

WAREHOUSE REAL TIME LOCATION SYSTEM (SITE SURVEY) TERMS

These terms are an agreement between the Solutions and Support Center (the “**S&SC**”) and customer (the “**Customer**”) identified on the site survey proposal issued by S&SC and accepted by Customer in accordance with the proposal’s terms (the “**Order**”) and govern the parties’ rights and obligations with respect to one or more site surveys to be performed in advance of future orders for the iWAREHOUSE® Real Time Location System (the “**Product**”).

These terms were last updated on **August 24, 2022** and are effective as between S&SC and Customer as of the effective date of the Order (the “**Effective Date**”). Capitalized terms used but not defined herein will have the meanings ascribed to such terms in the Order.

The parties therefore agree as follows:

1. **RTLS Site Survey.**

(a) S&SC shall perform site surveys at the locations (“**Survey Locations**”) and on the pricing and other terms specified in the Order and this agreement. Customer shall provide to S&SC and its representatives: (1) access to the Survey Locations; (2) an up-to-date and accurate CAD drawing with the dimensions and locations of network closets, HVAC systems and racking at each Survey Location (the “**Customer-Provided CAD**”); and (3) all other assistance and cooperation reasonably requested by S&SC and its representatives. Customer hereby grants S&SC a worldwide, non-exclusive, paid-up license for S&SC and its representatives to use, store, transfer, copy and modify the Customer-Provided CAD as is reasonably necessary for S&SC and its representatives to perform the site surveys and provide the Product to Customer. Customer hereby permits S&SC and its representatives to take any photos (the “**Location Photos**”) that S&SC or any representative deems necessary to complete the site surveys and prepare and perform Product installation and implementation at the Survey Locations. Upon completion of the site surveys, S&SC shall provide Customer with a post-site survey quote or inform Customer as to the incompatibility of the Product at the Survey Location.

(b) S&SC shall perform the site surveys in accordance with accepted industry standards. S&SC shall have the right to hire or engage one or more subcontractors to perform the site surveys; provided, however, S&SC shall remain responsible for its subcontractors’ compliance with the terms of this agreement.

(c) Customer shall promptly notify S&SC of any anticipated delays or deficiencies in Customer’s responsibilities and shall provide prompt assistance in resolving any such delays or deficiencies to S&SC’s reasonable satisfaction. S&SC reserves the right to stop work until such delays or deficiencies are remedied to S&SC’s reasonable satisfaction.

2. **Price and Payments.** Customer shall pay the amounts invoiced to Customer. Customer shall have no right to offset any payments due to S&SC under this or any other agreement. All sales are final and non-refundable. Customer shall pay all taxes and fees imposed upon the provision of the site survey, whether levied or assessed upon Customer or S&SC. Customer acknowledges that the amounts set forth in the Order may not include any tax, excises, duties, tariffs, fees or other governmental charges. Customer is not responsible for the payment of any taxes based on the net or gross income of S&SC.

3. **Term and Termination.** This agreement commences on the Effective Date and will expire on the expiration or termination of the Order (the “**Term**”). Either party may terminate this agreement and the Order without cause upon 60 days’ prior notice to the other party.

4. **Representations and Warranties.**

(a) Each party represents and warrants to the other that it has the full power, capacity and authority to enter into and perform its obligations under this agreement and to make the grant of rights contained herein, and its performance hereunder does not violate or conflict with any other agreement to which it is a party.

(b) EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT OR THE ORDER, S&SC MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, OR TITLE AND ALL SUCH WARRANTIES ARE HEREBY SPECIFICALLY DISCLAIMED. ANY EMPLOYEES, REPRESENTATIVES, AGENTS, OR DISTRIBUTORS OF S&SC ARE NOT AUTHORIZED TO MODIFY OR MAKE ADDITIONS TO THIS WARRANTY THAT ARE BINDING ON S&SC. ANY SUCH STATEMENTS, WHETHER WRITTEN OR ORAL, DO NOT CONSTITUTE ADDITIONAL WARRANTIES.

5. **Confidentiality.**

(a) “**Confidential Information**” means any information, whether oral or written, received by the Receiving Party from Disclosing Party that a reasonable person, given the nature and circumstances of disclosure, would know to be confidential; provided, however, Confidential Information does not include any information that is: (i) already public when the Disclosing Party discloses it to Receiving Party or becomes public (other than as a result of breach of this agreement by Receiving Party) after the Disclosing Party discloses it to the Receiving Party; (ii) lawfully obtained, after it is disclosed under this agreement, from a third-party who is not otherwise bound by a confidentiality agreement with Disclosing Party; (iii) already in the possession of the Receiving Party or any of its Representatives on a non-confidential basis prior to Disclosing Party’s disclosure; (iv) independently developed by the Receiving Party without use or reference to the Disclosing Party’s Confidential Information and without violating any obligation under this agreement; or (v) released without restriction by Disclosing Party.

(b) The party, its affiliates or agents that receives Confidential Information (the “**Receiving Party**”) of the other party, its affiliates or agents (the “**Disclosing Party**”) shall: (1) treat the Disclosing Party’s Confidential Information as confidential; (2) use the same degree of care as it maintains the confidentiality of its own confidential information, but in no event will the Receiving Party use less than a reasonable degree of care to maintain the confidentiality of Disclosing Party’s Confidential Information; (3) not use the Disclosing Party’s Confidential Information for any purpose other than as expressly permitted by or in connection with its obligations under this agreement; and (4) prevent disclosure of the Disclosing Party’s Confidential Information to third parties; provided, however, disclosure may be made on a confidential basis to Receiving Party’s parent, subsidiary and affiliate companies, and their officers, directors, employees and contract employees, agents, consultants, financing sources and advisors (collectively, “**Representatives**”) who need to know in connection with this agreement, so long as the Representatives are aware of the confidential nature and are bound to preserve the Confidential Information’s confidentiality. The Receiving Party shall be responsible for ensuring that its Representatives keep the Confidential Information confidential, do not disclose or divulge the same to any unauthorized person or entity and abide by the use restrictions contained herein. If either party or any of its Representatives loses or makes an unauthorized disclosure of the Confidential Information, it shall promptly notify the other party, provide a description of the circumstances of the loss or unauthorized disclosure and use reasonable efforts to retrieve the lost or wrongfully disclosed Confidential Information.

(c) Notwithstanding anything in this section 5 to the contrary, Customer Confidential Information does not include any feedback, suggestion or idea provided by Customer. S&SC and The Raymond Corporation (“**Raymond**”) shall have the right to use, profit from, disclose, publish and otherwise exploit any feedback, suggestion or idea, without compensation to Customer. Customer hereby relinquishes and waives any Intellectual Property right it might have in any feedback, suggestion or idea.

(d) The Disclosing Party’s Confidential Information, and all permitted copies, will remain the property of the Disclosing Party, and the Disclosing Party shall have the right to demand its return, in whole or in part, at any time, upon giving written notice to the Receiving Party. Upon receipt of such notice, the Receiving Party shall return the Confidential Information and all copies in its possession to the Disclosing Party as soon as is reasonably practical, but in no more than 30 days. Confidential Information incorporated in documents will be destroyed by Receiving Party. If the Receiving Party has destroyed any copies of Disclosing Party’s Confidential Information, Receiving Party shall confirm the destruction in the letter accompanying the return of any documents or copies. Notwithstanding the foregoing sentences, (1) the Receiving Party shall not be obligated to return or destroy any Confidential Information the Receiving Party is retaining pursuant to a document retention hold established in connection with any civil or criminal investigation or litigation for the period the document retention hold is in effect, at which time the Confidential Information will be returned to the Disclosing Party or destroyed as aforesaid; and (2) to the extent Receiving Party’s computer back-up procedures create copies of the Confidential Information, the Receiving Party may retain such copies in its archival or back-up computer storage for the period the Receiving Party normally archives backed-up computer records.

(e) The Receiving Party may disclose the Disclosing Party’s Confidential Information that it is obligated, on the advice of legal counsel, to produce by law or under order of a court of competent jurisdiction or other similar requirement of a government agency, for the limited purpose required by the court or government agency, so long as the Receiving Party, to the extent legally permitted, provides the Disclosing Party with prompt written notice with sufficient time to permit the Disclosing Party to seek a protective order to protect its Confidential Information from disclosure.

(f) Each party recognizes that the Disclosing Party might have no adequate remedy at law if the Receiving Party does not comply with its obligations under this section 5. Therefore, a grant of injunctive relief would be appropriate to restrain any breach, threatened breach, or otherwise to specifically enforce any obligations of Receiving Party under this agreement.

(g) The requirements imposed by this section 5 will continue for three years following the termination or expiration of this agreement.

6. Indemnification. Customer shall defend, indemnify and hold harmless S&SC, Raymond, and the officers, directors, employees and agents of each against all losses, damages, penalties, judgments, liabilities, settlements and expenses, including reasonable attorney fees and other expenses of litigation, settlement or defense (collectively, “**Indemnifiable Losses**”) arising out of or resulting from any claim, suit, proceeding or cause of action brought by a non-affiliated third party (each, a “**Claim**”) in connection with (A) the negligence or willful misconduct of Customer or its employees, agents, servants, subcontractors or vendors; or (B) any breach or alleged breach of this agreement by Customer. S&SC shall notify Customer with reasonable promptness upon learning of any Claim for which S&SC seeks defense, settlement or indemnification from Customer, but S&SC’s failure to do so will have no effect except to the extent Customer is prejudiced thereby. S&SC shall allow Customer to control the defense and settlement of the indemnified Claim and shall reasonably cooperate with the defense, but Customer shall use counsel reasonably experienced in the subject matter at issue and shall not settle a Claim without the written consent of S&SC.

7. LIMITATION OF LIABILITY. S&SC WILL NOT BE LIABLE TO CUSTOMER FOR INDIRECT, INCIDENTAL, BUSINESS INTERRUPTION OR CONSEQUENTIAL DAMAGES, INCLUDING ANY LOSS OF REVENUE, PROFITS, SALES, DATA OR REPUTATION, WHETHER ARISING UNDER CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY. THESE EXCLUSIONS APPLY EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES, AND EVEN IF ANY REMEDY FAILS OF ITS INITIAL PURPOSE. IN NO EVENT WILL THE CUMULATIVE LIABILITY OF S&SC, TOGETHER WITH ITS SUPPLIERS, LICENSORS AND AFFILIATES, ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE ORDER EXCEED THE TOTAL PAYMENTS RECEIVED BY S&SC FROM CUSTOMER UNDER THE ORDER, WHETHER ARISING UNDER WARRANTY/GUARANTEE, CONTRACT, NEGLIGENCE, STRICT LIABILITY, INDEMNIFICATION, DEFENSE OR ANY OTHER CAUSE OR COMBINATION OF CAUSES.

8. Force Majeure. S&SC shall not be liable to Customer, nor be deemed to have breached this agreement or the Order, for any failure or delay in fulfilling or performing any term of this agreement when and to the extent such failure or delay is caused by or results from any event or circumstance, whether or not foreseeable, beyond the reasonable control of S&SC.

9. **Assignability.** Except with S&SC's prior written consent, Customer shall not assign its interest in, or delegate any of its duties under, this agreement. Any unauthorized assignment or delegation will be null, void and of no force or effect and will constitute a material breach of this agreement.

10. **Governing Law.** The laws of the State of New York govern the validity, interpretation and performance of this agreement as well as all adversarial proceedings arising out of this agreement, without giving effect to any laws, rules or provisions that would cause application of the laws of any jurisdiction other than the State of New York. If either party brings against the other party any proceeding arising out of this agreement, that party shall bring that proceeding only in a state court located in Chenango County, New York or a federal court located in the Northern District of New York. The application of the United Nations Conventions on Contracts for the International Sale of Goods is excluded.

11. **Notice.** All notices, consents, communications or transmittals under this agreement will be in writing and will be deemed received on the day of delivery if personally hand delivered or sent by facsimile or electronic transmission (with written confirmation of the completed transmittal); or within two business days if mailed as certified or registered mail with return receipt, postage prepaid addressed to the party to whom notice is given at the address of the party provided in the Order.

12. **Entire Agreement; Waivers.** This agreement, together with the Order, contains the entire agreement between the parties and supersedes and cancels all prior agreements, whether oral or written, regarding the site surveys. There are no understandings, inducements, commitments, conditions, representations or warranties, whether direct, indirect, collateral, express or implied, oral or written, from either party to the other, other than as contained in this agreement. No waiver or satisfaction of a condition or nonperformance of an obligation under this agreement will be effective unless it is in writing and signed by the party granting the waiver.

13. **Independent Contractors.** The parties are independent contractors only and are not partners, master/servant, principal/agent or involved herein as parties to any other similar legal relationship with respect to the transactions contemplated under the Order, and no fiduciary, trust, or advisor relationship, nor any other relationship imposing vicarious liability exists or will exist between the parties under this agreement or otherwise at law.

14. **Severability.** If a dispute between the parties arises out of this agreement or the subject matter of this agreement, the parties desire that the court interpret this agreement as follows: (a) with respect to any provision that the court holds to be unenforceable, by modifying that provision to the minimum extent necessary to make it enforceable or, if that modification is not permitted by law, by disregarding that provision; and (b) if an unenforceable provision is modified or disregarded in accordance with this section, by holding that the rest of the agreement will remain in effect as written; and (c) if modifying or disregarding the unenforceable provision would result in a failure of an essential purpose of this agreement, by holding the entire agreement unenforceable.

15. **Publicity.** S&SC, Raymond Leasing Corporation and Raymond may identify Customer as a customer for any marketing or advertising purposes.

16. **Country Specific Terms.**

(a) **Canada.** The terms of this section 16(a) only apply with respect to the performance of RTLS Site Surveys within Canada.

(1) **Governing Law.** Section 10 is deleted in its entirety and replaced with the following: "The laws of the Province of Ontario govern the validity, interpretation and performance of this agreement as well as all adversarial proceedings arising out of this agreement, without giving effect to any laws, rules or provisions that would cause application of the laws of any jurisdiction other than the Province of Ontario. If either party brings against the other party any proceeding arising out of this agreement, that party shall bring that proceeding only in the Province of Ontario, and each party hereby submits to the exclusive jurisdiction of the courts of the Province of Ontario for purposes of any such proceeding. The application of the *United Nations Conventions on Contracts for the International Sale of Goods, the Sale of Goods Act (Ontario)* (or any equivalent applicable legislation), or any amendments thereto, are expressly excluded by the parties."

(2) **English Language.** The parties confirm that it is their express wish that this agreement, as well as any other documents relating to this agreement, including notices, schedules and authorizations, have been and shall be drawn up in the English language only. Les parties aux présentes confirment leur volonté expresse que cette convention, de même que tous les documents s'y rattachant, y compris tous avis, annexes et autorisations, soient rédigés en langue anglaise seulement.