 2 and 3 below. This Agreement does not obligate a JBE to place any orders for Work under this Agreement, and does not guarantee Contractor a specific volume of orders.
- 1.2** Each JBE shall have the right to place orders under this Agreement for any of the Work. A JBE may place orders for Work by issuing a Purchase Order. A "Purchase Order" is defined as an ordering document used by a JBE to place an order for Work under this Agreement. The form and format of an ordering document may vary. All Purchase Orders will reference this Agreement. The terms and conditions of this Agreement are applicable to all Purchase Orders, regardless of the ordering document or ordering process. Pricing for Work shall be in accordance with the prices set forth in this Agreement. After a Purchase Order has been presented to the Contractor by a JBE, the Contractor shall acknowledge and perform under the Purchase Order in a timely manner. Contractor shall provide the Work for each JBE in accordance with the terms of this Agreement and the applicable Purchase Order.
- 1.3** Purchase Orders issued by a JBE constitute and will be construed as a separate, independent contract between Contractor and such JBE. Such contract will be subject to the terms and conditions of this Agreement, provided the following: any additional or supplemental terms and conditions contained in the Purchase Order or in any invoice or confirmation of the Purchase Order that conflict with or materially alter any term or condition of this Agreement, (a) will not be deemed part of such Purchase Order; and (b) will not serve to supersede or modify any provision of this Agreement.
- 1.4** JBEs issuing a Purchase Order under this Agreement will include the name of a JBE contact person in the Purchase Order. Contractor shall contact the JBE's designated contact regarding questions on any Purchase Order or payment status of any Purchase Order.
- 1.5** The JBE signing the Purchase Order shall be solely responsible for: (i) the acceptance of and payment for the Work under such Purchase Orders; and (ii) its obligations and any breach of its obligations. Any breach of obligations by a JBE shall not be deemed a breach by any other JBE. Under no circumstances shall a JBE have any liability or obligation, except pursuant to a Purchase Order signed by such JBE, nor shall any breach by a JBE under a Purchase Order give rise to a breach under any other Purchase Order or be deemed grounds for termination of this Agreement by Contractor. The Establishing JBE shall have no liability or responsibility of any type related to: (i) any other JBE's use of or procurement through this Agreement (including any Purchase Order), or (ii) such JBE's business relationship with Contractor. The Establishing JBE makes no guarantees, representations, or warranties to any Participating Entity.
- 1.6** This Agreement is a nonexclusive agreement. Each JBE reserves the right to provide, or have others provide the Work. Contractor shall reasonably cooperate with any third parties retained by a JBE to provide the Work.

2. Goods

- 2.1 Description of Goods.** As ordered by each JBE under a Purchase Order, Contractor shall provide to the JBEs the following products, goods, materials, and supplies ("Goods") free and clear of all liens, claims, and encumbrances, and in accordance with this Agreement:

2.1.1 Standard Cabinet X-Ray System, model 920CX

Options:

- a. In-feed and out-feed roller table (short table length); 0.5 meters
- b. In-feed and out-feed roller table (long table length); 1 meter
- c. Movable pedestal stand for remote operation
- d. Plexiglas entry/exit shields

2.2 Certifications and Verifications. All products provided by Contractor to the JBEs must be compliant with all standards and regulations required by all federal, state and local governmental entities.

2.3 Inventory. The JBEs have an ongoing requirement for the Products and Services and Contractor shall maintain access to a reasonable stock of applicable products necessary to ensure prompt delivery to all JBEs for the duration of the Master Agreement. Failure to maintain access to a reasonable stock shall be deemed a material contractual breach.

2.4 Estimated Volumes. No minimum delivery estimate is to be stated in the Master Agreement and neither the Judicial Council nor the JBEs are required to order any Products and Services under the Master Agreement.

2.5 Guarantee. All equipment shall be guaranteed to be new and to perform to the manufacturer's specifications and Contractor shall warrant the equipment against defects in material and workmanship.

2.6 Warranty. If a JBE is unable to accept a delivery of equipment or parts, they will be warehoused at a JBE's warehouse until delivery can be made. Warranty of the equipment and parts will not be voided during this period.

3. Services.

3.1 Description of Services. As ordered by each JBE under a Purchase Order, Contractor shall perform the following services ("Services") described below for the JBEs.

3.1.1 Installation

All products ordered by the JBEs which require installation shall, as soon as possible after delivery, be completely installed and tested for functionality by the Contractor. The Contractor shall schedule installation, prior to delivery, with the ordering JBE's designated individual.

3.1.2 Training

3.1.2.1 Contractor shall provide to the JBE ordering any Products and Services a manual which shall include, but not be limited to, instructions on how to operate the functions, best practices, user tips and tricks, how to read the instruments and how to set-up instruments for different uses; the manual shall be used by those who go through initial training and who will be providing product training to new operators.

3.1.2.2 Contractor shall provide a total of four (4) hours of onsite training at the JBE's location for each product described that was purchased by the JBE. Two (2) hours of this training shall be provided at the time the product is installed, fully functioning and accepted by the JBE. The remaining two (2) hours of training shall be provided upon the JBE's request at any time after the initial two (2) hours of training, but no later than twelve (12) months following the date the product was installed, fully functioning and accepted by the JBE. Training

personnel provided by Contractor shall possess all requisite skills and knowledge to perform the training.

- 3.1.2.3** Upon request of a JBE, Contractor shall provide onsite training in addition to that described in section 3.1.2.2 for each product described in section 2.1 that was purchased by the JBE. Hourly billing rates for additional onsite training shall be inclusive of all related costs, including, but not limited to, labor, travel and materials. Training personnel provided by Contractor shall possess all requisite skills and knowledge to perform the training.

3.1.3 Onsite Maintenance Services and Support

- 3.1.3.1** For products described in section 2.1, Contractor shall provide five (5) continuous years of onsite maintenance services and support which shall commence on the day the purchased product is installed, fully functioning and accepted by the ordering JBE. The onsite maintenance services and support obligations will continue for the required term even if the Master Agreement expires, is terminated, or is not extended, this applies to the required five (5) year maintenance and services from date of installation, as well as any subsequently purchased agreement for extended maintenance and support services. Service agreements for x-ray machines must include an annual preventive maintenance and radiation survey. A copy of the radiation survey must be provided to the ordering JBE.

- 3.1.3.2** Contractor's customer service team shall be onsite within twenty-four (24) hours after a JBE or its representative places a service call. All calls made by a JBE or their representative shall be returned within two (2) hours of the call to confirm time of arrival by Contractor's service representative. Unless otherwise agreed to between Contractor and the JBE or their representative, service shall be performed within the JBE's business hours, which are generally 8:00 am to 5:00 pm PST, Monday through Friday, although hours may vary by location. Contractor shall also provide maintenance services and support after hours, on holidays and in emergency situations if requested by the JBE or their representative. Onsite service provided outside of regular business hours are billable at an hourly rate. The responding Contractor's service representative must possess the knowledge and provide all labor, tools, equipment and parts necessary to perform the requested service.

- 3.1.3.3** Onsite maintenance services and support is the primary vehicle for repair of equipment. Any manufacturer's warranty is considered ancillary to maintenance services and support.

- 3.1.3.4** Contractor shall provide telephone and email support to handle all requests and questions related to onsite maintenance services and support.

3.1.4 Customer Service

- 3.1.4.1** Contractor's customer service process shall ensure that all customer service issues are addressed in a consistent manner, including problem escalation and resolution of onsite maintenance services and support issues. The customer service process includes, but is not limited to:

- 3.1.4.1.1** Telephone customer service and onsite service organizational structure.

- 3.1.4.1.2** Contact process (phone, email, etc.).

- 3.1.4.1.3** Turnaround time for calls received, in normal, holiday, and emergency situations.

- 3.1.4.1.4 Follow up process.
- 3.1.4.1.5 Internal procedures to track customer service contact and resolution.
- 3.1.4.1.6 Escalation process to resolve outstanding customer service and maintenance services and support issues.
- 3.1.4.1.7 Remedies for not meeting the required onsite maintenance services and support response time for a service call placed by a JBE, with such remedies to include, but not be limited to, providing loaner equipment.

3.1.4.2 Contractor Contact Information:

3.1.4.2.1 Service and Technical Support

Telephone: (888) 258-6684
(Option 2 for Service, Option 4 for JBEs)
Email: rapiscanAOC@rapiscansystems.com

3.1.4.2.2 Purchase Order Submittal

Contact name: Rodney Kimbrell
Telephone: (205) 544-5415
Email: rkimbrell@rapiscansystems.com

3.1.4.2.3 Sales Support

Contact name: Rodney Kimbrell
Telephone: (205) 544-5415
Email: rkimbrell@rapiscansystems.com

3.1.5 Reports

Contractor must provide to the Judicial Council Project Manager in a form acceptable to the Judicial Council, quarterly reports which provide a summary, by JBE, of the Products and Services ordered, including the total value ordered during the quarter reported. The quarterly report must also include serial numbers of the security screening equipment, maintenance services and support coverage or extended maintenance services and support dates for each unit. Quarterly reports must be provided to the Judicial Council Project Manager no later than thirty (30) days after the end of each calendar quarter and must include purchases that are invoiced or paid for with a credit card. The quarterly report must also include a list of dates of the annual preventive maintenance and radiation surveys performed that quarter for newly installed and existing x-ray machines.

4. Ordering Process

Each JBE shall have the right to request quotes and place orders under this Agreement for any of the Work. A JBE shall request quotes as further described in Section 4.1.1, Requests for Quotes. A JBE may place orders for Work by issuing a Purchase Order as further described in Section 4.1.2, Purchase Orders.

4.1 Standard Cabinet X-Ray Systems. This Agreement is for the purchase of the equipment and the maintenance of standard cabinet x-ray systems. The standard cabinet x-ray systems consist of three models which are available under separate LPAs as noted below:

Available Under This LPA		Available Under LPA-84372	
Model:	920CX	XIS 6040	XIS 6545
Tunnel size:	24.4W x 16.5H	23.6W x 15.8H	25.6W x 17.8H
Dimensions:	82.0L x 34.2W x 54.2H	56.4L x 33.33W x 49.0H	60.4L x 35.0W x 51.4H
Weight:	1184 lbs.	820 lbs.	950 lbs.

When a JBE is seeking to procure a standard cabinet x-ray system, the JBE’s specific requirements regarding spacing, dimension limitations and tunnel size will be considered (“Specific Requirements”). If only one (1) model meets the Specific Requirements, the JBE may purchase the standard cabinet x-ray system that meets such Specific Requirements. Where multiple models meet the Specific Requirements, then the JBE will request a quote for all those models and will make a selection based on overall lowest price. A request for quote does not guarantee that JBE will make a purchase.

4.1.1 Requests for Quotes

The process for JBEs to request quotes shall be as follows:

- (i) Contact both vendors and provide a scope of requirements that includes, at a minimum:
 - a. The JBE’s Specific Requirements regarding spacing, dimension limitations and tunnel size.
 - b. Delivery location(s), including special instructions such as internal deliveries or availability of loading docks.
 - c. Date(s) the system(s) are needed to be installed, tested, and ready for use.
 - d. Process for delivery (building entry and security requirements, etc.)
 - e. Other requested services, such as removal and disposal of old systems, and additional warranty services.
 - f. Other requested goods, such as Plexiglas entry/exit shields, and movable pedestal stands.
- (ii) Vendors shall provide a quote based on the scope of requirements within a specific time period as set by the JBE. Contractor’s quote must reference this Agreement, Leveraged Procurement Agreement LPA-84377, and Contractor’s quoted pricing cannot exceed the pricing specified in Exhibit E of this Agreement.
- (iii) The JBE must select the vendor who provides the lowest overall quote for the deliverables that meet the JBE’s s scope of requirements and the terms and conditions of this Agreement.

4.1.2 Purchase Orders

4.1.2.1 The Judicial Council and JBEs may elect, but are not required, to purchase the Products and Services under the Master Agreement. The Judicial Council and JBEs may issue to Contractor a Purchase Order (“Purchase Order”) for Products and Services with possible variation in the form and format of the Purchase Order.

- 4.1.2.2** The JBEs will be responsible for the receipt and acceptance of all Products and Services ordered from Contractor and will also be responsible for payment pursuant to any resulting Master Agreement terms and conditions as described in Exhibit D, General Provisions.
- 4.1.2.3** The JBE placing a Purchase Order will include the name of the JBE's contact person ("JBE Project Manager") in the Purchase Order and the Contractor shall contact the JBE Project Manager regarding questions or payment status associated with the Purchase Order. If the Judicial Council is placing a Purchase Order on behalf of a JBE, then Judicial Council Project Manager is the project manager and the Contractor shall contact the Judicial Council Project Manager regarding questions or payment status associated with the Purchase Order.
- 4.1.2.4** After a Purchase Order has been issued to Contractor, Contractor must provide the Judicial Council or JBE that placed the Purchase Order, with an immediate receipt acknowledgement of the Purchase Order. The acknowledgement must be submitted by email, regardless of what method is used to place the Purchase Order and must include a listing of the Products and Services ordered, the delivery, installation and testing dates (if such dates are known at the time the Purchase Order is placed) and Contractor contact information. Regardless of whether a Purchase Order contains delivery, installation and testing dates, it is the obligation of Contractor to confirm or reconfirm, as applicable, such dates with the Judicial Council or JBE that placed the Purchase Order before Contractor proceeds with such delivery, installation or testing. Contractor understands and acknowledges that the Judicial Council or JBE may not know the delivery, installation and testing dates at the time a Purchase Order is issued. Contractor further understands and acknowledges that even if a Purchase Order includes such dates, a change in circumstances beyond the reasonable control of the Judicial Council or JBE may require the Judicial Council or JBE to change the delivery, installation and/or testing dates at no additional cost to the Judicial Council or JBE. The time and place of delivery, installation and testing must be acceptable to the Judicial Council or JBE.

5. Packaging

All products must be delivered in the manufacturer's standard packaging. Prices shall include all packing and/or crating charges. Cases shall be of durable construction, good condition, properly labeled and suitable in every respect for storage and handling of contents.

Each shipping carton shall be marked with the commodity, brand, quantity, item code number and the Judicial Council or JBE Purchase Order number as well as the name and telephone number of the Contractor's staff member who will be installing the equipment.

Each shipment shall include a packing slip showing the Purchase Order number, the ordering date, ordering department (if appropriate), ship-to location, the item number(s), product description(s), serial number(s), quantity ordered, quantity shipped and backordered items including the expected shipping date.

6. Delivery Requirements and Shipping Costs

Delivery shall be made as specified on the Purchase Order. All deliveries shall be made F.O.B. (free on board) destination as freight pre-paid. JBEs may not have a loading dock to accept deliveries. Therefore, the Contractor shall assume that all deliveries will be inside deliveries to a specific location as designated by the Judicial Council or JBE and the Judicial Council or JBE shall incur no additional

charges for any inside delivery. Specific delivery instructions will be noted on the Purchase Order, including information such as the presence of a loading dock or any special handling requirements. Any damage to the JBE's building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of the Contractor. When damage does occur, it is the responsibility of the Contractor to immediately notify the JBE Project Manager.

Contractor shall bear the risk of loss or damage to the ordered goods until the goods are delivered to the JBE's delivery address indicated on the Purchase Order.

It is the responsibility of the Contractor to contact the JBE Project Manager to arrange for the installation of the ordered goods.

7. Rejection of Goods or Acceptance of Service

If a JBE requests onsite maintenance service, a designated JBE representative ("JBE Representative") will review any completed maintenance or repairs and approve by signing Contractor's service report. The JBE Representative must then be given a copy of this approved Contractor's service report.

Contractor shall arrange for the return of all mis-ordered, mis-shipped, returned or damaged items at no cost to the JBE. There will be no restocking fee for returns of items that are damaged or shipped by the Contractor in error. Contractor shall not charge the JBE for the return of any mis-ordered, mis-shipped or damaged items.

8. Timeline

Contractor must perform the Services and deliver the Deliverables according to the following timeline:
The timeline for performance will be set forth by the individual JBEs in their Purchase Order.

9. Resources

Contractor is responsible for providing any and all facilities, materials and resources (including personnel, equipment, tools and software) necessary and appropriate for performance of the Services and to meet Contractor's obligations under this Agreement.

10. Commencement of Performance

This Agreement is of no force and effect until signed by both parties and all Establishing JBE-required approvals are secured. Any commencement of performance prior to Agreement approval (and approval by a JBE of a Purchase Order) shall be at Contractor's own risk.

END OF EXHIBIT

EXHIBIT C

PAYMENT PROVISIONS

1. General.

Subject to the terms of this Agreement, Contractor shall invoice the JBE, and the JBE shall compensate Contractor, as set forth in this Exhibit C. The amounts specified in this Exhibit shall be the total and complete compensation to be paid to Contractor for its performance under this Agreement. Contractor shall bear, and the JBE shall have no obligation to pay or reimburse Contractor for, any and all other fees, costs, profits, taxes or expenses of any nature that Contractor incurs.

All pricing for Goods, including shipping, installation and training, set forth in this Exhibit C shall remain fixed for the initial three (3) year term of this Master Agreement, as set for in section 2 of the coversheet of this Master Agreement. All pricing for maintenance service will remain fixed for the Term of this Agreement. If the Judicial Council elects to extend the term of this Master Agreement, the Judicial Council will send a Notice to Contractor per Exhibit D, section 5 (Option Terms). The Judicial Council will issue an amendment to this Agreement extending the Term and any agreed upon price adjustments for Goods, shipping, installation and training. In no event will such price adjustment exceed three percent (3%) of the current price.

2. Compensation for Goods and Services.

2.1 Contractor will invoice for Goods and Services that the JBE has accepted, in accordance with the costs outlined in Exhibit E, Cost Proposal Form.

2.2 No Advance Payment. The JBEs will not make any advance payments.

3. Expenses. Except as set forth in this section, no expenses relating to the Goods or Services shall be reimbursed by the JBEs.

3.1 Allowable Expenses. Contractor may submit for reimbursement, without mark-up, only the following categories of expense:

No allowable expenses under this Agreement.

3.2 Required Certification. Contractor must include with any request for reimbursement from the JBE a certification that Contractor is not seeking reimbursement for costs incurred to assist, promote, or deter union organizing. If Contractor incurs costs or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no reimbursement from the JBE was sought for these costs, and Contractor will provide those records to the Attorney General upon request.

4. Invoicing and Payment.

4.1 Invoicing. Each JBE will be responsible for payment of Goods and Services ordered by the JBE under this Agreement. Contractor shall submit invoices to the individual JBEs in arrears no more frequently than monthly. The JBE has no obligation to pay for Goods or Services until one original and two copies of a correct, itemized invoice is received at the address shown on the JBE's Purchase Order. Each invoice must be printed on Contractor's standard printed bill form, and must include at a minimum (i) the Purchase Order number, (ii) Contractor's name and remit address, (iii) the nature of the invoiced charge, (iv) the total invoiced amount, and (v) such detail as is reasonably necessary to permit JBE to evaluate the Work provided, including without limitation the number of hours worked and the applicable hourly rate. Contractor shall adhere to reasonable billing guidelines issued by the JBE from time to time. Amounts owed to the JBE due to rejections of Goods or Services or discrepancies in an invoice will be, at the JBE's option, fully credited against future invoices payable by the JBE, or paid

Judicial Council of California Master Agreement Number **LPA-84377**
with **Rapiscan Systems, Inc.**

by Contractor within thirty days from Contractor's receipt of a debit memo or other written request for payment by the JBE.

4.2 Payment. The JBE will pay each correct, itemized invoice received from Contractor after acceptance of the applicable Goods, Services or Deliverables, in accordance with the terms of this Agreement and the applicable Purchase Order. Payment is due thirty days from receipt of a correct, itemized invoice. Notwithstanding any provision to the contrary, payments to Contractor are contingent upon the timely and satisfactory performance of Contractor's obligations.

4.3 No Implied Acceptance. Payment does not imply acceptance of Contractor's invoice, Goods, Services, or Deliverables. Contractor shall immediately refund any payment made in error. The JBE shall have the right at any time to set off any amount owing from Contractor to the JBE against any amount payable by the JBE to Contractor under this Agreement.

5. Taxes.

Unless otherwise required by law, the JBE is exempt from federal excise taxes and no payment will be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The JBE shall only pay for any state or local sales, service, use, or similar taxes imposed on the Goods and Services rendered or equipment, parts or software supplied to the JBE pursuant to this Agreement.

END OF EXHIBIT

EXHIBIT D

GENERAL PROVISIONS

1. Provisions Applicable to Services

1.1 Qualifications. Contractor shall assign to this project only persons who have sufficient training, education, and experience to successfully perform Contractor's duties. If a JBE is dissatisfied with any of Contractor's personnel, for any or no reason, Contractor shall replace them with qualified personnel with respect to such JBE.

1.2 Turnover. Contractor shall endeavor to minimize turnover of personnel Contractor has assigned to perform Services.

2. Contractor Certification Clauses. Contractor certifies to the JBEs that the following representations and warranties, which shall apply to this Agreement and any Purchase Order, are true. Contractor shall cause its representations and warranties to remain true during the Term. Contractor shall promptly notify the JBEs if any representation and warranty becomes untrue. Contractor represents and warrants as follows:

2.1 Authority. Contractor has authority to enter into and perform its obligations under this Agreement and any Purchase Order, and Contractor's signatory has authority to bind Contractor to this Agreement and any Purchase Order.

2.2 Not an Expatriate Corporation. Contractor is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of PCC 10286.1, and is eligible to contract with the JBEs.

2.3 No Gratuities. Contractor has not directly or indirectly offered or given any gratuities (in the form of entertainment, gifts, or otherwise), to any Judicial Branch Personnel with a view toward securing this Agreement (or any Purchase Order) or securing favorable treatment with respect to any determinations concerning the performance of this Agreement (or any Purchase Order).

2.4 No Conflict of Interest. Contractor has no interest that would constitute a conflict of interest under PCC sections 10365.5, 10410 or 10411; Government Code sections 1090 et seq. or 87100 et seq.; or California Rules of Court, rule 10.103 or 10.104, which restrict employees and former employees from contracting with Judicial Branch Entities.

2.5 No Interference with Other Contracts. To the best of Contractor's knowledge, this Agreement and any Purchase Order does not create a material conflict of interest or default under any of Contractor's other contracts.

2.6 No Litigation. No suit, action, arbitration, or legal, administrative, or other proceeding or governmental investigation is pending or threatened that may adversely affect Contractor's ability to perform its obligations.

2.7 Compliance with Laws Generally. Contractor complies with all laws, rules, and regulations applicable to Contractor's business and its obligations under this Agreement and any Purchase Order.

2.8 Drug Free Workplace. Contractor provides a drug free workplace as required by California Government Code sections 8355 through 8357.

2.9 No Harassment. Contractor does not engage in unlawful harassment, including sexual harassment, with respect to any persons with whom Contractor may interact in the performance of this Agreement (and any Purchase Order), and Contractor takes all reasonable steps to prevent harassment from occurring.

- 2.10 Noninfringement.** The Goods, Services, Deliverables, and Contractor's performance under this Agreement (and any Purchase Order) do not infringe, or constitute an infringement, misappropriation or violation of, any third party's intellectual property right.
- 2.11 Nondiscrimination.** Contractor complies with the federal Americans with Disabilities Act (42 U.S.C. 12101 et seq.), and California's Fair Employment and Housing Act (Government Code sections 12990 et seq.) and associated regulations (Code of Regulations, title 2, sections 7285 et seq.). Contractor does not unlawfully discriminate against any employee or applicant for employment because of age (40 and over), ancestry, color, creed, disability (mental or physical) including HIV and AIDS, marital or domestic partner status, medical condition (including cancer and genetic characteristics), national origin, race, religion, request for family and medical care leave, sex (including gender and gender identity), and sexual orientation. Contractor will notify in writing each labor organization with which Contractor has a collective bargaining or other agreement of Contractor's obligations of nondiscrimination.
- 2.12 National Labor Relations Board Orders.** No more than one, final unappealable finding of contempt of court by a federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a federal court requiring Contractor to comply with an order of the National Labor Relations Board. Contractor swears under penalty of perjury that this representation is true.

3. Insurance Requirements

3.1 General Requirements

- 3.1.1** By requiring the minimum insurance set forth in this Agreement, the Judicial Council shall not be deemed or construed to have assessed the risks that may be applicable to Contractor under this Agreement. Contractor shall assess its own risks and if it deems appropriate or prudent, maintain higher limits or broader coverage.
- 3.1.2** The insurance obligations under this Agreement shall be: (1) all the insurance coverage and/or limits carried by or available to the Contractor; or (2) the minimum insurance coverage requirements and/or limits shown in this Agreement, whichever is greater. Any insurance proceeds in excess of or broader than the minimum required coverage and/or minimum required limits which are applicable to a given loss shall be available to the Judicial Council in compliance with the Insurance Requirements set forth in this Agreement. The Judicial Council may, in its sole discretion, accept self-insurance or risk-pool coverage as a substitute for any of the required insurance policies under this Agreement. No representation is made by the Judicial Council that the minimum insurance requirements of this Agreement are sufficient to cover the obligations of the Contractor under this Agreement.
- 3.1.3** Contractor shall obtain and maintain the required insurance for the duration of this Agreement with an insurance company or companies acceptable to the Judicial Council, in its sole discretion, and that are rated "A-VII" or higher by A. M. Best's key rating guide and are authorized to do business in the state of California.
- 3.1.4** For all insurance policies required under this Agreement, no deductible shall exceed five (5) percent of the minimum limit of insurance required under this Agreement unless authorized in writing by the Judicial Council. Any Contractor deductible must be clearly stated on the appropriate certificate of insurance.

Self-Insured retentions (SIR) must be declared to and approved in writing by the Judicial Council. The Judicial Council may require the Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by

either the named insured or Judicial Council. Any and all deductibles and SIRs shall be the sole responsibility of Contractor or subcontractor who procured such insurance and shall not apply to the Indemnified Parties. Judicial Council may deduct from any amounts otherwise due Contractor to fund the SIR. Policies shall NOT contain any SIR provisions that limit the satisfaction of the SIR to the named insured. The policy must also provide that defense costs, including the allocated loss adjustment expenses, will satisfy the SIR. Judicial Council reserves the right to obtain a copy of any policies and endorsements for verification.

- 3.1.5** Contractor is responsible for and may not recover from the State of California, Judicial Council, or the Court any deductible or self-insured retention that is connected to the insurance required under this Agreement. If self-insured, Contractor warrants that it will maintain funds to cover losses required to be insured against by Contractor under the terms of this Agreement.
- 3.1.6** Contractor, prior to commencement of the Work, shall provide Judicial Council with certificates of insurance and signed insurance policy endorsements, on forms acceptable to Judicial Council, as evidence that the required insurance is in full force and effect. The insurance required under this Agreement, and any excess liability or umbrella liability insurance, that Contractor maintains in compliance with the terms of this “General Requirements” subsection (with the exception of Professional Liability Insurance, if required) must be endorsed to include the State of California; Judicial Council of California; and their respective elected and appointed officials, judicial officers, officers, employees, and agents as additional insureds. No payments will be made to Contractor until all required current and complete certificates of insurance and signed insurance policy endorsements are properly endorsed and on file with the Judicial Council.
- 3.1.7** The insurance required under this Agreement, including all required additional insured coverages, must be endorsed to be primary and non-contributory to any insurance or self-insurance maintained by the State of California, Judicial Council, or the Court. Contractor’s liabilities under this Agreement shall not be limited in any manner to the insurance coverage required.
- 3.1.8** Failure to provide the documentation as required prior to the commencement of Work shall not constitute or be construed as a waiver of the obligation to provide such documentation.
- 3.1.9** The Certificates of Insurance must be addressed and mailed to:
- Matthew Bagwill
Contract Specialist, Branch Accounting and Procurement
Contract Number LPA-86287
Judicial Council of California
455 Golden Gate Avenue
San Francisco, CA 94012
- 3.1.10** All insurance policies required under this Agreement must remain in force for the entire duration of this Agreement. If the insurance expires during the Term of this Agreement, Contractor shall immediately renew or replace the required insurance and provide a new current certificate of insurance and signed insurance policy endorsement(s), or Contractor will be in breach of this Agreement, and the Judicial Council may direct the Contractor to stop work or may take other remedial action. Contractor must provide renewal insurance certificates and signed policy endorsements to Judicial Council on or before the expiration

date of the previous insurance certificates and signed policy endorsements. Any new insurance procured by Contractor must conform to the requirements of this Agreement.

- 3.1.11** In the event Contractor fails to keep the specified insurance coverage in force at all times required under this Agreement, Judicial Council may, in addition to and without limiting any other remedies available to it, (i) order the Contractor to stop work, or (ii) terminate this Agreement upon the occurrence of such event, subject to the provisions of this Agreement.
- 3.1.12** Contractor, and each insurer providing insurance required under this Agreement, expressly waives all rights of recovery and subrogation rights it may have against the State of California, Judicial Council, the Court, and their respective elected and appointed officials, judicial officers, officers, employees, and agents for direct physical loss or damage to the Work, and for any liability arising out of or in connection with the Work performed by Contractor under this Agreement or arising out of or in connection with Contractor's breach of this Agreement. This provision does not apply to professional liability insurance policies.
- 3.1.13** Contractor shall provide the Judicial Council with written notice within **TEN (10)** calendar days of becoming aware of a material change or cancellation of the insurance policies required under this Agreement. In the event of expiration or cancellation of any insurance policy, Contractor shall **immediately** notify the Judicial Council's Project Manager.
- 3.1.14** Judicial Council reserves the right to request certified copies of any of the insurance policies required under this Agreement, which must be provided by Contractor within **TEN (10)** business days following the request by Judicial Council.
- 3.1.15** Contractor must require insurance from its Subcontractors in substantially the same form as required of the Contractor herein and with limits of liability that are sufficient to protect the interests of the Contractor, State of California, the Judicial Council, and the Superior Court of California in the County in which the Project is located.

3.2 Individual Policy Requirements

3.2.1 Commercial General Liability

Commercial General Liability Insurance shall be written on an occurrence form with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage and \$1,000,000 annual aggregate. The policy shall include coverage for liabilities arising out of or in connection with premises, operations, products and completed operations, personal and advertising injury, and liability assumed under an insured contract. This insurance shall apply separately to each insured against whom a claim is made or suit is brought. The products and completed liability shall extend for not less than three (3) years past the completion of the Work or the termination of this Agreement, whichever occurs first.

3.2.2 Commercial Automobile Liability

Commercial Automobile Liability Insurance shall have limits of not less than \$1,000,000 per accident. This insurance must cover liability arising out of or in connection with the operation, use, loading, or unloading of a motor vehicle assigned to or used in connection with the Work including, without limitation, owned, hired, and non-owned motor vehicles.

3.2.3 Workers' Compensation & Employers' Liability Insurance

If Contractor has employees, it shall maintain workers' compensation insurance as required by law. Employer's liability limits shall be not less than \$1,000,000 for each accident, \$1,000,000 as the aggregate disease policy limit, and \$1,000,000 as the disease limit for each employee. If Contractor does not have employees, it shall provide a letter, on company letterhead, to the Judicial Council certifying, under penalty of perjury, that it does not have employees. Upon the Judicial Council's receipt of the letter, Contractor shall not be required to maintain workers' compensation insurance.

3.2.4 Umbrella Policies

Contractor may satisfy basic coverage limits through any combination of primary, excess, or umbrella insurance.

- 4. Indemnity.** Contractor will defend (with counsel satisfactory to the JBE or its designee), indemnify and hold harmless the Judicial Branch Entities and the Judicial Branch Personnel against all claims, losses, and expenses, including attorneys' fees and costs, that arise out of or in connection with: (i) a latent or patent defect in any Goods; (ii) an act or omission of Contractor, its agents, employees, independent contractors, or subcontractors in the performance of this Agreement; (iii) a breach of a representation, warranty, or other provision of this Agreement or any Purchase Order; and (iv) infringement of any trade secret, patent, copyright or other third party intellectual property. This indemnity applies regardless of the theory of liability on which a claim is made or a loss occurs. This indemnity will survive the expiration or termination of this Agreement or any Purchase Order, and acceptance of any Goods, Services, or Deliverables. Contractor shall not make any admission of liability or other statement on behalf of an indemnified party or enter into any settlement or other agreement that would bind an indemnified party, without the affected JBE's prior written consent, which consent shall not be unreasonably withheld; and such JBE shall have the right, at its option and expense, to participate in the defense and/or settlement of a claim through counsel of its own choosing. Contractor's duties of indemnification exclude indemnifying a party for that portion of losses and expenses that are finally determined by a reviewing court to have arisen out of the sole negligence or willful misconduct of the indemnified party.
- 5. Option Terms.** The Establishing JBE may elect to extend this Agreement for up to two consecutive one-year terms (each an "Option Term"), at the end of which Option Terms this Agreement shall expire. In order to exercise an Option Term, the Establishing JBE must send Notice to Contractor at least thirty (30) days prior to the end of the Initial Term (or the then-current Option Term). The Establishing JBE will issue an amendment to this Agreement extending the Term and any agreed upon price adjustments allowed in this Agreement.
- 6. Tax Delinquency.** Contractor must provide notice to the JBEs immediately if Contractor has reason to believe it may be placed on either (i) the California Franchise Tax Board's list of 500 largest state income tax delinquencies, or (ii) the California Board of Equalization's list of 500 largest delinquent sales and use tax accounts. The Establishing JBE may terminate this Agreement immediately "for cause" pursuant to Section 7.2 below (and each JBE may terminate its Purchase Order immediately "for cause" pursuant to Section 7.2 below) if (i) Contractor fails to provide the notice required above, or (ii) Contractor is included on either list mentioned above.
- 7. Termination**

 - 7.1 Termination for Convenience.** The Establishing JBE may terminate, in whole or in part, this Agreement (and a JBE may terminate, in whole or in part, a Purchase Order) for convenience upon thirty (30) days prior Notice. After receipt of such Notice, and except as otherwise directed by the Establishing JBE (and regarding a Purchase Order, except as otherwise directed by the JBE), Contractor shall immediately: (a) stop Services (or development of Deliverables) as

specified in the Notice; and (b) stop the delivery or manufacture of Goods as specified in the Notice.

- 7.2 Termination for Cause.** The Establishing JBE may terminate this Agreement, in whole or in part, immediately “for cause” (and a JBE may terminate a Purchase Order, in whole or in part, immediately “for cause”): if (i) Contractor fails or is unable to meet or perform any of its duties under this Agreement or a Purchase Order, and this failure is not cured within ten (10) days following Notice of default (or in the opinion of the JBE, is not capable of being cured within this cure period); (ii) Contractor or Contractor’s creditors file a petition as to Contractor’s bankruptcy or insolvency, or Contractor is declared bankrupt, becomes insolvent, makes an assignment for the benefit of creditors, goes into liquidation or receivership, or otherwise loses legal control of its business; or (iii) Contractor makes or has made under this Agreement (or any Purchase Order) any representation, warranty, or certification that is or was incorrect, inaccurate, or misleading.
- 7.3 Termination upon Death.** This entire Agreement will terminate immediately without further action of the parties upon the death of a natural person who is a party to this Agreement, or a general partner of a partnership that is a party to this Agreement.
- 7.4 Termination for Changes in Budget or Law.** Each JBE’s payment obligations are subject to annual appropriation and the availability of funds. Expected or actual funding may be withdrawn, reduced, or limited prior to the expiration or other termination of this Agreement or Purchase Order. Funding beyond the current appropriation year is conditioned upon appropriation of sufficient funds to support the activities described in this Agreement (including a Purchase Order). The Establishing JBE may terminate this Agreement (and any JBE may terminate a Purchase Order), and each JBE may limit Contractor’s Work (and reduce proportionately Contractor’s fees) upon Notice to Contractor without prejudice to any right or remedy of the JBEs if: (i) expected or actual funding to compensate Contractor is withdrawn, reduced or limited; or (ii) the Establishing JBE determines that Contractor’s performance under this Agreement (or a JBE determines that Contractor’s performance under a Purchase Order) has become infeasible due to changes in applicable laws.
- 7.5 Rights and Remedies.**
- 7.5.1 Nonexclusive Remedies.** All remedies provided in this Agreement may be exercised *individually* or in combination with any other available remedy. Contractor shall notify the Establishing JBE and the affected *Participating* Entities immediately if Contractor is in default, or if a third party claim or dispute is brought or threatened that alleges facts that would constitute a default under this Agreement (or a Purchase Order). If Contractor is in default: (i) a JBE may withhold all or any portion of a payment otherwise due to Contractor, and exercise any other rights of setoff as may be provided in this Agreement; (ii) a JBE may require Contractor to enter into nonbinding mediation; (iii) the Establishing JBE may exercise, following Notice, the Establishing JBE’s right of early termination of this Agreement (and a JBE may exercise its right of early termination of a Purchase Order) as provided herein; and (iv) a JBE may seek any other remedy available at law or in equity.
- 7.5.2 Replacement.** If the Establishing JBE terminates this Agreement (or if a JBE terminates a Purchase Order) in whole or in part for cause, the JBE may acquire from third parties, under the terms and in the manner the JBE considers appropriate, goods or services equivalent to those terminated, and Contractor shall be liable to the JBE for any excess costs for those goods or services. Notwithstanding any other provision, in no event shall the excess cost to the JBEs for such goods and services be excluded as indirect, incidental, special, exemplary, punitive or consequential damages of the JBEs. Contractor shall continue any Work not terminated.

7.5.3 Delivery of Materials. In the event of any expiration or termination of this Agreement (or a Purchase Order), Contractor shall promptly provide the applicable JBE or JBEs with all originals and copies of the Deliverables for such JBE, including any partially-completed Deliverables-related work product or materials, and any JBE-provided materials in its possession, custody, or control. In the event of any termination of this Agreement or Purchase Order, the JBEs shall not be liable to Contractor for compensation or damages incurred as a result of such termination.

7.5.4 Purchase Order. The termination of this Agreement shall not result in the termination of any outstanding Purchase Order that has not been terminated by a JBE, and this Agreement shall continue to apply to any such Purchase Order until such time as all Work under such Purchase Order has been completed by its terms or is terminated as provided in this Section 7; provided, however, that the term of such Purchase Order may not exceed the expiration date of this Agreement. Issuance and acknowledgement of any Purchase Order must be completed before the termination or expiration of this Agreement.

7.6 Survival. Termination or expiration of this Agreement shall not affect the rights and obligations of Contractor, the Establishing JBE, and the Participating Entities which arose prior to any such termination or expiration (unless otherwise provided herein) and such rights and obligations shall survive any such termination or expiration. Rights and obligations that by their nature should survive shall remain in effect after termination or expiration of this Agreement, including any section of this Agreement that states it shall survive such termination or expiration.

8. Assignment and Subcontracting. Contractor may not assign or subcontract its rights or duties under this Agreement (including any Purchase Order), in whole or in part, whether by operation of law or otherwise, **without** the prior written consent of the Establishing JBE. Consent may be withheld for any reason or no reason. Any assignment or subcontract made in contravention of the foregoing shall be void and of no effect. Subject to the foregoing, this Agreement will be binding on the parties and their permitted successors and assigns.

9. Notices. Notices **must** be sent to the following address and recipient:

If to Contractor:	If to the Establishing JBE:
Rapiscan Systems, Inc. Cindy Annulli, Project Manager 2805 Columbia Street Torrance, CA 90503	Judicial Council of California Attn: Contracts Supervisor 455 Golden Gate Avenue, Suite 300 San Francisco, CA 95833-4348

Either party may change its address for Notices by giving the other party Notice of the new address in accordance with this section. Notices will be considered to have been given at the time of actual delivery in person, three (3) days after deposit in the mail as set forth above, or one (1) day after delivery to an overnight air courier service.

10. Provisions Applicable to Certain Agreements. The provisions in this section are applicable to this Agreement and to any Purchase Order, provided, however that if this Agreement or a Purchase Order is not of the type described in the first sentence of a subsection, then that subsection does not apply to this Agreement or such Purchase Order.

10.1 Union Activities Restrictions. *If the Contract Amount is over \$50,000, this section is applicable.* Contractor agrees that no JBE funds received under this Agreement or any Purchase Order will be used to assist, promote or deter union organizing during the Term. If Contractor incurs costs, or makes expenditures to assist, promote or deter union organizing, Contractor will maintain records sufficient to show that no JBE funds were used for those expenditures. Contractor will provide those records to the Attorney General upon request.

- 10.2 Domestic Partners, Spouses, Gender, and Gender Identity Discrimination.** *If the Contract Amount is \$100,000 or more, this section is applicable.* Contractor is in compliance with, and throughout the Term will remain in compliance with: (i) PCC 10295.3, which places limitations on contracts with contractors who discriminate in the provision of benefits on the basis of marital or domestic partner status; and (ii) PCC 10295.35, which places limitations on contracts with contractors that discriminate in the provision of benefits on the basis of an employee's or dependent's actual or perceived gender identity.
- 10.3 Child Support Compliance Act.** *If the Contract Amount is \$100,000 or more, this section is applicable.* Contractor recognizes the importance of child and family support obligations and fully complies with (and will continue to comply with during the Term) all applicable state and federal laws relating to child and family support enforcement, including disclosure of information and compliance with earnings assignment orders, as provided in Family Code section 5200 et seq. Contractor provides the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- 10.4 Priority Hiring.** *If the Contract Amount is over \$200,000 and this Agreement is for services (other than Consulting Services), this section is applicable.* Contractor shall give priority consideration in filling vacancies in positions funded by this Agreement to qualified recipients of aid under Welfare and Institutions Code section 11200 in accordance with PCC 10353.
- 10.5 Iran Contracting Act.** *If the Contract Amount is \$1,000,000 or more and Contractor did not provide to the Establishing JBE an Iran Contracting Act certification as part of the solicitation process, this section is applicable.* Contractor certifies either (i) it is not on the current list of persons engaged in investment activities in Iran ("Iran List") created by the California Department of General Services pursuant to PCC 2203(b), and is not a financial institution extending \$20,000,000 or more in credit to another person, for forty-five (45) days or more, if that other person will use the credit to provide goods or services in the energy sector in Iran and is identified on the Iran List, or (ii) it has received written permission from the Establishing JBE to enter into this Agreement (and written permission from each JBE to enter into the applicable Purchase Order) pursuant to PCC 2203(c).
- 10.6 Loss Leader Prohibition.** *If this Agreement (including any Purchase Order) involves the purchase of goods, this section is applicable.* Contractor shall not sell or use any article or product as a "loss leader" as defined in section 17030 of the Business and Professions Code.
- 10.7 Recycling.** *If this Agreement (including any Purchase Order) provides for the purchase or use of goods specified in PCC 12207 (for example, certain paper products, office supplies, mulch, glass products, lubricating oils, plastic products, paint, antifreeze, tires and tire-derived products, and metal products), this section is applicable with respect to those goods. Without limiting the foregoing, if this Agreement (including any Purchase Order) includes (i) document printing, (ii) parts cleaning, or (iii) janitorial and building maintenance services, this section is applicable.* Contractor shall use recycled products in the performance of this Agreement (including any Purchase order) to the maximum extent doing so is economically feasible. Upon request, Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post-consumer material as defined in the PCC 12200, in such goods regardless of whether the goods meet the requirements of PCC 12209. With respect to printer or duplication cartridges that comply with the requirements of PCC 12156(e), the certification required by this subdivision shall specify that the cartridges so comply.
- 10.8 Federal Funding Requirements.** *If this Agreement (or a Purchase Order) is funded in whole or in part by the federal government, this section is applicable.* It is mutually understood between the parties that this Agreement (or a Purchase Order) may have been written for the mutual benefit of both parties (or Participating Entities) before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if

this Agreement (or a Purchase Order) were executed after that determination was made. This Agreement (or a Purchase Order) is valid and enforceable only if sufficient funds are made available to the Establishing JBE (or the applicable Participating Entity) by the United States Government for the fiscal year in which they are due and consistent with any stated programmatic purpose, and this Agreement (or a Purchase Order) is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this Agreement (or a Purchase Order) in any manner. The parties mutually agree that if the Congress does not appropriate sufficient funds for any program under which this Agreement (or a Purchase Order) is intended to be paid, this Agreement (or Purchase Order) shall be deemed amended without any further action of the parties to reflect any reduction in funds. The Establishing JBE may invalidate this Agreement (and a JBE may invalidate a Purchase Order) under the termination for convenience or cancellation clause (providing for no more than thirty (30) days' Notice of termination or cancellation), or amend this Agreement (or Purchase Order) to reflect any reduction in funds.

- 10.9 DVBE Commitment.** This section is applicable if Contractor received a disabled veteran business enterprise ("DVBE") incentive in connection with this Agreement. Contractor's failure to meet the DVBE commitment set forth in its bid or proposal constitutes a breach of the Agreement. If Contractor used DVBE subcontractor(s) in connection with this Agreement (or a Purchase Order): (i) Contractor must use the DVBE subcontractors identified in its bid or proposal, unless the Establishing JBE approves in writing replacement by another DVBE subcontractor in accordance with the terms of this Agreement; and (ii) Contractor must, within sixty (60) days of receiving final payment under each Purchase Order, certify in a report to the applicable JBE: (1) the total amount of money Contractor received under the Purchase Order; (2) the name and address of each DVBE subcontractor to which Contractor subcontracted work in connection with the Purchase Order; (3) the amount each DVBE subcontractor received from Contractor in connection with the Purchase Order; and (4) that all payments under the Purchase Order have been made to the applicable DVBE subcontractors. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation.
- 10.10 Antitrust Claims.** *If this Agreement resulted from a competitive solicitation, this section is applicable.* Contractor shall assign to the applicable JBE all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by Contractor for sale to the JBE. Such assignment shall be made and become effective at the time the JBE tenders final payment to Contractor. If the JBE receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this section, Contractor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the JBE any portion of the recovery, including treble damages, attributable to overcharges that were paid by Contractor but were not paid by the JBE as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Upon demand in writing by Contractor, the JBE shall, within one (1) year from such demand, reassign the cause of action assigned under this part if Contractor has been or may have been injured by the violation of law for which the cause of action arose and (a) the JBE has not been injured thereby, or (b) the JBE declines to file a court action for the cause of action.
- 10.11 Good Standing.** *If Contractor is a corporation, limited liability company, or limited partnership, and this Agreement (and any Purchase Order) is performed in whole or in part in California, this section is applicable.* Contractor is, and will remain for the Term, qualified to do business and in good standing in California.

- 10.12 Equipment Purchases.** *If this Agreement (or any Purchase Order) includes the purchase of equipment, this section is applicable.* The JBE may, at its option, repair any damaged or replace any lost or stolen items and deduct the cost thereof from Contractor's invoice to the JBE, or require Contractor to repair or replace any damaged, lost, or stolen equipment to the satisfaction of the JBE at no expense to the JBE. If a theft occurs, Contractor must file a police report immediately.
- 10.13 Four-Digit Date Compliance.** *If this Agreement (or any Purchase Order) includes the purchase of systems, software, or instrumentation with imbedded chips, this section is applicable.* Contractor represents and warrants that it will provide only Four-Digit Date Compliant deliverables and services to the JBEs. "Four-Digit Date Compliant" deliverables and services can accurately process, calculate, compare, and sequence date data, including date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Agreement and does not limit the generality of warranty obligations set forth elsewhere in this Agreement or any Purchase Order.
- 10.14 Small Business Preference Commitment.** This section is applicable if Contractor received a small business preference in connection with this Agreement. Contractor's failure to meet the small business commitment set forth in its bid or proposal constitutes a breach of this Agreement (and any Purchase Order). Contractor must within sixty (60) days of receiving final payment under this Agreement (and any Purchase Order) report to the JBE the actual percentage of small/micro business participation that was achieved. If Contractor is a nonprofit veteran service agency ("NVSA"), Contractor must employ veterans receiving services from the NVSA for not less than seventy-five percent (75%) of the person-hours of direct labor required for the production of goods and the provision of services performed pursuant to this Agreement (and any Purchase Order).

11. Miscellaneous Provisions.

- 11.1 Independent Contractor.** Contractor is an independent contractor to the JBEs. No employer-employee, partnership, joint venture, or agency relationship exists between Contractor and the JBEs. Contractor has no authority to bind or incur any obligation on behalf of the JBEs. If any governmental entity concludes that Contractor is not an independent contractor, the Establishing JBE may terminate this Agreement (and a JBE may terminate a Purchase Order) immediately upon notice.
- 11.2 GAAP Compliance.** Contractor shall maintain an adequate system of accounting and internal controls that meets Generally Accepted Accounting Principles.
- 11.3 Audit.** Contractor must allow the JBEs or their designees to review and audit Contractor's (and any subcontractors') documents and records relating to this Agreement (including any Purchase Order), and Contractor (and its subcontractors) shall retain such documents and records for a period of four (4) years following final payment under this Agreement. If an audit determines that Contractor (or any subcontractor) is not in compliance with this Agreement (including any Purchase Order), Contractor shall correct errors and deficiencies by the twentieth (20th) day of the month following the review or audit. If an audit determines that Contractor has overcharged the JBE five percent (5%) or more during the time period subject to audit, Contractor must reimburse the JBE in an amount equal to the cost of such audit. This Agreement (and any Purchase Orders) are subject to examinations and audit by the State Auditor for a period of three (3) years after final payment.
- 11.4 Licenses and Permits.** Contractor shall obtain and keep current all necessary licenses, approvals, permits and authorizations required by applicable law for the performance of the Services (including Deliverables) or the delivery of the Services. Contractor will be responsible

for all fees and taxes associated with obtaining such licenses, approvals, permits and authorizations, and for any fines and penalties arising from its noncompliance with any applicable law.

- 11.5 Confidential Information.** During the Term and at all times thereafter, Contractor will: (a) hold all Confidential Information in strict trust and confidence, (b) refrain from using or permitting others to use Confidential Information in any manner or for any purpose not expressly permitted by this Agreement, and (c) refrain from disclosing or permitting others to disclose any Confidential Information to any third party without obtaining the JBE's express prior written consent on a case-by-case basis. Contractor will disclose Confidential Information only to its employees or contractors who need to know that information in order to perform Services hereunder and who have executed a confidentiality agreement with Contractor at least as protective as the provisions of this section. The provisions of this section shall survive the expiration or termination of this Agreement and any Purchase Order. Contractor will protect the Confidential Information from unauthorized use, access, or disclosure in the same manner as Contractor protects its own confidential or proprietary information of a similar nature, and with no less than the greater of reasonable care and industry-standard care. Each JBE owns all right, title and interest in its Confidential Information. Contractor will notify the affected JBE promptly upon learning of any unauthorized disclosure or use of Confidential Information and will cooperate fully with the JBE to protect such Confidential Information. Upon a JBE's request and upon any termination or expiration of this Agreement or a Purchase Order, Contractor will promptly (a) return to the JBE or, if so directed by the JBE, destroy all such JBE's Confidential Information (in every form and medium), and (b) certify to the JBE in writing that Contractor has fully complied with the foregoing obligations. Contractor acknowledges that there can be no adequate remedy at law for any breach of Contractor's obligations under this section, that any such breach will likely result in irreparable harm, and that upon any breach or threatened breach of the confidentiality obligations, the JBEs shall be entitled to appropriate equitable relief, without the requirement of posting a bond, in addition to its other remedies at law.
- 11.6 Ownership of Deliverables.** Unless otherwise agreed in this Agreement, regarding any Deliverables or any other work product to be provided to a JBE, Contractor hereby assigns to such JBE all rights, title, and interest (and all intellectual property rights, including but not limited to copyrights) in and to such Deliverables and work product, any partially-completed Deliverables, and related materials. Contractor agrees not to assert any rights at common law, or in equity, or establish a copyright claim in any of these materials. Contractor shall not publish or reproduce any Deliverable or other work product in whole or part, in any manner or form, or authorize others to do so, without the written consent of the JBE.
- 11.7 Publicity.** Contractor shall not make any public announcement or press release about this Agreement (or any Purchase Order) without the prior written approval of the Establishing JBE (and with respect to any Purchase Order, the prior written approval of the applicable JBE).
- 11.8 Choice of Law and Jurisdiction.** California law, without regard to its choice-of-law provisions, governs this Agreement (including any Purchase Order). The Contractor and the applicable JBEs shall attempt in good faith to resolve informally and promptly any dispute that arises. Jurisdiction for any legal action arising from this Agreement shall exclusively reside in state or federal courts located in California, and the parties hereby consent to the jurisdiction of such courts.
- 11.9 Negotiated Agreement.** This Agreement has been arrived at through negotiation between the parties. Neither party is the party that prepared this Agreement for purposes of construing this Agreement under California Civil Code section 1654.
- 11.10 Amendment and Waiver.** Except as otherwise specified in this Agreement, no amendment or change to this Agreement will be effective unless expressly agreed in writing by a duly authorized officer of the Establishing JBE. A waiver of enforcement of any of this Agreement's

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with **Rapiscan Systems, Inc.**

terms or conditions by the Establishing JBE is effective only if expressly agreed in writing by a duly authorized officer of the Establishing JBE. Any waiver or failure by a JBE to enforce any provision of this Agreement or Purchase Order on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

11.11 Follow On Contracting. No person, firm, or subsidiary who has been awarded a Consulting Services agreement may submit a bid for, nor be awarded an agreement for the providing of services, procuring goods or supplies, or any other related action that is required, suggested, or otherwise deemed appropriate in the end product of this Agreement.

11.12 Severability. If any part of this Agreement is held unenforceable, all other parts remain enforceable.

11.13 Headings; Interpretation. All headings are for reference purposes only and do not affect the interpretation of this Agreement. The word “including” means “including, without limitation.” Unless specifically stated to the contrary, all references to days herein shall be deemed to refer to calendar days.

11.14 Time of the Essence. Time is of the essence in Contractor’s performance under this Agreement.

11.15 Counterparts. This Agreement may be executed in counterparts, each of which is considered an original.

END OF EXHIBIT

EXHIBIT E

COST PROPOSAL FORM

Standard Cabinet X-Ray System

	STANDARD CABINET X-RAY SYSTEM
Product including: 24-month warranty beginning at the time of installation; preventive maintenance; and annual radiation survey	Model number: 920CX
	Pre-tax price: \$17,000.00
In-feed and out-feed roller table (short table length); specify the length	Length: 0.5 Meter
	Pre-tax price: \$600.00
In-feed and out-feed roller table (long table length); specify the length	Length: 1.0 Meter
	Pre-tax price: \$700.00
Shipping (flat rate)	\$2,175.00
Installation	\$908.50
Training	\$0.00
Three Year Maintenance/Service Agreement - continuous years after warranty expiration	\$5,050.00
Removal, transport and legal disposal of any decommissioned Standard Cabinet X-Ray System	\$2,600.00
The JBE's may have the option to purchase one-year maintenance agreements after the expiration of the warranty period. Such agreements would be purchased on an annual basis and priced according to the age of the equipment:	
<ul style="list-style-type: none"> • One Year Maintenance/Service Agreement – Equipment Age 3 Years - Model Number 920CX 	\$1,600.00
<ul style="list-style-type: none"> • One Year Maintenance/Service Agreement – Equipment Age 4 Years - Model Number 920CX 	\$1,700.00
<ul style="list-style-type: none"> • One Year Maintenance/Service Agreement – Equipment Age 5 Years - Model Number 920CX 	\$1,751.00
<ul style="list-style-type: none"> • One Year Maintenance/Service Agreement – Equipment Age 6 Years - Model Number 920CX and 620XR 	\$1,803.53
<ul style="list-style-type: none"> • One Year Maintenance/Service Agreement – Equipment Age 7 Years - Model Number 920CX and 620XR 	\$1,857.54
<ul style="list-style-type: none"> • One Year Maintenance/Service Agreement – Equipment Age 8 Years - Model Number 920CX and 620XR 	\$1,913.37
Other costs (please list)	\$0.00
Option: Movable pedestal stand for remote operation	\$1,452.93
Option: Plexiglas entry/exit shields	\$0.00

Miscellaneous Services Pricing

	PRICE
Training hourly rate	\$367.55
Hourly labor rate for any services provided outside of regular business hours	\$281.25
Other costs – Dismantle X-Ray for removal when performed in conjunction with installation	\$450.00

END OF EXHIBIT

EXHIBIT F

**UNRUH CIVIL RIGHTS ACT AND
CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT CERTIFICATION**

Pursuant to Public Contract Code (PCC) section 2010, the following certifications must be provided when (i) submitting a bid or proposal to the JBE for a solicitation of goods or services of \$100,000 or more, or (ii) entering into or renewing a contract with the JBE for the purchase of goods or services of \$100,000 or more.

CERTIFICATIONS:

1. Contractor is in compliance with the Unruh Civil Rights Act (Section 51 of the Civil Code);
2. Contractor is in compliance with the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of the Title 2 of the Government Code);
and
3. Contractor does not have any policy against any sovereign nation or peoples recognized by the government of the United States, including, but not limited to, the nation and people of Israel, that is used to discriminate in violation of the Unruh Civil Rights Act (Section 51 of the Civil Code) or the California Fair Employment and Housing Act (Chapter 7 (commencing with Section 12960) of Part 2.8 of Division 3 of Title 2 of the Government Code).

The certifications made in this document are made under penalty of perjury under the laws of the State of California. I, the official named below, certify that I am duly authorized to legally bind the Contractor to the certifications made in this document. The certifications made in this document shall be deemed to be made for, and apply to, the Agreement and each Purchase Order of \$100,000 or more.

<i>Contractor Name (Printed)</i>		<i>Federal ID Number</i>
<i>By (Authorized Signature)</i>		
<i>Printed Name and Title of Person Signing</i>		
<i>Date Executed</i>	<i>Executed in the County of _____ in the State of _____</i>	

END OF EXHIBIT

END OF AGREEMENT