

## RAPID REMOTE DIAGNOSTICS TOOL TERMS AND CONDITIONS OF USE

Use of the FEI Company ("**Company**") Remote Access Program for Interactive Diagnostics ("**RAPID**") with respect to Company equipment owned or operated by you, including associated computing device, system and application software, and peripherals ("**Equipment**") is subject to the terms of your current sales or service agreement and the following additional terms. "**You**" (or similar terms such as "**your**") or "**Customer**" refer to the customer using, owning or controlling RAPID or Equipment in connection with services provided by Company.

RAPID allows Company representatives to remotely access your Equipment. Please note that not all Company Equipment is eligible for RAPID or remote support and that RAPID may not be offered in all geographies.

Company or the Customer may install the RAPID Client software on the Equipment and test the remote connection. When appropriate, Company will use RAPID to perform initial diagnostics, and, if possible, repair the Equipment prior to dispatching a field service or applications support engineer on-site. In other cases, Company will use RAPID to provide second-level support to the on-site field service or applications support engineer. Connections will always be initiated from the Equipment by or with the approval of the Customer.

Targeted response times and escalation procedures remain the same, though with RAPID, Company may be able to improve upon those times in many cases.

Customers participating in the program agree:

- To configure the network environment such that the Company Equipment can establish communications to the Company Secure Portal via a high-speed Internet connection.
- When requested by Company in response to a service request, initiate a live connection between the Equipment and the Company Secure Portal.
- When requested by Company in response to a service request, provide an operator to load specimens and manipulate controls as necessary to assist in the remote debug process.
- The Equipment collects information concerning the operation of the Equipment and while providing the services hereunder Company may receive such information from the Equipment ("**Collected Data**"). Customer owns such Collected Data and grants to Company a royalty-free, transferable, sublicensable, nonexclusive, worldwide, irrevocable license to use such information for any purpose.

Company's RAPID Client software and documentation either preinstalled on the Equipment or provided to you for installation on the Equipment (the "**Software**") shall be used for Company to provide the remote support services described herein. You acknowledge that the use of RAPID may increase your risks with respect to a breach of security or privacy and loss of data, and that you shall follow standard IT practices when connecting the Equipment to your network and follow the protocols set forth in the RAPID Users' Guide to mitigate such risks.

The Software is licensed under the General Public License Version 2 (the "**GPL**"), a copy of which is included with the Software. Company will make the source code for the Software available upon written request of any party in accordance with the terms of the GPL and at the following url address: [www.fei.com/rapidsource](http://www.fei.com/rapidsource). All written requests should be directed to Company at: FEI Company, 5350 NE Dawson Creek Dr., Hillsboro, OR 97124, Attn: Legal Department.

COMPANY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR ANY PARTICULAR PURPOSE.

IN NO EVENT SHALL COMPANY BE LIABLE FOR SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOSSES ALTHOUGH COMPANY MAY BE INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. EXCEPT AS EXPRESSLY PROVIDED HEREIN, COMPANY DISCLAIMS ALL OTHER LIABILITY TO YOU OR ANY OTHER PERSON IN CONNECTION WITH THIS AGREEMENT OR THE DELIVERY OR NON-DELIVERY, SALE, MAINTENANCE, USE OR PERFORMANCE OF THE GOODS AND SERVICES, INCLUDING SPECIFICALLY, BUT WITHOUT LIMITATION, LIABILITY FOR NEGLIGENCE OR STRICT LIABILITY IN TORT. IN NO EVENT SHALL COMPANY'S LIABILITY UNDER THIS AGREEMENT EXCEED THE PURCHASE PRICE PAID FOR THE GOODS AND SERVICES BY YOU AND YOU ACKNOWLEDGE THAT THE PRICING OF THE PRODUCT AND THE OTHER TERMS AND CONDITIONS OF THIS AGREEMENT REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT COMPANY WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT

THESE LIMITATIONS OF ITS LIABILITY. NOTWITHSTANDING THE FOREGOING, NOTHING CONTAINED IN THESE TERMS AND CONDITIONS LIMITS COMPANY'S LIABILITY FOR COMPANY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

Your sales or service agreement, together with these terms and conditions constitutes the entire agreement of the parties concerning the subject matter herein. Except as otherwise provided herein, additional or conflicting terms contained in any order document, standardized form or correspondence are expressly unenforceable under your sales or service agreement unless such terms and conditions are contained in an amendment to such agreement duly executed by both parties hereto.

If you do not have a separate sales or service agreement applicable to service provided hereunder, the following additional terms apply:

**CONFIDENTIALITY:** Customer understands that in the course of Company performing its obligations hereunder, Company may disclose confidential information ("**Confidential Information**"), to Customer. Customer may use Confidential Information only to assist Company in performing its obligations hereunder. Customer agrees not to disclose Confidential Information, directly or indirectly, to any third party. Customer may, however, disclose Confidential Information to its employees who have a need to know and are bound by confidentiality obligations no less restrictive than those set forth herein. Customer will protect the Confidential Information using the same degree of care it uses to protect its own confidential information, but no less than a reasonable degree of care. Customer's obligations of confidentiality hereunder shall not apply to information which: (i) is now, or hereafter becomes, through no act or failure to act on the part of Customer, generally known or available; (ii) is independently known by Customer at the time of receiving such information; (iii) is hereafter furnished to Customer by a third party without a breach of any obligation to Company; (iv) is independently developed by Customer without using Company's Confidential Information or breaching this Agreement; or (v) is required by law to be disclosed in response to a valid order by a court or other governmental body, provided Customer gives Company prompt written notice of such requirement prior to disclosure so that Company may attempt to obtain an order protecting such information from public disclosure. Customer's obligation under this Section shall survive the termination or expiration of this Agreement. Customer is prohibited from taking photos or video of Company representatives performing service without Company's prior written consent. If Customer begins to take photos or video of a Company representative during the course of a service visit, such representative shall have the right to discontinue service.

**FORCE MAJEURE:** Neither party shall be in breach of this Agreement if it fails to perform due to causes beyond its control, including but not limited to, acts of God, power outage, power surge, pandemics, fire, theft, war, riot, civil unrest, embargoes, strikes, labor disputes, communications failures, terrorism or acts of civil or military authorities.

**EXPORT RESTRICTIONS:** Customer acknowledges that the provision by Company of products (including components and spare parts), software, services (including warranty services), technology or intellectual property, including technical information supplied by Company or contained in documents (collectively "Items"), is subject to applicable export controls of the U.S. government and other jurisdictions, including but not limited to the European Union. These controls may require Company or Customer to first obtain a license (or similar requirement) from the relevant authority, or regulatory body. Company shall not be liable to Customer for any delay or failure to obtain the licenses or approvals that Company reasonably believes are necessary. Customer shall comply with all applicable export laws and regulations. Customer shall not, without first obtaining from the relevant authority or regulatory body any license required to do so lawfully, export or re-export any Item (either directly or indirectly), to: (i) any restricted or embargoed country or any person or organization whose privilege to participate in exports has been denied or restricted by the applicable authority; or (ii) any person or organization who is involved in improper development or use of nuclear weapons, or of chemical/biological weapons (CBW) or missiles, or in terrorist activities. Customer agrees not to use any supplied Item in restricted or prohibited activities such as nuclear explosives, unsafeguarded nuclear activities, chemical or biological weapons development, restricted rocket or missile systems, or restricted military purposes. Customer will, on request (i) promptly provide written information correctly identifying the end user and end use of any Items (including any information as it may relate to a subsequent transfer of such Items by Customer); and (ii) cooperate fully with Company in any official or unofficial audit or inspection arising in respect of the Items under applicable export or import control laws or regulations. Customer will ensure that the customers and end users to whom Customer re-sells or transfers the Items agree in writing to the provisions of this Section and Customer covenants to use its best efforts to enforce such provisions against customers and end users. Customer shall indemnify and hold Company harmless from, or in connection with, any violation of this Section by Customer or its employees, consultants, agents and/or representatives. In addition, failure of Customer to comply with this Section shall be a material breach of this Agreement and shall entitle Company to immediately terminate this Agreement. Company shall be entitled to terminate this Agreement without prior notice if such termination is necessary in order to comply with applicable export laws and regulations.

ASSIGNMENT: Customer may not assign or transfer this Agreement, in whole or in part, by operation of law or otherwise, without the prior written consent of Company.

GOVERNING LAWS: This Agreement shall be governed by the laws of the Commonwealth of Massachusetts, USA.

If you do not want to agree to these terms, do not proceed with the transaction and contact Company and we will consider negotiating a separate written agreement depending upon Customer's install base and sales volume.