1. SERVICES & DELIVERABLES. Seller agrees to provide to Microfab, Inc. herein designated as the Company (or its subsidiaries, if such subsidiaries are designated as the contracting party for delivery of the Goods referred to in this Agreement), the following services or goods ("Goods"), described in any purchase order, in accordance with these Terms and Conditions ("Agreement"). Upon acceptance of a purchase order, shipment of Goods or commencement of a Service, Seller shall be bound by the provisions of this Agreement, including all provisions set forth on the face of any applicable purchase order, whether Seller acknowledges or otherwise signs this Agreement or the purchase order, unless Seller objects to such terms in writing prior to shipping Goods or commencing Services.

This writing does not constitute a firm offer, and may be revoked at any time prior to acceptance. This Agreement may not be added to, modified, superseded, or otherwise altered, except by agreement in writing, signed by an authorized representative of Company and Seller. Any terms or conditions contained in any acknowledgment, invoice, or other communication of Seller, which are in conflict with the terms and conditions herein, are hereby rejected. To the extent that this Agreement might be treated as an acceptance of Seller’s prior offer, such acceptance is expressly made on condition of receipt by Seller to the terms hereof and shipment of the Goods for the price set forth herein, and that Seller shall be bound by the terms and conditions herein, to prepare, by the order date, sufficient packages to accommodate the quantity of the Goods ordered herein. If Seller hereby reserves the right to reschedule any delivery or cancel any purchase order issued at any time prior to shipment of the Goods or prior to commencement of any Services. COMPANY shall not be subject to any changes or other fees as a result of such cancellation.

2. DELIVERY. Time of is of the essence. Delivery of Goods and Services shall be made pursuant to the schedule, via the carrier, and to the place specified on the face of the applicable purchase order. COMPANY reserves the right to return, shipping charges collect, all Goods received in advance of the delivery schedule. If no delivery schedule is specified, the order shall be filled in order and delivery will be made by the most expeditious form of transportation. If no method of shipment is specified in the purchase order, Seller shall use the least expensive carrier. In the event Seller fails to deliver the Goods or Services within the time specified herein, COMPANY may, at its option, make performance by any other means or at any time or place, and may exercise such performance as a substitute for Seller's performance or at Seller's expense, and COMPANY may demand its allocable fair share of Seller's available Goods and terminate the balance of the Agreement. Seller shall package all items in suitable containers to permit safe transportation and handling. The Goods must be in good condition, free of trade marks, legends, and other markings not authorized by COMPANY. COMPANY reserves the right to reject such delivery or to refuse to accept the Goods. If the Goods are not in good condition, they will be returned to Seller at Seller's expense. If the Seller fails to make or complete such delivery or to perform in accordance with the provisions of this Agreement, the Goods shall become the property of COMPANY and Company reserves the right to reschedule any delivery or cancel any purchase order issued at any time prior to shipment of the Goods or prior to commencement of any Services. COMPANY shall not be subject to any changes to its terms or conditions as a result of such cancellation.

3. IDENTIFICATION, RISK OF LOSS, & DESTRUCTION OF GOODS. Seller assumes all risk of loss until receipt by COMPANY. Title to the Goods shall pass to COMPANY upon receipt by COMPANY of all of the Goods at the designated location. If the Goods ordered are destroyed prior to title passing to COMPANY, COMPANY may at its option cancel the Agreement or require delivery of substitute Goods of equal quality and quantity. Such delivery will be made as soon as commercially practicable. If loss of Goods is partial, COMPANY shall have the right to require delivery of the Goods not destroyed.

4. PAYMENT. As full consideration for the performance of the Services, delivery of the Goods and the assignment of rights to COMPANY as provided herein, COMPANY shall pay Seller (i) the amount agreed upon and specified in the applicable purchase order, or (ii) Seller's quoted price on deliverable items (short of Goods), or (iii) the agreed upon price for Services, whichever is lower. Applicable taxes and other charges such as shipping costs, duties, custom, tariffs, imposts, and government imposed surcharges shall be stated separately on Seller's invoice. Payment is made when COMPANY's check is mailed. Payment shall not constitute acceptance. All personal property taxes assessable upon the Goods prior to receipt by COMPANY of Goods conforming to the purchase order shall be borne by Seller. Seller shall invoice COMPANY for all Goods delivered and all Services actually performed. Each invoice submitted by Seller must be provided to COMPANY within thirty (30) days of completion of the Services. Failure to provide an applicable purchase order with the invoice will void the invoice. COMPANY reserves the right to return all incorrect invoices. Seller will receive no royalty or other remuneration on the production or distribution of any products developed by COMPANY or Seller in connection with or based on the Goods or Services provided.

5. WARRANTIES.

5.1 Services: Seller represents and warrants that all Services shall be completed in a professional manner and in accordance with all applicable specifications and requirements of all applicable Federal, State, local, municipal, and other governmental laws and regulations, including all applicable labor laws and regulations. Seller represents and warrants that the performance of Services under this Agreement will not conflict with, or be prohibited in any way, by any other agreement or statutory restriction to which Seller is bound.

5.2 Goods: Seller warrants that all Goods provided will be new and will not be used or refurbished. Seller warrants that all Goods delivered shall be free from defects in materials and workmanship and shall conform to all applicable specifications and requirements of a good faith basis, on a monthly basis within twenty-four (24) months from the date of delivery to COMPANY or for the period provided in Seller’s standard warranty covering the Goods, whichever is longer. Additionally, Goods purchased shall be subject to all applicable laws and orders of the federal government. If and to the extent any federal or state law or order has the effect of limiting the time limitation for warranties, the Seller shall, to the extent permitted by law, be construed as conditions as well as warranties and shall not be exclusive. Seller shall furnish COMPANY with a copy of Seller’s standard warranty and service guarantee applicable to the Goods. All warranties and service guarantees shall be both to COMPANY and Seller’s customers. If COMPANY identifies a warranty problem with the Goods during the warranty period, COMPANY shall promptly notify Seller of such problem and return the Goods to Seller at Seller’s expense. Within five (5) business days of receipt of the returned Goods, Seller shall, at COMPANY’s option, either repair or replace such Goods, or credit COMPANY’s account for the cost of such Service and repair. All Goods guaranteed by this Agreement are warranted for the remainder of the warranty period or six (6) months, whichever is longer.

6. INSPECTION. COMPANY shall have a reasonable time after receipt of Goods or Services to inspect such Goods or Services and to return to Seller at Seller’s expense and before payment to inspect them, and the failure hereunder shall not be deemed accepted until COMPANY has run an adequate test to determine whether the Goods and Services conform to the specifications hereof. If any portion of the Goods for the purpose of testing shall not constitute an acceptance of the Goods. If performance tendered does not wholly conform with the provisions hereof, COMPANY shall have the right to reject such performance. Nonconforming to Goods will be returned to Seller freight collect and risk of loss will pass to Seller upon COMPANY’s delivery to the common carrier.

7. INDEPENDENT CONTRACTOR. COMPANY is interested only in the results obtained under this Agreement; the manner and means of achieving the results are subject to Seller’s sole control. No agent or employee of COMPANY, nor any authorized representative of COMPANY, is given the authority to bind COMPANY by contract or otherwise. Neither Seller nor its employees, agents or contractors ("Seller’s Agents") are agents or employees of COMPANY, and therefore are not entitled to any employee benefits of COMPANY, including but not limited to, any type of insurance. Seller shall be responsible for all costs and expenses incurred to perform its obligations under this Agreement and shall provide Seller’s own supplies and equipment.

8. SELLER RESPONSIBLE FOR TAXES AND RECORDS. Seller shall be solely responsible for filing the appropriate federal, state and local tax forms, including, without limitation, a Schedule C or Form 1020, and paying all such taxes or fees, including estimated taxes and employment taxes, as a result of the performance of this Agreement. Seller agrees to provide COMPANY with reasonable assistance in the event of a government audit. COMPANY shall have no responsibility to cooperate with or withhold from or pay to Seller under this Agreement, any federal, state, or local taxes or fees. COMPANY will regularly report amounts paid to Seller by filing Form 1099-MISC with the Internal Revenue Service.

9. INSURANCE. Seller shall be solely responsible for maintaining and requiring Seller’s Agents to maintain such adequate health, auto, workers’ compensation, unemployment compensation and liability insurances, in a minimum amount as is common practice in Seller’s and Seller’s Agents’ trades or businesses, whichever affords greater coverage. Upon request, Seller shall provide COMPANY with certificates of insurance or evidence of coverage before commencing performance under this Agreement. Seller shall provide adequate coverage for any PROPERTY under the care, custody or control of Seller or Seller’s Agents.

10. INDEMNITY. Seller shall indemnify, hold harmless, and at COMPANY’s request, defend COMPANY, its officers, directors, customers, agents and employees, against all claims, liabilities, losses, costs, expenses, and damages incurred by or in any way resulting from (i) any claim based on the death or bodily injury to any person, death or bodily injury to any property, incurred by or on behalf of COMPANY or any of its representatives or (ii) any claim relating to products liability, if the Goods are being used in such a manner as to create a risk of danger to life or property in the absence of such products, or (iii) any claim arising out of or in any way connected with the Goods or Services provided under this Agreement, including, without limitation, (i) any claim based on the negligence, omissions, or willful misconduct of Seller’s or any Seller’s Agents or (ii) for any injuries (to persons or property) to the extent that COMPANY is alleged that the Goods or Services, the results of such Services, or any other products or processes provided under this Agreement, infringe a patent, copyright, trademark, trade secret, or similar right of a third party, whether of a patent, copyright, trademark, trade secret, or similar right of a third party, whether of a patent, copyright, trademark, trade secret, or similar right of a third party, whether of a patent, copyright, trademark, trade secret, or similar right of a third party, whether of a patent, copyright, trademark, trade secret, or similar right of a third party. COMPANY shall not settle any such claim or suit without COMPANY’s prior written approval. Seller agrees to pay or reimburse all costs that may be incurred by COMPANY in enforcing this indemnity, including attorneys’ fees.

Should COMPANY’s use, or use by its distributors, sub contractors, or customers, of any Goods or Services purchased by from Seller be enjoined, threatened or otherwise injured by action, suit, or proceeding, Company shall notify Seller of such action or proceeding and Seller, at its option, shall either procure a suitable substitute for the Goods or Services or pay the costs of such action or proceeding, including reasonable attorneys’ fees. Seller agrees to notify, alter, or directly or indirectly disclose any COMPANY Confidential Information unilaterally. Additionally, Seller acknowledges that COMPANY Confidential Information is subject to strict confidentiality obligations, and that any disclosure or use of COMPANY Confidential Information to Seller’s Agents who have a need to know, and to take steps to ensure that the dissemination is so limited, including the execution by Seller’s Agents of nondisclosure agreements with provisions substantially similar to those set forth hereon. In no event will Seller use data less than the degree of care and means that it uses to protect its own information of like kind, but in any event not less than reasonable care to prevent the unauthorized use of COMPANY Confidential Information. Seller agrees to cooperate in the investigation of any unauthorized disclosure of COMPANY Confidential Information.

Seller further agrees not to use the COMPANY Confidential Information except in the course of performing this Agreement and will retain all COMPANY Confidential Information for its own benefit or for the benefit of any third party. The mingling of the COMPANY Confidential Information with information of Seller shall not affect the confidential nature or ownership of the same by COMPANY. Seller agrees to keep all COMPANY Confidential Information and all COMPANY Confidential Information in strictest confidence and not to disclose COMPANY Confidential Information to any person or entity without the prior written consent of COMPANY. COMPANY shall own all COMPANY Confidential Information and shall own the property of COMPANY. Upon COMPANY’s written request or the termination of this Agreement, Seller shall immediately return all COMPANY Confidential Information, including all WORK PRODUCT, as defined herein, and all copies thereof.

12. OWNERSHIP OF WORK PRODUCT. For purposes of this Agreement, "WORK PRODUCT" shall include, without limitation, all designs, discoveries, creations, works, devices, models, work in progress, Service deliverables, inventions, products, computer programs, procedures, improvements, developments, drawings, notes, documents, information and
materials made, conceived, or developed by Seller, alone or with others, which result from or relate to the Services performed hereunder. Standard Goods manufactured by Seller and sold to COMPANY without having been designed, customized, or modified for COMPANY do not constitute Work Product. All Work Product shall at all times be and remain the sole and exclusive property of COMPANY. Seller hereby agrees to irrevocably assign and transfer to COMPANY and does hereby assign and transfer to COMPANY all of its worldwide right, title, and interest in and to the Work Product including all associated intellectual property rights. COMPANY will have the sole right to determine the treatment of any Work Product, including the right to keep it as trade secret, execute and file patent applications on it, to use and disclose it without prior patent application, to file registrations for copyright or trademark in its own name, or to follow any other procedure that COMPANY deems appropriate. Seller agrees: (a) to disclose promptly in writing to COMPANY all Work Product in its possession; (b) to assist COMPANY in every reasonable way, at COMPANY's expense, to secure, perfect, register, apply for, maintain, and defend for COMPANY's benefit all copyrights, patent rights, mask work rights, trade secret rights, and all other proprietary rights or statutory protections in and to the Work Product in COMPANY's name as it deems appropriate; and (c) to otherwise treat all Work Product as COMPANY Confidential Information as described above. These obligations to disclose, assist, execute, and keep confidential survive the expiration or termination of this Agreement. All tools and equipment supplied by COMPANY to Seller shall remain the sole property of COMPANY.

Seller will ensure that Seller's Assistants appropriately waive any and all claims and assign to COMPANY any and all rights and any interests in any Work Product or original works created in connection with this Agreement. Seller irrevocably agrees not to assert against COMPANY or its direct or indirect customers, assignees, or licensees any claim of any intellectual property rights of Seller affecting the Work Product.

COMPANY will not have rights to any works conceived or reduced to practice by Seller which were developed entirely on Seller's own time without using equipment, supplies, facilities, or trade secret or COMPANY Confidential Information, unless (i) such works relate to COMPANY's business, or COMPANY's actual or demonstrably anticipated research or development, or (ii) such works result from any Services performed by Seller for COMPANY.

13. NONINTERFERENCE WITH BUSINESS. During and for a period of two years immediately after the termination or expiration of this Agreement, Seller agrees not to unlawfully interfere with the business of COMPANY in any manner, and further agrees not to solicit or induce any employee or independent contractor to terminate or breach an employment, contractual, or other relationship with COMPANY.

14. TERMINATION. COMPANY may terminate this Agreement upon written notice to Seller if Seller fails to perform or otherwise breaches this Agreement, files a petition in bankruptcy, becomes insolvent, or dissolves. In the event of such termination, COMPANY shall pay Seller the portion of the Services satisfactorily performed and those conforming Goods delivered to COMPANY through the date of termination, less appropriate offsets, including any additional costs to be incurred by COMPANY in completing the Services.

COMPANY may terminate this Agreement for any other reason upon thirty (30) days' written notice to Seller. Seller shall cease to perform Services and/or provide Goods under this Agreement on the date of termination specified in such notice. In the event of such termination, COMPANY shall be liable to Seller only for those Services satisfactorily performed and those conforming Goods delivered to COMPANY through the date of termination, less appropriate offsets.

Seller may terminate this Agreement upon written notice to COMPANY if COMPANY fails to pay Seller within sixty (60) days after Seller notifies COMPANY in writing that payment is past due.

Upon the expiration or termination of this Agreement for any reason: (a) each party will be released from all obligations to the other arising after the date of expiration or termination, except for those which by their nature survive such termination; (b) upon expiration or termination of this Agreement, Seller promptly notify COMPANY of all COMPANY Confidential Information or any Work Product in Seller’s possession and, at the expense of Seller and in accordance with COMPANY’s instructions, will promptly deliver to COMPANY all such COMPANY Confidential Information and/or Work Product.

15. REMEDIES. If Seller breaches this Agreement, COMPANY shall have all remedies available by law and at equity. For the purchase of Goods, Seller’s sole remedy in the event of breach of this Agreement by COMPANY shall be the right to recover damages in the amount equal to the difference between market price at the time of breach and the purchase price specified in the Agreement. No alternate method of measuring damages shall apply to this transaction. Seller shall have no right to resell Goods for COMPANY’s account in the event of wrongful rejection, revocation of acceptance, failure to make payment or repudiation by COMPANY and any resale so made shall be for the account of Seller.

16. FORCE MAJEURE. COMPANY shall not be liable for any failure to perform including failure to: (i) accept performance of Services or, (ii) take delivery of the Goods as provided caused by circumstances beyond its control which make such performance impractical including, but not limited to, acts of God, fire, flood, acts of war, government action, accident, labor difficulties or shortage, inability to obtain materials, equipment, or transportation. In the event COMPANY is so excused, either party may terminate the Agreement and COMPANY shall at its expense and risk, return any Goods received to the place of shipment.

17. ATTORNEYS’ FEES. In any action to enforce this Agreement, the prevailing party shall be entitled to recover all court costs and expenses and reasonable attorneys’ fees, in addition to any other relief to which it may be entitled.

18. SEVERABILITY. If any provision of this Agreement shall be deemed to be invalid, illegal or unenforceable, the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

19. LIMITATION OF LIABILITY. IN NO EVENT SHALL COMPANY BE LIABLE TO SELLER OR SELLER'S ASSISTANTS, OR ANY THIRD PARTY FOR ANY INCIDENTAL, INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF, OR IN CONNECTION WITH, THIS AGREEMENT, WHETHER OR NOT COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGE, AND WHETHER OR NOT THERE IS A FAILURE OF ANY AGREED REMEDY.

20. ASSIGNMENT; WAIVER. Seller may not assign this Agreement or any of its rights or obligations under this Agreement, without the prior written consent of COMPANY. Any assignment or transfer without such written consent shall be null and void. A waiver of any default hereunder or of any term or condition of this Agreement shall not be deemed to be a continuing waiver or a waiver of any other default or any other term or condition.

21. NONEXCLUSIVE AGREEMENT. This is not an exclusive agreement. COMPANY is free to engage others to perform Services or provide Goods the same as or similar to Seller's. Seller is free to, and is encouraged to, advertise, offer, and provide Seller's Services and/or Goods to others; provided however, that Seller does not breach this Agreement.

22. NOTICES. Except for Purchase Orders which may be sent by local mail, facsimile transmission, or electronically transmitted, all notices, and other communications hereunder shall be in writing, and shall be addressed to Seller or to an authorized COMPANY representative, and shall be considered given when (a) delivered personally, (b) sent by confirmed telex or facsimile, (c) sent by commercial overnight courier with written verification receipt, or (d) three (3) days after having been sent, postage prepaid, by first class or certified mail.

23. SURVIVAL OF OBLIGATIONS. Any obligations and duties which by their nature extend beyond the expiration or termination of this Agreement shall survive the expiration or termination of this Agreement.

24. GOVERNING LAW. This Agreement shall be construed in accordance with, and disputes shall be governed by, the laws of the State of New Hampshire, excluding its conflict of law rules. Jurisdiction and venue over all controversies arising out of, or relating to, this Agreement shall be in the State of New Hampshire. The applicability of the UN Convention on Contracts for the International Sale of Goods is hereby expressly waived by the parties and it shall not apply to the terms and conditions of this Agreement.

25. ENTIRE AGREEMENT; MODIFICATION. This Agreement is the complete, final, and exclusive statement of the terms of the agreement between the parties and supersedes any and all other prior and contemporaneous negotiations and agreements, whether oral or written, between them relating to the subject matter hereof. This Agreement may not be varied, modified, altered, or amended except in writing, including a purchase order or a change order issued by COMPANY, signed by the parties. The terms and conditions of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any acknowledgment or other document submitted by Seller. Notwithstanding the foregoing, this Agreement will not supersede or take the place of any written agreement which is signed by both parties and covers the same subject matter as this Agreement or its related purchase orders.

26. COMPLIANCE WITH LAWS.

26.1 General: Seller shall comply fully with all applicable federal, state, and local laws in the performance of this Agreement including, but not limited to, all applicable employment, tax, export control, and environmental laws.

26.3 Hazardous Materials: If Goods include hazardous materials, Seller represents and warrants that Seller understands the nature of any hazards associated with the manufacture, handling, and transportation of such hazardous materials

26.4 Customs: Upon COMPANY’s request, Seller will promptly provide COMPANY with a statement of origin for all Goods and United States Customs documentation for Goods wholly or partially manufactured outside of the United States.