**North Dakota State University**

**College of Engineering**

**Engineering Activities Master Agreement**

The parties to this Agreement (as defined herein) hereby agree as follows:

1. **Agreement, Order, and Quote.** This Agreement (hereinafter “Agreement”) effective this date of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter “Effective Date”), is made by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ having its principal place of business located at\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (hereinafter “Client”), and North Dakota State University, a non-profit, tax-exempt, educational institution organized and existing under the Constitution and other laws of the state of North Dakota having its principal place of business located at 1735 NDSU Research Park Drive, P.O. Box 5756, Fargo, North Dakota 58105-5756 (hereinafter “NDSU”), collectively referred to as party or parties, whether singular or plural. The term of this Agreement shall be one (1) year from the Effective Date (hereinafter “Term”). Any quotation(s), statements of work, activity request or such written document issued by NDSU (hereinafter, whether used in the singular or plural, “Quote”) and purchase order or any other order or request for NDSU engineering activities that is issued by Client (hereinafter, whether used in the singular or plural, “Order”), pursuant to and under this Agreement during the Term is/are hereby incorporated into this Agreement and made part of this Agreement. The sole purpose and intent of this Agreement (and any Quote or Order) is for NDSU to perform certain engineering activities associated with the design, development, testing or delivery to Client only those prototype(s), component(s), or assembly/assemblies specified in the Quote or Order that do not contain or involve any inventions of NDSU or any other intellectual property of NDSU (hereinafter, whether used in the singular or plural, “Product”) unless it has been licensed from NDSU. Any Quote issued by NDSU is valid only for a period of thirty (30) days commencing from the date specified on the Quote.
2. **Acceptance of Agreement and Order.** This Agreement and any Order are subject to acceptance by NDSU. This Agreement and any Order are contingent upon availability of any materials from any of those NDSU suppliers that is/are needed to perform the work for Client under this Agreement and specified in Order. This Agreement contains all terms and conditions associated with the engineering activities to be performed by NDSU for Client pursuant to the Quote or Order and supersedes any terms and conditions of the Client. No additional or different terms and conditions shall be in force or effect unless NDSU expressly agrees in writing to such additional or different terms and conditions. Written purchase order acknowledgments or any other written documents or any verbal acknowledgements from NDSU will not be deemed to be an express written agreement which would amend or change this Agreement or any Quote or Order subject to and under this Agreement.
3. **Prices.** Prices are FOB NDSU, exclusive of all packaging and shipping costs unless otherwise stated in this Agreement, Quote or Order.
4. **Compensation and Payment Terms.** For the Product, and related capabilities and activities rendered therein, Client shall pay NDSU as follows: For orders in excess of $1,000 U.S., monthly invoices will be issued by NDSU to Client for prompt payment. At the completion of the work, a final invoice will be issued by NDSU. Terms are net 30 days of the invoice date and all payments shall be promptly rendered to NDSU.
5. **Returns.** Unless NDSU expressly agrees in writing to such additional or different terms and conditions, returns are not allowed or accepted by NDSU unless the Product(s) delivered by NDSU is nonconforming to the specification(s) jointly established and agreed to by the parties. NDSU reserves the right to charge Client for any costs associated with the handling of any returned goods.
6. **General Warranties.** NDSU warrants only that those Product(s) delivered by NDSU and provided to Client under this Agreement are free of any security interest or other lien and will make available to Client, to the extent NDSU is legally able to do so, all transferable warranties made to NDSU by the manufacturer of those goods contained in that Product made by NDSU. The Product provided to Client by NDSU is provided to Client “**AS IS**”. **NDSU MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES AND SPECIFICALLY MAKES NO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY INTENDED OR PARTICULAR PURPOSE**.
7. **Taxes.** Prices specified in Quote or Order are net of any sales, excise and any other government charge(s) payable by NDSU now or hereafter imposed upon production, manufacture, transportation or delivery thereof. Client agrees to reimburse NDSU for any tax or other charge(s), or to provide NDSU with an acceptable tax exemption certificate.
8. **Time of Delivery.** NDSU is not responsible for any delays in delivery if caused by any legislative, administrative or executive law, order or requisition or requirement of the Federal Government or any State or Municipal Government or any subdivision, department, agency, officer or official thereof, or if caused by, strike, fire, floods, accidents, terrorism, delays of carrier, force majeure, inability to obtain suitable and sufficient labor, and necessary supplies of any raw materials or any other materials, or other unavoidable contingencies. Any shipment or delivery dates are based on the best estimates of suppliers provided to NDSU. In no case shall NDSU be liable for any consequential, direct, indirect, incidental, exemplary or any special damages whatsoever arising from any delay in delivery.
9. **Client’s Requirements.** Any material, labor, tooling or equipment included in any Quote or Order pursuant to this Agreement are based on NDSU’s interpretation of Client’s requirements and are subject to verification performed by Client or Client’s representative at Client’s sole expense and responsibility.
10. **Limitation of Liability.** Client’s remedies for any defects in the Product provided by NDSU to Client are subject to any limitations contained in any of the NDSU supplier’s terms and conditions to NDSU. In addition, NDSU shall not be responsible for any property damages, bodily injury, or any fatality as a result of inherent design or manufacturing workmanship deficiencies of Client’s design or specifications; inclusive of any authorized design or manufacturing deviations made by of NDSU. NDSU’s sole and only liability shall be limited to either repair or replacement of the components or assemblies or refund of the purchase price all at NDSU’s sole discretion and option. **IN NO EVENT SHALL NDSU HAVE ANY LIABILITY HEREUNDER FOR ANY PERSONAL INJURY OR PROPERTY DAMAGES (EXCEPT TO THE EXTENT CAUSED BY NDSU’S INTENTIONAL, WILFUL, OR WANTON ACTS), LOST PROFITS, WORK DELAYS, LOSS OF DATA, OR FOR ANY OTHER INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARISING IN ANY WAY OUT OF THIS AGREEMENT UNDER ANY CAUSE OF ACTION.**
11. **Shipping.** Client assumes sole responsibility for any loss in transit from NDSU to Client. Subject to Section 4 of this Agreement, Client must first authorize NDSU in writing to ship or deliver any Product to Client. Client shall be responsible for arranging for any loss-in-transit insurance at Client’s sole expense. Claims for any shortages, other than loss-in-transit, must be made in writing to NDSU within five (5) days of receipt of any such shipment.
12. **Termination.** If Client fails to comply with the terms and conditions herein or if Client’s credit becomes unsatisfactory to NDSU, NDSU reserves the right to immediately terminate this Agreement and any Quote or Order upon notice to Client without any liability whatsoever. In such case, Client shall be responsible for all reasonable termination charges. Termination charges shall include, but shall not be limited to, full price for any completed Product required to fill open Orders, charges related to any and all materials ordered to meet any Quotes, any forecasts within supplier lead times, labor and materials relating to any work in progress, vendor or supplier cancellation and restocking charges, (if any), and a reasonable fee for providing such Product to Client. Except for the foregoing right of NDSU to immediately terminate, either party may terminate this Agreement for any reason upon thirty (30) days prior written notice to the other party; however, upon any such termination, Client shall promptly pay NDSU for all reasonable termination charges, as specified above, up to and including the date of termination.
13. **Waiver.** The failure of NDSU to insist upon the performance of any of the terms or conditions of this contract or to exercise any right thereunder shall not be deemed to be a waiver of such terms, conditions or rights in the future, nor shall it be deemed to be a waiver of any other term, condition, or right under this contract.
14. **No NDSU Endorsements.** In no event shall Client (or any of its successors, employees, agents, consultants, and/or contractors) state or imply in any publication, advertisement, or other medium that NDSU has provided, approved, endorsed, or tested any product or activity. In no event shall NDSU’s performance under this Agreement be considered a test of the effectiveness or the basis of any endorsement of any Product provided by NDSU.
15. **Use of Name or Logo.** NDSU and Client agrees not to use the other party’s name, logo, or any other marks (including, but not limited to, colors and music) owned by or associated with NDSU or the Client or the name of any representative of NDSU in any sales promotion work or advertising, or any form of publicity, without the prior written permission of NDSU in each and every instance.
16. **Intellectual Property Rights.** The following terms and conditions apply in all circumstances:

**a) Transfer of Title.**  Pursuant to policies of the North Dakota State Board of Higher Education and NDSU, NDSU or the NDSU Research Foundation shall not transfer or give any title of, or title to, any NDSU’s or the NDSU Research Foundation’s intellectual property, including but not limited to, any Product or any other prototype(s), component(s), or assembly/assemblies that contain or involve inventions or other intellectual property of NDSU.

**b) Intellectual Property Rights of Client.** This Agreement is not an agreement for Client-funded, sponsored research by NDSU. Any agreements concerning Client-funded, sponsored research shall be separate and apart from this Agreement, and any and all sponsored research agreements must be agreed to and approved by NDSU’s Office of Sponsored Programs Administration. Any such sponsored research agreement(s) shall specify the intellectual property terms and conditions associated with sponsored research performed by NDSU with funding, in part or whole, by Client including any and all intellectual property rights, and such sponsored research agreements may supersede this Agreement.

**c) Delivery.** Development or delivery of Product by NDSU to Client under this Agreement shall not transfer or give any license or any other right to the Client to use, make, sell, or have made or offer for sale, any inventions or other intellectual property of NDSU.

1. **Tooling Ownership.** Tooling which is solely and directly paid by Client and provided to NDSU by Client for Product under this Agreement shall be the property of the Client. NDSU shall only be responsible for those routine preventive maintenance expenses necessary to maintain such tooling provided by Client to NDSU during the time of NDSU’s use of such tooling pursuant to this Agreement and Order. Client shall be responsible for repair and/or replacement of tooling as requested by NDSU. Any tooling which is not solely and directly paid by Client shall be the sole property of NDSU, and NDSU shall retain sole title to any such tooling.
2. **Patent Infringement.** NDSU does not warrant its Product, or any tests results thereof to be free of any patent infringement, and Client takes said Product “**AS IS**”.
3. **Export Controls.** It is understood by the parties that NDSU is subject to United States laws and regulations controlling the export of technical data, computer software, prototypes, and other commodities (including the Arms Export Control Act, as amended and the Export Administration Act of 1979), and that its obligations hereunder are contingent on compliance with applicable United States export laws and regulations. The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States Government and written assurances by Client that Client shall not export data or commodities to certain foreign countries without prior approval of such agency. NDSU neither represents that a license shall not be required nor that, if required, it shall be issued.
4. **Governing Law.** This Agreement shall be interpreted, construed, and enforced in all respects in accordance with the laws in force under the State of North Dakota, United States of America, and Client consents to the courts of North Dakota as the EXCLUSIVE AND SOLE COURTS with jurisdiction and authority to resolve any disputes over the Agreement, its implementation, or enforcement save and except that question affecting the construction and effect of any patent shall be determined by the law of the country in which the patent is granted. .
5. **Amendment.** This Agreement and any Order hereunder shall be amended only in writing duly executed by all of the parties to this Agreement.
6. **Assignment.** This Agreement and any Order may not be assigned by either party without the prior written consent of the other party.
7. **Notices.**  Legal notices hereunder shall be given by registered or certified mail, or express delivery service, postage or delivery charge prepaid, and addressed to the party to receive such notice, invoice, or communication at the address given below, or such other address as may hereafter be designated by notice in writing. Notice shall be deemed made on the date of receipt:

**If to Client:**

Company Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Company address:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

City\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, State\_\_\_\_\_\_ ZipCode \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Tel: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Fax: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**If to NDSU:**

If to NDSU and relating to intellectual property, licensing, technology transfer and other related items:

North Dakota State University

Office of Technology Transfer

1735 NDSU Research Park Drive, Room 124

Fargo, North Dakota 58105 USA

Tel: 701-231-6659 Fax: 701-231-6661

Email: *joycelyn.lucke@ndsu.edu*

**If to NDSU relating to administrative items related to this Agreement:**

North Dakota State University

College of Engineering

1401 Centennial Blvd

Fargo, North Dakota 58105 USA

Tel: 701-231-7525 Fax: 701-231-8957

Email: *Alan.Kallmeyer@ndsu.edu*

**24) Independent Contractor.** In the performance of all research hereunder, NDSU shall be deemed to be and shall be an independent contractor and, as such, NDSU shall not be entitled to any benefits applicable to employees of Client. In the performance of all research contemplated hereunder, Client shall be deemed to be an independent contractor and, as such, Client shall not be entitled to any benefits applicable to employees of NDSU. Neither party is authorized or empowered to act as agent for the other for any purpose and shall not on behalf of the other enter into any agreement, warranty, or representation as to any matter. Neither party shall be bound to the acts or conduct of the other party.

**IN WITNESS WHEREOF,** the parties have entered into the Agreement:

|  |  |  |
| --- | --- | --- |
| **FOR: CLIENT:** |  | **FOR: NDSU:** |
| **Signature** I have read, understand, and agree to abide by the terms and conditions of this Agreement |  | **Alan Kallmeyer, Professor and Interim Dean,** **College of Engineering**I have read, understand, and agree to abide by the terms and conditions of this Agreement |
|  |  |  |
| **Name** |  | Date |
|  |  | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| **Title** |  | **Chad Ulven, Professor and Interim Chair,****Mechanical Engineering Department** |
|  |  | I have read, understand, and agree to abide by the terms  |
| **Date** |  | and conditions of this Agreement\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

Date