



## CONSULTING AGREEMENT

Between CUSTOMER, Inc. and ASE Optics, a wholly owned subsidiary of Rochester Precision Optics, of 850 John Street West Henrietta, New York, 14586, (hereinafter referred to as "ASE")

### **Federal Employer Identification Number\_27-4379504**

CUSTOMER Inc. ("CUSTOMER") and ASE Optics, Inc. have agreed that ASE shall perform certain technical, professional and/or consulting services for CUSTOMER. The services to be rendered to CUSTOMER by ASE are described in Schedule A of this Agreement. Payment and invoicing terms are described in Schedule A of this Agreement. All services under this Agreement are to be rendered on a time and materials basis unless otherwise agreed in writing by the parties. It is agreed that the services will commence on \_\_\_\_\_ and will be subject to the following terms and conditions:

#### **1. No Restrictions**

ASE confirms to CUSTOMER that ASE has not previously entered into any agreement that would restrict the performance of services assigned by CUSTOMER to ASE under this Agreement.

#### **2. Compliance**

ASE will comply with all applicable safety, health and security regulations of CUSTOMER.

#### **3. Definitions**

##### **Confidential Information**

Information, other than Excluded Information, provided by CUSTOMER and of a special and unique nature and value to CUSTOMER's business, in oral or tangible form, and not generally know by CUSTOMER's competitors including, without limitation, confidential reports and communications, customer and prospect lists, the identity of CUSTOMER' suppliers, distributors and consultants, information concerning CUSTOMER' consultants, financial information, production processes, marketing techniques, purchasing information, price lists, quotation procedures, customer information and data, installation and training techniques, maintenance procedures, business methods, and information and materials obtained by CUSTOMER from others in confidence and subject to a nondisclosure agreement. In order to be deemed Confidential Information, information disclosed orally must be identified as Confidential Information at the time of initial disclosure to ASE and confirmed in a written summary provided to ASE within 30 days after initial disclosure.

##### **Excluded Information**

Information publicly known or generally utilized by others engaged in the same business as CUSTOMER, furnished to others by CUSTOMER without restriction or independently developed by ASE without the use of Confidential Information or Protected Information.

##### **Work Product**

The designs, drawings and reports delivered under this Agreement by ASE to CUSTOMER, together with any improvement, modification or enhancement to CUSTOMER's products and services directly resulting from the services furnished by ASE under this Agreement.

#### **4. Indemnification**

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, RESULTING OR CONSEQUENTIAL DAMAGES.

#### **5. Governing Law**

Unless otherwise stated, this Agreement shall be interpreted and enforced pursuant to the laws of the State of New York without regard to its conflicts of law principles. The venue of any dispute, which cannot be amicably settled, shall be the State and Federal courts located in Monroe County, and the parties consent to the exclusive jurisdiction of such courts in such events.

#### **6. Mediation / Litigation**

In an effort to resolve any conflicts that arise during the Project or following the completion of the Project, CUSTOMER and ASE agree that all disputes between them arising out of or relating to this Agreement shall be submitted initially to a non-binding mediation, unless the parties mutually agree otherwise.

#### **7. Proprietary Rights**

All Confidential Information and Work Product are the exclusive property of CUSTOMER. All Work Product will be deemed "work made for hire" as defined in the federal copyright laws so that all copyrightable works will be owned exclusively by CUSTOMER upon creation. If it is determined that the Work Product protectable by copyright is not considered "work made for hire" under the federal copyright laws, ASE, by signing this Agreement (which includes proprietary rights and nondisclosure provisions), assigns to CUSTOMER exclusive ownership rights to the Work Product including all reproductions thereof. CUSTOMER will have the exclusive right to copyright or otherwise protect the Work Product and ASE will assist CUSTOMER in obtaining copyrights and such other protection as CUSTOMER seeks relating to the Work Product. ASE will sign any documents and take such other action as may be reasonably requested by CUSTOMER during and after the termination of this Agreement in order to more fully protect CUSTOMER's exclusive ownership rights in the Work Product. CUSTOMER shall have no right, title or interest in or to ASE design methodologies, design techniques, background information and/or general designs.

#### **8. Nondisclosure**

ASE will not use, disclose, publish, reproduce or otherwise make available any Confidential Information or Work Product other than to CUSTOMER, CUSTOMER's consultants authorized to render services to ASE, or a CUSTOMER's customer for whom services will be performed, in such case solely for the purposes specifically related to ASE's performance within the scope of this Agreement. ASE will take all appropriate action to protect the confidentiality and security of all the Confidential Information and Work Product. ASE promptly will advise CUSTOMER if ASE learns or has reason to believe that any unauthorized person or organization has obtained Confidential Information or Work Product and will cooperate with CUSTOMER if CUSTOMER elects to commence legal action against such person or organization.

#### **9. Return of Information**

During the term of this Agreement, if requested by CUSTOMER, and upon the termination of this Agreement, ASE promptly will return to CUSTOMER all Confidential Information furnished by CUSTOMER to ASE under this Agreement. The obligations of ASE hereunder will survive the termination of this Agreement.

#### **10. Relationships**

During the term of this Agreement, ASE will not solicit any CUSTOMER's customer for whom ASE is providing services to CUSTOMER, for the purposes of selling or providing services regarding \_\_\_\_\_ technology, optical systems, or any components thereof, for use with \_\_\_\_\_ technology.

During the term of this Agreement and for a period of two years thereafter, ASE will not directly or indirectly engage in the following activities without first obtaining CUSTOMER' written consent:

- Hire or retain or attempt to hire or retain any CUSTOMER employee.
- During the term of this Agreement and for a period of two years thereafter the, CUSTOMER will not directly or indirectly engage in the following activities without first obtaining ASE's written consent:
- Hire or retain or attempt to hire or retain any ASE employee.

**11. Enforcement**

ASE recognizes that CUSTOMER would suffer irrevocable harm if ASE breaches ASE's obligations hereunder and that monetary damages may not be adequate to compensate CUSTOMER for any breach of the provisions herein. CUSTOMER, in addition to its other remedies, will be entitled to injunctive relief in order to prevent or retain any breach or attempted breach of any provision herein. Any legal action to enforce this agreement will be brought in Monroe County, New York.

**12. Warranty**

ASE warrants that it shall perform the services provided under this Agreement in a professional and workman-like manner, and to use its best efforts in the performance of services hereunder.

**13. General**

The provisions set forth herein supersede any prior communication, representation, understanding or agreement with CUSTOMER or any representative of CUSTOMER. If any provision herein is declared unenforceable, the unenforceability of the provision will not have any effect upon the other provisions. The provisions set forth herein will endure to the benefit of the parties and their successors and assigns. ASE will perform its services as defined in Schedule A as contemplated by this Consulting Agreement as an independent contractor and nothing contained herein shall be construed as creating an employer-employee relationship. ASE agrees that CUSTOMER shall not be responsible for the withholding of payroll taxes, the purchase of workman's compensation coverage or to provide any other benefits associated with employment. The term of this engagement will be for no more than 6 months, after which it may be renewed on a month-to-month basis, at the sole option of CUSTOMER. During such initial term of 6 months, CUSTOMER may terminate this Agreement for its convenience, without obligation except for payment for: (i) services performed up to and including the day that written notice of such termination is actually received by ASE; (ii) expense incurred by ASE up to and including the day that written notice of such termination is actually received by ASE; and (iii) expenses incurred thereafter by ASE in the termination of subcontracts and/or other agreements for supplies and/or services to be used in the performance of services under this Agreement. No change will be made in any provision herein, nor any provision waived, without the prior written consent of ASE and CUSTOMER. This Consulting Agreement is not assignable by ASE without the written consent of CUSTOMER. CUSTOMER may assign this Agreement only in the event of the sale of all or substantially all of CUSTOMER's stock or assets.

In witness whereof, the parties have executed this agreement as of the date indicated above.

**CUSTOMER Inc.**

**ASE OPTICS, INC.**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **SCHEDULE A**

### **1. SERVICES.**

#### **1.1 Services to CUSTOMER**

ASE shall provide the following ("Services") to CUSTOMER:

- Optical design
- Qualification and test
- Prototype through to production support.

The first of many possible programs may include:

### **2. PAYMENT AND INVOICING TERMS.**

#### **2.1 Payment for Services**

ASE shall have the option, subject to confirmation and acceptance by CUSTOMER in writing to be paid as follows:

- a. Discovery Service: \$1950 for 20 hours of engineering work.
- b. at a standard hourly rate of \$135 per hour or;
- c. on a fixed fee for service basis, as negotiated in writing by both parties.
- d. at an hourly rate of \$110 per hour paid in cash along with the payment of CUSTOMER common stock at a rate of \$50 per hour.

#### **2.2 Reimbursement of Materials Procurement**

CUSTOMER agrees that any materials purchased by ASE for the purposes of delivering hardware to CUSTOMER will be reimbursable with a 30% markup over the actual expenses unless a fixed fee for said materials has been agreed upon in writing by both parties.

#### **2.3 Reimbursable Expenses**

CUSTOMER is also responsible for reimbursing ASE for all agreed upon non-professional expenses, such as travel and subsistence, reproduction, and other reasonable actual expenditures.

#### **2.3 Invoicing**

ASE will invoice CUSTOMER every month and will submit written time sheets containing sufficient detail to review their work effort and progress. Written progress reports will be required at the earlier of (i) completion of each project milestone, or (ii) monthly. CUSTOMER shall make payment within 30 days of invoice submittal. Payments beyond 30 days will be charged interest at a 1.5% interest rate.