

**Graduated Rad/Nuc Detector Evaluation and Reporting (GRaDERSM) Program
Homeland Security Information Network (HSIN) Website Access Agreement**

Date: _____

Name: _____
(First) (Middle) (Last)

Address 1: _____

Address 2: _____

City: _____ State: _____ Zip Code: _____

Phone: . _____ Alternate: _____

Email: _____ Alternate: _____

Stakeholder Type/Organization Name

Federal Agency: _____

State Agency: _____

Territorial Agency: _____

Tribal Agency: _____

Manufacturer: _____

Laboratory: _____

Organization Address:

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 “Stakeholder”) desires DNDO to provide access to information included on the Graduated Rad/Nuc Detector Evaluation and Reporting (GRaDERSM) Program Homeland Security Information Network HSIN Website for the purposes of preparing and participating in various aspects of the Program, the Stakeholder and DNDO (hereinafter “the Parties”) agree as follows:

1. DNDO will list program guidance, schedules, product performance test results, and other related information on the password-protected website under the program-specified categories reflecting equipment that is under consideration or meets at least minimum acceptable levels of conformance designated in the GRaDER Program. The Stakeholder must have:

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

2. Product descriptive and technical information and certifications shall be submitted by the Manufacturer. Test results may be submitted only by the actual NVLAP accredited or DNDO accepted testing laboratory as authorized by the product 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 and 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. DNDO reserves the right to disclose DNDO-developed evaluative information at DNDO's discretion.

4. Should a Manufacturer decline to give DNDO permission to release relevant information to State, local, tribal, and territorial government entities, this decision 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. DNDO reserves the right to publish and make available DNDO evaluations of instruments considered for the GRaDER Program to Federal, State, local, territorial, and tribal agencies.

6. DNDO understands that U.S.-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. DNDO reserves the right to publish this information on the GRaDER Program HSIN Website.

7. Manufacturers acknowledge and covenant 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. DNDO may, without advance notice to Manufacturer, purchase at retail or otherwise obtain products to determine compliance with the Tested Specification.

8. DNDO may, without advance notice to Stakeholder, visit Stakeholder's premises at reasonable times to audit use of the GRaDER service mark. Stakeholder 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.

9. The Stakeholder shall agree and understand that certain limitations apply as to the length of time that information shall be included on the *GRaDER Program HSIN Website*. *The DNDO System Administrator has sole and complete authority over the content of the website, Stakeholder access levels on the HSIN website, and the structure of the website.* DNDO reserves the right to remove content from the *GRaDER Program HSIN Website* or Stakeholder access to all or any part of the *GRaDER Program HSIN Website* if it is determined that content or Stakeholder activity no longer complies with the technical or administrative requirements of the GRaDER Program or if the Stakeholder is in violation of the terms of this Agreement.

10. The Stakeholder shall agree to certain limitations in advertising products included in the GRaDER Program. In no case will a Stakeholder either express or imply that participation in the GRaDER Program constitutes a Federal Government approval of, or endorsement of, any product.

11. The Stakeholder may refer in its advertisements and other publications to the laboratory test reports regarding ANSI/IEEE testing for which the Manufacturer paid only if the Stakeholder has legitimate access to that information.

12. The Stakeholder shall neither use the service mark "GRaDER" nor use DHS or component logos without the express written permission of DNDO.

13. 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.

14. 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.

15. The Stakeholder 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 Stakeholder will not submit a claim for compensation to any Federal agency.

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

17. Failure to comply with any of the terms of this Agreement may result in its termination and removal of Stakeholder from access to the GRaDER Program HSIN Website.

18. The Stakeholder 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 effected by a written notice from one Party to the other Party.

19. 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.

20. 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 information located on the GRaDER Program HSIN Website.

21. 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.

22. Stakeholder 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, Stakeholder's misuse of the GRaDER Program HSIN website, or Stakeholder's violation of the terms and conditions of this Agreement.

23. Stakeholder 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 Evaluation is used in any other way than as herein provided. The Stakeholder agrees that any breach of this Agreement in this respect could not adequately be compensated for in monetary damages. Accordingly, Stakeholder 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 Stakeholder from further use of the GRaDER mark or the GRaDER Program HSIN Website 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 evaluation information or its name and shall be in addition to, and not in lieu of, any other rights and remedies provided by this Agreement.

24. All notices and other communications under this Agreement shall be in writing or electronically published, 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.

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

26. Sensitive information disclosed to DNDO will not be searchable by using personal identifiable information (PIA).

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