CALCE FEE-FOR-SERVICE AGREEMENT

This Agreement, entered into by and between the University of Maryland ("University"), a constituent institution of the University System of Maryland, itself a public agency and instrumentality of the State of Maryland, and the Client hereto sets forth the terms and conditions under which University, by and through CALCE, a research lab within the University’s A. James Clark School of Engineering, will conduct CALCE FEE-FOR-SERVICE Projects.

A. Definitions

1. “Client” means the individual, company, or organization identified in this Agreement.
2. “Project” means any service described in a CALCE-FEE-FOR-SERVICE PROJECT PROPOSAL between parties referencing this Agreement.
3. “Report” means the written report describing the Project results to be prepared by CALCE and issued to Client upon completion of a Project.

B. Client Materials

1. Client will provide, at its sole expense, any information and materials not owned by or freely available to University that University needs to conduct the Project ("Client Materials").
2. Client is responsible for determining and notifying University if any Client Materials are subject to export control laws of the United States, including the Arms Export Control Act, the Export Administration Act, and their implementing regulations, or boycott and sanction programs and laws (collectively, “Export Control Laws”). Client shall not submit to CALCE any Client Materials that are subject to Export Control Laws (“Controlled Client Materials”) without prior written notice to CALCE describing the Controlled Client Materials, the specific regulation, including the Commerce Control List or US Munitions List entry, that apply to the Controlled Client Materials, and explaining why the Project requires University access to the Controlled Client Materials. The University shall determine, in its sole discretion, whether or not to accept Controlled Client Materials. If the University decides to accept such Materials, Client and University shall execute a separate University agreement specifying the conditions of disclosure and use of the Controlled Client Materials. University shall have no liability to Client of any kind if University decides not to accept Controlled Client Materials.
3. Client shall not disclose Client Materials that it considers to be proprietary or confidential ("Confidential Client Information") to University unless Client first notifies the CALCE Technical Contact identified in a CALCE-FEE-FOR-SERVICE PROJECT PROPOSAL and the University and Client execute a separate nondisclosure agreement provided by the University.
4. University shall not be liable for loss of or damage to any Client Materials and shall have no obligation to return Client Materials to Client unless otherwise specified in a separate agreement governing Controlled Client Materials or Confidential Client Information.

C. Conduct of Project

1. CALCE designates the individual identified as technical contact in a CALCE-FEE-FOR-SERVICE PROJECT PROPOSAL to serve as principal investigator for the Project. Client designates the individual identified in a CALCE-FEE-FOR-SERVICE PROJECT PROPOSAL to serve as its primary
technical contact for this Agreement. Either party may designate a new contact upon written notice to the other.

2. University will use its best efforts to complete the Project within the time frame set forth in a CALCE-FEE-FOR-SERVICE PROJECT PROPOSAL.

D. Disclaimer of Warranties, Limitation on Damages

1. SERVICES AND REPORTS ARE PROVIDED "AS IS." THE UNIVERSITY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES – WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, IN FACT OR ARISING BY OPERATION OF LAW – REGARDING REPORTS AND SERVICES INCLUDING THEIR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, CONFORMITY TO ANY DESCRIPTION, THEIR ACCURACY OR COMPLETENESS AND FREEDOM FROM INFRINGEMENT OF INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS OF ANY THIRD PARTY.

2. UNDER NO CIRCUMSTANCES SHALL THE STATE OF MARYLAND, THE UNIVERSITY OR THEIR RESPECTIVE OFFICERS, EMPLOYEES OR AGENTS BE LIABLE TO CLIENT OR ANY THIRD PARTIES FOR ANY CLAIMS OR DAMAGES CAUSED, IN WHOLE OR IN PART OR DIRECTLY OR INDIRECTLY, BY CLIENT’S USE OR POSSESSION OF REPORTS OR FOR LOST PROFITS, LOST REVENUES, LOST DATA, INTERRUPTION OF BUSINESS OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), FAILURE OF A REMEDY TO ACCOMPLISH ITS PURPOSE, STRICT LIABILITY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

E. Payment

1. The cost to conduct a Project shall be set forth in a CALCE-FEE-FOR-SERVICE PROJECT PROPOSAL.

2. The University shall not commence work on a Project unless and until it receives payment in the form of purchase order, credit card, wire transfer, cash or check. For purchase orders, University shall issue an invoice to Client in the amount set forth in a CALCE-FEE-FOR-SERVICE PROJECT PROPOSAL at the same time or shortly after completion of services. Client shall remit payment in full within thirty (30) days after the date of the invoice. Payment shall be made by check or money order payable to “University of Maryland” and mailed to the following address:

CALCE Research Center  
Mechanical Engineering  
2181D Martin Hall  
University of Maryland, College Park MD 20742-3035  
Attn: Erin Chen  
Telephone: +1 301 405 6427

F. Disputes: The parties shall first attempt to resolve any disagreements that arise under this Agreement in good faith. Under no circumstances shall the parties submit a dispute to arbitration or mediation without prior written authorization from and written agreement of their respective legal counsel.

G. General:

1. The relationship between Client and University is that of independent contractor and not employer-
employee or agent principle, or joint venture partners. Client acknowledges that the University is conducting the Project as a service to the public and in fulfillment of its history and status as a land grant institution.

2. The disclosure of this Agreement to third parties is governed by the Maryland Access to Public Records Act, State Government Article, Title 10, Subtitle 6, Annotated Code of Maryland, as amended from time to time.

3. Client shall not use the name of the University, CALCE or any University employee in advertising or in any manner that could reasonably be interpreted as a University endorsement of Client or Client’s business.

4. Client may not assign, delegate, license or otherwise transfer its duties under this Agreement except with prior written consent of University which shall not be unreasonably withheld.

5. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Maryland excluding its conflict of laws principles.

6. This Agreement, including any CALCE-FEE-FOR-SERVICE PROJECT PROPOSAL between parties, constitutes the entire understanding between the parties with respect to the subject matter herein. All prior agreements, written or oral, between the parties regarding this or other transactions are null and void and superseded by this Agreement and any terms or conditions contained in any document or process that Client requires University to accept or complete as a condition of doing business with Client or receiving payment from Client for services shall not modify or be deemed to modify the terms and conditions of this Fee-for-Service Agreement and, to the extent any such document contains terms in addition to or different from the terms of this Agreement, are hereby rejected by University.

7. This Agreement may only be modified by a written amendment to this Agreement signed by an authorized representative of each party.

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