



Design Services Agreement

This Design 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 and engineering services as set forth in this Agreement. The parties agree as follows:

1. DEFINITIONS

Flex and Customer agree that capitalized terms shall have the meanings set forth in this Agreement and Exhibit 1 attached hereto and incorporated herein by reference.

2. DESIGN SERVICES ENGAGEMENT

Customer hereby engages Flex to perform design and development, pre-production manufacturing engineering, and prototype and first article manufacturing (the “**Design Services**”) related to the Deliverable(s) which 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 shall be substantially in the form attached hereto as Schedule A and shall be consecutively numbered (Design Statement of Work A-1, A-2, A-3, etc.). Customer will issue purchase orders for the Design Services to Flex in accordance with the Design Statement of Work and Section 3 below.

Flex will 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. The Deliverables 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 5. Except as otherwise expressly provided herein, the Deliverables 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.

3. PURCHASE ORDERS; FEES; PAYMENT

3.1. 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. The parties agree that the terms and conditions contained in this Agreement shall prevail over any terms and conditions of any purchase order, acknowledgment form or other instrument. In the event of a conflict between the terms of this Agreement and the Schedules to this Agreement, the order of precedence will be: this Agreement and then the Schedule A (Design Statement of Work).

3.2. Fees; Changes; Taxes.

(a) Customer shall pay Flex for the Design Services and any related expenses in accordance with this Section 3 and 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**”).

(b) Customer is responsible for additional fees and costs (“**Additional Fees**”) due to: (i) changes to the Design 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 schedule, (iii) extension of any milestone completion schedule under the Design Statement of Work due to Customer requested changes or to causes outside of Flex’s control, including any technical complications



realized by Flex or Customer during the performance of the Design Services, (iv) any expediting charges because of a change in Customer's requirements which charges 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 Design Fees may be reviewed periodically by the parties. Any changes and timing of changes shall be agreed by the parties, such agreement not to be unreasonably withheld or delayed. By way of example only, the Design Fees may be increased if the market price of fuels, Materials, equipment, services, increases to labor rates and other pre-production costs, increase 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 the export licensing of the Deliverable and payment of brokers fees, duties, tariffs or similar charges, and (iii) CAPEX, and Customer shall be responsible for all such items. Should all or any portion of the Design 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.

(e) Customer shall pay all invoices in U.S. Dollars. The Design Fees 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 fees based on the most recent exchange rate of official reference rates adopted by the parties.

(f) 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.

3.3. Payment. The parties shall mutually agree whether the 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). The applicable method of payment shall be set out in the Design Fees. Customer agrees to pay all invoices for Design Services in U.S. Dollars within thirty (30) days of the date of the invoice. All Additional Fees shall be invoiced by Flex and paid for within thirty (30) days of the date of invoice.

3.4. Late Payment. Customer agrees to pay one and one-half percent (1.5%) monthly interest on all late payments. Furthermore, if Customer is late with payments, Flex may: (a) stop all Design Services 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 and/or in the event restart cost are incurred, invoice Customer for additional fees before the Design Services can resume. Customer agrees to provide all necessary financial information required by Flex from time to time in order to make a proper assessment of the creditworthiness of Customer.

3.5. 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 shall have 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 the risks associated with Design Materials Inventory and the accounts receivable from the Customer in accordance with the Design Services and Design Statements of Work. The draw down procedures under the standby letter of credit or the escrow account shall be determined solely by Flex. Flex shall have the right to suspend performance (e.g., cease ordering Materials



and/or cease making 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 delivered to Customer, until Customer has paid for the Design Services and all related charges. Customer agrees to promptly execute any documents requested by Flex to perfect and protect such security interest.

4. MATERIALS PROCUREMENT; CUSTOMER RESPONSIBILITY FOR MATERIALS

4.1. **Authorization to Procure Design Materials Inventory.** Customer's accepted purchase orders for Design Services authorize Flex to procure, without Customer's prior approval, Design Materials Inventory covered by such purchase orders, as applicable, based on the Lead Time. Customer agrees to 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.

4.2. **Customer Controlled Materials.** Customer may direct Flex to purchase Customer Controlled Materials in accordance with the Customer Controlled Materials Terms. Customer acknowledges that the Customer Controlled Materials Terms will directly impact Flex's ability to perform the Design 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 will notify Customer and the parties will agree to either (a) compensate Flex for such additional costs, (b) amend this Agreement to conform to the Customer Controlled Materials Terms or (c) amend the Customer Controlled Materials Terms to conform to this Agreement; in each case at no additional charge to Flex. Customer agrees to 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 suppliers. Customer agrees not to make any modifications or additions to the Customer Controlled Materials Terms or enter into new Customer Controlled Materials Terms with suppliers that will negatively impact Flex's procurement activities.

4.3. **Customer Responsibility for Design Materials Inventory.** Customer will pay Flex a monthly carrying fee of one and one-half percent (1.5%) for all Design Materials Inventory that has been held by Flex for longer than thirty (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 will 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 Standard Cost plus a twenty percent (20%) materials handling fee.

5. DELIVERABLES ACCEPTANCE

Upon receipt of Deliverables from Flex in accordance with the Design Statement of Work, Customer shall have five (5) working days to 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 shall have 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 will agree upon the cause of such failure, the associated adjustment and the related costs in accordance with Section 3.2(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 or Flex pursuant to Section 9.2(a).



6. INTELLECTUAL PROPERTY OWNERSHIP AND LICENSES

6.1. **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 performing the Design Services under 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 6.2 and any third party Intellectual Property Rights identified in Section 6.3.

6.2. **Flex Background Property.** Flex's "**Background Property**" shall mean and include Flex's Intellectual Property Rights, know how, design tools, methodologies, software, algorithms, or other means that may be used to (i) design, manufacture, assemble or test products, or (ii) to design production means or the processes by which products are designed, manufactured, assembled, or tested and any improvements or modifications thereto. Customer acknowledges and agrees that this Agreement shall not affect the ownership of, nor convey any licenses or rights under any of the Intellectual Property Rights in Flex's Background Property, either expressly, impliedly or otherwise to Customer or any other third party.

6.3. **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 into the Deliverables, and for providing adequate assurances to Flex, upon Flex's request that Customer has secured such rights or paid such royalties or fees.

6.4. **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**").

6.5. **Licenses.**

(a) 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.

(b) Except as set forth in subsection (a) above, each party acknowledges and agrees that no licenses or rights under any of the Intellectual Property Rights of the other party are given or intended to be given to such other party.

7. INDEMNIFICATION

7.1. **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 Deliverables and the Design Services which have been used by and relied upon by Flex. Accordingly, 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, the Deliverables or any products based on or incorporating any of the Design Services or Deliverables, including but not limited to any claim (i) of failure to comply with any safety



standards and/or Environmental Regulations, (ii) of product liability, (iii) of design defect and/or (iv) that the Design Services or the Deliverables or any products based on or incorporating any of the Design Services or Deliverables infringe any third party's Intellectual Property Rights or have caused any loss, liability, damage or injury, including death. This Section shall survive termination or expiration of this Agreement.

7.2. Procedures for Indemnification. With respect to any third-party claims, each party shall give the other party prompt notice of any third-party claim covered under this Section. Upon request, Flex shall provide Customer with reasonable cooperation at Customer's expense. Flex shall have 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. Customer shall not, without the prior written consent of Flex, agree to the settlement, compromise or discharge of such third-party claim.

7.3. Design Services or Use of Deliverables Enjoined. Should the Design Services or the manufacture, use or sale of any Deliverables be enjoined or threatened to be enjoined for a cause stated in Section 7.1 above, and Customer is unable within a reasonable time and at Customer's expense to obtain the right for Flex to continue the Design Services or the performance of its obligations under this Agreement, then Flex will have the right to terminate this Agreement under Section 9.2(a).

THE FOREGOING SECTION 7 STATES THE ENTIRE LIABILITY OF THE PARTIES TO EACH OTHER CONCERNING INFRINGEMENT OF PATENT, COPYRIGHT, TRADE SECRET OR OTHER INTELLECTUAL PROPERTY RIGHTS.

8. LIMITATION OF LIABILITY

FLEX MAKES NO REPRESENTATIONS AND NO WARRANTIES ON THE DESIGN SERVICES OR THE DELIVERABLES OR PRODUCTS BASED ON OR INCORPORATING ANY DESIGN SERVICES OR 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.

EXCEPT WITH REGARD TO A BREACH OF SECTION 10.1 (CONFIDENTIALITY) BELOW OR CUSTOMER'S INDEMNIFICATION OBLIGATIONS AS SET FORTH IN SECTION 7 ABOVE, 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 OR 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 OR DESIGN SERVICES, 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.

FLEX'S SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR A BREACH OF 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 8 (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.



9. TERM AND TERMINATION

9.1. **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 9.2 or 10.10 (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.

9.2. **Termination.** The parties may terminate the Agreement as further provided in this Section 9.2 and in Section 10.10 (Force Majeure):

(a) **Termination for Convenience.** Customer may terminate this Agreement 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 as specified in Sections 5, 7.3, and 10.10. In such event, Customer will compensate Flex for work performed at Flex's standard hourly billing rates quoted in the Design Fees, 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.

(b) **Termination for Breach.** Either party may terminate this Agreement 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 fifteen (15) 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: (a) shall not affect the amounts due under this Agreement by either party that exist as of the date of expiration or termination, and (b) shall cause the provisions of Sections 4.3 to apply with respect to payment and shipment to Customer of Design Materials 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 10.1 (Confidentiality) or Customer's indemnification obligations as set forth in Section 7. Notwithstanding termination or expiration of this Agreement, Sections 4.3, 6.1, 6.2, 6.3, 6.4, 7, 8, 9.2(c) and 10 shall be the only terms that survive any termination or expiration of this Agreement.

10. MISCELLANEOUS

10.1. **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.

10.2. Trade Compliance.

(a) Neither party shall export, re-export or otherwise transfer any Deliverables, Materials commodities, software, or technology that have been supplied under or 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, 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, Sudan, 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 or documentation 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) Unless otherwise agreed in writing by the parties, shipment of Deliverables and Materials shall be made EXW (Ex Works, Incoterms 2020) Flex's facility. Title transfers and all freight, insurance, and other shipping expenses shall be paid by Customer. Risk of loss and title shall pass to Customer upon delivery by Flex of the Deliverables and Materials to the stated delivery point in accordance with the applicable Incoterm. To the extent that Deliverables are imported into any country, the Customer shall act as the importer of record.

(d) In the event Customer designates a supplier (including to 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 anti-terrorism security measures (e.g., C-TPAT (Customs-Trade Partnership Against Terrorism)); (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.

10.3. Nonsolicitation. Each of the parties hereto agrees that, during the term of this Agreement and for a period of six (6) months 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 to the Design Services 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.



10.4. **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 Deliverables 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.

10.5. **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 preprinted terms and conditions on Customer's purchase orders shall be of no effect.

10.6. **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.

10.7. **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.

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

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

10.10. **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 of governmental or military bodies, fire, flood, earthquake, war, strike, lockout, epidemic, pandemic, destruction of production facilities, riot, insurrection, Materials unavailability, or any other cause beyond the reasonable control of the party invoking this section (collectively a "**Force Majeure**"), and if such party shall have 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.

10.11. **Successors, Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, assigns and legal representatives. Neither party shall have 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 some or all of its rights and obligations under this Agreement to an affiliated Flex entity.

10.12. **Notices.** All notices required or permitted under this Agreement will 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.

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

(a) This Agreement shall 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 with respect to enforcing claims for injunctive or equitable relief, any dispute, claim or controversy arising from or related in any way to this Agreement or the interpretation, application, breach, termination or validity thereof or any other aspect of the relationship between Flex and Customer or their respective affiliates and subsidiaries, including any claim of inducement of this Agreement by fraud and a determination of the scope or applicability of this agreement to arbitrate, will be submitted for resolution by binding arbitration in accordance with the Comprehensive Arbitration Rules & Procedures of JAMS. The arbitration will 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 proceeding 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. Notwithstanding the above, each party shall have recourse to any court of competent jurisdiction to enforce claims for injunctive and other equitable relief.

(c) 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.

10.14. **Manufacturer.** For a period of three years following the volume production date of a 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 Flex's price and quality of the product is competitive based on substantially similar volumes over same period of time, manufactured in the same region, financial strength of competitor and commercial terms including but not limited to payment terms, warranty terms and remedies. Such manufacturing will be done pursuant to Flex's standard manufacturing services agreement, subject to any changes to be negotiated in good faith by the parties.

10.15. **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.

10.16. **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.

10.17. **Use of Name is Prohibited.** The existence and terms of this Agreement are Confidential Information and protected pursuant to Section 10.1 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.

10.18. **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.

10.19. **Sale of Products to Governments.** In the event Customer sells products which incorporate any Deliverable or Design Service 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:

Flextronics:

Signature

Signature

By: _____

By: _____

Title: _____

Title: _____

Exhibit 1

Definitions

“Background Property”	shall have the meaning set forth in Section 6.2.
“Confidential Information”	shall mean (a) the existence and terms of this Agreement and all information concerning the Design Services fees 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.
“CAPEX”	means tooling, molds, fixtures, equipment, software, or facility improvements.
“Customer Controlled Materials”	shall mean certain Materials provided by Customer or by suppliers with whom Customer has a commercial contractual or non-contractual relationship.
“Customer Controlled Materials Terms”	shall mean the terms and conditions that Customer has negotiated with its suppliers for the purchase of Customer Controlled Materials.
“Damages”	shall have the meaning set forth in Section 7.1.
“Deliverables”	shall mean the items delivered to Customer by Flex pursuant to the Design Statement of Work, including any New Developments incorporated therein and any prototype or trial units.
“Design Materials Inventory”	shall mean any Materials necessary to perform the Design Services.
“Design Fees”	shall have the meaning set forth in Section 3.2.
“Design Services”	shall have the meaning set forth in Section 2.
“Design Specifications”	shall have the meaning set forth in Section 2.
“Design Statement of Work”	shall have the meaning set forth in Section 2.
“Essential IP”	shall mean 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.
“Environmental Regulations”	shall mean any hazardous substance content laws and regulations including those related to the EU Directive 2011/65/EU about the Restriction of Use of Hazardous Substances (RoHS).

“Governmental Change”	shall mean 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"	shall mean any and all intellectual property rights worldwide arising under statutory law, common law or by contract and whether or not perfected, including all: (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) divisionals, 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.
“Lead Time”	shall mean with respect to any particular item of Materials, the longer of (a) lead time to obtain such Materials as recorded on Flex’s MRP system or (b) the actual lead time, if a supplier has increased the lead time but Flex has not yet updated its MRP system.
“Materials”	shall mean components, materials and supplies that are used in the design, development, manufacturing, testing, packaging, and distribution of electronic products.
“New Developments”	shall have the meaning as defined in Section 6.1.
“Standard Cost”	shall mean, as applicable, (a) the quoted price of Materials represented on the bill of materials current at the time such Materials are acquired; or (b) the value of any Design Services performed on work-in-progress at the time such Design 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.



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
 - Phone Number
 - Email

Section 9 – Design Fees

- Product BOM target prices / 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
- CAPEX

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: _____

By: _____
Title: _____

SAMPLE