



Laser Thermal Analysis, Inc. Testing Services Agreement

This Testing Services Agreement (the "Agreement") is entered into by and between Laser Thermal Analysis, Inc., a company organized and existing under the laws of Delaware, with its principal place of business at 937 2nd St SE, Charlottesville, VA 22902 ("Service Provider"), and you or the entity you represent ("Client"). If you are an individual agreeing to the terms of this Agreement on behalf of an entity, such as your employer, you represent that you have the legal authority to bind that entity. This Agreement becomes effective when Client agrees to a Quote.

Service Provider and the Client shall individually be referred to as a "Party" and collectively referred to as the "Parties."

Background.

The Client is providing Materials, and the Service Provider offers Services to test the Materials.

THE PARTIES AGREE AS FOLLOWS:

1. Definitions.

(a) "Quote" means a quotation for Services provided by Service Provider.

(b) "Materials" means the materials, or devices made from materials, defined in the Quote and provided by Client for testing by Service Provider.

(c) "Services" means the testing services defined in the Quote to measure the thermal properties of the Materials that are defined in the Quote. Services do not include the provision of any information obtained from the measured thermal properties of the Materials relating to the physical structure, or changes in the physical structure, of the Materials.

(d) "Test Results" means the raw data, measurements, and results generated by Service Provider in the course of performing the Services.

(e) "Effective Date" means the date on which Client agrees to a Quote.

2. Applicability of Agreement.

(a) This Agreement governs the provision of Services by Service Provider to Client and forms an integral part of the Quote. Unless expressly stated in the Quote or otherwise expressly agreed in writing by the Parties, this Agreement constitutes all of the terms and conditions of the Quote.

(b) This Agreement shall prevail over and apply to the exclusion of any terms and conditions contained or referred to in Client's purchase order for Services or in correspondence or elsewhere or implied by trade custom, practice, or course of dealing. Any acceptance of a Client purchase order by Service Provider is conditioned on Client's acceptance of this Agreement, and all purchase orders received by Service Provider from Client shall be governed only by this Agreement notwithstanding any preprinted terms and conditions on Client's purchase order or any other communication or document of Client. Any additional or different terms in Client's documents are hereby deemed to be material alterations and notice of objection to and rejection of them is hereby given.

3. Scope of Services; Testing Schedule.

(a) The test method, deliverables and specific requirements for the Services will be set forth in the Quote.

(b) The Quote may specify timelines for performance of the Services. The Parties shall work together to establish and mutually agree upon any additional details of the testing schedule as needed. Such additional details may include milestones, deadlines, and review points. The mutually agreed upon testing schedule, including any such additional details, shall be referred to as the "Testing Schedule". Any subsequent changes to the Testing Schedule must be agreed upon in writing by both Parties.

(c) Subject to the terms and conditions of this Agreement, Service Provider agrees to perform the Services as specified in the Quote, and shall provide testing reports, documentation, and other deliverables as specified in the Quote or as otherwise mutually agreed in writing (collectively "Deliverables"). Client shall promptly review the Deliverables. Service Provider agrees to discuss the Deliverables, and respond to Client's reasonable questions regarding the Deliverables, during the Term (as defined below). If Client does not provide written objection to Service Provider within fifteen (15) days of receipt of the Deliverables, the Deliverables shall be deemed accepted by Client.

(d) Service Provider's performance of Services shall be subject to Client's timely provision of Materials and information required for testing, and to Client's reasonable cooperation as contemplated in the Testing Schedule.

4. Fees and Payment.

(a) In consideration for the testing services provided by the Service Provider, the Client shall pay the agreed-upon fees specified in the Quote. Fees payable to Service Provider do not include any sales, use, excise, value-added, withholding, or other similar taxes of any kind (collectively, "Taxes"). Client shall be responsible for payment of Taxes.

(b) Unless otherwise specified in the Quote or otherwise agreed in writing by the Parties, (i) Service Provider shall issue an invoice to Client when Service Provider provides the final Deliverable to Client, and (ii) each invoice issued by Service Provider shall be paid within thirty (30) days of Client's receipt of the invoice.

(c) Invoices not paid when due are subject to interest at the rate of 1.5% per month or, if less, the highest rate allowed under applicable law.

5. Confidentiality.

(a) A Party's "Confidential Information" shall mean all information disclosed by a Party to the other Party, whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information does not include: (i) information that was publicly available at the time of disclosure or that subsequently becomes publicly available other than by a breach of this provision, (ii) information already known by the receiving Party independent of the Confidential Information as evidenced by written records, (iii) information developed by the receiving Party independent of the Confidential Information, and (iv) information that the receiving Party rightfully obtains without restrictions on use and disclosure. Confidential Information shall remain the exclusive property of the disclosing Party and no intellectual property right is licensed, granted or otherwise transferred by this Section 5 or any disclosure of Confidential Information to the receiving Party.

(b) Each Party agrees not to use the other Party's Confidential Information except in the performance of the Services or as authorized by this Agreement, and not to disclose or otherwise make available such information to third parties without the other Party's prior written consent. Notwithstanding the foregoing, a receiving Party may disclose the other Party's Confidential Information to the extent required by law, regulation or court order. In such instance, the receiving Party will provide the disclosing Party with prior written notice of the compelled disclosure (to the extent legally permitted), and will cooperate with the disclosing Party, at the disclosing Party's expense, if the disclosing Party seeks to challenge the compelled disclosure. Nothing contained in this Agreement limits a Party from filing a truthful complaint or a Party's ability to communicate directly to: (i) any investigation by a U.S. government agency, or (ii) an investigation or proceeding that is protected under a whistleblower provision of a U.S. federal law or regulation.

(c) The Parties agree that any breach of this Section 5 by a receiving Party may result in irreparable harm to the disclosing Party and that the disclosing Party may seek injunctive relief in the event of any such breach.

6. Intellectual Property.

(a) All intellectual property rights in the testing processes, software, methodologies, templates, tools, ideas, concepts, techniques, models and know-how used by Service Provider to provide the Services, or created or developed by Service Provider during or in connection with the performance of Services, shall be owned by Service Provider or its licensor(s). Subject to the foregoing sentence, Client shall own the Test Results and final reports delivered to Client, excluding Service Provider's pre-existing intellectual property, testing processes, software, methodologies, templates, tools, models, know-how, and other intellectual property embedded in or used to generate such reports. Each Party reserves all rights in its intellectual property not expressly granted to the other Party under this Agreement.

(b) "Feedback" shall mean any feedback, comments, suggestions or other input provided by Client in connection with the Services. Client shall be under no obligation to provide Feedback and shall not provide any Feedback that violates the rights of any third party. Client hereby grants to Service Provider a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license (with the right to sublicense) to use, modify, prepare derivative works of, display, perform and otherwise exploit in any manner the Feedback, and to make, have made, import, use, sell and otherwise distribute products and services incorporating the Feedback.

7. Use of Client Name. Service Provider shall not use Client's name, logo, or other identifying information in marketing materials, press releases, customer lists, or other public-facing materials without Client's prior written consent.

8. Warranties.

(a) Service Provider warrants that the Services will be performed in a professional and competent manner.

(b) Client warrants that (i) it has a right to provide the Materials to Service Provider for testing pursuant to this Agreement, and (ii) all information provided by Client in connection with the Materials, or as requested by Service Provider in order for Service Provider to perform the Services, is accurate and complete.

(c) Client acknowledges that the Test Results and Deliverables are based on the information provided by Client and the requirements specified by Client, and may not identify all information or potential issues relating to the thermal properties of the Materials or otherwise relating to the subject matter of the Services.

(d) Prior to delivery of Materials, Client shall disclose to Service Provider all known or reasonably foreseeable hazardous properties of the Materials, including without limitation any radioactivity, toxicity, reactivity, flammability, pressurization, or other safety risks. Client shall provide Service Provider with all applicable Safety Data Sheets and handling instructions required by applicable law. Client represents and warrants that it has obtained all necessary permits, licenses, and authorizations for the transport and handling of the Materials. Service Provider reserves the right to refuse acceptance of any Materials for which adequate safety information has not been provided.

(e) Client shall indemnify, defend, and hold harmless Service Provider and its officers, directors, employees, and agents from and against any and all claims, losses, damages, costs, and expenses (including reasonable attorneys' fees) arising out of or related to: (i) any breach by Client of its representations, warranties, or obligations under this Agreement; (ii) any hazardous or undisclosed properties of the Materials not disclosed to Service Provider in accordance with Section 8(d); or (iii) death, personal injury, or property damage caused by the Materials while in Service Provider's custody, except to the extent caused by Service Provider's gross negligence or willful misconduct.

9. Limitation of Liability.

(a) EXCEPT AS EXPRESSLY PROVIDED HEREIN OR PROHIBITED BY APPLICABLE LAW, SERVICE PROVIDER EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES MADE, OR THAT MAY HAVE BEEN MADE, IN CONNECTION WITH THE QUOTE OR THIS AGREEMENT, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, AND ANY WARRANTY ARISING OUT OF A COURSE OF PERFORMANCE, DEALING OR TRADE USAGE.

(b) IN NO EVENT SHALL SERVICE PROVIDER'S AGGREGATE LIABILITY TO CLIENT RELATING TO THE SERVICES EXCEED THE TOTAL AMOUNT PAID BY CLIENT FOR SUCH SERVICES IN THE TWELVE (12) MONTHS PRIOR TO THE EVENT GIVING RISE TO THE LIABILITY.

(c) TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL, INDIRECT, PUNITIVE, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES OF ANY NATURE WHATSOEVER, REGARDLESS OF WHETHER SUCH PARTY HAS BEEN GIVEN NOTICE OF SUCH DAMAGES AND REGARDLESS OF WHETHER THOSE DAMAGES ARE SOUGHT UNDER CONTRACT, TORT OR ANY OTHER THEORIES OF LAW. NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS IN THIS SECTION 9(c) SHALL NOT APPLY TO OR LIMIT CLIENT'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8(e).

(d) THE SERVICES PROVIDED BY SERVICE PROVIDER ARE NOT PROVIDED FOR USE IN LIFE SUPPORT, SAFETY EQUIPMENT OR OTHER APPLICATIONS WHERE MALFUNCTION CAN RESULT IN PERSONAL INJURY OR DEATH, AND/OR IN SEVERE PROPERTY OR ENVIRONMENTAL DAMAGE. CLIENT'S USE OF SERVICES FOR SUCH APPLICATIONS IS AT ITS OWN RISK.

(e) NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, SERVICE PROVIDER'S LIABILITY FOR PHYSICAL LOSS OF OR DAMAGE TO MATERIALS WHILE IN SERVICE PROVIDER'S CUSTODY SHALL BE LIMITED TO THE LESSER OF: (i) THE DOCUMENTED REPLACEMENT COST OF THE MATERIALS, OR (ii) THE TOTAL FEES PAID BY CLIENT FOR THE SERVICES DIRECTLY ASSOCIATED WITH SUCH MATERIALS. SERVICE PROVIDER SHALL NOT BE LIABLE FOR LOSS OF OR DAMAGE TO MATERIALS RESULTING FROM NORMAL TESTING PROCEDURES OR FROM PROPERTIES OF THE MATERIALS NOT DISCLOSED BY CLIENT IN ACCORDANCE WITH SECTION 8(d).

10. Term, Termination.

(a) This Agreement shall become effective on the Effective Date and shall remain in effect until thirty (30) days after the delivery of the final Deliverable, or, if earlier, the date of termination in accordance with Section 10(b) (the "Term").

(b) Either Party may terminate this Agreement upon written notice if the other Party (i) breaches any material term of this Agreement and has not cured such breach within thirty (30) days of the date of its receipt of written notice of such breach from the non-breaching Party, or (ii) becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or an assignment for the benefit of creditors; provided, that in the case of any involuntary bankruptcy proceeding such proceeding is not dismissed within ninety (90) days after the filing thereof.

(c) Upon termination, the Client shall promptly pay for Services performed up to the termination date. Sections 2, 4, 6, 8, 9, 10, 11, 12, 13, and 14 shall survive the expiration or termination of this Agreement. Section 5 shall survive for three (3) years after the expiration or termination of this Agreement, except that trade secrets shall remain protected for so long as they qualify as trade secrets under applicable law.

(d) Client may provide Service Provider, no later than thirty (30) days after the expiration or termination of this Agreement, with a written request to return the Materials to Client after the Term (a "Materials Return Request"). Client shall pay all packaging and shipping costs associated with such return of Materials. If Service Provider does not receive a Materials Return Request during the Term or

within thirty (30) days after the expiration or termination of this Agreement, Service Provider may destroy or dispose of the Materials.

11. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia, excluding its conflict of laws provisions. The federal and state courts located in the Commonwealth of Virginia shall have exclusive jurisdiction and venue over controversies arising out of, or relating to, this Agreement. Each Party consents to the exercise by any such court of personal jurisdiction over it, and each Party waives any objection it might otherwise have to venue, personal jurisdiction, inconvenience of forum, and any similar or related doctrine.

12. Force Majeure. "Force Majeure" means any act of God, fire, natural disaster, earthquake, accident, act or regulation of government or a governmental agency, or an act that is beyond the reasonable control of either Party. Neither Party will be deemed in default of this Agreement (other than with respect to any obligations of Client to pay for Services) to the extent that performance of its obligations or attempts to cure any breach are delayed or prevented by reason of Force Majeure, provided that such Party gives the other Party prompt written notice thereof and continues to use its reasonable efforts to perform or cure, as applicable.

13. Export Controls. Client represents and warrants that the Materials and any related technical data, information, or documents provided to Service Provider do not contain or constitute export-controlled items subject to the Export Administration Regulations (15 C.F.R. § 730 et seq.) or the International Traffic in Arms Regulations (22 C.F.R. §§ 120–130), or, if they do, Client has so notified Service Provider in writing prior to delivery and has obtained all required export authorizations. Client shall clearly identify any export-controlled Materials with the applicable Export Control Classification Number (ECCN) or USML category designation. Client shall indemnify and hold harmless Service Provider from any fines, penalties, losses, or liabilities arising from Client's failure to comply with this Section.

14. General Provisions.

(a) Service Provider and Client are independent contractors. Neither Party is an agent, representative, or partner of the other Party. Neither Party has the authority to bind the other Party to any agreement or to the performance of any obligation. This Agreement shall not be construed to create an agency, joint venture, or partnership between the parties.

(b) This Agreement constitutes the entire and final agreement between the Parties with regard to its subject matter and supersedes all prior written or verbal communications, agreements or understandings with respect to such subject matter.

(c) Failure by a Party to exercise or enforce any rights hereunder shall not be deemed to be a waiver of any such right nor operate so as to bar the exercise or enforcement of such rights by such Party at any time thereafter.

(d) No modifications to this Agreement shall be binding unless expressly agreed to in writing by both Parties.

(e) Any notice hereunder shall be deemed to have been duly given when: (i) sent by nationally recognized pre-paid courier service to the Party concerned at its last known address; or (ii) sent by email

to the email address specified in the Quote (or such other address as a Party may designate in writing), with delivery deemed effective upon confirmation of receipt by return email or read receipt. Notices relating to disputes, termination, or breach must be sent by courier.

(f) If any provision of this Agreement is held invalid, all other provisions shall remain valid.

(g) Neither Party may assign its rights and obligations hereunder without the prior written consent of the other, and any unauthorized assignment shall be null and void, except that Service Provider may assign its rights and obligations hereunder to an acquiror of all or substantially all of its business or assets relating to the Services provided to Client hereunder.

(h) This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.