

## GRaDER<sup>SM</sup> Program Product Listing Agreement

Whereas, the U.S. Department of Homeland Security (DHS) Domestic Nuclear Detection Office (DNDO) is authorized to:

- publish technical capability standards and recommended standard operating procedures for the use of nonintrusive imaging and radiation detection equipment in the United States;
- carry out a program to test and evaluate technology for detecting a nuclear explosive device and fissile or radiological material;
- establish performance metrics for evaluating the effectiveness of individual detectors and detection systems in detecting such devices or material;
- support and enhance the effective sharing and use of appropriate information generated by the intelligence community, law enforcement agencies, counterterrorism community, other government agencies, and foreign governments, as well as provide appropriate information to such entities; and
- facilitate the use of testing facilities under a fee-for-services arrangement, and with the consent of the relevant party, publish the test results.

(Title XIX, Sec. 1902 of the Homeland Security Act of 2002 (HSA) (Pub. L. No. 107-296), (Sec. 121 of the SAFE Port Act (SPA), Pub. L. No. 109-347), as added by the SPA and amended by Sec. 104 of Pub. L. No. 110-53.)

And, whereas \_\_\_\_\_ (hereinafter “Manufacturer”) desires DNDO to include its product performance test results on the *GRaDER Program List of Evaluated Equipment*, Manufacturer and DNDO (hereinafter “the Parties”) agree as follows:

1. DNDO will list product performance test results on a *GRaDER Program List of Evaluated Equipment* under the program-specified categories reflecting equipment that meets at least minimum acceptable levels of conformance. The Manufacturer must have:

- applied for program consideration under the procedures specified in the GRaDER guidance available on the GRaDER Program website,
- provided the necessary information for evaluation as specified in the GRaDER guidance available on the program website, and agreed to the following terms and conditions.

2. Test results may be submitted only by the actual NVLAP or approved testing laboratory as authorized by the product Manufacturer. Product certifications shall be submitted only by the Manufacturer.

3. The Manufacturer shall stipulate whether or not DNDO is given permission to release relevant information regarding the instrument under application to State, local, tribal and territorial government agencies via a web-based medium or written

responses to direct inquiries. Relevant information shall include test reports, Manufacturer certifications, summarized DNDO test evaluation results, including observations and evaluation comments and remarks relating to performance, suitability, and survivability, and other Manufacturer-provided information received by DNDO. All relevant information may be disclosed to other Federal entities.

4. Should a Manufacturer decline to give DNDO permission to release relevant information to State, local, tribal and territorial government entities, that may preclude such government entities from selecting the Manufacturer's product from the *GRaDER Program List of Evaluated Equipment* available to entities outside of the Federal government. This may impede a Manufacturer's ability to compete and impact the ability of the Manufacturer to market radiation detector products based on funds provided by the Federal Emergency Management Agency (FEMA) Grants programs (i.e., the list of allowable equipment for the grants).

5. The Manufacturer shall provide the DNDO GRaDER Program Manager notice of any and all instrument configuration changes within 15 calendar days after implementation. Configuration changes are any changes beyond the mere cosmetic. The term includes, but is not limited to, acquiring components from different sources, assembling components in a different location, changes in the assembly process or sequence that may affect final performance, software coding changes, etc. The notice shall include cut-in time, date, and plant(s) affected, instrument serial numbers affected, lot number(s) affected, and a detailed description of the changes made to the instrument hardware, software, or algorithm design, maintenance, calibration, or repair procedures, or operating instructions.

6. If an instrument has undergone a configuration change, as described above, the Manufacturer shall arrange for any additional testing (at a NVLAP-accredited or DNDO-accepted laboratory) that DNDO determines is necessary. DNDO holds the instrument Manufacturer responsible for keeping track of its suppliers. When supplier parts change, the Manufacturer's instrument changes; and DNDO will assess the changes for possible retesting requirements at the Manufacturer's cost. DNDO will determine the scope of retesting necessary that results from a configuration change. The Manufacturer shall be responsible to coordinate, fund, provide the instruments necessary, and contract with the NVLAP-accredited lab to accomplish the testing and cause the testing laboratory to submit the resulting test report(s) to DNDO. DNDO will require only that testing sufficient to demonstrate that the revised equipment (configuration, design, or construction) continues to meet the GRaDER Program requirements. The Manufacturer is responsible for the costs of configuration change testing.

7. The Manufacturer or supplier shall complete DNDO-required configuration change testing, including a partial or full retest of the system per the requirements of the applicable ANSI/IEEE N42 and associated standards. This testing shall be completed by an independent NVLAP-accredited or DNDO-accepted laboratory with the appropriate scope of accreditation. Data derived from this testing shall be used

by DNDO to establish the level of compliance for the instrument under application and shall be subject to reporting and release under the stipulations described above.

8. DNDO understands that US-based vendors (perhaps more than one) may represent overseas Manufacturers, and the same product may be sold under different names and trademarks. The Manufacturers shall declare within the GRaDER Program application all trade names and trademarks under which the product is marketed and distributed. The Manufacturers shall declare within the GRaDER Program application all design, form, fit, and function variations so that DNDO may determine any additional testing requirements based on configuration differences as described above. When these names and trademarks change, the Manufacturer shall notify DNDO within 15 calendar days of implementation.

9. Manufacturer acknowledges and covenants that each product complies with the relevant testing specifications and such product has not been modified in any way from the form in which it existed at the time DNDO determined it complied with the testing specifications. Manufacturer agrees that DNDO may, without advance notice to Manufacturer, purchase at retail or otherwise obtain products to determine compliance with the Tested Specification.

10. DNDO may, without advance notice to Manufacturer, visit Manufacturer's premises at reasonable times to audit Manufacturer's use of the GRaDER mark. Manufacturer shall make the labels or other devices bearing the GRaDER mark and the means for applying the mark available at all reasonable times for inspection by DNDO.

11. Manufacturer agrees to cooperate with post-listing quality assurance surveillance testing as DNDO deems necessary. This testing shall be completed by an independent NVLAP accredited or DNDO accepted laboratory under the guidance of DNDO or NIST acting on behalf of DNDO.

12. DNDO will be responsible for the laboratory costs of the ongoing quality assurance testing (i.e., surveillance testing). Data derived from this testing shall be used by DNDO to verify and validate the level of conformance for the instrument after acceptance into the GRaDER Program, and shall be subject to reporting and release under the stipulations described above. This data may be used by DNDO to alter the level of compliance status of equipment listed by DNDO on one or more DHS or component web-based reporting applications (e.g., Responder Knowledge Base [RKB] or DHS DNDO GRaDER websites). The Manufacturer shall agree to submit and allow selection of test articles by DNDO, or NIST acting on behalf of DNDO, for the purposes of conducting such quality assurance surveillance testing.

13. If DNDO determines the product is not in compliance with the testing specification(s), DNDO shall provide written notice to Manufacturer. If Manufacturer fails to take corrective action within 30 days of the receipt of such notice, DNDO shall have the right to announce publicly that the product no longer complies with the testing specification(s). Corrective action may include modification of the product so that it is in compliance with the testing specification(s) or removal of the product from the *GRaDER Program List of Evaluated Equipment*. Further, in the event that Manufacturer

has sold or otherwise distributed products that do not comply with the testing specification(s), DNDO shall have the right to announce publicly that such products do not comply with the testing specification(s). The remedies in this section are not exclusive and shall not serve to limit Manufacturer's liability to any third party.

14. Manufacturer agrees that the samples of the product may be retained by DNDO for the purposes of comparing the products DNDO tested against the products Manufacturer commercially offers. Manufacturer acknowledges that the samples may be damaged or destroyed during the testing process and agrees that DNDO is not responsible for damage or loss of samples that occurs during testing or shipment of the samples.

15. The Manufacturer shall agree to certain limitations as to the length of time that the instrument under application shall be included on the *GRaDER Program List of Evaluated Equipment*. In general, the listed equipment, once tested and accepted into the GRaDER Program, shall remain listed for no longer than four calendar years after initial acceptance or four calendar years after re-testing for configuration change. Equipment will be removed from the list one year after production is discontinued or at any time if repeat quality assurance testing indicates a failure to maintain equipment performance.

16. DNDO reserves the right to remove equipment from the *GRaDER Program List of Evaluated Equipment* if it is determined it no longer complies with the technical or administrative requirements of the GRaDER Program or if the Manufacturer is in violation of the terms of this Agreement.

17. The Manufacturer shall agree to certain limitations in advertising products included in the *GRaDER Program List of Evaluated Equipment*. In no case will a Manufacturer either express or imply that its participation in the GRaDER Program constitutes a Federal Government approval of, or endorsement of, the Manufacturer's product.

18. The Manufacturer may refer in its advertisements and other publications to the laboratory test reports regarding ANSI/IEEE testing for which the Manufacturer paid.

19. The Manufacturer shall neither use the trademark "GRaDER," nor use DHS or component logos, without the express written permission of DNDO.

20. DNDO shall approve content and claims related to performance, suitability, survivability or reporting of the instrument when there is any reference to DNDO, DHS, the Federal Government or any other Federal agency.

21. DNDO shall approve content and claims related to configuration changes in instrument hardware, software or algorithm design, maintenance, calibration or repair procedures, or operating instructions of the instrument under test when there is any reference to DNDO, DHS, the Federal Government or any other Federal agency.

22. The Manufacturer understands that the activities it undertakes in connection with the GRaDER Program are voluntary and not intended to provide services

to the Federal Government. As such, the Manufacturer will not submit a claim for compensation to any Federal agency.

23. The Manufacturer and DNDO will attempt to resolve any disputes under this Agreement informally in order to preserve maximum confidence in the GRaDER Program.

24. Failure to comply with any of the terms of this Agreement may result in its termination and removal of equipment from the *GRaDER Program List of Evaluated Equipment*.

25. The Manufacturer and DNDO concur that this Agreement is wholly voluntary and may be terminated by either party at any time, and for any reason, without penalty. Termination will be affected by a written notice from one Party to the other Party.

26. This Agreement is not intended to, nor does it, create any right to administrative or judicial review, or any right, whether substantive or procedural, enforceable by any party against the United States, its agencies or instrumentalities, its officers or employees, or any other person.

27. Nothing herein shall be construed as granting or conferring any rights by license or otherwise, expressly, implied, or otherwise, to any patent or other intellectual property rights contained in the Products under application.

28. Nothing in this Agreement is intended to conflict with current law or regulation or the directives of DHS. If a term of this agreement is inconsistent with such authority, then that term shall be invalid, but the remaining terms and conditions of this agreement shall remain in full force and effect.

29. Manufacturer agrees to hold harmless, indemnify, and defend DNDO, the Department of Homeland Security, and the Government of the United States of America, from and against any and all claims, damages, costs, and expenses (including reasonable attorneys' fees) arising out of the marketing, sale or distribution of the product, including, but not limited to claims relating to defective products, incompatibility with the testing specification(s), inability to operate as advertised, or any other product liability claim, Manufacturer's misuse of the *GRaDER Program List of Evaluated Equipment*, or Manufacturer's violation of the terms and conditions of this Agreement.

30. Manufacturer agrees that the manufacture, sale, delivery, shipment, distribution or promotion of any product using the GRaDER mark or description referring to DNDO would mislead the public if such product does not comply with the testing specification or if the *GRaDER Program List of Evaluated Equipment* is used in any other way than as herein provided and agrees that any breach of this Agreement in this respect could not adequately be compensated for in money damages. Accordingly, Manufacturer agrees that, in the event of the violation of any of the terms and conditions of this Agreement, a temporary injunction may be issued at the instance of DNDO restraining Manufacturer from further use of the GRaDER mark or the *GRaDER*

*Program List of Evaluated Equipment* or any reference to DNDO in its advertising or in connection with its products, and from selling, offering for sale, distributing or delivering products, and any other relief deemed appropriate. Such injunction shall not restrain the sale or distribution of products that are in compliance with the testing specification(s) and the GRaDER Program Use Guidelines. The granting or issuance of such an injunction shall not affect the right of DNDO to compensatory or punitive damages for the misuse of the *GRaDER Program List of Evaluated Equipment* or its name and shall be in addition to, and not in lieu of, any other rights and remedies provided by this Agreement.

31. All notices and other communications under this Agreement shall be in writing and shall be deemed given if delivered personally, mailed, or sent by facsimile or email with a receipt confirmed by telephone, to the noticed party.

32. The Manufacturer's representative certifies that the representative is authorized to sign this Agreement and thereby bind the Manufacturer to these terms and conditions.

Party:	DNDO	Manufacturer
	_____ Signature/Date	_____ Signature/Date
	_____ Title	_____ Title
	_____ Print Name	_____ Print Name
	_____ Print Title	_____ Print Title
	_____ Fax	_____ Fax
	_____ Phone	_____ Phone
	_____ Email	_____ Email