



Manufacturing Services Agreement

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MANUFACTURING SERVICES AGREEMENT

This MANUFACTURING SERVICES AGREEMENT (“**Agreement**”), dated as of this ____ day of _____, 20__ (the “**Effective Date**”) by and between [NAME OF COMPANY] (“**Company**”), a _____ [corporation/limited liability company] with offices at [ADDRESS], and [NAME OF COMPANY] (“**Customer**”), a _____ [corporation/limited liability company] with offices at [ADDRESS].

RECITALS

WHEREAS, the Company is in the business of providing [DESCRIBE SERVICE] (the “**Manufacturing Services**”);

WHEREAS, the Customer is a [TYPE OF BUSINESS] and desires to contract with the Company to purchase the Manufacturing Services;

NOW THEREFORE, in consideration of the premises and the mutual covenants herein set forth, it is agreed by and between the parties as follows:

1. Definitions. The following definitions apply to capitalized terms in this Agreement. All other capitalized terms are defined in the body of the Agreement.

1.1 “**Affiliate**” means a Person which, directly or indirectly, owns or controls, is owned or is controlled by or is under common ownership or control with another Person; “control” and its derivatives means the power to direct the management or affairs of a Person; and “own” and its derivatives means the beneficial ownership of 50% or more of the voting equity securities or other equivalent voting interests of the Person.

1.2 “**Change of Control**” means as to either party (a) the sale, conveyance, transfer, or disposition of all or substantially all of such party’s assets, business, technology, intellectual property or other material goods, to a third party, (b) the acquisition of such party by a third party (whether through a merger, acquisition, consolidation or other transaction or series of transactions) the consummation of which results in a Person (other than an Affiliate of such party prior to such transaction) becoming the beneficial owner of fifty (50%) percent or more of the outstanding equity interests or voting power in such party, other than, in the case of this clause (b), an acquisition or a merger or consolidation in which holders of shares of voting capital stock immediately prior to the acquisition, merger or consolidation will not have at least fifty (50%) percent of the ownership of voting capital stock of the acquiring third party or the surviving corporation in such merger or consolidation, or transaction effected solely for purpose of changing the corporate domicile of such party, as the case may be, immediately after the merger or consolidation.

1.3 “**Confidential Information**” means all confidential and proprietary information of a party (“**Disclosing Party**”) disclosed to the other party (“**Receiving Party**”), whether orally or in writing, that is either marked or designated as confidential or is identified in writing as confidential or proprietary within fifteen (15) days of disclosure to the Receiving Party; provided that the following shall be deemed to be Confidential Information even if not so marked or identified: the terms and conditions of this Agreement (including pricing and other terms

reflected in all schedules hereto), the Disclosing Party's business and marketing plans, technology and technical information, product designs, and business processes, any information or materials with the name, sign, trade name or trademark of the Disclosing Party and any information that a reasonable person would deem confidential or proprietary given the nature of the information and the circumstances under which it is disclosed. "Confidential Information" does not include any item of information which (a) is or becomes available in the public domain without the fault of the Receiving Party; (b) is disclosed or made available to the Receiving Party by a third party without restriction and without breach of any relationship of confidentiality; (c) is independently developed by the Receiving Party without access to the disclosing party's Confidential Information; or (d) is known to the recipient at the time of disclosure.

1.4 **"Deliver, Delivered or Delivery"** means the delivery by Company of the Products manufactured pursuant to a particular Service Order to the delivery point provided by Customer for shipment or pull in accordance with Customer's instructions, as provided in accordance with the guidelines. Delivery terms are FOB Origin, freight prepaid and billed to Customer.

1.5 **"Excess Materials"** shall mean components and other materials held by the Company in excess of Customer's Forecast.

1.6 **"Intellectual Property Rights"** means (a) all inventions (whether or not patentable and whether or not reduced to practice), all improvements thereto, and all patents, patent applications, and patent disclosures, together with all reissuances, divisions, continuations, continuations-in-part, revisions, renewals, extensions, and reexaminations thereof, (b) all works of authorship, including all mask work rights, database rights and copyrightable works, all copyrights, all applications, registrations and renewals in connection therewith, and all moral rights, (c) all trade secrets, (d) all registered and unregistered trademarks, service marks, trade dress, domain names, logos, trade names, and corporate names, together with all translations, adaptations, derivations, and combinations thereof and including all goodwill associated therewith, and all applications, registrations and renewals in connection therewith, (e) all derivative works of any of the foregoing; (f) any other similar rights or intangible assets recognized under any laws or international conventions, and in any country or jurisdiction in the world, as intellectual creations to which rights of ownership accrue, and all registrations, applications, disclosures, renewals, extensions, continuations or reissues of the foregoing now or hereafter in force, and (g) all copies and tangible embodiments of all of the foregoing (a) through (f) in any form or medium throughout the world.

1.7 **"Lead Time"** means the minimum amount of time prior to the requested Delivery of a Product that a Purchase Order must be provided to Company to initiate the performance of Services. The Lead Time as of the date of this Agreement is [NUMBER] (____) days.

1.8 **"Packaging Specifications"** means the packaging process and format to be agreed upon by the parties with respect to each Product and set forth in the applicable specification.

1.9 **"Person"** whether capitalized or not, means any individual, sole proprietorship, joint venture, partnership, corporation, company, firm, bank, association, cooperative, trust, estate, government, governmental agency, regulatory authority, or other entity of any nature.

1.10 “**Product**” means a completed product to be manufactured as a result a Purchase Order, which may be amended from time to time.

1.11 “**Purchase Order**” means a written or electronically transmitted Purchase Orders for Products placed by Customer with Company in accordance with any instructions or guidelines as provided by either party from time to time, including the description, quantity, Customer, delivery instructions, requested Delivery date, ship to point and other relevant information relating to the order and shipment.

1.12 “**Standard Cost**” means the standard cost of performing services with respect to a component or Product, as set forth in [Customer’s then current pricing materials].

[2 **Term.** [This Agreement shall be effective from the Effective Date and shall continue for a period of [NUMBER] (__) year(s) thereafter (the “**Term**”), unless sooner terminated as otherwise provided in Section 13 hereof (Termination) and can be renewed by mutual agreement between the parties.]

OR

[2. **Term.** The initial term of this Agreement (the “**Initial Term**”) shall commence on the Effective Date and shall continue for a period of [NUMBER] (__) years thereafter, unless sooner terminated as otherwise provided in Section 13 (Termination) hereof. After the Initial Term, this Agreement shall automatically renew for additional [NUMBER] (__) year periods (each a “**Renewal Term**”, and together with the Initial Term, the “**Term**”) subject to at least [NUMBER] (__) days’ advance written notice of termination by either party prior to expiration of the Initial Term or Renewal Term then in effect.]

OR

[2. **Term.** The term of this Agreement shall be [NUMBER] (__) months from the Effective Date, and may be extended for additional [NUMBER] (__) month periods upon mutual agreement of the parties at least thirty (30) days prior to the anniversary of the Effective Date.]

3. Products and Services. Manufacturing services for all products identified on Purchase Orders issued by Customer (the “**Products**”) and received by the Company are covered by this Agreement.

3.1 Retention. Customer hereby retains Company to provide the Products in accordance with the terms and conditions of this Agreement and Company hereby consents to such retention.

3.2 Performance of Services. During the Term, the Company shall use reasonable commercial efforts to provide Products in accordance with the terms of this Agreement. Additional Products may be added to this Agreement upon mutual written agreement between the parties, and its associated fees and other relevant Product-specific terms and conditions. Company will initiate service in connection with the Product upon receipt of a Purchase Order.

3.3 Lead Time; Rescheduling; Allocation. Company shall use reasonable commercial efforts to accept and perform any Purchase Order placed in accordance with the terms and conditions of this Agreement, including the applicable Lead Times (which may be revised by Company from time to time upon notice to Customer). The Company may, at its sole discretion,

allocate its capacity among Company's customers, but will provide Customer with priority equivalent to that given to customers purchasing similar services, in similar quantities, using similar processes or materials.

3.4 Packaging. The Company will package each Product substantially in accordance with the applicable Packaging Specification, as it may be amended from time to time upon agreement of the parties and subject to approval of the respective engineering organizations of the parties.

3.5 Third Party Contractors. The Company may retain third parties ("**Contractors**") and subsidiary companies ("**Subsidiaries**") to furnish services to it in connection with the performance of its obligations hereunder and permit such Contractors and Subsidiaries to have access to Customer's Confidential Information, but only to the extent and insofar as reasonably required in connection with the performance of Company's obligations under this Agreement; provided that all such Contractors and Subsidiaries shall be required by Company to execute a written agreement that (a) is sufficient to secure compliance by such Contractors and Subsidiaries with Company's obligation of confidentiality concerning Confidential Information; (b) acknowledges the Contractor's or Subsidiary's obligation to assign all work product in connection with performance hereunder. Customer, upon request, may review such agreements at any time before or after execution by such Contractors and Subsidiaries to ensure compliance with this Agreement.

4. Forecasts, Ordering, Adjustments and Returns.

4.1 Forecasts. Customer will provide Company, in accordance with the Guidelines, a [monthly] forecast of Customer's requirements for Products [covering the remainder of the Term]. Such forecasts shall represent and reflect Customer's good faith expectations of its requirements based upon customer demand. Customer acknowledges that Company will use forecasts for material and manufacturing planning purposes in connection with the Products and, further, that Company will purchase certain inventory required for the Products in accordance with such forecast.

Customer shall be responsible for and will pay the Company on demand for all non-cancelable or non-returnable components purchased pursuant to such Forecast. Customer may, at its option, limit the amount of components that may the Company procure by notifying the Company in writing. If Customer so limits the amount of components that the Company may procure in excess of Forecasts and Purchase Orders, and the Company is unable to deliver Products timely as set forth in Purchase Orders as a result of such limits, the Company shall not be responsible for its inability to deliver Products timely. Customer shall be liable and invoiced for the sales prices of all Products manufactured or partially manufactured specifically to fulfill Customer's canceled Purchase Orders/Forecasts, prior to the date of any expiration or termination.

The Company shall notify Customer of Excess Materials in writing after the expiration of such Forecast.

4.2 Liability for Inventory. Company shall be liable to purchase all Inventory purchased to forecast or built to a Service Order for which Delivery of the relevant Product has not been taken upon the expiration of the Term, or in the event of termination by Customer pursuant to Section 13.1 or termination by Company pursuant to Section 13.2. Company shall

invoice Customer for such Inventory promptly upon determining the amount of the claim. Upon full payment for such Inventory and receipt of "ship to" delivery instructions, the Inventory shall be Delivered to Customer. Unless otherwise agreed by the parties, shipping and insurance costs from Company's Inventory location to the "ship to" delivery point will be paid by Company and reimbursed by Customer. Customer will be billed for the charges at the rate of actual shipping and insurance costs plus [NUMBER] (__) percent. In the event payment is not made or shipping instructions are not received within thirty (30) days of Company's invoice, Company may scrap the affected Inventory without further liability to Customer. In addition, the parties shall review Inventory from time to time and shall identify and agree upon any Inventory, which is obsolete, which may be scrapped by Company promptly thereafter. The scrapping of such Inventory pursuant to this Section, shall not affect Customer's obligation to pay for such Inventory.

4.3 Purchase Orders. Customer shall place Purchase Orders with Company in accordance with the Guidelines to initiate the manufacturing of the Products by Company. Each Purchase Order will be issued by Customer in accordance with the applicable Lead Time(s), which initially shall be [NUMBER] (__) days. Company shall use reasonable efforts to manufacture the Product in accordance with the Purchase Order. Customer acknowledges that its placement of Purchase Orders in accordance with the Guidelines is a material term of this Agreement, and further acknowledges its obligation to adjust its forecast such that no Product purchases are forecast for any period during which Customer will not be able to place Purchase Orders in accordance with the Guidelines.

4.4 Purchase Order Adjustments. Customer may not cancel any Products for which a Purchase Order has been received by Company. Customer may change the "ship to" location and/or the scheduled Delivery date until [NUMBER] (__) hours prior to the expected shipping date; however, such adjustment may be subject to additional costs or charges. Customer may not modify a Purchase Order within [NUMBER] (__) hours of the scheduled shipping date, without Company's prior express consent. Any requests to modify a Purchase Order within [NUMBER] (__) hours of the scheduled shipping date shall be directed to Company's manager of demand fulfillment, or his or her designee, and will be handled on a case by case basis.

4.5 Agreement Controls. Except for the identification of Products, quantities and other matters necessary to be specified by a Purchase Order, the terms governing the performance of production will be governed by the terms and conditions of this Agreement. In the case of conflict between this Agreement and any Purchase Order, invoice, acknowledgement or similar document, the terms of this Agreement will prevail. Any remedies at law or equity not specifically disclaimed or modified by this Agreement remain available to both parties.

4.6 Delivery and Shipping. Title to the Product and risk of loss pass to Customer at the point of delivery (i.e. the Company's dock or stockroom). All quoted Delivery dates are estimates only and Company shall not be liable for any failure to meet a quoted Delivery date.

Unless otherwise agreed by the parties, shipping and insurance costs from Company to the Customer's delivery point will be paid by Company and reimbursed by Customer. Customer will be billed for the charges on a monthly basis at the rate of actual shipping and insurance costs plus [NUMBER] (__) percent. Company will select the carrier. In no event shall Company be liable for any delay in delivery, or assume any liability in connection with shipment, nor shall the carrier be deemed an agent of Company. All claims for damages must be filed with the carrier.

Shipments may be made in installments. Unless otherwise agreed in writing or as set forth in the Packaging Specification, all Products will be packed and shipped in accordance with Company's standard shipping and packaging practices.

[4.7. Product Returns. Before returning Product to the Company for repair, Customer shall notify the Company in writing of a Warranty claim or its agreement to pay the Company's then current rates for repair, and request a return material authorization ("**RMA**") form. The Company will forward to Customer an RMA. Upon receipt of the RMA, Customer shall then forward the defective Product ("**Returned Product**") to the Company freight prepaid, FOB destination. If the Returned Product is not subject to a Warranty claim, The Company will notify Customer and if Customer requests repair, the Company's shipment of the Returned Products back to Customer shall be accompanied by an invoice for repairs fees, which invoice Customer shall pay within [NUMBER] (__) days of receipt. If the Company determines, after inspection and testing, that a Returned Product for which Customer made a Warranty claim is free of defects, The Company's shipment of the Returned Product back to Customer shall be accompanied by an invoice for the "**Defect Not Found Charge**" of [AMOUNT] per Returned Product plus a [\$AMOUNT] per hour labor charge, which Customer shall pay within [NUMBER] (__) days of receipt.]

OR

[4.7 Product Returns. Any Product Delivered hereunder shall be deemed accepted by Customer unless Company receives written notice of a defect or non-conformity with respect to such Product within [NUMBER] (__) days of shipment from the delivery point to Customer. In the event a Product appears not to conform to the Specifications or a shipment does not conform to the requirements of a Purchase Order, Customer shall promptly notify the appropriate Company contact, as identified to Customer by Company from time to time, specifying the non-conformity and requesting a Return Material Authorization ("**RMA**") number for Product return. Company will issue a RMA number within [NUMBER] (__) hours of Customer's request. This RMA number must be referenced on all paperwork and shipping containers with respect to the returned Product. Upon receipt of receipt of the Product, Company will be afforded a reasonable opportunity to inspect it to validate non-conformance. No Product shall be returned to Company without compliance with the foregoing RMA procedures.]

5. Quality and Inspection.

5.1 Company's Process. Company shall manufacture and inspect the Products in accordance with its general process and quality procedures.

5.2 Customer Inspection. Customer, or its representative (which must be reasonably acceptable to Company), will be entitled to inspect the Products and their manufacturing process at the Company's manufacturing facilities or its Subcontractor, or at Company's warehouse, prior to Delivery and during the course of Company's performance of Services. Such inspection shall be solely for the purpose of reviewing the quality of such Products and processes. Any such inspection shall be subject to reasonable prior written notice given to Company by Customer and to the execution of a reasonable form of non-disclosure agreement by Customer and any approved representative. Company shall not be responsible for any delay in Delivery or shipment of the affected Products that results from the inspection, and Customer shall bear all costs of the

inspection. In the event Company bears any costs as a consequence of the inspection, Customer shall reimburse Company for its actual expenses, plus [NUMBER] (__) percent.

6. Payments, Fees and Charges. Upon completion of the Products specifically relating to the manufacture and shipment of Products, as evidenced by shipment of the Product from Company's facility, Company will send an invoice to Customer identifying the Purchase Order, and confirming the quantity and description of all Products that have been shipped. Customer will pay invoices for the Products, or such other invoices as are issued under this Agreement, including invoices for scrapped Inventory, cancellation charges, shipping costs, inspection expenses, Product modifications and transition assistance, within [NUMBER] (__) days of receipt. Delivery and shipment of Products shall at all times be subject to the approval of Company's credit department and Company may at any time decline to ship any Products, except upon receipt of payment, or upon terms and conditions or security satisfactory to Company. Company will provide Customer with credit terms in accordance with the credit policies established by its credit department.

6.1 Fees. Subject to the terms and conditions of this Agreement, Company agrees initially to perform the services related to the Products for the respective fees set forth on Exhibit A (the "Fees"). Any Fee which is not set forth on Exhibit A initially will be set at the Standard Cost with respect to the Product at the time of production release, plus [NUMBER] (__) percent. All Fees shall be reviewed quarterly and shall be adjusted such that they are approximately equivalent to the Standard Cost with respect to the Product, plus [NUMBER] (__) percent. Unless otherwise agreed to in writing by Company, all Fees are exclusive of transportation and insurance from Company facilities to the customer delivery point.

6.2 Taxes. Current fees are listed in the Exhibit A and are exclusive of all taxes, including sales, use or value added taxes. Each party shall pay all applicable tariffs, duties or taxes (other than franchise and income taxes for which the other party is responsible) imposed or levied by any government or agency and included in the other party's invoices, including federal, state and local sales, use, value added and personal property taxes. Any claimed exemption from such taxes or duties must be supported by a tax exemption certificate and other proper documentary evidence delivered to the other party.

In the event Company is required to pay any Tax or transportation or insurance charges, Customer shall reimburse Company the amount of the Tax or charge plus [NUMBER] (__) percent. Where applicable, Taxes shall appear as separate items on Company's invoice.

6.3 Expenses. Each party shall pay its own expenses incurred in connection with its obligations hereunder.

6.4 Payment Terms. Unless otherwise provided herein, all payments will be due net [NUMBER] (__) days from the date of invoice and shall be made in U.S. Dollars. Payment of invoices shall be made to [COMPANY] at [ADDRESS] or another address that may be provided by notice to Customer. Payment does not constitute final acceptance of the Products and is subject to adjustments for errors, shortages and defects in the Products.

6.5 Late Payments. Amounts not paid when due shall be subject to interest at one and one-half (1-1/2%) percent per month or, if less, the maximum rate of interest allowed by law, calculated from the due date. If any amount is not paid when due hereunder, in addition to such past due amounts, the party entitled to payment shall be entitled to recover from the other party the

costs and expenses incurred in connection with collecting the same (including costs of investigation and attorneys fees). The Company may, at its sole discretion, require future payments in advance, require a letter of credit, or put shipments on credit hold.

7. Insurance. The Company shall maintain insurance against fire, theft, and damage to the Products in an amount equal to or in excess of this price pursuant to this Agreement. The Company shall also maintain errors and omissions insurance in the amounts of [AMOUNT] per occurrence and [AMOUNT] in the aggregate for the Company's manufacturing defects. Customer shall maintain insurance against fire, theft and damage to any Customer property held by the Company, including without limitation in-circuit test fixtures, capital equipment, Returned Product and other Customer materials and property in the Company's possession. Customer shall maintain errors and omissions insurance in the amounts of [AMOUNT] per occurrence and [AMOUNT] in the aggregate for product liability.

8. Export Control Laws.

8.1 Representation. Customer agrees to comply strictly and fully with all United States and international export controls imposed on the Products by any country or organization in whose jurisdiction Customer operates or does business. Customer will not knowingly, export or re-export any Product to any country prohibited under United States Export Administration Regulations ("EAR"), without first obtaining a valid license to so export or re-export the Products.

8.2 Responsibility. Except as otherwise agreed in writing between the parties, all export permits, import certificates, insurance, duty, customs clearance charges and/or licenses and related costs from the Customer delivery point will be the Customer's responsibility. The Company shall not be required to ship any Product if it believes that such shipment may violate any applicable EAR. The Customer will promptly notify the Company of any change in any Product, which may affect its export status, including any change, which may affect its EAR Export Commerce Control Number or License designator.

9. Intellectual Property Rights; Confidential Information.

9.1 Ownership.

9.1.1 *Company Ownership.* Company shall retain ownership of all Company Intellectual Property Rights. Subject to Section 9.1.2 (Customer Ownership) hereof, to the extent that ownership of any element of Intellectual Property Rights do not automatically vest in Customer by virtue of this Agreement or otherwise, Company hereby transfers and assigns to Customer all of Company's right, title and interest in any elements of the Customer's Intellectual Property Rights and protectable elements or derivative works thereof.

9.1.2 *Customer Ownership.* Customer shall retain ownership of all Customer Intellectual Property Rights. Subject to Section 9.1.1 (Company Ownership) hereof, to the extent that ownership of any element of Intellectual Property Rights do not automatically vest in Company by virtue of this Agreement or otherwise, Customer hereby transfers and assigns to Company all of Customer's right, title and interest in any elements of the Company's Intellectual Property Rights and protectable elements or derivative works thereof.

9.2 Confidential Information. The Receiving Party shall not disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this

Agreement, except with the Disclosing Party's prior written permission; provided that a Receiving Party may disclose any Confidential Information of the Disclosing Party to its employees, attorneys and accountants who have a need to know such Confidential Information for purposes of this Agreement and who are bound to a written agreement protecting such Confidential Information as required hereby.

9.3 Protection. The Receiving Party agrees to protect the confidentiality of the Confidential Information of the Disclosing Party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event shall either party exercise less than reasonable care in protecting such Confidential Information.

9.4 Compelled Disclosure. If the Receiving Party is compelled by law to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

9.5 Remedies. If the Receiving Party discloses or uses (or threatens to disclose or use) any Confidential Information of the Disclosing Party in breach of this Section 9 (Intellectual Property Rights; Confidential Information), the Disclosing Party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, without the necessity of posting bond, it being specifically acknowledged by the parties that any other available remedies are inadequate.

9.6 Disposition Upon Termination. Upon the termination of this Agreement for any reason whatsoever, or upon request of a Disclosing Party, the Receiving Party shall return to the Disclosing Party, or shall destroy, as the Disclosing Party shall specify, all copies of all the Disclosing Party's Confidential Information in the Receiving Party's possession. Within [NUMBER] (__) days thereafter, the Receiving Party shall provide the Disclosing Party with a certificate, executed by the Receiving Party or by an officer of the Receiving Party, confirming that all copies of all such Confidential Information have been returned to the Disclosing Party or destroyed, as the case may be.

10. Warranties.

10.1 Warranties. The Company hereby represents and warrants that the Products delivered under this Agreement, excluding components purchased from third-party vendors ("**Vendor Components**"), shall conform to Customer's written specifications and will be free of the Company manufacturing defects for a period of [NUMBER] (__) year from delivery (the "**Warranty Period**"). The Company shall transfer to Customer all warranties on Vendor Components in effect to the extent permitted to do so. The Company warrants that Returned Product (as defined below), excluding Vendor Components, will be free of the Company manufacturing defects for a period equal to the remaining days of the original [NUMBER] (__) year Warranty Period or [NUMBER] (__) days from the date of the Company's shipment of the Returned Product, whichever is greater. Customer's exclusive remedy and the Company's sole liability under this section and applicable law shall be for the Company, at its option, either to repair or replace the Product found to have a material manufacturing defect, if such defect is reported to the Company within the Warranty Period and Customer, at the Company's request, provides the Company with sufficient information to reproduce the defect in question. The Company's warranty hereunder shall be void if the Product has been subjected to abuse, misuse,

accident, alteration, neglect, operation inconsistent with the Product Documentation, or unauthorized repair or alteration by anyone other than the Company. Customer hereby disclaims any and all warranties as to the Company, express or implied, including without limitation the implied warranties of merchantability or fitness for a particular purpose.

10.2 Disclaimer. EXCEPT AS PROVIDED HEREIN, THE COMPANY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, UNDER OR RELATED TO THIS AGREEMENT OR WITH RESPECT TO THE PRODUCTS OR ANY SERVICES. THE COMPANY HEREBY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF TITLE, MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THE PRODUCTS ARE EACH PROVIDED “AS IS” WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED AND THE PROVISION AND USE OF THE PRODUCTS ARE AT CUSTOMER’S SOLE RISK. IN NO EVENT SHALL EITHER PARTY HERETO BE LIABLE, AND EACH PARTY HERETO COVENANTS NOT TO BRING, ANY CLAIM FOR DAMAGES IN EXCESS OF THE AMOUNTS PAID TO THE COMPANY BY CUSTOMER, OR FOR SPECIAL, CONSEQUENTIAL, INDIRECT, EXEMPLARY OR PUNITIVE DAMAGES, WHETHER OR NOT SUCH DAMAGES WERE FORESEEABLE AND EVEN IF ADVISED OF THE POSSIBILITY OF THE SAME.

10.3 Warranty Replacement. If any Product is found to breach the warranty specified in this Section during the Warranty Period, Customer may return, or direct its Customer to return, the Product to Company, and Company shall, at Company’s sole option and expense, promptly (a) replace such defective Product and return the replacement unit to Customer, or (b) refund or credit to Customer the Fees paid for the defective Product. The foregoing shall constitute Customer’s sole remedy and Company’s sole obligation with respect to any breach of warranty under this Agreement.

[11. **Indemnification.** Customer will defend or settle any allegation or claim by a third party (“**Claim**”) against the Company, its shareholders, directors, officers, employees and agents that any Product or any part thereof manufactured pursuant to this Agreement and in material compliance with Customer’s specifications and directions: (i) directly or indirectly infringes any patent, copyright, trademark or service mark; or (ii) has caused injury to the property or person of any third party, except to the extent directly attributable to the Company’s manufacturing processes. Customer will indemnify and hold the Company, its shareholder, directors, officers, employees and agents harmless from all such Claims and all resulting costs, expenses, compromises, damages, and attorney’s fees (collectively, “**Costs**”) provided that: (i) Customer is given prompt written notice of the Claim; (ii) Customer is given the sole authority to defend or settle the Claim; and (iii) the Company does not compromise or settle the Claim without Customer’s prior written consent. The Company shall cooperate fully with all reasonable requests of Customer in connection with any such Claim. The Company will defend or settle any allegation or Claim against Customer its shareholders, directors, officers, employees and agents, that the Company’s manufacturing processes (i) directly or indirectly infringe any patent, copyright, trademark or service mark; or (ii) have caused injury to the property or person of any third party. The Company will indemnify and hold Customer harmless from all such Claims and all Costs provided that: (i) the Company is given prompt written notice of the Claim; (ii) the

Company is given the sole authority to defend or settle the Claim; and (iii) Customer does not compromise or settle the Claim without the Company's prior written consent. Customer shall cooperate fully with all reasonable requests of the Company in connection with any such Claim.

The foregoing states the entire obligation of the indemnifying party, and the indemnified party's sole remedy.]

OR

[**11. Indemnification.** Each party hereto (the “**Indemnifying Party**”) shall, at its own expense, defend the other party, and its subsidiaries, affiliates, directors, officers, employees, agents and independent contractors (collectively, the “**Indemnified Party**”), from and against any and all loss, cost, liability or expense (including costs and reasonable fees of attorneys and other professionals) arising out of or in connection with the negligence of the Indemnifying Party's agents and employees. Such indemnity shall include claims brought with respect to the defective design or code of the Product for which Customer shall be the indemnifying party. The Indemnifying Party shall pay all costs of defense and settlement, together with any judgment which may be finally awarded; provided: (a) the Indemnified Party gives the Indemnifying Party reasonably prompt notice in writing of any such suit and permits the Indemnifying Party, through counsel of its choice, to defend and/or settle such Claim; and (b) the Indemnified Party provides the Indemnifying Party information, assistance and authority, at the Indemnifying Party's expense, to enable the Indemnifying Party to defend such Claim. The Indemnifying Party shall not be responsible for any settlement made by the Indemnified Party without the Indemnifying Party's written permission.]

12. Limitation of Liability

12.1 Limitation. EXCEPT FOR LIABILITY ARISING FROM INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 12 (LIMITATION OF LIABILITY) OR LIABILITY ARISING FROM A BREACH BY EITHER PARTY OF SECTION 9 (INTELLECTUAL PROPERTY RIGHTS; CONFIDENTIALITY) HEREOF, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY CUSTOMER HEREUNDER.

12.2 Exclusion of Consequential and Related Damages. EXCEPT FOR LIABILITY ARISING FROM INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 11 (INDEMNIFICATION) OR LIABILITY ARISING FROM A BREACH BY EITHER PARTY OF SECTION 9 (INTELLECTUAL PROPERTY RIGHTS; CONFIDENTIALITY) HEREOF, IN NO EVENT SHALL EITHER PARTY OR ANY THIRD PARTY PROVIDER HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. SOME STATES AND JURISDICTIONS DO NOT ALLOW LIMITATIONS ON DURATION OR THE EXCLUSION OF AN IMPLIED

WARRANTY, SO THE ABOVE LIMITATION MAY NOT APPLY. EACH PARTY MAY ALSO HAVE ADDITIONAL RIGHTS NOT STATED IN THIS DOCUMENT.

13 Termination

13.1 By Company. This Agreement may be terminated by Company, immediately upon written notice to Customer in the event of a breach by Customer of Section 9 (Intellectual Property Rights; Confidential Information) hereof.

13.2 By Customer. This Agreement may be terminated by Customer immediately upon written notice to Company, in the event of a breach by Company of Section 9 (Intellectual Property Rights; Confidential Information) hereof.

13.3 By Either Party. This Agreement may be terminated by either party:

(a) effective at the end of the third year of the Initial Term by providing not more than [NUMBER] (____) days nor less than [NUMBER] (____) days prior written notice of such termination to the other party;

(b) if the other party materially breaches any of its duties, obligations or responsibilities under this Agreement (other than breaches covered in Sections 13.1 and 13.2 hereof), and fails to cure such breach within thirty (30) days after written notice of such breach to the breaching party (except for a breach of a payment obligation in which case the cure period shall be ten (10) days after such written notice); or

(c) immediately if (i) a receiver, trustee, administrator, or administrative receiver is appointed for the other party or its property; (ii) the other party makes an assignment for the benefit of creditors; (iii) any proceedings should be commenced against the other party under any bankruptcy, insolvency, or debtor's relief law, and such proceedings shall not be vacated or set aside within sixty (60) days from the date of commencement thereof; (iv) the other party commences any proceedings under any bankruptcy, insolvency, or debtor's relief law or (v) the other party is liquidated or dissolved.

13.4 Effects of Termination.

(a) Termination shall not relieve the parties of any obligations incurred prior to the date of termination, including obligation to pay any fees accrued or payable to the Company prior to the effective date of the termination. In the event of termination by Customer, Customer agrees to purchase Products ordered prior to termination and to reimburse the Company for Excess Materials, non-cancelable or non-returnable and minimum buy components, and any restocking fees incurred by the Company for the benefit of Customer and in accordance with this Agreement. If either party should breach any material provision of this Agreement, the non-defaulting party may declare a default, and may terminate this Agreement in its entirety if the other party should fail to remedy a default which is capable of cure within [NUMBER] (____) days after receipt of written notice thereof.

(b) Upon termination or expiration of this Agreement for any reason whatsoever, each party shall immediately (a) discontinue any use of the other party's name, logo, trademarks, service marks or slogans; (b) discontinue all representations or statements from which it might be inferred that any relationship exists between the parties; (c) cease to promote, solicit order for or procure orders for any Products; and (d) promptly return all Confidential Information and related

materials to each party in accordance with Section 9 (Intellectual Property Rights; Confidential Information) hereof.

(c) The following provisions shall survive the termination or expiration of this Agreement for any reason and shall remain in effect after any such termination or expiration: Sections 1 (Definitions), 6 (Payments, Fees and Charges), 9 (Intellectual Property; Confidential Information), 10 (Warranties), 11 (Indemnification), 12 (Limitation of Liability), 13 (Termination), 13.4 (Effects of Termination), and 15 (Miscellaneous Provisions) and 15.4 (Dispute Resolutions) (only for ninety (90) days beyond termination or expiration).

14. Relationship of the Parties.

14.1 Independent Contractors. The relationship of Company and Customer established by this Agreement is that of independent contractors, and nothing contained in this Agreement or in the parties performance thereof shall be construed to constitute the parties as partners, joint venturers, co-owners or otherwise as participants in a joint or common undertaking. Except as expressly set forth herein, this Agreement shall not constitute either party the employee, legal representative or agent of the other, nor shall either party have the right or authority to assume, create, or incur any liability or any obligation of any kind on behalf of the other party.

14.2 No Agency. This Agreement shall not be construed as creating an agency, partnership, joint venture, or other relationship between the parties other than one of independent contractors. No employees and/or consultants of the Company shall be considered employees of Customer.

15. Miscellaneous Provisions.

15.1 Compliance with Applicable Laws. Each party shall, at its own expense, comply with all applicable laws and make, obtain, and maintain in force at all times during the term of this Agreement, all filings, registrations, reports, licenses, permits and authorizations required under applicable law, regulation or order required for such party to perform its obligations under this Agreement.

15.2 No Benefit to Others. There are no intended third party beneficiaries of this Agreement. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the parties and their respective successors and permitted assigns, and they are not to be construed as conferring any rights on any other persons.

15.3 Notices. All notices under this Agreement shall be in writing and shall be delivered to the addresses first set forth above. Notice shall be deemed to have been given upon: (a) personal delivery; (b) the first business day after sending notice via nationally recognized overnight courier; or (c) three business days after depositing notice in the United States mail, sent Certified Mail Return Receipt Requested. Notices to Company shall be addressed to the attention of its [TITLE]. Notices to Customer shall be addressed to the attention of its [TITLE]. Either party may change its address for notice by giving notice of such address change in the manner provided herein.

15.4 Dispute Resolution. Resolution of any and all disputes arising from or in connection with this Agreement ("**Disputes**") shall be exclusively governed by and settled in accordance with the provisions of this Section 15.4.

(a) The parties shall make a good faith attempt to resolve any Dispute arising out of or relating to this Agreement through informal negotiation between appropriate representatives or each of each party. If at any time either party feels that such negotiations are not leading to a resolution of the Dispute, such party may send a notice to the other party describing the Dispute and requesting a meeting of the senior executives from each party. Within ten (10) business days after such notice of a Dispute is given, each party shall select appropriate senior executives (e.g. director or V.P. level) of each party who shall have the authority to resolve the matter and shall meet to attempt in good faith to negotiate a resolution of the Dispute prior to pursuing other available remedies. During the course of negotiations under this Section 15.4 (a), all reasonable requests made by one party to the other for information, including requests for copies of relevant documents, will be honored. The specific format for such negotiations will be left to the discretion of the designated negotiating senior executives but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other party. In the event that any Dispute arising out of or related to this Agreement is not settled by the parties within thirty (30) days after the first meeting of the negotiating senior executives, either party may commence litigation with respect to the Dispute. However, except as provided below in Section 15.4 (b), neither party shall commence litigation against the other party to resolve the Dispute (i) until the parties try in good faith to settle the Dispute by negotiation for at least thirty (30) days after the first meeting of the negotiating senior executives, or (b) until forty (40) days after notice of a Dispute is given by either party to the other party, whichever occurs first.

(b) Any Dispute regarding the following is not required to be negotiated prior to seeking relief from a court of competent jurisdiction: (i) breach of any obligation of confidentiality; infringement, misappropriation, or misuse of any intellectual property right; or (ii) any other claim where interim relief from the court is sought to prevent serious and irreparable injury to a party. However, the parties to the Dispute shall make a good faith effort to negotiate such Dispute, according to the above procedures, while such court action is pending.

IF FOR ANY REASON THIS DISPUTE CLAUSE BECOMES NOT APPLICABLE, THEN EACH PARTY, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, HEREBY IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY AS TO ANY ISSUE RELATING HERETO IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER MATTER INVOLVING THE PARTIES HERETO.

15.5 Waiver and Cumulative Remedies. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity.

15.6 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

15.7 Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior express written consent of the other party. Notwithstanding the foregoing either party may assign this Agreement together with all rights and obligations hereunder, without consent of the other party, in connection with a Change

of Control. Any attempt by a party to assign its rights or obligations under this Agreement in breach of this Section shall be void and of no effect. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

15.8 Governing Law. This Agreement shall be governed exclusively by, and construed exclusively in accordance with, the laws of the [STATE], without regard to its conflicts of laws provisions.

15.9 Venue. The state and federal courts located in [CITY/STATE] shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the jurisdiction of such courts and waives any right it may otherwise have to challenge the appropriateness of such forums, whether on the basis of the doctrine of *forum non conveniens* or otherwise. Each party also hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

15.10 Force Majeure. Neither party shall be liable to the other for failure or delay in the performance of a required obligation if such failure or delay is caused by strike, riot, fire, flood, natural disaster, war, [actual or threatened] act of terrorism or other similar cause beyond such party's control, provided that such party gives prompt written notice of such condition and resumes its performance as soon as possible, and provided further that the other party may terminate this Agreement if such condition continues for a period of [NUMBER] days.

15.11 Entire Agreement. This Agreement, including all exhibits and schedules hereto, constitute the entire agreement between the parties as to its subject matter, and supersede all previous and contemporaneous agreements, proposals or representations, written or oral, concerning the subject matter of this Agreement. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment, or waiver is to be asserted. No provisions in any purchase orders or business forms shall amend or supersede any term or condition of this Agreement.

15.12 Controlling Document. All Purchase Orders for the Products shall be governed by this Agreement. Any additional, inconsistent or conflicting clauses in any order, release, acceptance or other written correspondence between the parties shall be considered null and void, unless expressly executed by duly authorized representatives of both parties.

15.13 Counterparts. This Agreement may be executed in counterparts, which taken together shall form one legal instrument.

15.14 Construction. The titles of the sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement. Unless the context of this Agreement clearly requires otherwise: (a) references to the plural include the singular, the singular the plural, and the part the whole, (b) references to one gender include all genders, (c) "or" has the inclusive meaning frequently identified with the phrase "and/or," (d) "including" has the inclusive meaning frequently identified with the phrase "including but not limited to" or "including without limitation," (e) references to "hereunder," "herein" or "hereof" relate to this Agreement as a whole, and (f) the term "days" refers to U.S. calendar days and not business days, unless expressly noted. Any reference in this Agreement to any statute, rule, regulation or agreement, including this Agreement, shall be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended or supplemented from time to time. The

parties agree that this Agreement shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against either party, and that ambiguities shall not be interpreted against the drafting party.

15.15 Expenses. Each party shall pay its own expenses incurred in connection with its obligations hereunder.

15.16 Survival. The parties hereto agree that the provisions hereof requiring performance or fulfillment after the expiry or earlier termination of this Agreement shall survive such expiry or earlier termination. The provisions of this Agreement relating to ownership, confidential information, warranty disclaimer, and limits of liability shall survive the expiration or termination of this Agreement.

[The remainder of this page has been intentionally left blank]

IN WITNESS WHEREOF, the parties have executed this Manufacturing Services Agreement as of the date first written above.

[NAME OF COMPANY]

By: _____
Its:

[NAME OF CUSTOMER]

By: _____
Its:

MANUFACTURING SERVICES AGREEMENT

FEES