

MAPLE LEAF PHOTONICS LLC TERMS OF USE

Pursuant to the January 5, 2021, agreement (the “Agreement”) between Maple Leaf Photonics LLC, a Washington limited liability company (“MLP”) and Stonehill College, a Massachusetts not for profit corporation (the “College”), governing the sale of certain equipment¹ and license of software, third parties authorized by the College to use the Equipment must agree to be bound by the Licenses, Confidentiality, Warranty, Dispute Resolution, and Governing Law provisions (including its subsections) of the Agreement, as set forth below. References to “Customer” refer to the third-party user; in the interest of avoiding confusion, paragraph numbers in this document correspond to paragraph numbers in the Agreement.

2. LICENSES

2.1. Software. All software, whether as stand-alone, embedded, or installed in Systems (“Software”), are licensed and not sold to Customer. Software is solely for use with the System(s) in accordance with these terms of use, and may not be copied except as expressly permitted by a separate license agreement with MLP. All licenses for Software are revocable, non-exclusive, non-transferable, and non- sub-licensable.

2.2. Intellectual Property. Customer agrees that all right, title, and interest including all copyright, trademark, patent, and other similar intellectual property rights, associated with the System (including all underlying components, design, and software), Services, and all System Materials are the intellectual property of MLP (or its licensors) and are protected by copyright, trademark, trade secrets, and other intellectual property laws. This Agreement does not grant or convey to Customer any right, title, or interest in or to the System (including all underlying components, design, and software), the Services, or all System Materials, except (a) pursuant to the licenses granted by Sections 2.1 and 2.3 and (b) provided that the individual tangible physical hardware components thereof, apart from the System and installed Software, will be the property of Customer. For purpose of this Agreement, “System Materials” means all documentation, manuals, diagrams, instructions or other materials provided under this Agreement or provided to Customer.

2.3. License to System. MLP hereby grants Customer a limited license to use the System and any associated System Materials solely in connection with Customer’s use of the System for photonic device testing needs. Customer may not: (a) license, sublicense, sell, resell, transfer, assign, distribute, or otherwise commercially exploit the System (or any portion thereof) or the System Materials, unless expressly provided and agreed to in writing between Customer and MLP; (b) offer photonic testing services to any third-party, or allow any third-party to use the System to test such party’s photonic device, whether or not for a fee or consideration, unless expressly provided and agreed to in writing between Customer and MLP; or (c) modify, decompile, reverse engineer, disassemble, attempt to derive, or access the System (or any system component or Software thereof) in order to (i) build a product or service that is, directly or indirectly, competitive with or in any way a substitute for any services, product or software offered by MLP, (ii) build a product using similar ideas, features, or functions, (iii) copy any ideas, features, or functions of the System or Software, or (iv) make any modification, adaptation, improvement, enhancement, translation or derivative work from the System or Software. Customer acknowledges that the foregoing restrictions are an essential term of this Agreement. The Customer’s license and right to use the System will terminate upon Customer’s material breach of this Agreement. In order to protect its rights to the System, MLP will be entitled to a return of the System to its possession following any material breach of the license.

¹ The Equipment is identified as (1) SD90 Probe Station, (2) Fiber Positioner, Long-Travel Piezo, (3) Probe Positioner, XYZ 12mm (manual) in the Maple Leaf Photonics sales order #SO-00123 dated December 3, 2020.

2.4. Custom Services and Feedback. Customer agrees that any enhancement requests, custom drivers, modifications, feedback, recommendations or other information provided by Customer to MLP relating to the System, Services, or System Materials are hereby assigned by Customer to MLP and will be the sole property of MLP. Nothing in this provision alters MLP's obligation to maintain in confidence Customer's Confidential Information as provided in this Agreement.

3. CONFIDENTIALITY

3.1. Confidential Information. For purpose of this Agreement, "Confidential Information" means any proprietary information, technical data, trade secrets, or know how of either party that is disclosed to the other party, including, but not limited to, photonic devices, designs, specifications, System Materials, hardware designs, prototypes, schematics, software, plans, prices and costs (including of this Agreement), or other business or technical information of the disclosing party that is designated to be confidential or proprietary or which reasonably appears to be confidential or proprietary. Each party reserves any and all right, title and interest (including, without limitation, any intellectual property rights) that it may have in or to any Confidential Information that it may disclose to the other party under this Agreement. Both parties agree that the terms of this Agreement and the System Materials are Confidential Information, including any such items provided prior to the Order Acknowledgment.

3.2. Non-use and Non-disclosure. Both parties agree to: (a) protect Confidential Information of the discloser against any unauthorized use or disclosure to the same extent that the recipient protects its own Confidential Information of a similar nature against unauthorized use or disclosure, but in no event will use less than a reasonable standard of care to protect such Confidential Information; (b) refrain from using the other party's Confidential Information, except to perform its obligations or exercise its rights under this Agreement; and (c) not disclose such Confidential Information to any third party, except to those employees or contractors of the receiving party who are required to have the information in order to perform the party's obligations under this Agreement and who are under confidentiality obligations. If a party is required by law to disclose the other party's Confidential Information, that party must give the other party prompt written notice of the requirement prior to the disclosure and assist the other party to obtain an order protecting the information from public disclosure. Both parties acknowledge that damages for unauthorized disclosure of Confidential Information may be irreparable, and the other party will be entitled to seek equitable relief in addition to other remedies, including legal fees.

4. LIMITED REPAIR AND REPLACE WARRANTY

4.1. Repair and Replace Warranty. MLP warrants that the System will function according to MLP's specifications as provided in the Order Acknowledgment on the delivery date. For a period of one (1) year following the date of delivery ("Warranty Period"), MLP will repair or replace any malfunctioning hardware component of the System or resolve any error in the underlying software (the "Repair and Replace Warranty"). The Repair and Replace Warranty is subject to (a) Customer providing detailed, written notification to MLP of the non-conformance within the warranty period, (b) Customer obtaining prior authorization from MLP to return the nonconforming System, provided the issues cannot be solved remotely, and (c) Customer returning the nonconforming System to MLP freight and insurance prepaid. The Repair and Replace Warranty extends only to the original Customer of the System from MLP. For valid warranty claims, MLP shall, at its sole discretion, either replace, repair, or refund the prorated purchase price with respect to the System. Customer understands that repairing or replacing any component or software may take a reasonable amount of time and MLP is not liable for any damages due to a loss of device testing time or damaged photonic device or other Customer equipment.

Customer's sole and exclusive remedy for any warranty claim, shall be limited solely to repair and/or replacement under this Section 4.1 within the Warranty Period.

4.2. Warranty Exclusions. The Repair and Replace Warranty will be voided if: (a) Customer makes any unauthorized modifications or changes to the System; (b) MLP cannot reproduce or identify the defect; (c) the malfunction, errors, or defects are due to unapproved changes to the System by Customer, the testing equipment onsite, or other causes external to the System; (d) Customer fails to use the System in accordance with System Materials; (e) Customer incorrectly operates third-party equipment that is used with the System; (f) Customer incorrectly installs the System; (g) Customer has not installed the most recent update of any software; (h) Customer attaches items to the System that are not manufactured by MLP; (i) the System undergoes abnormal wear and tear, damage caused by an accident, misuse, neglect, negligence, vandalism, acts of God, subjection to adverse conditions, improper storage or handling, or disasters such as flood, fire, or war; or (j) Customer is in breach of this Agreement. Additionally, Customer acknowledges that the System incorporates third-party software and that MLP does not provide any warranty to the extent there is a defect in any such third-party software, provided MLP will use reasonable efforts to provide a workaround for a defect in third-party software.

4.3. Disclaimer of Other Warranties. EXCEPT AS EXPRESSLY PROVIDED HEREIN, MLP MAKES NO OTHER WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. NO MODIFICATION OR ALTERATION OF THE FOREGOING WARRANTY AND LIMITATION OR REMEDIES PROVISIONS SHALL BE VALID OR ENFORCEABLE UNLESS SET FORTH IN A WRITTEN AGREEMENT SIGNED BY AN AUTHORIZED REPRESENTATIVE OF BOTH PARTIES. THE INDEMNITIES IN SECTION 5 AND THE WARRANTY IN THIS SECTION 4 ARE EXCLUSIVE AND IN LIEU OF ALL OTHER INDEMNITIES OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. MLP MAKES NO WARRANTY THAT THE SYSTEM OR SERVICES: (A) WILL MEET YOUR REQUIREMENTS; (B) WILL MEET YOUR PHOTONIC DEVICE TESTING NEEDS; OR (C) WILL BE ERROR- FREE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU.

5. INDEMNIFICATION AND LIMITATION OF LIABILITY

5.1. Indemnification by MLP. MLP will defend, indemnify, and hold Customer harmless from all losses, claims, or costs (including reasonable attorneys' fees) of Customer as a result of any third-party suit, claim, or proceeding against Customer to the extent that such suit or proceeding is based on any claim that the System (or any component or software thereof) infringes on the intellectual property rights of any third party, provided that MLP is promptly notified in writing of such claim and is given full authority, information, and assistance by Customer to defend and settle the matter. MLP will have the right and option at any time in order to take reasonable actions to avoid such claims or actions and minimize potential liability. MLP will not defend or settle any matter in a manner that is detrimental to the financial standing or reputation of Customer. The foregoing paragraph will not apply if any unauthorized alteration is made to the System outside the license and scope of use authorized in this Agreement.

5.2. Indemnification by Customer. Customer shall defend, indemnify, and hold MLP harmless from all losses, claims, damages or costs (including reasonable attorneys' fees) of MLP as a result of any third-party suit, claim, causes of action, or proceeding against MLP related to or arising from Customer's operation of its business in connection with the System, System Materials, Software and hardware, and any use (or misuse) of the System by Customer or any of its authorized third-part(ies), and any agents, assigns, representatives, and all other persons acting by, through, under, or on behalf of, or in concert with any of them (collectively, "Releasor"), in a manner not authorized by this Agreement, including any alteration of the System or Releasor's liability to any third-party arising from its representations regarding any photonic device or its characteristics. Customer shall defend, indemnify, and

hold MLP harmless from and against any and all liability, losses, claims, damages, costs (including reasonable attorneys' fees), causes of action, and expenses arising out of or in connection with, directly or indirectly, any personal injury, including death, or any damage to property or business which may be sustained by any use (or misuse), negligent use, failure to operate or negligent operation of the System, Customer's failure to instruct the Releasor in the proper use of the System, and customer's failure to ensure the safety of the Releasor while the System is in use.

5.3. Limitation of Liability. EXCEPT WITH RESPECT TO ANY INDEMNIFICATION OBLIGATIONS, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF PROFITS), OR FOR ANY OTHER DAMAGES, EXCEPT AS PROVIDED ABOVE IN THIS AGREEMENT, ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE SYSTEM OR SERVICES, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SYSTEM, OR FOR ANY DEFECT, ERROR, OR OMISSION, REGARDLESS OF CAUSE, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SPECIFICALLY, MLP WILL NOT BE LIABLE FOR ANY DAMAGES RELATED TO ANY MALFUNCTION OR ERROR WHICH CAUSES THE PARTIAL OR COMPLETE LOSS OF CUSTOMER'S OR ANY THIRD-PARTY'S EQUIPMENT OR ANY PHOTONIC CHIP OR DEVICE BEING TESTED. IN ALL CASES, MLP'S MAXIMUM AGGREGATE LIABILITY TO CUSTOMER WILL NOT EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER UNDER THIS AGREEMENT TO MLP.

6. GENERAL LEGAL

6.2. Dispute Resolution. The parties will attempt to resolve through good faith discussion any dispute that arises under this Agreement. If the parties are unable to resolve the dispute within sixty (60) days after delivery of written notice of the dispute, Customer may bring suit against MLP in King County or Seattle, Washington, and MLP may bring suit against Customer in Bristol County or Boston, Massachusetts.

6.3. Governing Law. Any and all matters in dispute between the parties to this Agreement shall be governed by, and construed and enforced in accordance with, the laws of Massachusetts, excluding conflict of law provisions, regardless of the legal theory upon which such matter is asserted.

By signing below, I agree to be bound by MLP's terms of use. I have had the opportunity to ask questions about these terms prior to agreeing to be bound by them.

Third-Party User SIGNATURE

Date

Third-Party User PRINTED name

Third-Party User company or organization PRINTED name

