

## STANDARD TERMS & CONDITIONS

**THE FOLLOWING STANDARD TERMS AND CONDITIONS** ("Terms") are applicable to the Proposal presented by Fraunhofer USA, Inc. ("Fraunhofer USA") to the project sponsor named in the Proposal (the "Client") and any Purchase Orders and/or any resulting agreement(s) regarding the research and development services and goods specified in the Proposal. Fraunhofer USA and Client may be individually referred to as a "Party" and collectively as the "Parties". Once executed by the Parties, the Proposal, including any Statement of Work contained in or attached to the Proposal or separately agreed upon by the Parties, along with these Terms, any Purchase Orders, and any other documents mutually agreed upon by the Parties in connection with the project to be undertaken by Fraunhofer USA for the Client, shall be collectively referred to as the "Agreement".

### **1. Project Specifications; Modifications.**

**1.1** Fraunhofer USA is a tax-exempt scientific research and educational organization. Fraunhofer USA does not perform research and development projects on a work made for hire basis. Fraunhofer USA will perform research and development services as specified in the Agreement (the "Services") and/or will deliver any results, including any goods, material, or prototypes, as may be set forth in the Agreement or any amendment to the Agreement (the "Deliverables"). Fraunhofer USA will use commercially reasonable efforts to complete the Services and provide any Deliverables within the time period set forth in the Agreement.

**1.2** The Client may request a modification to any Statement of Work associated with the Agreement by delivering a written request to Fraunhofer USA, specifying the desired modifications. Fraunhofer USA will indicate its willingness to perform any requested additional work, provide an estimate of the fees (at its then current rates) for the requested modifications; and a revised estimate of the time for performance of the services pursuant to the modified Statement of Work (collectively, a "Change Order"). If the Parties agree on the terms of the Change Order, the Parties will execute the Change Order and attach it to the Agreement as an Addendum. No Change Order will become effective, and Fraunhofer USA will not have any obligation to perform the Services as modified by the Change Order, until the Change Order is executed by authorized representatives of both Parties.

### **2. Compensation.**

**2.1** Client shall pay Fraunhofer USA for the Services or Deliverables as specifically provided for in the Agreement. Unless specifically agreed to by the Parties, Fraunhofer USA's prices do not include applicable sales, use, value added or other taxes directly attributable to the Services. Fraunhofer USA shall indicate any such taxes as separate line item in its invoices.

**2.2** In addition to Force Majeure events, which are stated in Section 12, occasionally, circumstances that are not anticipated by the Parties, such as unknown information or conditions, cause the resources allocated by Fraunhofer USA to a project to be inadequate for the performance of the Services in the manner contemplated by the Parties. If Fraunhofer USA determines such circumstances exist on this project or if Fraunhofer USA cannot complete the Services within the time period specified in the Agreement or utilizing the resources initially allocated by Fraunhofer USA to performing the Services, for reasons beyond Fraunhofer USA's control, Fraunhofer USA shall give Client written notice of that determination. The Parties shall thereafter negotiate in good faith a written revision of the Agreement in order to document the revised project terms and any additional fees.

**2.3** Payment terms will be set forth in the Agreement. Unless otherwise agreed to in writing by Fraunhofer USA, all Fraunhofer USA invoices shall be payable via wire transfer of immediately available funds to such bank account as Fraunhofer USA shall direct, on net thirty (30) day terms. All payments shall be made in U.S. Dollars without holdback or setoff. Past due invoices will incur cumulative service charges of 1% per month.

### **3. Intellectual Property Rights and Deliverables.**

#### **3.1 Definitions:**

**3.1.1 Background Intellectual Property** means the Intellectual Property of either Party, as well as applications for legal protection for any such rights (excluding Foreground Rights), that: (a) are currently owned by either Party, or by a Party under license to that Party prior or subsequent to entering into this Agreement; or (b) can be shown to have been developed by a Party per the terms of a separate agreement or program unrelated to the Agreement, whether or not included in any Deliverables.

**3.1.2 Client Materials** means all Intellectual Property or other materials delivered or otherwise provided by Client to Fraunhofer USA as required to facilitate Fraunhofer USA's performance of the Services and providing the Deliverables.

**3.1.3 Field of Use** for the Agreement shall have the meaning set forth in the Agreement. In the event the Field of Use is not defined in the Agreement, then the Field of Use shall be limited to Client's internal business purposes and any license granted to the Client cannot be sublicensed or assigned.

**3.1.4 Foreground Intellectual Property** means all Intellectual Property, as well as applications for legal protection for any such rights, that may be developed by the Parties, individually or collectively, after the Effective Date of this Agreement, and within the agreed upon defined Statement of Work for the Agreement (e.g., the Services or the Deliverables).

**3.1.5 Fraunhofer USA Intellectual Property** includes any Fraunhofer USA Background Intellectual Property and/or Technical Data used by Fraunhofer USA while performing the Services that: (a) is in existence as of the Effective Date; (b) is solely developed, discovered or obtained by Fraunhofer USA after the Effective Date for the purposes of or in connection with the provision of the Services under the Agreement or is developed, discovered or obtained by Fraunhofer USA during the course of work on other projects; and (c) which may or may not be included in the Deliverables.

**3.1.6 Know-How** means all information and/or methodologies developed by and/or in the possession of a Party or the employees, consultants, or principals of that Party which relates to that Party's Intellectual Property, and the development and usage of its Intellectual Property.

**3.1.7 Intellectual Property** means all of the following: (a) discoveries, improvements, inventions (whether or not patentable); (b) patents, patent applications, patent disclosures, and any other patentable subject matter; and all improvements or modifications to any of the foregoing; (c) copyrights, applications to register copyrights, works of authorship, any other copyrightable works and derivatives, as defined in Section 101 of the Copyright Act; (d) computer software (including source code, executable code, databases, data and related documentation) and any derivatives, as defined in Section 101 of the Copyright Act; (e) trade secrets, proprietary information; and (f) Technical Data.

**3.1.8 Technical Data** means all technical Know-How and information reduced to a material form produced, acquired or used by Fraunhofer USA or Client in relation to the Deliverable(s) and includes all data, databases, manuals, handbooks, designs, standards, specification, report, writing, models, sketches, plans, drawing, calculations, source code, software design data, test results, software and software updates and other items describing or providing information relating to the Deliverable(s).

## **3.2 Research and Deliverables and Rights of Use.**

**3.2.1** The Services and Deliverables shall be made available to the Client in accordance with the Agreement. Software is made available in the object code, unless otherwise expressly stated in the Agreement.

**3.2.2** The Parties recognize that much of Fraunhofer USA's research and development activity builds upon similar activities performed for third parties. Except for the Intellectual Property that is subject to commercially available licenses or permits and incorporated into the Services and/or Deliverables, Fraunhofer USA represents and warrants it will incorporate into the Services and/or Deliverables delivered to Client Intellectual Property Fraunhofer USA is legally permitted to utilize and license to Client for that purpose. Solely for the Intellectual Property associated with the commercially available licenses and permits, Client will be responsible for costs associated with acquiring and maintaining commercial licenses for such Intellectual Property incorporated in the Services and/or Deliverables.

**3.2.3** The Agreement will not change or transfer title to any Intellectual Property or Know-How owned by any of the Parties, unless otherwise specifically agreed to in writing by authorized representatives of the Parties. Otherwise, the Parties shall retain all right, title, and interest in and to their respective Background Intellectual Property and Know How; and Fraunhofer USA shall retain all right, title and interest in and to all Fraunhofer USA Intellectual Property and Know-How.

**3.2.4** Fraunhofer USA will retain and be the sole assignee of all right, title, and interest in and to any Foreground Intellectual Property and Know-How developed solely by Fraunhofer USA during the term of the Agreement ("Fraunhofer USA Foreground Intellectual Property").

**3.2.5** Client will retain and be the sole assignee of all right, title, and interest in and to any Foreground Intellectual Property and Know-How developed solely by Client during the term of the Agreement ("Client Foreground Intellectual Property").

**3.2.6** Foreground Intellectual Property and Know-How developed jointly by both Parties in performance of the project (i.e., inventions that employees of both Parties were involved in and for which the intellectual property right cannot be applied for separately for the individual shares of the invention) belong to the Parties jointly in accordance with their share in the invention ("Joint Foreground Intellectual Property"). The Parties shall reach an agreement on a case-by-case basis regarding the application for (including lead management), maintenance of, and defense of intellectual property rights to Joint Foreground Intellectual Property ("Joint Foreground Intellectual Property Management") and the associated costs. Unless otherwise agreed, Fraunhofer USA shall be the lead management for the Joint Foreground Intellectual Property Management and shall make the decision to apply for intellectual property rights for the Joint Foreground Intellectual Property and the Parties shall each bear 50% of the costs. The Parties may use Joint Foreground Intellectual Property like their own, along with the intellectual property rights applied for or issued to them, for their duration and license them non-exclusively without any obligation to account to the other Party for commercial revenues. For copyrighted works, including programmed software, and know-how that were created jointly by the Parties in performing the project, this Section 3.2.6 applies – where applicable – accordingly.

**3.2.7** Client will provide Fraunhofer USA a limited, royalty-free, non-exclusive license to use, and/or reproduce the Client Materials to the extent that the Client Materials may be needed by Fraunhofer USA to perform the Services and provide the Deliverables or as otherwise agreed to by the Parties in writing. As a condition of Fraunhofer USA receiving or using any Client Materials, Client warrants that Client has the right to grant, and hereby does grant, to Fraunhofer USA a royalty-free, non-transferable, non-exclusive license or sublicense to make, use, reproduce, create derivative works of, and modify Client Materials in the performance of the Services and creation of the Deliverables and for no other purpose.

**3.2.8** Any license to Fraunhofer USA Foreground Intellectual Property and Background Intellectual Property will be subject to receipt of all payments due per the terms of the Agreement and any associated separate written agreements, and further subject to any Government Rights in Data that may arise from a government funded project.

**3.2.9** The Client shall be granted a non-exclusive, non-transferable, non-licensable and royalty-free right to use the Fraunhofer USA Foreground Intellectual Property generated by Fraunhofer USA during the performance of the Agreement, and the intellectual property rights for such Foreground Intellectual Property filed by and issued to Fraunhofer USA, for use solely in the Field of Use. The Client shall reimburse Fraunhofer USA an appropriate part of the costs, that has to be agreed upon between the Parties, of applying for, maintaining, and defending the associated intellectual property rights and shall pay Fraunhofer USA, in case of use of the invention, a lump-sum employee inventor fee which shall be agreed on a case-by-case basis.

**3.2.10** In the event any Fraunhofer USA Background Intellectual Property used by Fraunhofer USA in performing the Services and providing the Deliverables is needed by Client in order to use the Deliverables in accordance with their intended internal purposes as set forth in the Agreement, Client shall be granted a non-exclusive, royalty-free right to use such Fraunhofer USA Background Intellectual Property solely for such internal purposes in the Field of Use. In the event any Fraunhofer USA Background Intellectual Property used by Fraunhofer USA in performing the Services and providing the Deliverables is needed by Client in order to commercially use, exploit or replicate the Deliverables, the Client shall be granted, on written request and under a separate written agreement, a non-exclusive, royalty-bearing right of use solely in the Field of Use, insofar as Fraunhofer USA has no other contrary obligations. This request must be declared to Fraunhofer USA in writing no later than five (5) months after handover of the research and development result and Deliverables. All rights in the Services or Deliverables not expressly granted to Client in the Agreement are expressly reserved by Fraunhofer USA.

**3.2.11** The Client shall be granted a non-exclusive, non-transferable, non-licensable and royalty-free right to use copyrighted works, including software programmed by Fraunhofer USA, and know-how created by Fraunhofer USA during the performance of the project solely in the Field of Use for the purpose of application that the Agreement is based on.

**3.2.12** Subject to receipt of all payments due per the Agreement, and provided that Client is not in breach of the Agreement, and further subject to any Government Rights in Data that may arise from a government funded project, then upon written request of the Client, Fraunhofer USA shall if feasible negotiate the terms of a separate written license agreement, which will include, among other things, the Field of Use, the scope of any exclusive or non-exclusive license to any Background Intellectual Property or Foreground Intellectual Property (if requested by Client no later than two (2) months after being notified of the creation of Foreground Intellectual Property), the provision of royalty payments, and branding, as well as other applicable terms and conditions, insofar as Fraunhofer USA has no other contrary obligations, all of which will be negotiated in good faith by the Parties. In all events, Fraunhofer USA reserves a non-exclusive, royalty-free right to use any of its Background Intellectual Property and Foreground Intellectual Property for internal research and development purposes.

**3.2.13** Upon Fraunhofer USA's receipt of payment of all compensation and any reimbursable expenses that are due from Client under the Agreement, Fraunhofer USA will deliver the final Deliverable(s) to the Client.

**3.2.14** Fraunhofer USA shall make the decision to apply for intellectual property rights for the inventions generated during the performance of the Agreement, however, there is no obligation of Fraunhofer USA to apply for any

intellectual property rights. If Fraunhofer USA decides to file an application, Fraunhofer USA will apply for intellectual property rights for the relevant invention in its own name.

**3.2.15** If the Client has issued a licensing request pursuant to Section 3.2.12, Fraunhofer USA shall offer the Client the right to file an intellectual property rights application, at Client's expense, within a reasonable time after the licensing request, in the countries in which Fraunhofer USA has decided against filing an application.

**3.2.16** The Agreement will not preclude or limit Fraunhofer USA in any way from utilizing Fraunhofer USA's Intellectual Property or Know-How, or providing testing, analysis, or other development or research services of any kind or nature whatsoever to any third party so long as Fraunhofer USA does not use any of Client's Confidential Information or Client Materials in doing such work.

#### **4. Conflicting Intellectual Property Rights.**

**4.1** Unless otherwise expressly stated in the Agreement, Fraunhofer USA does not perform any patent research or research regarding conflicting intellectual property rights.

**4.2** The Parties shall inform each other of third-party intellectual property rights they become aware of before and during the performance of the project that could conflict with the agreed use pursuant to Section 3.2. Fraunhofer USA is not obliged to examine the potential infringement of such third-party intellectual property rights, unless otherwise expressly stated in the Agreement.

**4.3** The Parties shall mutually decide in what way such discovered intellectual property rights are to be taken into account in the further performance of the project.

**4.4** On learning of a claim involving Client's Intellectual Property or Client Materials, Client shall indemnify, defend, and hold harmless Fraunhofer USA and its officers, directors, employees, successors, and assigns against all claims, liabilities, costs, expenses, damages, deficiencies, losses or obligations of any kind or nature (including reasonable attorneys' fees and other costs and expenses of litigation), based on, arising out of or resulting from: (i) the content, accuracy, completeness, consistency, facilitation, use, or provision of all Client Materials supplied to Fraunhofer USA; or (ii) any third party claim, suit, action, or proceeding related to or arising out of or resulting from Client's infringement or violation of any third party's intellectual property rights, except to the extent that infringement or violation is directly caused due to Fraunhofer USA's Background Intellectual Property. Client shall control the defense and/or settlement of any such claim without additional cost to Fraunhofer USA, other than the expenditure of a reasonable amount of time assisting Client with such defense or settlement.

#### **5. Representations; Warranty; Remedies.**

**5.1** Fraunhofer USA warrants that it will perform the Services in accordance with the specifications set forth in the Statement of Work associated with the Agreement, (the "Specifications"), the Services will be performed in a competent, professional, and timely manner by qualified individuals in accordance with professional and industry standards. While Fraunhofer USA will use commercially reasonable efforts to perform the intended Services and deliver the Deliverables, the nature of scientific research is such that Fraunhofer USA cannot assure Client that the Services and/or Deliverables will achieve the intended result.

**5.2** THERE ARE NO EXPRESS WARRANTIES OTHER THAN THOSE LISTED AND DESCRIBED ABOVE, AND FRAUNHOFER USA DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NO OTHER EXPRESS WARRANTY OR GUARANTY GIVEN BY ANY PERSON, WITH RESPECT TO THE DELIVERABLES SHALL BE BINDING ON FRAUNHOFER USA. ALL OF FRAUNHOFER USA'S WARRANTIES EXPIRE SIX (6) MONTHS AFTER THE DATE THAT THE DELIVERABLES ARE DELIVERED TO CLIENT. EXCEPT AS STATED IN THIS SECTION, CLIENT BEARS ALL RISKS ASSOCIATED WITH ITS USE OF THE DELIVERABLES. CLIENT waives its right to rely on any such implied warranties, acknowledges that the limited remedies set forth in this Warranty are CLIENT's sole and exclusive remedies, and agrees to comply with the terms of this Warranty. THIS SECTION SHALL SURVIVE ANY TERMINATION OR EXPIRATION OF THE AGREEMENT FOR ANY REASON.

#### **6. Limitation of Liability.**

**6.1** The liability of Fraunhofer USA, all of Fraunhofer USA's affiliated organizations and of Fraunhofer USA's (and its affiliates') directors, officers, employees and agents, for claims arising out of any act or omission of Fraunhofer USA under the Agreement shall be limited to the lesser of \$1 Million or the amounts actually paid by Client to Fraunhofer USA under the Agreement during the 12-month period preceding the events which gave rise to the claim. Client must give Fraunhofer USA written notice of any claim for damages no later than six (6) months after the delivery of the Deliverables by Fraunhofer USA or its affiliates to Client or those claims shall be forever barred.

**6.2** NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL EXEMPLARY OR PUNITIVE DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING, WITHOUT LIMITATION, LOST GOODWILL, LOST PROFITS, WORK STOPPAGE, IMPAIRMENT OF OTHER GOODS OR INTELLECTUAL PROPERTY RIGHTS, AND WHETHER ARISING OUT OF BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGE OR IF SUCH DAMAGE COULD HAVE BEEN REASONABLY FORESEEN. IN NO EVENT WILL FRAUNHOFER USA BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE DELIVERABLES OR SERVICES BY CLIENT. THESE LIMITATIONS SHALL APPLY TO ALL CAUSES OF ACTION INDIVIDUALLY AND IN THE AGGREGATE.

**6.3** Each of the Parties shall take appropriate and reasonable steps to minimize any damages, and shall be responsible for personal injury or property damage caused by the willful or negligent actions of its officers, employees, agents or representatives. Each of the Parties waives any right that it has to indemnification or contribution from the other Party in the event of such damage or personal injury.

**6.4 Insurance:** The Parties will each maintain at all times during the term of this Agreement reasonable levels of insurance coverage for comprehensive general liability and product liability to cover the activities, risks, and potential omissions associated with the performance of the Services by Fraunhofer USA and with Client's use of the Deliverables and as required by law. Both Parties will also maintain workers compensation, employer's liability insurance, or the equivalent, as applicable, and such other insurance coverage as is customary and prudent for similarly situated companies. Copies of each Party's Certificate of Insurance will be provided upon reasonable demand. If either Party is self-insured, then it will provide a certification of its self-insurance program with coverage similar to that stated above.

**7. Product Liability.** Client is solely responsible for assuring that all Services and/or Deliverables are safely used or incorporated into any product produced or service performed by Client or its affiliates or subcontractors. Client will indemnify, defend and hold Fraunhofer USA, its officers, employees, and affiliates harmless from any liability for property damage, personal injury, or death that results from (a) the use by any person of any product produced or sold by Client, or (b) acts or performance of services by any Client personnel.

**8. Nondisclosure.**

**8.1** In the event that the Parties have not executed a nondisclosure agreement related to the Agreement, then for so long as Fraunhofer USA is performing Services for Client under the Agreement and for an additional five (5) years after the delivery of the Deliverables to Client or termination of the Agreement, whichever is later, both Parties shall maintain the confidentiality of and neither Party shall disclose any Confidential Information received by it from the other Party. The Receiving Party will not disclose, use, or copy such Confidential Information, except as required for the performance of the Agreement, and will take all reasonable precautions to prevent any unauthorized disclosure, use, or copying. The Receiving Party shall not reverse engineer, disassemble or decompile any products, prototypes, software, or tangible objects that embody Confidential Information. To the extent such Confidential Information constitutes a trade secret under applicable law, the Receiving Party's obligations of confidentiality and nondisclosure with respect to that information shall continue indefinitely for so long as such information remains a trade secret.

**8.2** Unless excluded by Section 8.3, "Confidential Information" is defined as any confidential or proprietary technical or business information furnished by one Party (the "Disclosing Party") to the other Party (the "Receiving Party") in connection with the Agreement. Such Confidential Information may be conveyed in written, graphic, oral, visual, or physical form and may include, without limitation, patents, patent applications, inventions, inventor's rights, copyrights, utility models, industrial or other designs, trade secrets, mask works, scientific knowledge, know-how, show-how, processes, procedures, formulae, products, drawings, materials, apparatus, methods, customer or supplier specifications or requirements, computer and other data, technical documentation or specifications, plans, records, test results, information, permissions, licenses and approvals, telephone numbers, e-mail addresses and names, techniques, business operations, financial information (including pricing and costing), customer and/or supplier information, distribution information, computer software or other data, plans or other records and information.

**8.3** Each Party acknowledges that Confidential Information excludes such information that: (a) is in the public domain at the time of its disclosure by the Disclosing Party (customer names and identities of contacts shall not be considered public domain information); (b) is already in the possession of the Receiving Party through legal and lawful means on the date of the disclosure by the Disclosing Party, free of any non-disclosure restrictions; (c) the Receiving Party can demonstrate through documentation was obtained independent of its disclosure by the Disclosing Party, free of non-disclosure restrictions; or (d) is independently developed by the Receiving Party without use of any Confidential Information disclosed by the Disclosing Party.

**8.4** On the termination or expiration of the Agreement, the Receiving Party will return, or destroy and certify the destruction of, the Disclosing Party's Confidential Information.

**8.5** In the event the Parties execute a separate nondisclosure agreement that applies to the Agreement, then to the extent that this Section and any such other agreement are inconsistent, the terms of that separate nondisclosure

agreement shall control.

**9. Client Obligations.**

**9.1** The Client shall use all reasonable efforts to provide all information to Fraunhofer USA that is necessary for Fraunhofer USA's provision of the Services. Such information shall include, but not necessarily be limited to, that pertaining to the specifications for the Services and the Deliverables, as stated in the Agreement.

**9.2** In the event that Fraunhofer USA requires the decision, approval, or consent from the Client, or needs any licenses or any necessary permissions from any third party(ies) in order to continue with the provision of the Services or Deliverables or any part thereof at any time, the Client shall provide the same in a reasonable and timely manner.

**9.3** If the nature of the Services requires that Fraunhofer USA has access to the Client's premises or any other location, access to which is lawfully controlled by the Client, the Client shall ensure that Fraunhofer USA has access to the same at the times to be agreed between Fraunhofer USA and the Client or as otherwise required for performance of the Services.

**10. Termination; Effects of Termination.**

**10.1** Either Party may immediately terminate the Agreement: (i) for cause by providing written notice of default to the defaulting Party describing such default in reasonable detail, and the defaulting Party fails to cure or fails to take immediate steps to cure such default within ten (10) business days of receipt of such notice; or (ii) upon thirty (30) days prior written notice under all other circumstances. Fraunhofer USA may suspend performance of the Services without terminating the Agreement, if Client defaults in (A) making any payment due to Fraunhofer USA or (B) in providing Fraunhofer USA with any information or support required by the Agreement.

**10.2** Except for terminations of the Agreement for cause or as otherwise specified in the notice of termination, termination of the Agreement will not affect any Purchase Orders or Statements of Work that have been issued prior to the Termination Notice and the Agreement will remain in effect until all such work is completed.

**10.3** Upon any termination of the Agreement per Section 10.1(ii), in exchange for receipt of payment by Client to Fraunhofer USA of all outstanding invoices as well as Fraunhofer USA's final invoice for the services performed by Fraunhofer USA and reimbursement of expenses incurred by Fraunhofer USA, in each case, through the date of termination, including any expenses attributable to periods following the date of termination that cannot be cancelled upon the termination of this Agreement, Fraunhofer USA shall deliver to Client the Deliverables, as they exist on the effective date of termination. Client shall pay Fraunhofer USA's final invoice(s) for services performed and expenses incurred on net thirty (30) day terms. In addition, all sections which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect; and termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement which exist at or before the date of termination.

**11. Michigan Law.** The Agreement and any dispute that may arise out of or relate to the Agreement shall be governed by and interpreted in accordance with the substantive laws of the State of Michigan law, without giving effect to Michigan's conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Products shall not apply to this Agreement.

**12. Force Majeure.** No Party to the Agreement will be liable for any failure or delay in performing their obligations (other than payment obligations) where such failure or delay by a Party is the results of an Act of God, Federal, State, or local governmental orders or regulations, epidemics or pandemics, National Emergencies, severe weather (tornado, hurricane, flood), civil disturbance, acts of terrorism, national strikes, delivery delays by suppliers and other events that are outside the control of that Party (each, a "Force Majeure Event"). Upon the occurrence of a Force Majeure Event, the affected Party will provide reasonable notice of the Force Majeure event, and if known, its duration, and the Parties shall negotiate in good faith written amendments to the Agreement, Purchase Order, or Agreement that take into account the effects of that Force Majeure Event on the Parties' ability to perform their respective duties under the Agreement. In any such event, Fraunhofer USA reserves the right to allocate available materials covered by the Agreement among its customers, including Client.

**13. Dispute Resolution: Arbitration.**

**13.1** Except for actions for injunctive relief, as set forth below in Section 13.3, the Parties will attempt to resolve any disputes through friendly negotiations, but in the event that the Parties cannot resolve a dispute within thirty (30) days of referral of such dispute, then either Party may refer the matter to arbitration.

**13.2** Subject to Section 13.3 below, any controversy or claim arising out of or relating to the Agreement, or

the breach thereof, shall be resolved by the American Arbitration Association (AAA) pursuant to its Rules of Commercial Arbitration then in effect, by a sole arbitrator mutually appointed by the Parties per the rules of the AAA, unless the Parties agree to a panel of three (3) arbitrators within ten (10) business days of submission of the dispute to AAA. Such Rules are hereby deemed incorporated into the Agreement. The ruling of the arbitrator(s) shall be final and binding on both Parties. The award of the arbitrator may be entered in and enforced by any court having jurisdiction thereof. Each Party shall pay its own costs and attorney fees. Arbitration shall occur at the AAA offices in Novi, Michigan.

**13.3** The Parties acknowledge that irreparable injury may result to the nonbreaching Party as a consequence of a breach of the Agreement, may not be adequately compensated by damages, and that in the event of a breach or threat of breach by the breaching Party of any of the provisions of the Agreement, the nonbreaching Party shall be entitled, in addition to other remedies and damages available, to seek an injunction, without posting of a bond, which may be brought at any time before a court of competent jurisdiction, to restrain the violations thereof by the breaching Party and all persons acting for and/or with the breaching Party, including attorney fees and court costs.

**14. Compliance with Law.** The Parties shall comply with all federal, state and local laws and regulations that apply to their respective obligations under the Agreement, including without limitation, the US Foreign Corrupt Practices Act (the "FCPA) and all US export control and ITAR laws and regulations, including the Arms Export Control Act, 22 U.S.C. 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq.; and the Export Administration Act, 50 U.S.C. app. 2401-2420, including the Export Administration Regulations, 15 C.F.R. 730-774 (collectively, "Export Control Laws"). Without limiting the foregoing, the Parties also agree that they will not transfer any U.S. export controlled item, data, information, Proprietary Information, or services, to include transfer to foreign persons employed by or associated with, or under Agreement to either Party or either Party's lower-tier subcontractors, without the authority of an export license, agreement, or applicable exemption or exception. Without limiting the generality of the foregoing, Client shall comply with or adopt written policies requiring compliance with the FCPA and Export Control laws, and Client shall cooperate with Fraunhofer USA in responding to any audits regarding such compliance.

**15. Publications; Advertising.**

**15.1 Advertising:** Each of the Parties agrees that before it makes any public statement, or creates, publishes or posts any such information during the term of the Agreement and for twelve (12) months thereafter, on any media or electronic platform, accessible by third parties or the public, the statement must first be reviewed and approved by an officer of the other Party before it is released or made public. The restriction on public disclosures shall not apply to general descriptions associated with the research being performed. Parties may disclose generic information about the research that does not include Confidential Information without the permission of the other Party. Each Party will adhere to the other Party's branding and marketing requirements when describing the organization or logo usage for any purpose. Client may use Fraunhofer USA's name only with Fraunhofer USA's prior written consent and Fraunhofer USA may use Client's name only with Client's prior written consent.

**15.2 Scholarly Publications:** Fraunhofer USA may publish articles or other materials that incorporate aspects of its research and development services for Client, provided that no such publication shall include Client's name or any Client Confidential Information or Client's proprietary information without Client's prior written consent. Client may publish the proprietary results of Fraunhofer USA's research and development services for Client, provided that such publication does not include any Fraunhofer USA Confidential Information without Fraunhofer USA's prior written consent. Each Party agrees to provide the other Party with two (2) weeks notification prior to submission for publication of any materials that include descriptions of the Services or the Deliverables. Either Party shall have this two (2) week period to review and comment on the material proposed for publication, unless publication deadline requires a shorter review period. Authorization shall be deemed to have been provided unless the receiving party expressly objects to the publication in writing within that two (2) week period.

**16. Notices.**

Any notice or other communication by one Party to the other hereunder shall be in writing and shall be given, and be deemed to have been given, if either hand delivered or mailed, postage prepaid, certified mail (return receipt requested), or transmitted via email (read receipt verified), addressed as follows:

If to **Client** to the person and address set forth in the Agreement.

If to **Fraunhofer USA:**

The person(s) who signs the Agreement at the address set forth in the Agreement, with a copy of any legal notices to:

Laurie Fuciarelli  
Grants and Contracts Manager  
Fraunhofer USA, Inc.  
44792 Helm St., Plymouth, MI 48170  
Email: lfuciarelli@fraunhofer.org

**17. Non-Solicitation of Employees.** Neither Party shall solicit, whether directly or indirectly, for employment or employ any employee of the other Party who performed services on behalf of either Party in connection with, or was otherwise involved in, the Agreement or a project assignment associated with the Agreement, during the term of the Agreement and for a period of one (1) year after the termination of the Agreement, without the express written permission of the other Party. This provision shall not restrict general advertisements of employment or the rights of any employee of one Party, on that employee's own initiative, or in response to general advertisements, to seek employment from the other Party and under such circumstances, for the other Party to hire such employee.

**18. Entire Agreement; General Terms and Conditions.**

**18.1** The documents that comprise the Agreement, including any separate non-disclosure agreement entered into between the Parties, represent the entire understanding of the Parties with regard to Fraunhofer USA's research and development services for Client. They supersede all prior oral or written negotiations and agreements between the Parties relating to the Services and Deliverables, including any inconsistent pre-printed terms set forth in any Purchase Order.

**18.2** The Agreement is expressly limited to the terms of the Agreement, including its attachments and these Terms, as agreed to by the Parties. Acceptance of a Purchase Order does not constitute an acceptance by Fraunhofer USA of any contrary or additional terms contained in any Purchase Order or other document furnished by Client that are contradictory to the Terms, the Proposal, including any Statement of Work contained in or attached to the Proposal or separately agreed upon by the Parties, and any such contrary or additional terms are rejected by Fraunhofer USA.

**18.3** The Parties' agreement may only be modified in a writing signed by an authorized representative of each Party.

**18.4** Any of the documents referenced herein may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of the Agreement delivered by facsimile, e-mail, or other means of electronic transmission (to which a PDF copy is attached) shall be deemed to have the same legal effect as delivery of an original signed copy of the Agreement.

**18.5** No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.

**18.6** The Agreement shall be personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-license or otherwise delegate any of its rights thereunder, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of the other Party, such consent not to be unreasonably withheld.

**18.7** Notwithstanding Section 18.6, Fraunhofer USA shall be entitled to perform any of the obligations undertaken by it through suitably qualified and skilled sub-contractors and affiliates. Any act or omission of such other member or sub-contractor shall, for the purposes of the Agreement, not be deemed to be an act or omission of Fraunhofer USA.

**18.8** The Agreement and all documents relating thereto, including, without limitation, any consents, waivers and modifications which may hereafter be executed may be reproduced by any photographic, photostatic, or other similar process (including .pdf) and the Party reproducing the document may destroy any original document so reproduced. Fraunhofer USA and Client agree and stipulate that any such reproduction will be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business) and that any enlargement, facsimile or further reproduction of such reproduction will likewise be admissible in evidence.

**18.9** In the event that any provision of the Agreement is held to be invalid, unenforceable or illegal by a court of competent jurisdiction, such determination will not affect the validity, enforceability or legality of any other provision of the Agreement and the provision in question shall be modified to the smallest extent required to make it legal, valid and enforceable.