

## **Terms and Conditions for Specter Engineering, a Minnesota LLC (the “Firm”) – 09/15/2019**

### **BACKGROUND**

- a.** The Client is of the opinion that the Firm has the necessary qualifications, experience and abilities to provide consulting services to the Client.
  
- b.** The Firm is agreeable to providing such consulting services to the Client on the terms and conditions set out in this Agreement.

**IN CONSIDERATION OF** the matters described above and of the mutual benefits and obligations set forth in this Agreement, the receipt and sufficiency of which consideration is hereby acknowledged, the Client and the Consultant (individually the "Party" and collectively the "Parties" to this Agreement) agree as follows:

### **1. Services Rendered**

#### ***a. The Services***

The Firm agrees to perform the services described in the Statement of Work (collectively the “Services”) for the Client. The Client represents and warrants that it will fully inform and provide accurate information to the Firm regarding the scope and goals of the desired Services, including, but not limited to, keeping the Firm informed of any deadlines, budgetary restraints, or changes in scope or goal.

#### ***b. Warranty of Services***

The Firm represents and warrants that the Firm, its employees and its agents are trained and experienced in the performance of the services to be rendered, have the necessary expertise, and are able to provide and successfully complete the Services as requested. All Services shall be performed in a professional manner, meeting generally acceptable industry standards and any other standards specified in the Statement of Work. The Firm will be solely responsible for determining the manner for performing the services, consistent with the requirements of Client with respect to the Services to be performed. The Firm has the right to assign the work product, and intellectual property rights therein, of its employees and agents in order to fulfill the obligations of this Agreement.

#### ***c. Alterations and Changes to Services***

Any alteration or deviation from the scope of the services specified in the Statement of Work may incur extra costs and will be executed only upon receipt of written change orders. Changes may result in charges over and above the estimate. The Firm reserves the right to amend the Services with written notice to the Client, or in the alternative, terminate this Agreement.

### **2. Independent Contractor**

#### ***a. Relationship***

In the performance of the Services, the Firm shall be an independent contractor and not an employee or agent of the Client. The Firm and the Client acknowledge that this Agreement does not create a partnership or joint venture between them and is exclusively a contract for service. The Firm shall have no authority to enter into agreements on behalf of the Client or otherwise bind the Client to any third party. The Firm shall have no authority to act in any way as a representative of the Client, unless

otherwise expressly agreed in writing by the Client. The Firm shall not be subject to set hours of work and will determine the time and manner in which the Services are performed.

**b. *Risk of Services***

The Firm shall supply all Services hereunder at its own risk. Neither the Firm, nor anyone employed, retained, or engaged by the Firm, shall be entitled to Worker's Compensation Insurance or any other insurance, benefits, or other compensation of any kind from by the Client as a result of this Agreement or the performance of Services hereunder. The Firm is responsible for paying, and complying with reporting requirements for, all local, state and federal taxes related to payments made to the Firm under this Agreement. The Firm shall make its own arrangements for insurance at the Firm's sole cost, which insurance shall be the Firm's sole and exclusive remedy for any damage or personal injury suffered in connection with this Agreement.

**c. *Right to Work for Other Clients***

Nothing in this Agreement is intended to preclude the Firm's simultaneous or subsequent engagement by third parties provided only that such services do not interfere with the Firm's obligations under this Agreement, are consistent with the Firm's duties of confidentiality provided for herein, and do not otherwise violate or breach the Firm's covenants and obligations set forth herein.

**3. Compensation**

**a. *Fees***

The price for the deliverables/services is described in the Statement of Work. Price, delivery terms, availability of deliverables and descriptions and specifications of deliverables is subject to change without notice.

The Compensation as stated in this Agreement does not include sales tax, or other applicable duties as may be required by law. Any sales tax and duties required by law will be charged to the Client in addition to the Compensation.

**b. *Reimbursable Expenses***

The Firm shall be entitled to reimbursement from the Client for reasonable "out-of-pocket" expenses including travel, meals, and other reasonable costs directly related to the Services.

**c. *Invoices***

Invoices submitted by the Firm to the Client are due within thirty (30) days of receipt. All invoices shall be delivered to the Client at the address indicated below, or to such other address as designated by written notice to the Firm.

**d. *Early Termination***

In the event that this Agreement is terminated prior to completion of the Services, but where the Services have been partially performed, the Firm will be entitled to payment for all expenses incurred by the Firm and all charges for time spent on the Services rendered up to the date of termination, including any applicable late fees, provided that there has been no breach of contract on the part of the Firm. Any unused portion of the Retainer shall be returned to the Client.

**e. *Late Fees***

In the absence of a bona fide legal dispute between the parties, any late payments will trigger a fee of the lesser of 2%, or the maximum amount allowable by law per month on the amount still owed.

#### **4. Client Information**

***a. Confidential Information***

For purposes of this Agreement, Confidential Information means information disclosed to Firm or known by it as a result of or as disclosed in the course of its contract with Client, which is not generally known to the public, pertaining to Client's business services, members, affiliates, customers, or employees, including, but not limited to, contracts, proposals, procedures and protocols, operating models, financial records and data, strategic planning information, software code, customer information and data, data processing information, pricing, and marketing programs and data.

***b. Protection of Confidential Information***

The Firm shall do what is reasonably necessary to guard and prevent the unauthorized misappropriation or disclosure and threatened misappropriation or disclosure of Client's Confidential Information.

***c. Non-Disclosure of Confidential Information***

Except as required by law, the Firm shall not directly or indirectly, under any circumstances or at any time, during the term of this Agreement and for a further period of eighteen (18) months following termination of this Agreement for any reason, communicate or disclose to any person, firm, association, corporation, Client or any other third party, or use or allow to be used for the benefit of any party other than Client or otherwise to the detriment of Client, without Client's prior written consent, any Confidential Information anywhere in the world where it is reasonably anticipated that Confidential Information may be used in an area where Client regularly conducts business. The Firm shall at all times keep secret and in strict confidence and hold inviolate said Confidential Information. The Firm hereby agrees and acknowledges that all Confidential Information received by it constitutes, confidential communications, and information; provided, however, that the confidentiality obligations of this paragraph shall not apply in the event and to the extent that the aforesaid matters are or become generally known to, and available for use by, the public other than by any act or omission of Contractor.

#### **5. Intellectual Property**

***a. Definition and Work for Hire***

All intellectual property and related material, including any trade secrets, moral rights, goodwill, relevant registrations or applications for registration, and rights in any patent, copyright, trademark, trade dress, industrial design and trade name that is developed or produced, and delivered to the Client under this Agreement (the "Intellectual Property"), is a "work made for hire" and will be the sole property of the Client. The use of the Intellectual Property by the Firm will not be restricted in any manner. The Firm agrees to execute and deliver all instruments and documents, and shall take such other actions as may be necessary or reasonably requested by the Client, so that it may perfect, protect, and defend its rights in the Intellectual Property.

***b. Use of Intellectual Property***

The Firm may not use the Intellectual Property for any purpose other than that contracted for in this Agreement except with the written consent of the Client. The Firm will be responsible for any and all damages resulting from the unauthorized use of the Intellectual Property.

#### **6. Assignment**

Unless stated otherwise in this Agreement, neither party may assign any of its rights or delegate any of its duties or obligations, in whole or in part, under this Agreement without the prior written consent of the other party; any such purported assignment or delegation without such written consent shall be void. However, the Firm reserves the right subcontract any portions of the Services that it deems necessary without the prior written consent of the Client.

### **7. Amendment**

Neither the Firm nor the Client may amend this Agreement, except by written agreement of the parties that identifies itself as an amendment to this Agreement.

### **8. Notice**

All notices and other communication under this Agreement shall be in writing and deemed to have been duly given if delivered or sent by certified mail, postage prepaid, and addressed to the respective addresses of each of the Client and the Consultant as indicated below, or to such other address as designated by written notice to the other.

### **9. Indemnification**

The Client agrees to indemnify and hold the Firm harmless from any and all claims, demands, liabilities, and expenses including, without limitation, court costs and attorneys' fees arising out of bodily injury to or death of, any person, or damage or destruction of any property, or misuse arising out of or in any way related to the Services performed by the Firm or its employees or agents under this Agreement.

### **10. Binding Effect**

This Agreement shall be binding upon and inure to the benefit of the parties hereto, including Firm's heirs and personal representatives or successors, and the successors and assigns of the Client.

### **11. Governing Law**

The construction and interpretation of this Agreement and the rights of the parties with respect to the subject matter herein, shall be governed by the substantive laws of the State of Minnesota. The Client expressly consents to the jurisdiction of courts located within the State of Minnesota.

### **12. Severability**

The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any one or more of the provisions hereof shall not affect the validity and enforceability of the remaining provisions. If any provision of this agreement is held invalid, illegal or unenforceable, the parties shall negotiate in good faith to replace such invalid, illegal or unenforceable provision with a valid, legal and enforceable provision that will most nearly and reasonably approach the effect of the invalid, illegal or unenforceable provision and the intent of the parties in entering into this Agreement.

### **13. Disputes**

The Client and the Firm agree to use an impartial mediator should a dispute about the Services rendered under this Agreement arise. The Client and the Firm agree to pursue legal action only if mediation fails to give an acceptable solution. This clause does not bar legal action for the collection of amounts due under this Agreement. Should

legal action be required for collection, the Client will be liable for all court costs, disbursements, and actual attorneys' fees reasonably incurred by the Firm in connection with collection of the amounts due.

#### **14. Term and Termination**

The term of this Agreement shall continue through the term of any active work on the Services, unless otherwise terminated by the Firm or the Client. This Agreement may be terminated without cause by either party with thirty (30) days written notice to the other party. The Client shall remain liable for all expenses incurred by the Firm and all charges for time spent on the Services rendered up to the date of termination, including any applicable late fees.

#### **15. Remedies**

The Firm acknowledges that any breach of any of the provisions of Section 4 will cause substantial and irreparable harm to Client for which money damages alone would be an inadequate remedy. Accordingly, in the event of a breach or threatened breach by the Firm of any of the provisions of Section 4, the Client shall be entitled to an injunction restraining it from such breach, without the necessity of posting a bond, and to recover the Client's costs (including, without limitation, reasonable attorneys' fees) incurred in connection with enforcing this Agreement, in addition to any other rights or remedies available at law, in equity or by statute. Nothing herein contained shall be construed as prohibiting Client from pursuing any other remedies available for such breach, threatened breach, or any other breach of this Agreement.

#### **16. Headings**

The headings in this Agreement are for convenience and identification only and are in no way intended to describe, interpret, define or limit the scope, extent of this Agreement or any provision of this Agreement.

#### **17. Construction**

Each and every provision of this Agreement shall be construed as though both parties participated equally in the drafting of same, and any rule of construction that a document shall be construed against the drafting party shall not be applicable to this Agreement.

#### **18. Client Acknowledgment**

Client acknowledges that the Client has had the opportunity to consult legal counsel in regard to this Agreement, has read and understands this Agreement, and that the Client has entered into it freely and voluntarily and based on the Client's own judgment and not on any representations or promises other than those contained in this Agreement. The Client acknowledges and agrees that the restrictions contained in this Agreement are fair and reasonable.

#### **18. Entire Agreement, Modification and Waiver**

This Agreement contains the entire agreement of the parties with respect to its subject matter and supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof. No modification or waiver of the provisions hereof will be binding unless in writing and signed by the party against whom such modification or waiver is sought to be enforced. No waiver of any provision of this Agreement at any time will preclude enforcement of such provision at any other time or of any other provision of this Agreement.