



Design and Manufacturing Services Agreement

This Design and Manufacturing Services Agreement (the “**Agreement**”) is made as of _____, 20__ (the “**Effective Date**”), by and between _____, having its place of business at _____ (“**Customer**”) and Flextronics _____ having its place of business at _____ (“**Flex**”).

Customer desires to engage Flex to perform certain design, engineering and manufacturing services as set forth in this Agreement and in applicable agreed upon Design and Manufacturing Specifications to be attached or incorporated by reference. The parties agree as follows:

1. DEFINITIONS

The capitalized terms shall have the meanings set forth in this Agreement and in Exhibit 1.

2. DESIGN SERVICES ENGAGEMENT

Customer hereby engages Flex to perform design and development, pre-production, engineering, and prototype and first article manufacturing (the “**Design Services**”) related to the Product that is described in the written designs and specifications of Customer (“**Design Specifications**”) and attached to a Design Statement of Work prepared by mutual agreement of the parties (the “**Design Statement of Work**”). Each Design Statement of Work under this Agreement is to be substantially in the form attached hereto as Schedule A and is to be consecutively numbered (Design Statement of Work A-1, A-2, A-3, etc.). Customer shall issue purchase orders for the Design Services to Flex in accordance with the Design Statement of Work and Section 4 below.

Flex shall perform the Design Services using careful, efficient, and qualified workers, and in a professional and workmanlike manner in accordance with the Design Statement of Work, and Flex shall provide Deliverables that will conform in all material respects to the Design Specifications. The sole remedy of Customer for the breach of such obligations of performance or conformance is set forth in Section 8.1. Except as otherwise expressly provided herein, the Deliverables (including any prototype or trial units of the Product) shall be provided on an “as-is” basis. Flex makes no warranty whatsoever with respect to commercial products manufactured by third parties based on or incorporating all or any part of the Deliverables.

In the event the Design Specifications require that the Product be compliant with Environmental Regulations, Flex shall only be responsible for ensuring that, for the Materials that Flex includes in the Deliverables, Flex has received from suppliers of such Materials a certificate of compliance with such Environmental Regulations. Flex has no responsibility whatsoever in the event the Materials are determined to be not in compliance with such Environmental Regulations, nor any responsibility whatsoever for Customer Controlled Materials that Customer has specified to be included in the Deliverables or Product.

3. MANUFACTURING SERVICES

The following terms apply only to the manufacture of commercial quantities of the Product:

3.1. **Work.** Customer hereby engages Flex to procure Materials and to manufacture, assemble, and test Products (collectively such work “**Manufacturing Services**”) pursuant to mutually agreed upon written Manufacturing Specifications, which may be prepared as part of the Design Services set forth in Section 2 above. The “**Manufacturing Specifications**” for each Product or revision thereof, shall include but are not limited to bill of materials, designs, schematics, assembly drawings, process documentation, test specifications, current revision number, and Approved Vendor List. The Manufacturing Specifications as included in Flex’s production document management system and maintained in accordance with the terms of this Agreement are incorporated herein by reference as Exhibit 2. The Manufacturing Services does not



include any new product introduction (NPI) or product prototype services related to the Products, which is considered “**Design Services**” as provided in this Agreement. In case of any conflict between Manufacturing Specifications and this Agreement, the Agreement shall prevail. Flex and Customer shall maintain and update the Manufacturing Specifications in accordance with the terms of this Agreement.

3.2. **Engineering Changes.** Either party may request that Flex incorporate engineering changes into the Product or Manufacturing Specification by providing a written description of the proposed engineering change sufficient to permit the parties to evaluate the feasibility and cost of the proposed change. Flex shall proceed with engineering changes when the parties have agreed upon the changes to the Manufacturing Specifications, delivery schedule and adjustments to the Fee List, and Customer has agreed to reimburse Flex the implementation costs and adjust the Product pricing as applicable.

3.3. **CAPEX.** Customer shall pay Flex for or obtain and consign to Flex any CAPEX as set forth in Flex’s pricing quotation, the attached Fees List, or some other agreement signed by the parties incorporated herein by reference. Preparations for providing Services will not commence until payment for the CAPEX is received by Flex.

3.4. **Launch and Ramp Expenses.** Customer shall pay Flex for incurred NRE Charges of preparing the production and testing environment for mass production of the Products. Such launch and ramp expenses shall be set forth in Flex’s pricing quotations, the attached Fees List, or some other agreement signed by the parties incorporated herein by reference. If it appears that the actual incurred launch and ramp expenses will exceed through no fault of Flex those agreed to, Flex will provide Customer notification of such additional expenses and Customer agrees to be responsible for such additional amount.

3.5. **Miscellaneous Services.** From time to time, Customer may engage Flex to perform additional services. The parties will mutually agree on the scope, deliverables and fees prior to such engagement.

4. FORECASTS; ORDERS; FEES; PAYMENT

4.1. **Forecast.** Customer shall provide Flex, on a monthly basis, a rolling twelve (12) month forecast indicating Customer’s monthly Product and services requirements (the “**Forecast**”). Unless a different timeframe is agreed to by the parties, Customer shall on a monthly basis provide purchase orders for the first three (3) months of the then applicable Forecast, which shall be non-cancellable portion of the Forecast.

4.2. **Purchase Orders; Precedence.** Customer may use its standard purchase order form for any notice provided for hereunder, provided that all purchase orders must reference this Agreement and the applicable Design Statement of Work or Manufacturing Specifications. The parties agree that the terms and conditions contained in this Agreement prevail over any terms and conditions of any purchase order, acknowledgment form or other instrument.

4.3. **Purchase Order Acceptance.** Flex shall normally accept purchase orders from Customer, provided that Flex may reject any purchase orders: (a) that is for a change in previously ordered quantities that has not been approved in advance by Flex; (b) if the Fees reflected in the purchase order are inconsistent with the parties’ then current agreement with respect to the Fees; (c) that represents a significant deviation from the Forecast for the same period, unless such deviation is approved in advance by Flex (d) if the parties have not agreed on changes to the Design Fees or Fee List made in accordance with Section 4.4; or (e) that would extend Flex’s financial exposure beyond Customer’s approved credit line. Flex shall notify Customer of rejection of any purchase order within five (5) working days of receipt of such purchase order.

4.4. **Fees; Changes; Taxes.**

(a) Customer shall pay Flex for the Design Services, Manufacturing Services and any related expenses in accordance with this Section 4. The Design Fees set forth in the applicable Design Statement



of Work or as mutually agreed by the parties in writing or in the quotation (the “**Design Fees**”) and initial fees for Manufacturing Services as identified in on the Fee List attached hereto and incorporated herein as Exhibit 3 (the “**Fee List**”), as applicable, and collectively (the “**Fees**”). If a Fee List is not attached or completed or amended as agreed upon, then parties shall identify them on the purchase orders issued by Customer and accepted by Flex in accordance with the terms of this Agreement.

(b) Customer is responsible for additional fees and costs (“**Additional Fees**”) due to: (i) changes to the Design Specifications or Manufacturing Specifications, (ii) failure of Customer or its subcontractor(s) to perform its responsibilities with respect to the Design Services, including a failure to timely provide sufficient quantities or a reasonable quality level of Customer Controlled Materials or consigned materials where applicable to sustain the design or production schedule, (iii) extension of any milestone completion schedule under the Design Statement of Work due to Customer requested Changes or due to causes outside of Flex’s control, including any technical complications realized by Flex or Customer during the performance of the Design Services or Manufacturing Services, (iv) any expediting charges because of a change in Customer’s requirements which are pre-approved, and (v) a Governmental Change. Flex will notify Customer and will receive Customer’s written approval before incurring any Additional Fees .

(c) The Fees shall be reviewed at least quarterly by the parties. Any changes to the Fees and timing of changes (including, without limitation, engineering related changes set forth in Section 3.2) shall be agreed by the parties, such agreement not to be unreasonably withheld or delayed. By way of example only, the Fees may be increased if the market price of fuels, Materials, equipment, service, increases to labor rates and other production costs, change beyond normal variations in pricing or currency exchange rates as demonstrated by Flex.

(d) All Fees are exclusive of (i) Taxes; (ii) amounts related to export licensing of the Product and payment of brokers, fee, duties, tariffs or similar charges; and (iii) CAPEX, Launch and Ramp Expenses, and Customer shall be responsible for all such items. Should all or any portion of the Design Services or Manufacturing Services performed by Flex under this Agreement be deemed, at any time, to be taxable, Flex shall invoice Customer for such taxes and Customer shall promptly pay all such invoices submitted by Flex. This subsection (d) does not apply to taxes on Flex’s net income.

4.5. Currency and Exchange Rates. The Fees List shall be based on the exchange rate(s) for converting any non-invoice currency purchases into invoice currency. The parties shall true-up all amounts paid in a quarter with a debit/credit memo on a quarterly basis, based on the cumulative changes in the exchange rate(s) resulting from converting the non-invoice currency into the invoice currency in the previous quarter. In the event of a change in the currency exchange rate at the beginning of a quarter and at the end of said quarter of more than two (2) percent then Flex may change the price of the Product on the Fees List based on the most recent exchange rate of official reference rates adopted by the parties.

4.6. Payment.

(a) Customer shall pay all amounts due in U.S. Dollars within thirty (30) days of the date of the invoice.

(b) The parties shall mutually agree and identify in each Design Statement of Work whether the Design Fees for Design Services are to be paid for by one of the following methods: (i) upfront at the start of the project, (ii) in agreed installment payments over a defined term, or (iii) some combination of (i) and (ii).

4.7. Late Payment. Customer shall pay one and one-half percent (1.5%) monthly interest on all late payments. Furthermore, if Customer is late with payments, Flex in its sole discretion, undertake any or any combination of the following: (a) stop all Design Services or Manufacturing Services, as applicable, under this Agreement until assurances of payment satisfactory to Flex are received or payment is received; (b) demand prepayment for Design Services or purchase orders; (c) delay shipments; (d) retain all work in process until all outstanding invoices are paid in full; and (e) to the extent that Flex project personnel cannot be reassigned to other billable work during such stoppage or in the event restart cost are incurred, invoice Customer for additional fees before the Design Services or Manufacturing Services, as applicable, can



resume. Customer shall provide all necessary financial information required by Flex from time to time in order to make a proper assessment of the creditworthiness of Customer.

4.8. Credit Terms/Security Interest. Flex shall provide Customer with an initial credit limit, which shall be reviewed (and, if necessary, adjusted) periodically. Customer shall provide information reasonably requested by Flex in support of such credit reviews. In Flex's reasonably exercised discretion and based upon reasonably complete financial information, Flex has the right to reduce Customer's credit limit and/or require, Customer to obtain and maintain a standby letter of credit or escrow account on behalf of Flex; in such case, the bank chosen by Customer shall be reasonably acceptable to Flex, the letter of credit or escrow account shall be in force for a minimum period of time of six (6) months and shall be in an amount equal to Flex's entire exposure, including without limitation the risks associated with Design Material Inventory, Inventory, Special Inventory, and the accounts receivable from the Customer in accordance with the Design Services and Design Statements of Work or Customer's Forecast for Manufacturing Services. The draw down procedures under the standby letter of credit or the escrow account shall be determined solely by Flex. Flex has the right to suspend performance (e.g., cease ordering Materials based on Customer's Forecast and/or cease making Product deliveries) until Customer either makes a payment to bring its account within the revised credit limit and/or makes other arrangements satisfactory to Flex. Customer grants Flex a security interest in the Deliverables and Products delivered to Customer until Customer has paid for the Deliverables, Products and all Product-related charges. Customer shall promptly execute any documents requested by Flex to perfect and protect such security interest.

4.9 Underutilization of Manufacturing Capacity. Flex will maintain production capacity as required to fulfill the Forecast from Customer in exchange for Customer's quarterly payment for Underutilization Costs in the event that Customer's actual purchased volume of Products is less than the forecasted volume of Products during the previous quarter.

5. MATERIALS PROCUREMENT; CUSTOMER RESPONSIBILITY FOR MATERIALS

5.1. Authorization to Procure Design Materials Inventory, Inventory and Special Inventory. Customer's accepted purchase orders for Design Services or the Manufacturing Services (as applicable) and each Forecast shall constitute authorization for Flex to procure, without Customer's prior approval, (a) Design Materials Inventory and the Inventory to create the Deliverables or manufacture the Products covered by such purchase orders and Forecast, as applicable, based on the applicable Lead Times and (b) Minimum Order Inventory reasonably required to support the Customer Purchase Order and Forecast and (c) Any other Special Inventory which is separately authorized by Customer. Customer shall pay any expedite charges (including any broker fees) required by suppliers to receive Design Materials Inventory prior to the end of the normal Lead Time.

5.2. Supply Chain Management.

(a) **Purchases from AVL.** Customer may provide to Flex and maintain an AVL. If Flex co-sources Materials for Customer, the parties will address changes to the AVL in accordance with the Section entitled Engineering Changes. Flex shall only purchase Materials which is manufactured by the manufacturer on the AVL. Customer shall include Flex an AVL for Materials that Flex can supply and, if Flex is competitive with other vendors with respect to reasonable and unbiased criteria for acceptance established by Customer, Customer shall raise no objection to Flex sourcing Materials from Flex. , Customer shall include Flex on the AVL for Materials that Flex can supply and, if Flex is competitive with other vendors with respect to reasonable and unbiased criteria for acceptance established by Customer, Customer shall raise no objection to Flex sourcing Materials from Flex. If Customer does not provide an AVL to Flex with respect to any Materials, then Flex may use its own AVL. For purposes of this Section 5.2 only, the term "Flex" includes any Flex Affiliates.

(b) **Customer Controlled Materials.** Customer may direct Flex to purchase Customer Controlled Materials in accordance with Customer Controlled Materials Terms. Customer acknowledges that the Customer Controlled Materials Terms will directly impact Flex's ability to perform Design Services and Manufacturing Services under this Agreement. In the event that Flex reasonably believes that Customer Controlled Materials Terms will create an additional cost that is not covered by this Agreement, then Flex



shall notify Customer and the parties shall agree to either (i) compensate Flex for such additional costs, (ii) amend this Agreement to conform to the Customer Controlled Materials Terms or (iii) amend the Customer Controlled Materials Terms to conform to this Agreement; in each case at no additional charge to Flex. Customer shall provide copies to Flex of all Customer Controlled Materials Terms upon the execution of this Agreement and promptly upon execution of any new agreements with vendors. Customer shall not make any modifications or additions to the Customer Controlled Materials Terms or enter into new Customer Controlled Materials Terms with vendor that will negatively impact Flex's procurement activities.

(c) **Customer Responsibility for Inventory and Special Inventory.** Customer is responsible under the conditions provided in this Agreement for all Materials, Inventory and Special Inventory purchased by Flex under this Section 5.

(d) **Vendor Warranties for Materials.** To the extent Flex actually receives from a vendor of Materials or services the benefit arising from said vendor's warranty obligations related to its Materials or Services Flex shall transfer such benefit to Customer (without any actual liability for such vendor's warranty obligations) the following warranties with regard to the Materials or services (i) conformance of the Materials or services with the vendor's specifications and/or with the Specifications; (ii) that the Materials or services will be free from defects in design, materials or workmanship; (iii) that the Materials or services shall comply with Environmental Regulations or other laws; and (iv) that the Materials or services will not infringe the intellectual property rights of third parties.

6. SHIPMENTS, SCHEDULE CHANGE, CANCELLATION, STORAGE

6.1. **Quantity Increases and Shipment Schedule Changes.**

(a) For any Forecast or accepted purchase order, Customer may request an increase in the quantity of Products ordered or forecast. All Product quantity increases require Flex's approval, which, in its sole discretion, may or may not be granted. Flex shall use reasonable commercial efforts to meet any allowed Product quantity increases, which are subject to Materials and capacity availability. If Flex agrees to such increase in the quantity, and if there are extra costs to meet such increase, then Customer shall be liable for such extra costs. Any decrease in quantity is considered a cancellation, unless the decreased quantity is rescheduled for delivery at a later date in accordance with subsection (b) below.

(b) For any accepted purchase order, Customer may request a reschedule of the expected delivery date not to exceed ten (10) working days. All Product reschedules in excess of ten (10) working days require Flex's approval, which, in its sole discretion, may or may not be granted. If Flex accepts a reschedule of any length of time, and if there are extra costs to meet such reschedule or increase, then Customer shall be liable for such extra costs. Any part of a purchase order quantity that is rescheduled pursuant to this Section 6 may not be subsequently rescheduled.

(c) Any delays in the normal production or interruption in the workflow process caused by Customer's changes to the Design Specifications or Manufacturing Specification or failure to provide sufficient quantities or a reasonable quality level of Customer Controlled Materials where applicable to sustain the production schedule, shall be considered a reschedule of any affected purchase orders for purposes of this Section for the period of such delay.

(d) Products that have been ordered by Customer and that have not been picked up in accordance with the agreed upon shipment dates shall be considered cancelled and Customer shall be responsible for such Products in the same manner as set forth in Section 6.2. Flex shall invoice Customer for all cancelled Products and Customer shall, within ten (10) working days following the invoice, provide the location to which Flex shall ship the Products.

6.2. **Cancellations.**

Customer may not cancel all or any portion of Product quantity of an accepted purchase order without Flex's prior written approval, which, in its sole discretion, may or may not be granted. If Customer does not request prior approval or if Customer and Flex do not agree in writing to specific terms with respect to any approved cancellation, then Customer shall pay Flex Monthly Charges for any such cancellation, calculated as of the first day after such cancellation for any Product or Inventory or Special Inventory



procured by Flex to support the original delivery schedule. In addition, if Flex notifies Customer that any Product (or partially completed Product) subject to such cancellation has remained in Flex's possession for more than thirty (30) days, then Customer shall immediately purchase from Flex such Product at the amount set forth in the Fee List or cost for any applicable partially completed Product.

6.3. Excess, Aged, and Obsolete Inventory.

(a) Customer shall be responsible for the Inventory in accordance with the following. At the end of every calendar month:

(i) Excess Inventory.

A. Carrying Charges. Flex shall report the Excess Inventory. Such Excess Inventory reports shall normally be deemed agreed to by Customer, unless Customer provides a written objection within fourteen (14) days of the end of the corresponding calendar month. Customer shall pay Flex a carrying cost fee equal to the value of the Excess Inventory times the Monthly Charges.

B. Purchase of Excess Inventory. Customer shall purchase Excess Inventory that has been Excess Inventory for at least three (3) months, as identified by Flex in each monthly report, at a price equal to (as applicable) the price from the Fee List for any finished Products, the cost for any partially completed Products, or Standard Cost plus MOC for any other Excess Inventory.

(ii) Obsolete Inventory. Flex shall report the Obsolete Inventory. Customer's failure to object to Flex's Obsolete Inventory report (or failure to deny its responsibility for such inventory) shall constitute its acceptance of Flex's Obsolete Inventory report. After a validation period, which shall not exceed fourteen (14) days from the date of such report, Customer shall purchase the Obsolete Inventory at a price equal to (as applicable) the price from the Fee List for any finished Products, the cost for any partially completed Products, or Standard Cost plus MOC for any other Obsolete Inventory. For any Obsolete Inventory that is not purchased by Customer, Customer shall pay Flex a carrying cost fee equal to the value of the Obsolete Inventory times the Monthly Charges. If Customer fails to make on-time payment for Obsolete Inventory as required by this provision, Customer shall be liable for continuing additional such carrying cost fees for such Obsolete Inventory accruing on a weekly basis until Customer makes a complete payment for the Obsolete Inventory.

(iii) Aged Inventory. Flex shall report the Aged Inventory. Customer's failure to object to Flex's Aged Inventory report (or failure to deny its responsibility for such inventory) shall constitute its acceptance of Flex's Aged Inventory report. After validation, which shall not exceed fourteen (14) days from the date of such report, Customer shall purchase the Aged Inventory at a price equal to (as applicable) the price from the Fee List for any finished Products, the cost for any partially completed Products, or Standard Cost plus MOC for any other Aged Inventory. For any Aged Inventory that is not purchased by Customer, Customer shall pay Flex a carrying cost fee equal to the value of the Aged Inventory times the Monthly Charges. If Customer fails to make on-time payment for Aged Inventory as required by this provision, Customer shall be liable for continuing additional such carrying cost fees for such Aged Inventory accruing on a weekly basis until Customer makes a complete payment for the Aged Inventory.

Prior to invoicing Customer for the amounts due pursuant to Sections 6.1, 6.2, and this Section 6.3 (other than the carrying charges for Excess Inventory), Flex shall use commercially reasonable efforts for a period not to exceed fourteen (14) days from the date of any such reports, to return for refund unused Materials from Excess, Obsolete, Aged Inventory and Special Inventory, to cancel pending orders for such inventory, and to otherwise mitigate the amounts payable by Customer.

Customer shall submit payment for the amounts identified and invoiced pursuant to this Section in accordance with the terms for payment set forth above in Section 4.6. Flex shall ship the Excess, Obsolete, and Aged Inventory and Special Inventory to Customer promptly following said payment by Customer. In the event Customer does not pay in accordance with the payment terms set forth above, then, in addition to any late payment charges that Flex is due from Customer, Flex shall be entitled to dispose of such Excess, Obsolete, and Aged Inventory and Special Inventory in a commercially reasonable manner and credit to Customer any monies received from third parties.

(b) For changes (including cancellation and reschedules) that are not consistent with this Section 6, Customer shall be responsible for the following costs in addition to the charges set forth above:



- (i) any vendor cancellation charges incurred; and
- (ii) expenses incurred by Flex related to labor and equipment specifically put in place to support the purchase orders and Forecasts that are affected by such reschedule or cancellation (as applicable).

(c) Customer Responsibility for Design Materials Inventory. Customer shall pay Flex a monthly carrying fee of one and half percent (1.5%) for all Design Materials Inventory that has been held by Flex for longer than 30 days from receipt at Flex's facility and that is not covered by a purchase order backlog deliverable in the next thirty (30) days under a Design Statement of Work. Upon completion of the Design Services or termination of this Agreement, Customer shall either (a) purchase any remaining Design Materials Inventory from Flex at Standard Cost plus a twenty percent (20%) material handling fee; or (b) direct Flex to return such Design Materials to the supplier (if returnable) and pay Flex the difference between the reimbursement actually received by Flex and the Standard Cost plus a twenty percent (20%) material handling fee; or (c) direct Flex to sell such Design Materials to a production facility selected by Customer and pay Flex the difference between the sale price actually received by Flex and the Price plus a twenty percent (20%) materials handling fee.

6.4. **No Waiver.** Flex's failure to invoice Customer for any of the charges set forth in this Section 6 does not constitute a waiver of Flex's right to charge Customer for the same event or other similar events in the future.

7. SHIPPING TERMS

7.1. **Shipments.** Flex shall (a) deliver all Products pursuant to the terms of this Agreement suitably packed for shipment in accordance with the Specifications (Design or Manufacturing, as applicable) and marked for shipment to Customer's destination specified in the applicable purchase order, and (b) make such deliveries EXW (Ex works, Incoterms 2020) Flex's manufacturing facility. Risk of loss and title shall pass to Customer upon delivery by Flex of the Products and Materials to the stated delivery point in accordance with the applicable Incoterm. All freight, insurance and other shipping expenses, as well as any special packing expenses not expressly included in the original quotation for the Products, shall be paid by Customer.

7.2. Trade Compliance.

(a) Neither party shall export, re-export or otherwise transfer any Products, Materials, commodities, software, or technology that have been supplied under or are otherwise in connection with performance of this Agreement, including after further processing by Customer or incorporation into another item (individually and collectively, "**Technology**") inconsistently with any requirement of the Export Administration Regulations ("**EAR**"), the International Traffic in Arms Regulation ("**ITAR**"), or legal measures administered by the U.S. Treasury Department, Office of Foreign Assets Control ("**OFAC**") or other laws or regulations of the United States and (as applicable) the exporting country outside the United States. Without limitation, Customer shall not, directly or indirectly, transfer Technology to a jurisdiction against which OFAC imposes an embargo (currently, Crimea, Cuba, Iran, North Korea, Syria and Venezuela) or to a person sanctioned by the U.S. government. In the case of Flex exports, re-exports and other transfers of Technology, Customer shall provide all information and documentation necessary to perform and support proper export authorization and shall be responsible for the accuracy and completeness of all such information provided by Customer, including identification of all parties to the transaction, end users, end uses, countries of destination, HTS and ECCN classifications, and any other information relevant to licenses for the Technology.

(b) Customer shall be responsible for obtaining any license, permit or other governmental approvals (individually and collectively, "**Export Licenses**") required for the export, re-export, or transfer of any Technology. Customer shall be responsible for all reviews, classifications and licenses related to any encryption or other information security-related regulations.

(c) To the extent that Products are imported into any country, the Customer shall act as the importer of record.

(d) In the event Customer designates a supplier (including Materials vendors, transporters, warehousemen, freight forwarders, and brokers) to be used by Flex, then: (i) Customer shall designate only



suppliers that comply with the minimum security requirements of applicable voluntary supply chain security measures (e.g., C-TPAT Customs-Trade Partnership Against Terrorism); AEO Authorized Economic Operator); (ii) Customer shall prohibit any such suppliers from sub-contracting to any suppliers that are not in compliance with the aforementioned laws and minimum security requirements; and (iii) Customer shall support Flex in determining supplier compliance with the requirements in this Subsection including by requiring suppliers designated by Customer to complete a Flex questionnaire and to undergo periodic on-site audits to be conducted by a provider designated by Flex, at Customer's expense.

8. DELIVERABLES, PRODUCT ACCEPTANCE AND EXPRESS LIMITED WARRANTIES

8.1. Deliverables Acceptance. Upon receipt of a Deliverable from Flex in accordance with the Design Statement of Work, Customer shall within five (5) working days accept or reject the Deliverables. If Customer does not reject the tendered Deliverables with such time period, then the Deliverables shall be deemed accepted. If Customer determines that the Deliverables fail to satisfy the criteria for acceptance set forth in the Design Statement of Work, then, Customer may choose not to accept such Deliverables, and shall provide Flex with a notice stating in reasonable detail the manner in which the unaccepted Deliverables failed to meet with such criteria. Upon receipt of such a notice, and if such failure is due to causes within the control of Flex, then Flex shall, adjust the unaccepted Deliverables and Customer has an additional five (5) working days within which to accept such corrected Deliverables. If such failure is due to causes outside the control of Flex, the parties shall agree upon the cause of such failure, the associated adjustment and the related costs in accordance with Section 4.4(b). The parties agree to repeat the procedure set forth in this Section one (1) time. If after this attempt, the non-conformities and deficiencies are not corrected and Customer determines that it wants Flex to continue to attempt to correct the non-conformities and deficiencies, then either (i) the parties will enter into a mutually agreeable change order that will allow Flex to be paid on a time and material basis for the ongoing work, or (ii) the Agreement or the affected Design Statement of Work may be terminated by Customer of Flex pursuant to Section 12.2.

8.2. Product Acceptance. The Products delivered by Flex, in accordance with Manufacturing Services, shall be inspected and tested as required by Customer within ten (10) working days of receipt at the "ship to" location on the applicable purchase order. If Products do not conform to the purchase order or the express limited warranty set forth in this Section below, Customer has the right to reject such Products during said period. Products not rejected during said period shall be deemed accepted. Customer may return defective Products in accordance with the procedures set forth below. Customer shall bear all the risk of loss, and all costs and expenses, associated with Products that have been returned to Flex for which there is no defect found.

8.3. Express Limited Warranty. This Section 8.3 sets forth Flex's sole and exclusive warranty and Customer's sole and exclusive remedies with respect to a breach by Flex of such warranty.

(a) Flex warrants that the Products shall have been manufactured in accordance with the Manufacturing Specifications and will be free from defects in workmanship for a period of twelve (12) months from the date of shipment. In addition, Flex warrants that Production Materials are in compliance with Environmental Regulations.

(b) Notwithstanding anything else in this Agreement, this express limited warranty does not apply to and Flex makes no representations or warranties whatsoever with respect to : (i) Materials (excluding Production Materials to the extent expressly set forth in Section 8.3(a)), equipment, and/or Customer Controlled Materials or services provided by vendors on the AVL; (ii) defects resulting from adherence to the Manufacturing Specifications or any instructions provided by or on behalf of Customer; (iii) the design of the Products; (iv) Product that has been abused, damaged, altered or misused or mishandled (including improper storage or installation or improper handling in accordance with static sensitive electronic device handling requirements) by any person or entity after title passes to Customer; (v) first articles, prototypes, pre-production units, test units or other similar units; (vi) defects resulting from tooling, designs or instructions produced or supplied by Customer, including any defective test equipment or test software provided by Customer; or (vii) the compliance of Materials (excluding Production Materials) or Products



with any safety or Environmental Regulations or other laws. Customer shall be liable for costs or expenses incurred by Flex arising out of or related to the foregoing exclusions to Flex's express limited warranty.

(c) Upon any failure of a Product to comply with this express limited warranty, Flex's sole obligation, and Customer's sole remedy, is for Flex, at Flex's option, to promptly repair or replace such unit and return it to Customer freight prepaid. In the event that such unit cannot be repaired or replaced using commercially reasonable efforts, Flex shall refund the price paid by the Customer to Flex for such unit. Customer shall return Products covered by the warranty freight prepaid after completing a failure report and obtaining a return material authorization number from Flex to be displayed on the shipping container. This warranty will not apply to any Product that is returned more than thirty (30) days after the expiration of the warranty period set forth in Section 8.3(a). Furthermore, this warranty shall not apply if the Customer has removed from Flex's possession, for any reason, any tools or equipment that are necessary to repair the Product. Customer shall bear all of the risk, and all costs and expenses, associated with Products that have been returned to Flex for which there is no defect found.

(d) Customer shall provide any and all warranties directly to any of its end users or other third parties and Customer shall not pass through to end users or other third parties the warranties made by Flex under this Agreement. Furthermore, Customer shall not make any representations to end users or other third parties on behalf of Flex, and Customer shall expressly indicate that the end users and third parties must look solely to Customer in connection with any problems, warranty claim or other matters concerning the Product.

(e) For the purposes of clarity, the limited warranty mentioned in this Section 8.3 only applies to Products delivered under Manufacturing Services, any warranty applicable to Design Services or Deliverables are specified in Section 2 of this Agreement.

8.4. No Representations or Other Warranties. FLEX MAKES NO OTHER REPRESENTATIONS OR WARRANTIES ON THE DESIGN SERVICES, MANUFACTURING SERVICES, DELIVERABLES, PERFORMANCE OF THE WORK OR THE PRODUCTS, EXPRESS, IMPLIED, STATUTORY, OR IN ANY OTHER PROVISION OF THIS AGREEMENT OR COMMUNICATION WITH CUSTOMER, AND FLEX SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

9. INTELLECTUAL PROPERTY OWNERSHIP AND LICENSES

9.1. New Developments. Flex agrees that, upon Flex's receipt of Customer's payment for the Design Services hereunder, all designs, plans, reports, drawings, schematics, prototypes, models, inventions, copyrights, and all other information and items made or conceived by Flex or by its employees, contract personnel, or agents during the course of this Agreement and incorporated into the Deliverables (the "**New Developments**") and all Intellectual Property Rights in the New Developments are assigned to Customer as its sole and exclusive property, subject to Flex Background Property identified in Section 9.2 only any third party Intellectual Property Rights identified in Section 9.3.

9.2. Flex Background Property. Flex's "**Background Property**" means Flex's Intellectual Property Rights, including without limitation all trade secrets, know-how, design tools, methodologies, software, algorithms, or other means that (i) may be used to design, manufacture, assemble or test products, (ii) may be used to design production means or the processes by which products are designed, manufactured, assembled, or tested, (iii) were developed outside of or prior to this Agreement or any SOW, and (iv) constitute any improvements or modifications of any of the foregoing.

9.3. Third Party Technology; Essential IP. Customer shall be responsible for obtaining any necessary license or other rights and for paying any royalties or license fees in connection with any third party technology and any Intellectual Property Rights therein (including any Essential IP) incorporated in the Deliverables or Product, and for providing adequate assurances to Flex, upon Flex's request that Customer has secured such rights or paid such royalties or fees.

9.4. Independent Work. This Agreement shall not affect the ownership of, nor convey any licenses to, any innovation, improvement, idea, method, technique or work of authorship, or any Intellectual Property



Right therein, which is created during or subsequent to the term of this Agreement by a party outside the performance of the Design Services under this Agreement and without reference to, or other use of, the Confidential Information of the other party (an “**Independent Work**”).

9.5. **Licenses.** Customer hereby grants Flex a non-exclusive, worldwide, royalty-free license during the term of this Agreement to Customer's Intellectual Property Rights as necessary to perform Flex's obligations under this Agreement. Customer also grants Flex a non-exclusive, royalty-free license during the term of this Agreement to copy, modify and use any software provided by Customer that is required to perform Flex's obligations under this Agreement. No other licenses express or implied or otherwise, are given or intended to be given to any of the Intellectual Property Rights of the other party.

10. INDEMNIFICATION; LIMITATION OF LIABILITY

10.1. **Indemnification by Customer.** Customer and Flex hereby acknowledge and agree that: (1) the Design Services to be performed hereunder by Flex may be incorporated into a product, process, or service to be owned or controlled by Customer, (2) Customer is responsible for final review, testing, and approval of all features of the Deliverables and acceptance of the results of the Design Services, and (3) Customer has provided Flex with data information and/or Design Specifications regarding the Product and the Design Services which have been used by and relied upon by Flex. Accordingly, subject to Section 10.2 below, Customer shall defend, indemnify, and hold harmless Flex, its affiliated companies, officers, directors, employees, and agents (the “**Flex Indemnified Parties**”) from and against all claims, actions, losses, expenses, damages and other liabilities (including reasonable attorneys' fees) (collectively “**Damages**”) incurred by or assessed against any of the foregoing, but solely to the extent the same arise out of third party claims relating to or in connection with the Design Services, Manufacturing Services, the Deliverables, the Products or any products based on or incorporating any of the Design Services or Deliverables, including but not limited to any claim (whether solely or in any combination) for (i) failure to comply with any safety standards and/or Environmental Regulations, (ii) product liability, (iii) design defect, or (iv) infringement or misappropriation of a third part's Intellectual Property Rights based on the Design Services, Deliverables, or Products, or (v) any loss, liability, damage or injury, including death, resulting from the Deliverables or Products or any products based on or incorporating any of the Design Services or Deliverables. This Section survives termination or expiration of this Agreement.

10.2. **Indemnification by Flex.** Flex agrees to defend, indemnify and hold harmless, Customer and its Affiliates, and all directors, officers, employees, and agents (each, a “**Customer Indemnified Parties**”) from and against all Damages incurred by or assessed against any Customer Indemnified Parties, but solely to the extent arising out of third-party claims relating to:

(a) any actual or alleged injury or damage to any person (including death) or property caused, or alleged to be caused, by a Product sold by Flex to Customer hereunder, but solely to the extent such injury or damage has been caused by the breach by Flex of its express limited warranties set forth in Section 8.3;

(b) any actual or alleged infringement or misappropriation of third party's copyrights or trade secrets or confidential information, but solely to the extent that such infringement or misappropriation is caused by a process or Production Materials that Flex elects to use to manufacture, assemble or test the Products; however, Flex shall not have any obligation to indemnify Customer if such claim would not have arisen but for Flex's manufacture, assembly or test of the Product in accordance with the Manufacturing Specifications; or

(c) noncompliance with any Environmental Regulations, but solely to the extent that such non-compliance is caused by a process or Production Materials that Flex elects to use to manufacture the Products; however, Flex shall not have any obligation to indemnify Customer if such claim would not have arisen but for Flex's manufacture of the Product in accordance with the Manufacturing Specifications.

10.3. **Procedures for Indemnification.** With respect to any third-party claims, the party to be indemnified party shall give the other party prompt notice of any third-party claim covered under this Section and the right to control the defense and settlement of such claims. Upon request, the party to be indemnified



shall provide the indemnifying party with reasonable cooperation at the indemnifying party's expense. The indemnified party has the right to participate in the defense of any third-party claim and to employ counsel, at its own expense, separate from the counsel employed by Customer. The indemnified party shall not, without the prior written consent of the indemnifying party, agree to the settlement, compromise, or discharge of such third-party claim, unless the indemnifying party has refused to assume in writing any responsibility for the control, defense, or settlement of such claim; any such settlement, compromise, or discharge in violation of this Section releases the indemnifying party in full for all obligations and liabilities associated with the claim.

10.4. **Design, Manufacture or Sale of Products Enjoined**. Should the Design Services, Manufacturing Services or the manufacture, use or sale of any Deliverables or Product be enjoined or threatened to be enjoined for a cause stated in Sections 10.1 or 10.2 above, and the indemnifying party is unable within a reasonable time and at Customer's expense to obtain the right for the indemnified party to continue (as applicable) the performance or use of the Design Services, Manufacturing Services, Deliverables, or Products under this Agreement, then the indemnified party has the right to terminate this Agreement under Section 11.2.

THE FOREGOING SECTION 10.1 TO SECTION 10.4 STATES THE ENTIRE LIABILITY OF THE PARTIES TO EACH OTHER CONCERNING INFRINGEMENT OF PATENT, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS.

10.5. **Limitation of Liability**. FLEX MAKES NO REPRESENTATIONS AND NO WARRANTIES ON THE DESIGN SERVICES OR MANUFACTURING SERVICES OR THE DELIVERABLES OR PRODUCTS BASED ON OR INCORPORATING ANY DELIVERABLES, EXPRESS, IMPLIED, STATUTORY, OR IN ANY OTHER PROVISION OF THIS AGREEMENT OR COMMUNICATION WITH CUSTOMER, AND FLEX SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT.

(a) EXCEPT WITH REGARD TO A BREACH OF CONFIDENTIALITY 12.1 OR EITHER PARTY'S INDEMNIFICATION UNDER SECTION 10, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY "COVER" DAMAGES (INCLUDING INTERNAL COVER DAMAGES WHICH THE PARTIES AGREE MAY NOT BE CONSIDERED "DIRECT" DAMAGES), OR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE DAMAGES OF ANY KIND OR NATURE ARISING OUT OF THIS AGREEMENT OR THE USE OF THE DELIVERABLES OR THE SALE OF PRODUCTS, BASED ON OR INCORPORATING THE DELIVERABLES, WHETHER SUCH LIABILITY IS ASSERTED ON THE BASIS OF CONTRACT, TORT (INCLUDING THE POSSIBILITY OF NEGLIGENCE OR STRICT LIABILITY), OR OTHERWISE, EVEN IF THE PARTY HAS BEEN WARNED OF THE POSSIBILITY OF ANY SUCH LOSS OR DAMAGE, AND EVEN IF ANY OF THE LIMITED REMEDIES IN THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE.

(b) FLEX'S SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR A BREACH OF:

(i) **DESIGN SERVICES** UNDER THE AGREEMENT BY FLEX SHALL BE FOR FLEX, AT ITS SOLE OPTION TO RE-PERFORM THE AFFECTED DESIGN SERVICES, INCLUDING REPAIR OR REPLACEMENT OF ANY DEFECTIVE DELIVERABLE, SUBJECT TO THIS SECTION (LIABILITY LIMITATION), OR REFUND THOSE PORTIONS OF THE FEES RELATED TO THE AFFECTED DESIGN SERVICES OR DELIVERABLE. THE TOTAL, AGGREGATE AND CUMULATIVE LIABILITY OF FLEX, IF ANY, FOR DAMAGES FOR ALL CLAIMS UNDER THIS AGREEMENT OF ANY KIND WHATSOEVER, REGARDLESS OF LEGAL THEORY, AND WHETHER ARISING IN TORT OR CONTRACT, SHALL NOT EXCEED PERCENT (_ %) OF THE PRECEDING TWELVE (12) MONTHS REVENUES FROM THE DATE THE CLAIM ARISES.

(ii) **MANUFACTURING SERVICES** UNDER THIS AGREEMENT, SHALL BE SUBJECT TO AN AGGREGATE CAP IN ACCORDANCE WITH THE FOLLOWING: THE TOTAL, AGGREGATE AND



CUMULATIVE LIABILITY OF EITHER PARTY, IF ANY, FOR DAMAGES FOR ALL CLAIMS UNDER THIS AGREEMENT OF ANY KIND WHATSOEVER, REGARDLESS OF LEGAL THEORY, AND WHETHER ARISING IN TORT OR CONTRACT, SHALL NOT EXCEED _ PERCENT (_%) OF THE PRECEDING TWELVE (12) MONTHS REVENUES FROM THE DATE THE CLAIM ARISES.

(c) NOTWITHSTANDING THE FOREGOING, THE LIMITATIONS IN THIS SECTION SHALL NOT APPLY TO LIMIT (I) CUSTOMER'S PAYMENT OBLIGATIONS HEREUNDER, (II) FLEX'S EXPRESS WARRANTY (BUT NOT DESIGN OR DELIVERABLE WARRANTY) OBLIGATIONS, (III) A PARTY'S OBLIGATIONS OF INDEMNIFICATION OR (IV) A PARTY'S OBLIGATIONS OF CONFIDENTIALITY HEREUNDER.

11. TERM AND TERMINATION.

11.1. **Term.** The term of this Agreement shall commence on the Effective Date and shall continue for one (1) year thereafter unless terminated as provided in Section 11.2 or Section 12.9 (Force Majeure). After the expiration of the initial term hereunder (unless this Agreement has been terminated), this Agreement shall be automatically renewed for separate but successive one-year terms unless either party provides written notice to the other party that it does not intend to renew this Agreement ninety (90) days or more prior to the end of any term.

11.2. **Termination.** The parties may terminate the Agreement or either the Design Services or the Manufacturing Services as further provided in this Section 11.2 and in Section 12.9 (Force Majeure). In order to terminate both the Design Services and the Manufacturing Services, a party must terminate the Agreement.

(a) Termination for Convenience.

(i) Customer may terminate the Design Services under a Design Statement of Work for convenience at any time upon written notice to Flex. In the event of termination for convenience prior to completion of the Design Services, Customer shall pay Flex all outstanding invoices and shall compensate Flex for all work in progress and out-of-pocket costs incurred up to the date of cancellation plus reasonable shut-down costs. Flex agrees to deliver all results of Design Services paid for up to the time of cancellation. Flex may terminate the Design Services if Flex cannot deliver under the Design Statement of Work due to causes beyond its control including without limitation as specified in Sections 8, 10.4, and 12.9. In such event, Customer will compensate Flex for work performed at Flex's standard hourly billing rates quoted in Fee List, and for out-of-pocket costs incurred prior to the date of stoppage. In the event that Customer cannot perform under this Agreement through causes beyond its control, Flex will be responsible for the return of payments made prior to the date of stoppage that are in excess of work performed and out-of-pocket costs incurred.

(ii) Either party may terminate the Manufacturing Services upon ninety (90) days written notice to the other party.

(iii) Either party may terminate the entire Agreement upon ninety (90) days written notice to the other party.

(b) **Termination for Breach.** Either party may terminate the Agreement or either the Design Services or the Manufacturing Services for breach if (i) the other party defaults in any payment to the terminating party and such default continues without a cure for a period of fourteen (14) days after the delivery of written notice thereof by the terminating party to the other party, or (ii) if the other party defaults in the performance of any other material term or condition of this Agreement and such default continues unremedied for a period of thirty (30) days after the delivery of written notice thereof by the terminating party to the other party.

(c) **Effect of Expiration or Termination.** Expiration or termination of this Agreement under any of the foregoing provisions: (i) shall not affect the amounts due under this Agreement by either party that



exist as of the date of expiration or termination; and (ii) shall cause the provisions of Section 4.6 to apply with respect to payment and shipment to Customer of finished Products, Design Materials Inventory, Inventory, and Special Inventory in existence as of such date. Termination of this Agreement and settling of accounts in the manner set forth in the foregoing sentence shall be the exclusive remedy of the parties for breach of this Agreement, except for breaches of Section 12.1 (Confidentiality) or Customer's indemnification obligations as set forth in Section 10.1. Notwithstanding termination or expiration of this Agreement Sections 4.5, 4.6, 4.7, 4.8, 4.9, 6.3, 7.2, 10, 11.2 (c) and 12, survive any termination or expiration of this Agreement.

12. MISCELLANEOUS

12.1. **Confidential Information.** Each party shall not use any Confidential Information of the disclosing party for any purposes or activities other than in support of such party's obligations established in this Agreement. Except as otherwise specifically permitted herein or pursuant to written permission of the party, neither party shall disclose or facilitate disclosure of Confidential Information of the disclosing party to any third party, except that the receiving party may disclose such Confidential Information to (i) those of its Affiliates and their respective employees, consultants, and other agents who need to know such Confidential Information for carrying out the activities contemplated by this Agreement and/or (ii) third party suppliers or vendors for the purpose of obtaining price quotations; provided, however, that in either case, the recipient has agreed in writing to confidentiality terms that are no less restrictive than the requirements of this Section. Notwithstanding the foregoing, the receiving party may disclose Confidential Information of the disclosing party pursuant to a required court order, subpoena or other governmentally-required process; however, in such circumstance, the receiving party shall, to the extent reasonably feasible and permissible: (a) give the disclosing party prompt notice of the receiving party's receipt or knowledge of such required disclosure; and (b) provide the disclosing party a reasonable opportunity to oppose such process or to obtain a protective order at the disclosing party's expense. Subject to each party's right to maintain copies of Confidential Information in accordance with such party's reasonable record-keeping requirements, Confidential Information of the disclosing party in the custody or control of the receiving party shall be promptly returned or destroyed upon the earlier of (i) the disclosing party's written request or (ii) termination of this Agreement. Either party may retain in its legal representative's files a copy of the other party's Confidential Information that has been disclosed to said party. Confidential Information disclosed pursuant to this Agreement shall be maintained confidential for a period of three (3) years after the disclosure thereof.

12.2. **Non-solicitation.** Each of the parties hereto agrees that, during the term of this Agreement and for a period of two (2) years following termination of this Agreement, neither party will, except with the other party's prior written approval, solicit, offer employment to, or contract with the other party's employees or contractors who were engaged in the activities related hereunder provided, however, that any discussions initiated by any of one party's employees with the other party and general solicitations for employment (including the use of employment agencies and general advertisements not directed to target a party or any of the party's employees) conducted by or on behalf of the other party, shall not constitute a violation of the foregoing restriction. The parties agree that quantifying losses arising from a violation of this provision would be difficult to ascertain and calculate since the loss of a key personnel can have profound effects for years to come. Therefore, in the event of a violation, the breaching party shall pay the other party Two Million Dollars (\$2,000,000.00) per incident. The parties agree that the sum is not a penalty, but rather a reasonable measure of damages.

12.3. **Insurance.** Flex and Customer agree to maintain appropriate insurance to cover their respective risks under this Agreement with coverage amounts commensurate with levels in their respective markets. Customer specifically agrees to maintain insurance coverage for any Products and Materials the title and risk of loss of which has passed to Customer pursuant to this Agreement and which is stored on the premises of Flex.

12.4. **Entire Agreement; Severability.** This Agreement constitutes the entire agreement between the Parties with respect to the transactions contemplated hereby and supersedes all prior agreements and understandings between the parties relating to such transactions. In all respects, this Agreement shall govern, and any other documents including, without limitation, preprinted terms and



conditions on Customer's purchase orders shall be of no effect. If the scope of any of the provisions of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provisions shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of this Agreement shall not thereby fail, but that the scope of such provisions shall be curtailed only to the extent necessary to conform to law.

12.5. **Enforcement of Agreement.** If the scope of any of the provisions of this Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provisions shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of this Agreement shall not thereby fail, but that the scope of such provisions shall be curtailed only to the extent necessary to conform to law.

12.6. **Amendments; Waiver.** This Agreement may be amended only by written consent of both parties. The failure by either party to enforce any provision of this Agreement will not constitute a waiver of future enforcement of that or any other provision. Neither party will be deemed to have waived any rights or remedies hereunder unless such waiver is in writing and signed by a duly authorized representative of the party against which such waiver is asserted.

12.7. **Independent Contractor.** Neither party is to be, for any purpose, be deemed to be an agent of the other party and the relationship between the parties is only that of independent contractors. Neither party has 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.

12.8. **Expenses.** Each party shall pay its own expenses in conjunction with the negotiation of this Agreement.

12.9. **Force Majeure.** In the event that either party is prevented from performing or is unable to perform any of its obligations under this Agreement (other than a payment obligation) due to any act of God, acts or decrees or orders of governmental or military bodies, fire, casualty, flood, earthquake, war, strike, lockout, epidemic, pandemic, destruction of production facilities, riot, insurrection, Materials unavailability, the failure of equipment or tooling provided by Customer except to the extent such failure was caused by Flex, or any other cause beyond the reasonable control of the party invoking this section (collectively a "**Force Majeure**"), and if such party has used its commercially reasonable efforts to mitigate its effects, such party shall give prompt written notice to the other party, its performance shall be excused, and the time for the performance shall be extended for the period of delay or inability to perform due to such occurrences. Regardless of the excuse of Force Majeure, if such party is not able to perform within ninety (90) days after such event, the other party may terminate the Agreement.

12.10. **Successors, Assignment.** This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors, assigns and legal representatives. Neither party has the right to assign or otherwise transfer its rights or obligations under this Agreement except with the prior written consent of the other party, not to be unreasonably withheld. Notwithstanding the foregoing, Flex may assign, delegate, or subcontract some or all of its rights and obligations under this Agreement to an affiliated Flex entity or to a third party financial institution for the purpose of receivables financing (e.g., factoring).

12.11. **Notices.** All notices required or permitted under this Agreement are to be in writing and will be deemed received (a) when delivered personally; (b) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; (c) when acknowledged as received via email; or (d) two (2) days after deposit with a commercial overnight carrier. All communications will be sent to the addresses set forth above or to such other address as may be designated by a party by giving written notice to the other party pursuant to this Section.



12.12. **Controlling Law; Disputes Resolution; Waiver of Jury Trial.**

(a) This Agreement is to be governed by and interpreted in accordance with the laws of the state of California, exclusive of conflict or choice-of-law rules, except to the extent there may be any conflict between the law of the State of California and the Incoterms of the International Chamber of Commerce, 2020 edition, in which case the Incoterms shall be controlling. The parties specifically agree that the 1980 United Nations Convention on Contracts for the International Sale of Goods, as may be amended from time to time, shall not apply to this Agreement. The parties hereby consent to the personal and exclusive jurisdiction and venue of the California state courts and the Federal courts located in Santa Clara County, California.

(b) Notwithstanding the foregoing, except as set forth in subsection (c) below, any dispute, claim or controversy arising out of or relating in any way to this Agreement, any other aspect of the relationship between Flex and Customer or their respective affiliates and subsidiaries, the interpretation, application, enforcement, breach, termination or validity thereof (including, without limitation, any claim of inducement of this Agreement by fraud and a determination of the scope or applicability of this agreement to arbitrate), or its subject matter (collectively, “**Disputes**”) shall be determined by binding arbitration before one arbitrator. The arbitration shall be administered by JAMS and conducted in accordance with the expedited procedures set forth in the JAMS Comprehensive Arbitration Rules and Procedures as those Rules exist on the effective date of this Agreement. Notwithstanding anything to the contrary in this Agreement, the Federal Arbitration Act shall govern the arbitrability of all Disputes. The arbitration shall be held in Santa Clara County, California, and it shall be conducted in the English language. The parties shall maintain the confidential nature of the arbitration proceedings and any award, including the hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision. The arbitrator shall have authority to award compensatory damages only and shall not award any punitive, exemplary, or multiple damages, and the parties waive any right to recover any such damages. Judgment on any award in arbitration may be entered in any court of competent jurisdiction. Either party may apply to the arbitrator seeking injunctive relief until the arbitration award is rendered or the controversy is otherwise resolved. Either party also, without waiving any remedy under this agreement, may seek from any U.S. Court having personal and subject matter jurisdiction over the parties any interim or provisional relief that is necessary to protect the rights or property of that party, pending the establishment of the arbitration tribunal. This specifically includes, without limitation, the right to seek temporary restraining orders, preliminary injunctions, writs of prejudgment attachment and other security liens, and orders of mandamus or prohibition, but specifically precludes the right to seek monetary damages of any kind outside of the arbitration proceeding.

(c) Each party shall pay their own expenses in connection with the resolution of Disputes pursuant to this Section 12.12, including reasonable attorneys’ fees. Notwithstanding the foregoing sentence, should any party to this Agreement hereafter institute any legal action or administrative proceeding against the other by any method other than set forth in this Section 12.12, the responding party shall be entitled to recover from the initiating party all damages, costs, expenses, and attorneys’ fees incurred as a result of such action.

(d) IN THE EVENT OF ANY DISPUTE BETWEEN THE PARTIES, WHETHER IT RESULTS IN PROCEEDINGS IN ANY COURT IN ANY JURISDICTION OR IN ARBITRATION, THE PARTIES HEREBY KNOWINGLY AND VOLUNTARILY, AND HAVING HAD AN OPPORTUNITY TO CONSULT WITH COUNSEL, WAIVE ALL RIGHTS TO TRIAL BY JURY, AND AGREE THAT ANY AND ALL MATTERS SHALL BE DECIDED BY A JUDGE OR ARBITRATOR WITHOUT A JURY TO THE FULLEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW. To the extent applicable, in the event of any lawsuit between the parties arising out of or related to this Agreement, the parties agree to prepare and to timely file in the applicable court a mutual consent to waive any statutory or other requirements for a trial by jury.

12.13. **Manufacturer.** For a period of three (3) years following the volume production date of the Product based on the Design Services or incorporating any Deliverables (including any subsequent derivatives or iterations), Flex shall be the exclusive manufacturer of such Product provided that (i) Flex’s price of the Product is competitive; and (ii) Flex’s Product quality meets or exceeds the industry average for such metrics.



12.14. **Even-Handed Construction.** The terms and conditions as set forth in this Agreement have been arrived at after mutual negotiation, and it is the intention of the parties that its terms and conditions not be construed against any party merely because it was prepared by one of the parties.

12.15. **Controlling Language.** This Agreement is in English only, which language shall be controlling in all respects. All documents exchanged under this Agreement shall be in English.

12.16. **Use of Name is Prohibited.** The existence and terms of this Agreement are Confidential Information and protected pursuant to Section 12.1 above. Accordingly, neither party may use the other party's name or identity or any other Confidential Information in any advertising, promotion or other public announcement without the prior express written consent of the other party. Neither party, their employees, their affiliated companies, nor their subcontractors shall publicly announce this Agreement or release any information pertaining hereto publicly without the prior written consent of the other party. Neither party shall use any trademark, trade name, or names, logos or any contraction, abbreviation, or otherwise of the other party's, unless such other party agrees upon a separate trademark license.

12.17. **Counterparts and Exchange of Signatures.** This Agreement may be executed in counterparts. The parties agree that electronically transmitted and reproduced signatures (including faxed pages, scanned copies of signatures and email acknowledgements) constitute acceptable exchange of authentic consent to the terms and conditions of this Agreement.

12.18 **Sale of Products to Governments.** In the event Customer sells Products manufactured hereunder to a government entity or agency where such sales are governed by rules and regulations published by the government (e.g., FAR and DFAR in the case of the United States government), Customer shall provide Flex with (i) no less than 90 days prior written notice and (ii) the applicable mandatory rules and regulations which apply to Customer as well as to Flex as a supplier to Customer ("Flowdown Provisions"). Flex will only be bound to comply with such Flowdown Provisions to which it specifically agrees in writing and such agreement may be conditioned upon changes to the Fees List and the Lead Time to deliver the Products that are agreed to by Customer. Flex will notify Customer of its acceptance or not within said 90 days' time period. If Flex does not so notify within said time period, Flex's acceptance will be deemed to have been given.

IN WITNESS WHEREOF, the parties hereto have signed this Agreement as of the Effective Date.

Customer:

Flex:

Signature

Signature

By: _____

By: _____

Title: _____

Title: _____

Exhibit 1

Definitions

“Affiliate”	means any corporation, partnership, joint venture or other legal entity that a party to this Agreement controls, is under common control with, or is controlled by, where “control” means the ownership of more than fifty percent (50%) of the voting equity in such entity or otherwise the ability to direct the management of such entity.
“Aged Inventory”	means either of any Product, partially completed Product, Inventory or Special Inventory, or some or all, for which there has been zero or insignificant consumption over the past six (6) months, which includes any particular item that Flex has had on hand for more than six (6) months.
“Approved Vendor List” or “AVL”	means the list provided by Customer or Flex, as the case may be and approved by Customer, that determines the vendors from which Flex must purchase Materials, and may include, but is not limited to, original equipment manufacturers, resellers, distributors, or brokers.
“Background Property”	has the meaning set forth in Section 9.2.
“CAPEX”	means tooling, molds, fixtures, equipment, software, or facility improvements.
“Confidential Information”	means (a) the existence and terms of this Agreement and all information concerning the Fees and the unit number and price of Products and Inventory/Special Inventory and (b) any other information that is marked as “Confidential” or the like or, if delivered verbally, confirmed in writing to be confidential within 30 days of the initial disclosure. Confidential Information does not include information which (i) the receiving party can prove it already knew at the time of receipt from the disclosing party; or (ii) has come into the public domain without breach of confidence by the receiving party; (iii) was received from a third party without restrictions on its use; (iv) the receiving party can prove it independently developed without use of or reference to the disclosing party’s Confidential Information; or (v) the disclosing party agrees in writing is free of such restrictions.
“Customer Controlled Materials”	means those Materials provided by Customer or by suppliers with whom Customer has a commercial contractual or non-contractual relationship.
“Customer Controlled Materials Terms”	means the terms and conditions that Customer has negotiated with its suppliers for the purchase of Customer Controlled Materials.
“Deliverables”	means the items delivered to Customer by Flex pursuant to the Design Statement of Work, including any New Developments incorporated therein and any pre-production, prototype or trial units of the Product.
“Design Materials Inventory”	means any Materials necessary to perform the Design Services.
“Design Fees”	has the meaning set forth in Section 4.2.

“Design Services”	has the meaning set forth in Section 2.
“Design Specifications”	has the meaning set forth in Section 2.
“Design Statement of Work”	has the meaning set forth in Section 2.
“Economic Order Inventory”	means Materials purchased in quantities, above the required amount for purchase orders and the Forecast, in order to achieve price targets for such Materials.
“Environmental Regulations”	means any applicable hazardous substance content laws and regulations including those related to or implementing the EU Directive 2011/65/EU about the Restriction of Use of Hazardous Substances (RoHS) and (EC 1907/2006) dealing with the registration, evaluation, authorization and restriction of chemical substances (REACH).
“Essential IP”	means the Intellectual Property Rights of any third parties in industry recognized standards, protected in any jurisdiction, which would be inherently infringed by the manufacture, design, use, or sale of a device made in compliance with such industry recognized standards.
“Excess Inventory”	means either of any Product, partially completed Product, Inventory or Special Inventory, or some or both, owned by Flex that is not required for consumption to satisfy the next thirty (30) days of demand for Products under the then-current purchase order(s) and Forecast.
“Governmental Change”	means any laws, rules, regulations, court orders, administrative rulings or other governmentally-imposed or governmentally-sanctioned requirements (including mandatory wage increases) which result in changes to the costs of performance hereunder.
“Intellectual Property Rights”	means any and all intellectual property rights worldwide arising under statutory law, common law or by contract and whether or not perfected, including without limitation: (i) trade dress, trademark, and service mark rights; (ii) patents, patent applications and patent rights; (iii) rights associated with works or authorship including copyrights, copyright applications, copyright registrations, mask works rights, mask work applications, mask work registrations; (iv) rights relating to trade secrets and confidential information; (v) any rights analogous to those set forth in this section and any other proprietary rights relating to intellectual property; and (vi) divisional, continuations, renewals, reissues and extension of the foregoing (as and to the extent applicable) now existing, hereafter filed, used or acquired, and whether registered or unregistered.
“Inventory”	means any Materials that are procured by or on-order with Flex in accordance with the applicable Lead Time for use in the manufacture of Products pursuant to a purchase order or Forecast from Customer.
“Lead Time(s)”	means the Materials Procurement Lead Time plus the manufacturing cycle time required from the delivery of the Materials at Flex’s facility to the completion of the manufacture, assembly and test processes.
“Manufacturing Services”	has the meaning set forth in Section 3.

“Materials”	means components, parts, raw material and subassemblies that comprise the Product and that appear on the bill of materials for the Product.
“Material Overhead Costs” or “MOC”	means Flex’s fee for acquiring, managing and storing Materials, which may be expressed as a percentage of the Standard Cost of the Materials, as such percentage is set forth in the applicable bill of materials or other document; if no MOC is specified in the applicable documents, then the MOC shall be equal to: (i) ten percent (10%) of the Standard Cost of all Materials on hand at Flex; and (ii) five percent (5%) of the cost of all Materials on order and not cancelable.
“Materials Procurement Lead Time”	means with respect to any particular item of Materials, the longer of (a) the lead time to obtain such Materials as recorded on Flex’s system of record or (b) the actual lead time.
“Minimum Order Inventory”	means Materials purchased in excess of requirements for purchase orders and Forecast because of minimum lot sizes required by the vendor.
“Monthly Charges”	means a monthly finance carrying charge of one and one-half percent (1.5%), and all reasonable costs related to storage and handling.
“New Developments”	have the meaning as defined in Section 9.1.
“NRE Charges”	means incurred labor and Product-specific tooling, equipment or software and other reasonably necessary non-recurring set-up, tooling or similar expenses as set forth in Flex’s pricing quotations.
“Obsolete Inventory”	means either of any Product, partially completed Product, Inventory or Special Inventory, or some or all, that is any of the following: (a) removed from the bill of materials for a Product by an engineering change; (b) no longer on an active bill of materials for any of Customer’s Products; or (c) on-hand with Flex but not required for consumption to satisfy the next one hundred eighty (180) days of demand for Products under the then-current purchase order(s) and Forecast.
“Products”	means an item in its completed form as described in written and agreed upon Manufacturing Specifications, and that is the object of the Manufacturing Services.
“Production Materials”	means materials that are consumed in the production processes to manufacture Products including solder, epoxy, cleaner solvent, labels, flux, and glue; Production Materials do not include any such production materials that have been specified by the Customer or any Customer Controlled Materials.
“Special Inventory”	means any long Lead Time Materials and/or Minimum Order Inventory and/or Economic Order Inventory.
“Specifications”	means the Design Specifications or the Manufacturing Specifications, as applicable.
“Standard Cost”	means, as applicable, (a) the quoted cost of Materials represented on the bill of materials current at the time such Materials are acquired; or (b) the value of any Services performed on work-in-progress at the time such Services are performed.

“Taxes”	means federal, state and local excise, sales, use, VAT, and transfer taxes and similar charges. “Taxes” do not include taxes based on the net income of Flex or on real property owned by Flex.
“Underutilization Cost”	means those costs associated with the manufacturing lines and space in the factory incurred by Flex as a result of underutilization of the production capacity in the event that Customer’s actual purchased volume of Products is less than the forecasted volume of Products, including the facility costs, equipment costs and amortization, labor costs, and any other related costs.

Schedule A

Design Statement of Work A-1

(Sample)

Section 1 – Product Definition

- High level description of product
- What the product is/is not
- Product appearance picture

Section 2 – Design Specifications

Detailed product specification (can be separate document if desired)

Section 3 – Proposed Schedule & Deliverables

- Project schedule
- Key deliverable dates
- Key deliverables (e.g., circuit schematic, board layout, test results, packaging)

Section 4 – Project Design Responsibilities

- Flex's detailed responsibilities
- Customer's detailed responsibilities
- Shared responsibilities

Section 5 – Customer Specified Items

- Customer specified components, suppliers, mechanical designs, software, subsystems, etc.
- Customer preferences for certain components

Section 6 – Testing requirements

- Validation test requirements
- Regulatory test requirements
- Reliability testing requirements
- Unique testing requirements
- Required certifications

Section 7 – Process

- Customer's unique development process requirements

Section 8 – Contacts

- Customer contacts
- Flex contacts
- Including:
 - Name
 - Voice Number
 - Pager Number
 - Fax Number
 - Email

Section 9 – Schedule of Design Fees/Costs

- Product BOM target price / Flex product cost
- Flex's NRE cost or quotation; reimbursement schedule
- Flex's prototype cost (optional, can be covered in manufacturing agreement)
- Outside service costs

Section 10 – Acceptance Criteria

Describe the objective criteria upon which both parties agree that the Deliverables or other work will be accepted by Customer; e.g., test requirements, delivery of report, etc. - acceptance criteria are unique and need to fit the specific work being performed.

If any provisions of the Agreement need to be modified for a particular Design Statement of Work, those changes would also be included here.

Customer:

Flextronics:

By: _____
Title: _____

SAMPLE

Exhibit 2

Manufacturing Specifications

Incorporated by reference only.

Exhibit 3

Fee List
(Sample)

[TO BE COMPLETED -- to reflect the agreed upon pricing for the Products.]