

# Hyperchip Inc.

## Terms and Conditions of Sale

**1. PRODUCTS AND SERVICES BY HYPERCHIP INC. (HYPERCHIP)** – HYPERCHIP shall provide to the PARTNER the Products and Services set out in the Hyperchip Partner Agreement including all schedules (the Partner Agreement).

**2. PAYMENT BY PARTNER** – PARTNER agrees to pay HYPERCHIP in accordance with the Partner Agreement.

**3. ORDERS** – HYPERCHIP reserves the right to reject any order or any portion for any reason. HYPERCHIP may suspend product delivery or performance of Services for PARTNER'S breach or insufficient credit.

**4. CHANGES** – PARTNER may request changes in the Services or Product Design. If HYPERCHIP agrees to the change, the change will be treated as a separate order subject to HYPERCHIP'S change order process. If HYPERCHIP performs any change at the PARTNER'S request, HYPERCHIP shall be entitled to a reasonable adjustment to the time of performance and the price for the Service. If PARTNER or an end customer causes delays in HYPERCHIP'S work, a commensurate deferral of the due date and a reasonable adjustment in the price will occur.

**5. PRICE AND PAYMENT** – Prices are FCA Montreal, are set forth in the Partner Agreement and will be paid by the PARTNER in accordance with the Partner Agreement. The first customer shipment of units will be made by HYPERCHIP after HYPERCHIP receives full payment for all Non Recurring Engineering (NRE). Payment for units will be made to HYPERCHIP prior to shipment of units. Shipment of units will occur by HYPERCHIP subject to HYPERCHIP having received payment in full prior to shipment. PARTNER will pay all sales taxes unless PARTNER provides HYPERCHIP with a tax exemption certificate prior to the date of PARTNER'S order. PARTNER will pay for shipping, insurance and other destination charges.

PARTNER will advise HYPERCHIP of any billing discrepancies or disputes over an invoice within 10 days after receiving it. A late payment charge of 1.5% per month or portion thereof (or the maximum amount allowed by law, if lower) will automatically accrue on any overdue payment. If PARTNER makes late payments, HYPERCHIP reserves the right to change these payment terms. PARTNER will reimburse HYPERCHIP for reasonable attorney's fees and costs associated with collecting late payments. PARTNER will reimburse HYPERCHIP for all reasonable travel, living and related out-of-pocket expenses to the extent travel is requested by PARTNER and agreed to by HYPERCHIP or is necessary to provide Services plus a 15% administration fee.

**6. CONFIDENTIAL INFORMATION** – A party disclosing Confidential Information ("Discloser") to the other party ("Recipient") shall only do so under the terms of this agreement. As used herein, "Confidential Information" shall mean all confidential and/or proprietary information, in any form whatsoever, whether oral, electronic, visual, written or otherwise, relating to Discloser's business and/or those of its suppliers and customers, including, without limitation, research and development efforts, inventions, trade secrets, know-how, methods, techniques, algorithms, engineering concepts, applications, processes, designs, descriptions, drawings, intellectual property rights, product specifications, technical

documentation, development tools, software, source and object codes, models, demonstrations, samples, equipment, products, manufacturing processes, service specifications, strategies, plans, intentions, pricing, marketing information, sales, contracts, financial data and information about previous, existing or potential employees, contractors, suppliers, and customers. Confidential Information shall include both information that is identified as Confidential Information at the time of disclosure and information that a reasonable person would consider from the nature of the information and the circumstances of disclosure, is information proprietary or confidential to the Discloser and/or the discloser's suppliers, customers or other associated parties. Confidential Information shall not be limited to original information supplied by the discloser, but shall include any and all copies and reports, analyses, products and other materials derived from or containing such original information.

Recipient's obligations under this Agreement shall not apply to any Confidential Information, which is:


- (i) in or enters the public domain through no breach of this Agreement by Recipient;
- (ii) already in the possession of Recipient at the time of initial disclosure and with respect to which no obligation of confidentiality exists;
- (iii) independently developed by Recipient without reference to Discloser's Confidential Information and such independent development can be demonstrated to the reasonable satisfaction of the Discloser;
- (iv) approved for use or disclosure by written authorization of the Board of Directors of Discloser; or
- (v) the subject of an order issued by a court or other governmental entity compelling disclosure, provided however that, in the event disclosure is required by law, Recipient will provide Discloser with prompt notice of such requirement in order to enable Discloser to seek an appropriate protective order.

Recipient agrees, where there is any uncertainty as to the confidential status of any information proposed to be used or disclosed by Recipient, to consult with and seek the approval of Discloser before such use or disclosure.

### 7. OBLIGATION OF CONFIDENTIALITY –

A. Recipient will use Confidential Information only for the purposes of the proposed business relationship with Discloser. Except as may be permitted by this Agreement, Recipient shall hold in confidence, shall not disclose to any other person who is not under a like obligation of confidentiality, and shall not exploit for Recipient's own benefit or for the benefit of another person or organization, any Confidential Information.

B. Recipient shall use at least the same level of diligence to protect Discloser's Confidential Information from unauthorized use or disclosure as it uses to protect its own confidential or proprietary Information, but in no event shall Recipient use less than reasonable diligence.

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Notwithstanding the previous sentence, Recipient shall only give access to Confidential Information to its directors, officers, employees and contractors with a need-to-know for the purposes of carrying out the intentions contemplated in this Agreement and who have entered into a written agreement containing confidentiality terms and conditions at least as strict as those contained herein. Recipient shall include in such agreement with its employees and contractors a provision that their obligations of confidentiality shall survive termination of employment or the contract agreement.

C. Recipient shall not copy or reproduce Confidential Information except as reasonably required for the purposes contemplated in this Agreement, and will ensure that any confidentiality or other proprietary rights notices on the Confidential Information are reproduced on any and all such copies. Confidential Information shall be held in trust by Recipient for Discloser.

D. Upon request of Discloser or upon termination of discussions between Discloser and Recipient in relation to the business relationship contemplated herein, Recipient shall promptly deliver to Discloser all documents and other materials in any form containing Confidential Information, however recorded, in Recipient's possession or under Recipient's control, or shall immediately destroy all such documents and furnish the other party with written certification of their destruction.

E. Except as expressly permitted under this Agreement or as otherwise agreed by the parties in writing, neither party shall disclose to any other person or entity the existence or terms of this Agreement or that the parties have engaged in or are engaging in discussions with respect to a potential business relationship or have entered into a business relationship.

## **8. INTELLECTUAL PROPERTY RIGHTS –**

A. "HYPERCHIP Intellectual Property" shall mean, collectively, any patent, copyright or trade secret in which HYPERCHIP, at the time of delivering Products or Services hereunder, owns and has the right to grant any licenses of the type herein granted by HYPERCHIP, but only to the extent of such right, and (i) which is specific to the deliverables as furnished hereunder and/or claims an invention disclosed in the deliverables as furnished hereunder; and (ii) but for the licenses granted herein is unavoidably and necessarily infringed by the end customer's implementation and use of the deliverables. Upon payment of the applicable fees as set forth in the Partner Agreement and subject to the provisions of this Agreement, HYPERCHIP hereby grants a non-exclusive, personal, royalty-free and non-transferable license to use, under HYPERCHIP Intellectual Property, all deliverables in the form furnished hereunder solely to the end customer, solely for the purpose of using such deliverables for the end customer's own internal business purposes. The license rights granted do not include rights to manufacture products or to offer services of the same nature as the Services provided hereunder.

B. Subject to PARTNER'S right, title and interest in PARTNER'S Confidential Information, any and all inventions, derivative works, improvements, developments or innovations made, conceived or devised by HYPERCHIP (and its contractors or consultants, as the case may be) in the course of providing

Services and deliverables hereunder, are (and shall be) the sole and exclusive property of HYPERCHIP, including but not limited to all rights, title and interest to patents, copyrights, trademarks and trade secrets therein.

C. Except as expressly set forth herein, no other right or license is either granted or implied by either party to the other with respect to any technical or business information, or with respect to rights in any patents, trademarks, copyrights, trade secrets, mask work protection rights, and other intellectual property.

**9. PERSONNEL** – HYPERCHIP reserves the right to determine which personnel to assign to perform Services. HYPERCHIP personnel shall at all times be subject to the employment conditions of HYPERCHIP and not those of PARTNER. HYPERCHIP'S personnel shall comply with PARTNER and the end customer's reasonable site and security regulations and procedures of which HYPERCHIP has received written notice sufficiently prior to arrival at the site

**10. WARRANTY** – PARTNER'S acceptance of Products and Services shall be deemed to occur as Products are delivered and Services are completed. HYPERCHIP warrants directly to PARTNER that at the time of Performance, Services will be performed in a workmanlike manner and in accordance with good industry practice in the community in which Services are performed. If Services performed by HYPERCHIP prove not to have been so performed, and if PARTNER notifies HYPERCHIP to that effect within 30 calendar days commencing on the date of the performance of the Service giving rise to the claim, HYPERCHIP, at its option, either will correct all confirmed defects or deficiencies in the performance of the Services or render a pro-rated credit for the defective or non-conforming portion of the Services based upon the original change for the Services.

THIS SERVICES WARRANTY IS EXCLUSIVE AND IS IN LIEU OF ALL OTHER EXPRESS AND IMPLIED WARRANTIES INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF ANY PATENT OR OTHER INTELLECTUAL PROPERTY RIGHT OF ANY THIRD PARTY. THIS WARRANTY BEGINS IMMEDIATELY UPON COMPLETION OF THE SERVICES AND IS PARTNER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM THAT THE SERVICES DO NOT COMPLY WITH REQUIREMENTS, ARE DEFECTIVE OR DO NOT SATISFY THE ABOVE WARRANTY. HYPERCHIP'S SOLE OBLIGATION SHALL BE TO MAKE CORRECTIONS OR GIVE A CREDIT AS SET FORTH ABOVE IN THIS WARRANTY.

**11. PARTNER'S RESPONSIBILITIES** – PARTNER agrees to: (a) Follow all of HYPERCHIP'S instructions; (b) Provide HYPERCHIP with such technical information, data, support and assistance as reasonably required by HYPERCHIP, (c) Obtain all necessary and applicable governmental permits for installation, operation and maintenance of the products and software, except applicable permits HYPERCHIP must have to conduct business. HYPERCHIP will not be responsible for the cost of reconstructing data stored on disk files, tapes, memories, etc. lost during the performance of Services hereunder. PARTNER and the end customer will fulfill the foregoing obligations without charge to HYPERCHIP. If HYPERCHIP'S performance is hindered or prevented for any reason due to PARTNER or an end customer's failure to fulfill its obligations hereunder,

HYPERCHIP will be excused from performing its obligations until PARTNER or the end customer provides what HYPERCHIP requires to perform.

## **12. EXCLUSIVE REMEDIES AND LIMITATION OF LIABILITY –**

**A.** Within this Section, “HYPERCHIP” shall mean Hyperchip Inc., its subsidiaries, affiliates, and the directors, officers, employees, agents, subcontractors and suppliers of all of them. “Damages” shall refer collectively to all injury, loss or expense incurred.

**B.** HYPERCHIP’S ENTIRE LIABILITY AND PARTNER’S EXCLUSIVE REMEDIES FOR ANY DAMAGES CAUSED BY ANY DEFECT OR FAILURE, OR ARISING FROM THE PERFORMANCE OR NON-PERFORMANCE OF ANY SERVICES, REGARDLESS OF THE FORM OF THE ACTION, WHETHER IN CONTRACT, TORT, INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, SHALL BE:

(1) FOR TANGIBLE PROPERTY DAMAGE AND PERSONAL INJURY CAUSED BY HYPERCHIP’S NEGLIGENCE: THE AMOUNT OF THE DIRECT DAMAGES;

(2) FOR HYPERCHIP’S FAILURE TO PERFORM SERVICES AS WARRANTED: THE REMEDY SET FORTH IN THE WARRANTY SECTION; and

(3) FOR ALL OTHER CLAIMS: THE AMOUNT OF DIRECT DAMAGES, BUT NOT TO EXCEED THE LESSER OF (a) THE TOTAL FEES PAID UNDER THIS AGREEMENT, OR (b) \$100,000.

**C.** HYPERCHIP SHALL NOT BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES, OR FOR LOST PROFITS, SAVINGS OR REVENUES. THIS PARAGRAPH SHALL SURVIVE THE FAILURE OF ANY EXCLUSIVE REMEDY.

**13. TERMINATION** – HYPERCHIP shall have no liability for delays in the delivery schedule unless the delay extends more than 60 days and is not attributable to PARTNER, an end customer or to force majeure conditions, in which case PARTNER’S sole remedy shall be to cancel delayed items without liability for cancellation charges. If PARTNER fails to perform any material term or condition of this Agreement and such failure continues for 30 days (or for 10 days for breach of payment obligations or obligations under Sections 5 and 6) after receipt of written notice, PARTNER shall be in default and HYPERCHIP may terminate this Agreement (and/or all or any portion of the rights or licenses granted to PARTNER and the end user hereunder) and exercise any available rights. Upon termination by HYPERCHIP, all Statement of Works (SOWs) and orders shall terminate and PARTNER shall be liable for payment for all Services rendered to date, plus applicable cancellation charges, reimbursement of HYPERCHIP’S incurred expenses, and other damages under applicable law with respect to the terminated portion of the order.

**14. FORCE MAJEURE** – Except for payment obligations, neither party shall be responsible for any delay or failure in performance to the extent such delay or failure is caused by fire, strike, embargo, explosion, earthquake, flood, war, water, the elements, labor dispute, government requirements, acts of God, inability to secure raw materials or transportation facilities, acts or omissions of carriers or suppliers, or other causes beyond a

party’s reasonable control. Actions and inactions of end customers shall not be considered beyond PARTNER’S reasonable control.

**15. ASSIGNMENT** – Neither party may assign this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld. However, HYPERCHIP may assign this Agreement to a present or future affiliate, subsidiary, acquirer or successor to all or part of its services business, and may assign its right to receive payment without PARTNER’S consent. HYPERCHIP may subcontract work to be performed under this Agreement.

**16. EXPORT** – PARTNER shall not use, distribute, transfer, or transmit the deliverables or any other information provided by HYPERCHIP except in compliance with U.S. export laws and regulations. At HYPERCHIP’S request, PARTNER shall sign such export-related documents as may be required for HYPERCHIP to comply with U.S. export regulations.

## **17. GENERAL –**

**A.** Amendments to this Agreement must be in writing and signed by authorized representatives of both parties.

**B.** A party’s failure to enforce any right or remedy available under this Agreement shall not constitute a waiver of that right or remedy. If any provision of this Agreement is found to be invalid or unenforceable, the remaining provisions shall remain in effect, and this Agreement shall be modified to the extent required to make the provision valid and enforceable.

**C.** PARTNER may not use the HYPERCHIP tradename or tradedress or publicize this Agreement in any way unless HYPERCHIP consents in writing, except that PARTNER may identify HYPERCHIP as its subcontractor to its end customers.

**D.** This Agreement shall be governed by and shall be construed under the laws of the Province of Quebec, Canada and the laws of Canada applicable therein. The parties agree that any and all disputes arising under this Agreement shall be subject to the nonexclusive jurisdiction of the courts of the province of Quebec.

**E.** During this Agreement and for one year thereafter, neither party will make a targeted employment solicitation of the individual employees of the other.

**F.** PARTNER understands that HYPERCHIP is in the business of providing products and services drawing upon the knowledge, understanding and expertise HYPERCHIP has gained in the course of working with many varied customers. Notwithstanding anything in this Agreement to the contrary, nothing herein shall be deemed to assign rights to or limit HYPERCHIP’S use of any information, know-how or knowledge to the extent it does not contain PARTNER’S Confidential Information. A HYPERCHIP employee or subcontractor who has seen Confidential Information shall not be precluded from working on projects that relate to similar subject matters whether during or after the term of this Agreement, provided that the individual does not use or make reference to the Confidential Information.

**G.** In the event of a conflict between the terms in the Partner Agreement and this Agreement, the Partner Agreement shall govern. Terms and conditions contained in an order for Products and Services that are inconsistent with this Agreement or the Partner Agreement, including any pre-printed terms and conditions, shall be ineffective and void.