

Master Service Agreement

This Master Service Agreement ("**MSA**") sets forth the terms and conditions governing the relationship between Syncroness, Inc. ("**Syncroness**") and the entity or organization that is engaging Syncroness to perform services on its behalf (such entity or organization, "**Customer**").

Please review this MSA carefully. By accepting this MSA (which may be indicated by Customer issuing a purchase order to Syncroness, by clicking a box that indicates acceptance of this MSA or otherwise), Customer agrees to all of the terms of this MSA. If Customer does not agree to any of the terms of this MSA, Customer must not accept this MSA and must not retain Syncroness to perform any services. The person who indicates acceptance of this MSA on behalf of Customer hereby represents and warrants that he or she has full authority to do so.

1. Interaction of MSA and Project Proposals. This MSA applies to any work product provided by Syncroness to Customer pursuant to a Project Proposal (as defined below) and to any design, development, pre-production manufacturing engineering and prototype services performed by Syncroness on behalf of Customer ("**Services**"), regardless of whether the parties have entered into a Project Proposal for such Deliverable or Services. This MSA incorporates by reference the terms and conditions of any specific product design or product manufacturing agreement executed by both parties (a "**Project Proposal**"). Each Project Proposal will include the scope, cost, deliverables to be provided by Syncroness ("**Deliverables**"), and project specific details. Any additional or different terms proposed by Customer, whether in a request for proposals, purchase order, acknowledgement, or otherwise, are unacceptable to Syncroness, are expressly rejected by Syncroness, and will not become part of this MSA. Where specific terms of a Project Proposal conflict with the terms of the MSA, the terms of the Project Proposal will take precedence for the fees and expenses and the specific scope of Services detailed in that Project Proposal, but the terms of the MSA will take precedence over the terms of the Project Proposal in all other respects. To the extent the parties wish to supersede a term or condition of this MSA with the term or condition of a Project Proposal, the applicable Project Proposal must expressly reference such term or condition of this MSA and expressly state the intent of the parties to override such term or condition of MSA.
2. Services.
 - a. Schedule: Syncroness will use commercially reasonable efforts to meet the schedule set forth in the Project Proposal and to attempt to accelerate the schedule to the extent reasonably requested by Customer wherever possible. Notwithstanding the foregoing, due to the uncertain nature of product development, Syncroness cannot guarantee schedule dates. Syncroness will advise Customer of any conditions or events it discovers which may delay the completion of the project.

- b. Modifications. Any changes, additions or deletions to the Services and applicable Deliverables requested by either Customer or Synchroness (each, a "**Modification**") will comply with this Section. Each party will propose any Modification through a written request to the other party. Upon proposing its own Modification to Customer, or after receipt of Customer's request for a Modification, Synchroness will submit a proposal to Customer describing the change and any effect on price, schedules, or other anticipated effects of the proposed Modification. Customer will either accept the proposal for the Modification in writing, or notify Synchroness of its objections to the proposal, in which case the parties will negotiate in good faith the terms that will apply to the Modification. No changes to any Services, Deliverables or Project Proposals will be valid or binding unless and until accepted in writing by both parties.
- c. Acceptance. Upon receipt of a Deliverable from Synchroness, Customer shall have five (5) days to accept or reject the Deliverable (the "**Acceptance Period**"). If Customer determines that the Deliverable fails to satisfy the criteria for acceptance set forth in the Project Proposal, then before the end of the Acceptance Period Customer may provide Synchroness with a notice stating in reasonable detail the manner in which the unaccepted Deliverable failed to meet with such criteria. Upon receipt of such a notice, Synchroness shall, adjust the unaccepted Deliverable and Customer shall have an additional five (5) days within which to accept such corrected Deliverable. The parties agree to repeat the procedure set forth in this Section up to three (3) times. If after three (3) attempts, the non-conformities and deficiencies are not corrected then either (i) Customer may elect to have Synchroness continue to attempt to correct the non-conformities, and the parties will enter into a mutually agreeable change order that will allow Synchroness to be paid on a time and material basis for the ongoing work or (ii) the MSA may be terminated by Customer or Synchroness immediately upon written notice to the other. If Customer fails to notify Synchroness of its acceptance or rejection of the Deliverable by the expiration of the Acceptance Period, then the Deliverable will be deemed accepted upon the end of the Acceptance Period.
- d. Design Materials. Customer's execution of the applicable Project Proposal authorizes Synchroness to procure, without Customer's prior approval, any components, materials and supplies that are necessary to perform the Services or create the Deliverables, based on the lead time for such items ("**Design Materials**"). Upon completion of the Services or termination of the applicable Project Proposal or this MSA, Customer will either (a) purchase any remaining Design Materials from Synchroness at cost plus a fifteen percent (15%) material handling fee; or (b) direct Synchroness to either return such materials to the supplier (if returnable) or sell the Design Materials to a third party, and pay Synchroness the difference between the reimbursement or sales price actually received by Synchroness and the cost plus a fifteen percent (15%) material handling fee.
- e. Services for Others. Customer acknowledges that Synchroness may perform services from time to time for other persons or entities that are similar to the Services. This MSA will not prevent Synchroness from using its personnel, equipment and resources utilized in performing Services for the purpose of

performing such similar services for such third parties, *provided however*, the foregoing will not limit Synchroness' obligations under the NDA (as defined below in this MSA) with respect to Customer's confidential information.

3. **Termination**: This MSA may be terminated by Customer at any time, with or without cause, by written notice to Synchroness. Synchroness may terminate this MSA for breach if Customer defaults in the performance of any term or condition of this MSA and fails to cure such default (if curable) within thirty (30) days after receipt of written notice thereof. Any termination of the MSA will not affect Customer's obligation to pay Synchroness for Services properly performed up to the date of the termination and additional charges required to close the project. Both parties agree to negotiate in good faith the cost incurred by Synchroness. Sections 1 (Interaction of MSA and Project Proposals), 2 (Services), 3 (Termination), 4 (Fees and Payment), 6 (Relationship), 7 (Confidentiality), 8 (Governing Law; Venue), 10 (Ownership), 11(b) (Disclaimer), 12 (Indemnity), 13 (Limitation of Liability), and any terms necessary to enforce any of the foregoing, will survive any termination or expiration of this MSA.
4. **Fees and Payment**. Fees will be designated as either fixed bid or time and materials based in the applicable Project Proposal and shall be payable by Customer pursuant to the Project Proposal and the terms and conditions set forth in this Section 3. In the case of a time and materials project, Customer acknowledges that the amounts set forth in the Project Proposal are only estimates, and agrees that Customer will be responsible for all Services provided by Synchroness on a time and materials basis. In the case of a fixed bid project, Customer acknowledges that the scope of work to be performed is only that work described in the Project Proposal
 - a. **Milestone Billing**: A deposit of 50% for the current phase is required to start work on the phase. This deposit will secure a project start date and resource allocation within Synchroness. Synchroness will invoice Customer for fees based on milestones defined in the Project Proposal.
 - b. **Monthly Billing**: For billing on fixed cost projects, Synchroness invoices percent complete for the project unless otherwise stated in the Project Proposal.
 - c. **Travel Expenses**: Any travel will be billed at cost. Overnight or overseas travel will be billed at 50% labor for the amount of time spent traveling for the project. Any plane trip exceeding 8 hours in one leg will be ticketed as Business Class. Reimbursable expenses are billed at cost as they accrue. Mileage charged at the federal rate. Customer has the right to approve travel costs in advance.
 - d. **Material Expenses**: Project materials are subject to a 15% handling charge and may be billed when ordered. The cost of project materials subject to the handling charge includes the cost of freight and all applied taxes, fees, and tariffs.
 - e. **Third-Party Services**: Fees charged by third-party service providers are subject to a 15% carrying charge and may be invoiced to Customer when Synchroness is charged for the services provided.
 - f. **Payment**: For all undisputed invoices, Customer agrees to pay all invoiced amounts within thirty (30) days from the date of invoice. Synchroness must be notified of disputed invoices within 5 business days. Customer further

agrees to pay all of Synchroness' costs of collection (including reasonable attorneys' fees) of any amounts owed Synchroness by Customer. If Customer fails to make payment as agreed, Synchroness may stop work on the project in which event any schedule dates agreed will become invalid. Late payments shall accrue interest at a rate of 1.5% per month until paid. All fees are exclusive of federal, state and local excise, sales, use, VAT, and similar transfer taxes, and any duties, and Customer shall be responsible for all such items, excluding any taxes on Synchroness' income. Ownership of Deliverables will not be effective until full payment for such Deliverables has been received.

5. Use for Marketing Purposes: Following public disclosure by Customer, Synchroness reserves the right to use images and/or descriptions of the product(s) designed for portfolio purposes. Use of the Customer name will be limited to customer list only.
6. Relationship: Neither party shall be deemed to be an agent of the other party for any purpose, and the relationship between the parties shall only be that of independent contractors. Neither party shall have any right or authority to assume or create any obligations or to make any representations or warranties on behalf of any other party, whether express or implied, or to bind the other party in any respect whatsoever. Nothing in this MSA is intended to confer any rights, benefits, obligations or liabilities on any third party. Synchroness shall comply with this MSA, but Synchroness is otherwise free from control or direction by Customer over the performance of its duties and obligations hereunder, including the details and methods of such performance.
7. Confidentiality: Either prior to or simultaneously with the execution of this MSA, Customer and Synchroness have executed a separate confidentiality agreement (the "NDA"). The NDA is hereby incorporated into this MSA by reference. Information disclosed before and after the date of this MSA by or on behalf of Customer or Synchroness with respect to this MSA or its subject matter is subject to the NDA.
8. Governing Law; Venue: This MSA shall be governed by and construed in accordance with the laws of the State of Colorado applicable to contracts made and performed therein. The parties hereby submit themselves to the jurisdiction of the courts of the State of Colorado for the determination of any controversy arising under or in connection with this MSA, and agree that all service of process may be made by registered (return receipt) mail to the other. The prevailing party in any dispute shall be entitled to recover its reasonable attorney's fees and costs incurred, in addition to any other damages.
9. Assignment: Neither this MSA nor any right or obligation arising from this MSA shall be assignable or shall be assigned by either party without the prior, express written consent of the other party, which shall not be unreasonably withheld. Any attempted assignment in contravention to this Section will be void and of no force or effect. This MSA shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.
10. Ownership:
 - a. Deliverables. Subject to all terms and conditions of this MSA and upon payment to Synchroness in full for all Deliverables, Synchroness will assign and

transfer to Customer all right, title and interest in and to all Deliverables developed by Synchroness hereunder and all intellectual property rights therein.

- b. Customer Technology. Customer hereby grants to Synchroness a perpetual, irrevocable, nonexclusive, royalty-free, fully-paid, worldwide license under Customer's intellectual property rights to use, perform, display, reproduce, modify, adapt, distribute, prepare derivative works, make, have made and sell, any Customer-proprietary information provided to Synchroness for incorporation into any Deliverable(s) produced under this MSA. Subject to the foregoing license, Customer will retain exclusive ownership interest in all Customer-proprietary information and any other proprietary materials or content that it supplies to Synchroness during performance under this MSA or any Project Proposal.
- c. Synchroness Technology. To the extent any Synchroness Technology (as defined below) is incorporated into or provided with any Deliverables, subject to the payment of all amounts due hereunder and all other terms and conditions of this MSA, Synchroness grants to Customer a limited, non-exclusive and terminable license to such Synchroness Technology solely for the purposes of using the Deliverables in their intended manner. "**Synchroness Technology**" means any all technology, inventions, ideas, processes, formulae, software, hardware, data, works of authorship, know-how, discoveries, developments, designs and techniques, whether or not patentable or copyrightable, supplied by Synchroness or its subcontractors in performance of the Services or incorporated into the Deliverables, that was either previously owned, developed or created by, or licensed to, Synchroness or its subcontractors prior to the commencement of the Services, or that was developed or created by Synchroness or its subcontractors outside of their performance under this MSA or any Project Proposal. Subject to the foregoing, Synchroness retains exclusive ownership rights and interest in all Synchroness Technology and any other proprietary materials or content that it supplies to Customer during performance under this MSA or any Project Proposal, whether or not such Synchroness Technology is incorporated into any Deliverables. All Synchroness Technology constitutes Synchroness' confidential information.
- d. Third Party Products. In order to be able to perform the Deliverables properly, Customer will obtain and comply with applicable licenses to any third party software, hardware, technology or other intellectual property rights, which licenses must be obtained and maintained at Customer's sole cost and expense.

11. Warranties:

- a. Limited Warranty. Synchroness warrants that the Services will be performed in a professional and workmanlike fashion, consistent with industry standard practices. Synchroness will perform the mutually agreed test plan, but makes no warranty that the results of the design and development will be successful, or that the operation of any Deliverable or any resulting product will be uninterrupted or error-free.

- b. Disclaimer. THE WARRANTIES SET FORTH IN THIS SECTION 11 ARE THE SOLE AND EXCLUSIVE WARRANTIES MADE BY SYNCRONESS TO CUSTOMER UNDER THIS MSA OR ANY PROJECT PROPOSAL. SYNCRONESS SPECIFICALLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND WITH REGARD TO ANY SUBJECT MATTER OF THIS MSA, THE SERVICES AND ANY DELIVERABLES (OR RESULTING PRODUCT), INCLUDING WITHOUT LIMITATION ANY WARRANTY OF NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, FUNCTIONALITY OR MERCHANTABILITY, WHETHER EXPRESS, IMPLIED OR STATUTORY..

12. Indemnity:

- a. By Synchroness. Synchroness will, at its own expense, indemnify, defend and hold Customer harmless from and against any and all claims, costs, fees (including reasonable attorneys' fees), damages, liabilities and expenses to the extent arising from any third party claim for (a) property damage, personal injury, or death caused by any negligent or intentionally wrongful act or omission of any Synchroness personnel while performing under this MSA or Project Proposal or while on Customer's premises; or (b) infringement or misappropriation of a third party's copyrights or trade secrets by any of Synchroness Technology or Deliverables developed by Client hereunder (except to the extent such claim arises out of or relates to any express directions, specifications or instructions made by Customer or Synchroness' use of any Customer-proprietary information).
- b. By Customer. Customer will, at its own expense, indemnify, defend and hold Synchroness harmless from and against any and all claims, costs, fees (including reasonable attorneys' fees), damages, liabilities and expenses to the extent arising from any third party claim for (a) property damage, personal injury, or death caused by any negligent or intentionally wrongful act or omission of any Customer personnel; (b) infringement or misappropriation of any intellectual property rights based on any express directions, specifications or instructions made by Customer or Synchroness' use of any Customer-proprietary information; or (c) injury to persons or property, or any loss, expense or damage incurred by any person or party arising in any manner from the manufacture, sale, or use of products produced using the Deliverables developed by Synchroness and its contractors and suppliers under this MSA.
- c. Indemnification Procedures. The indemnifying party's obligations are conditioned upon the indemnified party: (a) giving the indemnifying party prompt written notice of any claim for which the indemnified party is seeking indemnity; (b) granting sole control of the defense and settlement of the claim to the indemnifying party; and (c) reasonably cooperating with the indemnifying party at the indemnifying party's expense. In no event may the indemnifying party make any admission or agree to the entry of any judgment for money to be entered on behalf of the indemnified party without the prior express written consent of the indemnified party.

13. Limitation of Liability. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE DAMAGES OF ANY KIND OR NATURE ARISING OUT OF THIS MSA, THE DELIVERABLES OR ANY PRODUCTS BASED ON OR INCORPORATING THE DELIVERABLES, WHETHER SUCH LIABILITY IS

ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE, EVEN IF A PARTY HAS BEEN WARNED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE. IN NO EVENT SHALL SYNCRONESS' TOTAL AGGREGATE LIABILITY TO CUSTOMER ARISING FROM OR RELATING TO THIS MSA OR ANY PROJECT PROPOSAL EXCEED THE TOTAL AMOUNT PAID TO SYNCRONESS BY CUSTOMER UNDER THE RELEVANT PROJECT PROPOSAL FOR THE DELIVERABLE (OR PORTION THEREOF) GIVING RISE TO SUCH LIABILITY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE. THE FOREGOING LIMITATIONS ON LIABILITY SHALL NOT APPLY TO OR LIMIT EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 12 ABOVE.

14. Entirety: This MSA, together with the NDA, contains the entire agreement of the parties with respect to the subject matter hereof, and supersedes all prior understandings and agreements of the parties with respect to such matter. Any reference herein to this MSA shall be deemed to include any exhibits attached and agreed to by both parties. In the event of any conflict between these terms and the terms of any purchase order delivered by Customer, the terms of this MSA shall control.
15. Waiver of Breach: The waiver by either party of any breach of any provision of this MSA or Project Proposal shall not constitute a waiver of any other breach.
16. Notices: All notices required or permitted to be given under this MSA shall be given in writing and shall be considered given if delivered or sent by personal delivery, courier, telecopy, electronic or both certified and regular mail to the following addresses/fax numbers, or such other address/fax number as a party may specify by the giving of notice to the other. Customer's address for notices shall be that address set forth in the Project Proposal. Synchroness's address for notices shall be as follows:
 - Vice President, Sales
 - Synchroness, Inc.
 - 10875 Dover Street, Unit 200
 - Westminster, CO 80021
 - T: 720-257-7203
 - F: 303-429-5025

17. Acceptance: Acceptance of any proposal is acceptance of the MSA terms. Services cannot commence without a signed Project Proposal and Purchase Order. Digital signatures are considered acceptable signatures. Purchase orders, deposits, or authorization can be forwarded to the appropriate Synchroness Account Manager or Project Manager, or alternatively mailed to:

Synchroness, Inc.
Attn: Accounts Receivable
10875 Dover Street
Unit 200
Westminster, CO 80021

Purchase orders should reflect the Phases as specified in this proposal in separate line items, as well as one additional line item for prototypes and one additional line item for travel.