

## A. Customer Requirements

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The following material and services are not a part of this RFI proposal and ENORISE expects them to be supplied by others. Conditions listed in this section apply as noted. This includes, but is not limited to:

- Customer project coordinator
  - Single point of contact for day to day contact with the ENORISE Program Manager
  - Interface between ENORISE and internal Customer groups that may be affected by ENORISE decisions or activities
  - Make final project decisions and perform conflict resolution as necessary
  - Support personnel for Customer technical and infrastructure related issues during the entire project, including test rig supplied by others
- Any specific protocol/interface out of ENORISE standard is not supplied and can be quoted at the request of Customer
- Customer specific tools are not included
- This RFI proposal is offered on assumption that there are no hidden conditions or circumstances. Additional work resulting from such undeterminable general conditions is considered additional work.
- ENORISE may reasonably rely on data, test results, drawings and other information provided by Customer or Customer agents or employees.
- Any required fluids including coolant, oil, hydraulic fluid, etc., unless otherwise specified in this RFI proposal for all stages of the project.
- Integration and commissioning of equipment and systems which are not a part of our scope of supply
- Any work, service, or material which is necessary that is not specifically noted to be a responsibility of ENORISE in this RFI proposal
- Any facility, environmental, federal, civil, or local government or non-government related permits, permissions, licenses beyond the standard required to obtain Customer work permits.
- Unless specifically noted as supplied in this RFI proposal- Extra insurance, builders risk, liquidated damages, consequential damages, penalties, bonding, taxes, convenience fees, or any other requirement of this nature.
- Ergonomic assists is not part of this RFI proposal
- Any utility usage monitoring devices is not part of this RFI RFI proposal
- This RFI proposal assumes that Customer will require no more than 5 business days to review any material and equipment submittals.
- This RFI proposal is based on working one shift during normal business hours with no overtime, Monday through Friday, no holidays.
- Withholding or similar taxes, which customer is responsible for remitting directly to the pertinent authorities, is not included
- Use of the equipment for production, internal or commercial purposes constitutes customer initial acceptance or beneficial occupancy
- This RFI proposal does not include wiring of communication or data systems or modification of existing systems to accommodate to new work.
- This RFI proposal does not offer any equipment, materials or labor for regenerative power

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management system including reverse current relays, current relays, current transformers, load banks or any other system that may be required by AHJ or other bodies unless otherwise specified as provided in this document.

## **B. Assumptions**

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In preparing this RFI proposal, ENORISE has made the following assumptions:

- This RFI proposal is based on the test systems being located at Customer location.
- The use of non-union labor is acceptable
- ENORISE reserves the right to subcontract selected tasks in Europe, Asia and North America. However, this is subject to prior notice and Customer approval.
- For the purposes of this RFI proposal ENORISE equates Site Acceptance with Substantial Completion. Substantial Completion means that the Project, or a portion of the Project designated by the Customer, is sufficiently complete and satisfactory to be occupied or used for the purpose for which it is intended (beneficial use) and only minor items such as touch-up, adjustments and minor replacements or installations remain to be completed or corrected. Beneficial Occupancy means the condition prior to Final Completion of the Project at which time the Project, or portion thereof, is sufficiently complete and systems operational such that the Customer could, after obtaining necessary approvals and certificates, occupy and utilize the space for its intended use. In this case Substantial Completion will be considered achieved and the Customer accepts the Project, or a portion thereof, for such Beneficial Occupancy. If the customer assumes Beneficial Occupancy prior to Substantial Completion, ENORISE will declare that the Project has achieved Substantial Completion.

## **C. Products & Parts Warranty**

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ENORISE represents and warrants that products and parts that it mass produces for re-sale ("ENORISE-Provided Products") will be free from any material defects in material and workmanship for a period of one (1) year from the date the ENORISE-Provided Products are delivered to Customer. ENORISE will use its best efforts to remedy any defects in material and/or workmanship occurring in ENORISE-Provided Products during the one-year warranty period. If, however, such defects are not remedied, ENORISE may in its sole discretion accept the return of the non-conforming ENORISE-Provided Products and refund the purchase price. Payment of such refund will be the full extent of ENORISE's liability and ENORISE shall not be liable for any other costs or expenses.

All products and/or parts provided by any ENORISE subcontractor ("ENORISE Subcontractor Products"), if any, will bear the warranty provided by the ENORISE subcontractor(s), if any. ENORISE Subcontractor Products will not be warranted by ENORISE. Customer understands and acknowledges that ENORISE does not make any warranties or representations regarding ENORISE Subcontractor Products.

ENORISE represents and warrants that all ENORISE custom made, one-of-a-kind, or prototype products ("ENORISE Custom Products") will be free from any material defects in material and workmanship at the date of delivery of the ENORISE Custom Products to the Customer. Customer understands and acknowledges that no other representation or warranty is made regarding ENORISE Custom Products. ENORISE will use its best efforts to remedy any defect in material and/or workmanship that exists at the time of delivery of ENORISE Custom Products to Customer. If, however, such defects are not remedied, ENORISE may in its sole discretion accept the return of the non-conforming ENORISE Custom Products and refund the purchase price. Payment of such refund will be the full extent of ENORISE's liability and ENORISE shall not be liable for any other costs or expenses.

Any modification to any warranty or representation made under this Section must be made in writing and signed and dated by ENORISE and Customer.

## D. Appendix A – ENORISE Customer Standard Terms & Conditions

**Enorse** - means Enorse Americas, a Delaware Limited Liability Corporation.

**Customer** - means the party purchasing services or goods from Enorse under the Agreement.

**Agreement** - means these Customer Standard Terms and Conditions, together with the proposal, which forms the contract between Enorse and Customer. The Agreement is limited to, and conditional upon, Customer's acceptance of the Enorse Customer Standard Terms and Conditions exclusively. Any additional or different terms proposed by Customer, whether in Customer's quotation, acknowledgement, invoice or otherwise, are expressly rejected by Enorse, and will not become part of the Agreement.

**Acceptance of Proposal** - Enorse proposals are valid for thirty (30) days from the issuance date, unless otherwise stated in writing.

**Acceptance of Customer Purchase Order** - Acceptance of a purchase order from Customer is subject to Enorse's credit approval. Enorse may withhold acceptance of a purchase order pending a credit investigation.

**Invoices, Pricing and Currency** - Pricing is in U.S. dollars. Pricing excludes taxes, custom duties and transportation costs, which are billed separately. Enorse may issue invoices in accordance with Enorse business practices or as stated within a proposal.

**Terms of Payment** - Payment is due from Customer to Enorse net thirty (30) days from the invoice date. Payments must be in U.S. dollars. An interest charge of one and one half percent (1.5%) per month (18% per year) may be charged on accounts exceeding the stated thirty (30) day term for payment, but not to exceed applicable usury limitations.

**Indemnification** - Customer agrees to pay, reimburse, defend, indemnify and hold harmless Enorse from any and all damages, losses, claims, liabilities, costs and expenses (including reasonable attorneys' and other professional fees, settlements and judgments) arising out of Customer's, Customer's agents', assign's and/or other third-parties' use of Enorse technology, services or materials provided to any of them.

**IP and IP rights** - "IP" means intellectual property, including but not limited to concepts, models, methods, inventions, designs, trade names, trademarks, computer programs, databases, data documentation, know-how, trade secrets or other confidential information. "IP rights" means all IP related rights, as e.g. copyrights or neighboring rights, patent rights, trademark rights, design rights, or rights related to trade secrets or other confidential information.

**Deliverables** - "Deliverables" means any and all deliverables to be fulfilled or to be provided by Enorse under the agreement.

**Background IP** - IP owned by or licensed to Enorse or its affiliates prior to or separate from the development of the Deliverables under the project ("Background IP"), and all related IP rights, remain with Enorse or its affiliates. Provided all payments to Enorse have been made, Enorse grants Customer a non-exclusive, non-transferable and sub-licensable to Customer or Customer's suppliers for supplying Customer, worldwide license to the Background IP made available to Customer in conjunction with the project and needed to exploit the Deliverables for the intended purpose as agreed between the Parties. For the avoidance of doubt, Enorse is not obligated to protect its Background IP, e.g. by patents, to keep protective rights in force or to enforce or defend protective rights related to Background IP against third parties.

**Foreground IP** - All IP created within the project by or with the participation of Enorse and/or its affiliates and incorporated in the Deliverables ("Foreground IP") will be jointly owned by Customer and Enorse. In case Foreground IP is protectable by registration, Foreground IP will be registered under joint names. The related expenses will be equally shared between the Parties. Each Party is entitled to exploit, modify and license, including the right to grant sublicenses through multiple tiers, the Foreground IP in the broadest sense without restrictions and without having to compensate the other Party. Details of handling jointly owned Foreground IP shall be mutually discussed and agreed by Customer and Enorse. Intellectual property created within the project which is not incorporated in the Deliverables will remain with the Party who created the IP.

**Special provisions for IP relating to proprietary Enorse software or technology** - All IP created within the project, which is based on or is a derivative or supplement of a proprietary software or technology of Enorse and/or its affiliates made available to Customer in conjunction with the project, will be owned solely by Enorse and will be part of Enorse's proprietary IP ("Proprietary Enorse IP"). Provided all payments to Enorse have been made, Enorse grants Customer a non-exclusive, non-transferable and sub-licensable to Customer's suppliers for supplying Customer, worldwide license to Proprietary Enorse IP made available to Customer in conjunction with the project and needed to exploit the Deliverables for the intended purpose as agreed between the Parties. If the Deliverables include source code of Enorse software, Customer is obligated a) to keep the source code of Enorse software and its content confidential and b) to pass Enorse software to third parties in object code only and prohibit reverse engineering. If Enorse software is delivered in object code only, Customer is prohibited from reverse engineering. Enorse is not obligated to protect Proprietary Enorse IP against third parties.

**Commercial exploitation of proprietary Enorse IP** - Customer is entitled to use Proprietary Enorse IP for the commercial exploitation of the Deliverables under the granted license for a fair and reasonable compensation for Enorse to be negotiated in a separate agreement.

**IP Warranty** - If within the project Enorse notices third party intellectual property rights which Enorse believes are critical for the use of the Deliverables, Enorse will inform Customer as soon as practicable. However, Enorse does not warrant that the Deliverables are free from third parties' intellectual property rights. To further support Customer in minimizing the risk to infringe third party rights, Enorse offers to perform a patent study. If Customer is of the opinion, that the Deliverables may infringe third party rights, within Enorse's limits, Enorse offers Customer support to amend the Deliverables according to Customer's instructions for a reasonable compensation.

**Enorse's Confidential Information** - Any signed separate non-disclosure agreement between Enorse and Customer applicable to the subject matter of the Agreement supersedes this provision. Enorse's confidential information includes, but is not limited to, all information, documentation, drawings, computer software, ideas, and concepts in whatever form or media that pertains to Enorse, which is not in the public domain, that is disclosed or made available to the Customer, and/or its representative, agent, successor, or assign, including but not limited to that which is disclosed in discussions between Enorse and/or any of them. Customer may not disclose Enorse's confidential information to a third-party or use for purposes except as provided by the Agreement, except pursuant to a release signed by an authorized Enorse representative.

**Modifications** - Changes to the Agreement must be in writing and approved in writing as evidenced by the signatures of the parties.

**Enforcement; Applicable Law** - Enorse may enforce or choose not to enforce any terms of the Agreement. Non-enforcement of any terms of the Agreement neither implies Enorse's consent to Customer's non-compliance, nor constitutes a waiver of any of Enorse's rights. If any part of the Agreement is held by a court or other tribunal or competent jurisdiction to be unenforceable, the remainder of the Agreement remains intact, binding, and enforceable in accordance with the terms. The Agreement will be interpreted and construed in accordance with the laws of the State of Michigan, without considering its conflict of laws rules and excluding the United Nations Convention Contracts for the International Sale of Goods. Each of the parties hereto submits, to the exclusive jurisdiction of any State of Michigan court sitting in Oakland County or, to the extent it has jurisdiction, to the U.S. District Court for the Eastern District of Michigan, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment.

**Source of Production and/or Services and Changes Regarding Them** - Enorse may provide services or produce goods from any source (including subcontractors) located anywhere, unless otherwise expressly stated in writing signed by the parties. Enorse may change design and/or models or provide modified services, when such changes are made to improve the services or goods.

**Termination** - Enorse may immediately terminate the Agreement upon written notice to Customer, if Customer defaults by (i) failing to provide parts, materials and/or services required by the Agreement for Enorse to fulfill the Agreement obligations, or (ii) changing the project goals or timing with no mutually acceptable Agreement modification. Customer must reimburse Enorse for all non-cancelable and reasonable shut down costs and expenses, as well as amounts payable upon default or cancellation under the Agreement.

**Default** - A default results upon the Customer's failure to deliver parts or to perform services or tasks necessary for Enorse to fulfill any obligations under the Agreement.

**Consequences of Default or Cancellation** - Customer's default or cancellation of the Agreement entitles Enorse to recover from Customer the costs and expenses incurred by Enorse including, but not limited to, any committed or irreversible costs and/or expenses at the time of termination, as well as, any agreed upon project shut-down costs and expenses, plus a reasonable allowance for overhead and profit.

**Representation's Regarding Authority and Conflicts** - Each party represents and warrants to the other: (i) that it has the power, authority and the legal right to enter into the Agreement and to perform the obligations, (ii) that the execution and delivery of the Agreement and the performance of the obligations do not conflict with or constitute a default under any of the parties' contractual obligations under any other contract, and (iii) that the Agreement constitutes a legal, valid and binding obligation of each party.

**Export Controls and Sanctions** - The services or goods provided under the Agreement may be subject to U.S. export controls and sanctions, which include the Export Administration Regulations, the International Traffic in Arms Regulations, as well as the economic and trade sanctions administered and enforced by the Office of Foreign Assets Control. The Customer shall comply with all U.S. export controls and sanctions.

**Limitation of Liability** - Enorse will not be liable to Customer, the Customer's agents, representatives, assigns or successors, for any incidental, punitive, indirect, special, exemplary, reliance or consequential damages or for lost profits. The liability, if any, of Enorse under the Agreement for any claims, costs, damages, losses, and expenses for which Enorse may be legally liable, whether arising in negligence or other tort, contract, or otherwise, and whether or not foreseeable, will not exceed the lesser of the aggregate agreed-on price under the pertinent Statement of Work or \$1 million.

**CUSTOMER AGREES THAT ITS SOLE AND EXCLUSIVE REMEDY AGAINST ENORISE, AT THE ELECTION OF ENORISE, WILL BE LIMITED TO THE PERFORMANCE OF SERVICES AND/OR REPAIR AND REPLACEMENT OF NONCONFORMING OR DEFECTIVE GOODS; PROVIDED THAT, ENORISE IS PROMPTLY NOTIFIED IN WRITING OF ANY SUCH DEFECT. IN NO EVENT WILL THIS EXCLUSIVE REMEDY EXCEED THE LIMITS STATED ABOVE UNDER THIS CAPTION "LIMITATION OF LIABILITY."**

**Warranty** - Enorse shall perform all services using generally accepted industry standards and practices and in accordance with applicable laws and regulations. Enorse makes no other representations or warranties regarding Enorse performed services or goods delivered under the Agreement. Any warranty modification must be signed by an authorized Enorse representative. This warranty is valid for ninety 90 days from the conclusion of the Agreement.

**WARRANTY DISCLAIMER** - Enorse MAKES NO WARRANTY OF ANY KIND OTHER THAN THE EXPRESS WARRANTY STATED ABOVE UNDER THE CAPTION "WARRANTY." TO THE EXTENT ALLOWED BY LAW, Enorse HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. UNLESS THE PARTIES OTHERWISE AGREE IN A SIGNED WRITING, Enorse MAKES NO WARRANTY THAT SERVICES OR GOODS PROVIDED UNDER THE AGREEMENT DO NOT INFRINGE THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS, INCLUDING, BUT NOT LIMITED TO, UTILITY MODELS, PATENT APPLICATIONS, PATENTS, DESIGNS, TRADEMARKS, DATABASES, SOFTWARE OR OTHER WORK OF AUTHORSHIP.

**Subcontractor Warranty** - All services or goods provided by an Enorse subcontractor, if any, will bear the warranty provided by the Enorse subcontractor, if any, and will not be warranted by Enorse.

**Binding Proposal** - UNLESS signed by an authorized Enorse representative, any attached proposal is only for discussion and budgetary purposes.

**Equal Employment Opportunity** - Enorse may utilize the goods or services specified in this Purchase Order in the transaction of business with the U.S. Government. Customer agrees that it is in compliance will all Federal, State and local Equal Employment opportunity laws and regulations.

Customer and any of its subcontractors shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

**Compliance with Export Regulation and Similar Restrictions** - All information, including Proprietary Information, exchanged hereunder may be subject to "U.S. Export Controls," which include, but are not limited to the following: the International Traffic in Arms Regulations ("ITAR," 22 C.F.R. §§120-130); the Export Administration Regulations ("EAR," 15 C.F.R. §§730-774); and, the U.S. economic and trade sanctions administered and enforced by the Office of Foreign Asset Controls ("OFAC"), which include regulations, statutes and Executive orders. Accordingly, the Parties agree to abide by U.S. Export Controls governing the transfer, export, or re-export of Proprietary Information, including technical data. Technical data subject to U.S. Export Controls may not be released to foreign nationals without first obtaining the appropriate export license or other approval from the U.S. government; this restriction includes the transfer of technical data to foreign national employees of U.S. companies. The Receiving Party must obtain written consent from the Disclosing Party prior to submitting any request to a U.S. government authority to export technical data subject to U.S. Export Controls. The Receiving Party shall indemnify and hold the Disclosing Party harmless for all claims, demands, damages, costs, fines, penalties, attorney's fees, and all other expenses arising from failure of the Receiving Party to comply with U.S. Export Controls. Finally, as applicable, the Parties shall comply with all laws concerning the disclosure of classified information under the National Industrial Security Program as established by Executive Order 12829.

**Compliance with Laws** - Customer and any of its subcontractors agree to comply with all applicable laws, rules, regulations, ordinances, etc., such as (by way of example but not limitation) the Foreign Corrupt Practices act, labor laws, and health and safety regulations including the Affordable Care Act. In addition, the parties agree to comply with the UN principles relating to international human rights protection, collective bargaining, prohibition against human trafficking, abolition of forced and child labor, and prevention of corruption.

**Force Majeure** - Enorse shall not have any liability for failure or delay in performance of services under this Agreement when such failure or delay is due to any cause beyond its reasonable control such as a war, strike, riot, crime, epidemic, pandemic, or act of God, prevents one or both parties from fulfilling their obligations under the contract. The parties shall negotiate reasonably required adjustments to price, scope of work, schedule and other pertinent provisions the contract considering both parties' reasonable interests. Neither Enorse nor CUSTOMER shall have any liability for failure or delay in performance of services under this Agreement, except for any obligations to make payments to the other Party under this Agreement, when such failure or delay is due to any cause beyond the reasonable control and without the fault or negligence of the affected Party; provided that notice will be given to the other Party promptly and in writing when it appears that such cause will delay performance under this Agreement.

If the performance of Enorse's obligations under this Agreement is prevented or delayed in whole or in part by any act or omission of CUSTOMER or its Representatives, Enorse shall not be deemed in breach of its obligations under this Agreement or otherwise liable for any claims, costs, damages, losses, and expenses sustained or incurred by CUSTOMER.

If any such failure or delay threatens to impair CUSTOMER's ability to meet its obligations, CUSTOMER may, cancel the affected portion or portions of this Agreement by written notice to Enorse, subject to payments due by Customer to Enorse for work performed and non-cancellable costs incurred by Enorse under this Agreement.

**Agreement Conditioned Upon Acceptance of Enorse's Customer Standard Terms and Conditions** - Any attached proposal is expressly limited to, and made conditional upon, acceptance of the proposal, including these Customer Standard Terms and Conditions, by the Customer, without change. These Customer Standard Terms and Conditions cannot be modified unless specifically set forth in writing signed by an authorized Enorse representative.