

This **Manufacturing Services Agreement** (the “Agreement”) is made by and between the following parties on [**insert signing date**] (the “Effective Date”):

**SUBA TECHNOLOGY, INC.** (“Seller”)

Business address at: 46501 Landing Parkway, Fremont, California U.S.A.

A company incorporated under the laws of California, United States of America

Hereafter the “Seller”,

And “Buyer”, [...],

Business address at: [...]

A company incorporated under the laws of [...]

Hereafter the “Buyer”, together with the Seller, each a “Party” and collectively, the “Parties”.

For the purpose of this Agreement, “Affiliates” means (1) a company which controls one of the Parties, (2) a company which is controlled by one of the Parties or (3) a company controlled by the same parent company of one of the Party. “Control” means the possession of (i) beneficial ownership of at least fifty percent (50%) of the voting power of a person, or (ii) power to control the composition of a majority of the board of directors of such person, or (iii) the power to elect of the corresponding key managing authority.

In consideration of the mutual covenants and representations herein set forth, the Seller and the Buyer agree as follows:

**PREAMBLE:**

Seller is an EMS (Electronic Manufacturing Services) entity specializing in the manufacture and sale of electronic products.

Buyer [**Description of its business**]

Buyer and Seller have approached each other and have decided to establish the terms and conditions of their collaboration within the framework of this Agreement.

**IT WAS AGREED AS FOLLOWS:**

**1. Subject**

During the term of this Agreement and subject to the terms and conditions herein, Seller will provide custom manufacturing services to Buyer at Seller’s site in Fremont, California. These services may include, but are not limited to, manufacturing [printed circuit board assemblies, subsystems, completed systems (the “Products”), testing, packaging, troubleshooting and reworking of Products, materials management, warehousing and direct fulfillment]. Buyer may assign a third-party to act as a program manager to provide relevant information or instructions to Seller; provided that Buyer shall be responsible for all actions or omissions of such third part as if it is Buyer’s representative and acts on behalf of Buyer.

**2. Precedence**

This Agreement, including all its appendix and amendments, supersedes all proposals or quotations, oral or written, and all negotiations, conversations, or discussions between or among the Parties relating to the subject matter of this Agreement.

On any conflict between the term of this Agreement and the terms in any exhibit or purchase order, the order of precedence as to the controlling terms shall be as follows:

- (i) The terms of this Agreement, and / or any deviation mutually agreed to by both the Parties in writing;
- (ii) The terms of any exhibits to this Agreement; and
- (iii) The non-pre-printed terms on the face page of Buyer's purchase order accepted by Seller.

For the sake of clarity, it is hereby understood that Buyer's preprinted terms and conditions appearing in any purchase order or any Buyer's documentation shall have no force and effect and shall not apply to this Agreement or any transactions between the parties.

### **3. Purchase of Products**

#### **3.1. Buyer's Responsibility**

The Buyer agrees to pay for the Products, any costs associated with the Products and any other services applicable in accordance with the terms of this Agreement.

#### **3.2. Seller's Responsibility**

The Seller will purchase component materials based on Buyer's specifications using only the Approved Vendor List (hereinafter referred to as the "AVL") provided by Buyer. In the event that the Seller needs to purchase component materials from brokers, Buyer shall agree to sign the Broker Waiver Form and agree to have the component materials validated against counterfeiting through a CCAP-101 certified testing house. All related costs shall be borne by Buyer.

The Seller will manufacture Products according to Buyer's specifications and provide other services as mutually agreed by the Parties in writing. In the event that Buyer decides to have the Products manufactured outside of its documented specifications, the Buyer agrees to sign the Seller's deviation form.

### **4. Duration**

The term of this Agreement shall commence as of the Effective Date and continue for twelve (12) months (the "Initial Term").

The Agreement shall be automatically renewed for successive 12-month periods (each such period, a "Renewed Term") unless either Party gives the other Party written notice at least ninety (90) days' prior to the expiration of the Initial Term or each Renewed Term of its intent to terminate or not to renew the Agreement.

### **5. Termination**

#### **5.1. Termination by the Parties**

Notwithstanding the foregoing and subject to the terms and conditions herein, the Parties may terminate this Agreement upon mutual agreement.

Either Party may also, at its option, terminate this Agreement by written notice:

- (i) for convenience, with written notice to the other Party one hundred and eighty (180) calendar days in advance;
- (ii) upon any material breach of this Agreement by the either Party which has not been corrected within forty-five (45) days after written notice detailing such material breach;
- (iii) in the event of the bankruptcy, insolvency or is not covered by Section 5.1(ii), prolonged financial difficulties that will result in failure of timely payment of the other Party or the opening of collective proceedings against the other Party, unless the procedural authorities decide otherwise;

The Seller may also terminate this Agreement if the Buyer fails to timely make any payment hereunder and fails to fully pay such outstanding amount (including any interests and/or penalties set forth hereunder, if applicable) within ten (10) days after Seller issues to Buyer a written demand for payment.

## **5.2. Consequence of the Termination and Expiration**

Upon expiration or termination of this Agreement, for any reason, Buyer shall be responsible to pay for the following:

- (i) the Quoted Price (as defined below) for all finished Products existing at the time of expiration or termination;
- (ii) the price for all work in process (“WIP”) as agreed by the Parties in good faith which shall include all Seller’s cost for labor, materials (direct and indirect), PPV (as defined below) and any applicable VAT; provided that if the Parties cannot reach an agreement for the price of the work in process within thirty (30) days, such price shall be the Quoted Price
- (iii) Customer Quoted Price of components for excess and obsolete materials under the conditions defined in Section 7 (Inventory Management);
- (iv) any supplier cancellation and restocking charges, including Seller’s cost for component purchases on open purchase orders with suppliers where the components have not yet been shipped to Seller;
- (v) Any material the form of raw materials, work-in-process and completed products that are under Material Review Board (MRB); and
- (vi) Any non-Bill of Materials in Buyer’s inventory, including non-cancellable open purchase order;
- (vii) Any open purchase orders on Non-Recurring Engineering services.

Seller shall invoice Buyer for the foregoing promptly after the effective date of expiration or termination, and Buyer shall pay Seller within the payment term specified in Section 12 (Payment terms).

Upon expiration or termination of this Agreement, a reasonable warranty mechanism shall be mutually agreed upon between the Parties due to removal of the production line, material, equipment and skilled operators for any rework, repair, or spare part production for the Product.

Any Buyer-owned equipment, jigs and fixtures shall be transferred to the Seller after completion of

payments by the Buyer against Section 5.2 (subsections (i) through (vi)).

## **6. Orders.**

### **6.1. Purchase Orders**

No later than five (5) business days before the end of each calendar month, Buyer shall deliver to Seller a rolling forecast of its demand for Products for twelve (12) months on a monthly basis calculating the estimated demand starting from the 1<sup>st</sup> day of the next calendar month. The preceding forecast is only estimate of the demand requested by Buyer; provided that the forecast for the first three (3) months of each forecast shall be binding for Buyer (the “Binding Forecast”).

Buyer shall place firm rolling orders (the “Purchase Orders”) to purchase the Products and the Parties agree that the purchase volume for such purchase orders within the time period specified in the Binding Forecast shall be the same as specified in the Binding Forecast. All Purchase Orders shall specify Buyer’s part number, quantity, price and deliver terms (which shall be agreed by Seller), delivery date, specifications, and shipping destination. Each Purchase Order shall be placed reasonably in advance in order to allow sufficient lead time for the manufacturing by Seller.

Each Purchase Order shall be deemed as an offer of Buyer and Seller shall provide Buyer with a written order confirmation upon validation of material clear-to-build and capacity in a timely manner. Such order confirmation will be deemed as the acceptance of Buyer’s Purchase Order. Following acceptance by Seller, the Purchase Orders will only be amended by Buyer in accordance with this Section 6.

Buyer shall use best efforts to provide Seller with six (6) months’ prior written notice of the discontinuance of any Product.

### **6.2. Variation and Rescheduling of Orders**

#### **6.2.1. Variation**

Buyer may increase or decrease the quantity of Products specified in a Purchase Order or a Binding Forecast by delivering to Seller, by mail or facsimile, a written change order in the form accepted by Seller (each, a “Change Order”); provided that no Change Order shall be effective until acknowledged and accepted in writing by Seller. Seller will use commercially reasonable efforts to accommodate any increase or decrease in demand subject to component material availability.

Notwithstanding the above, Buyer shall assume costs associated with its requests in any Change Order, including but not limited to overtime charges, equipment or labor idle charges, expediting fees, freight charges, and the following, without duplication, in case of any Change Order:

- (i) the Materials (as defined below) costs plus “added value” for the decreased quantity of purchase volume and Seller will invoice Buyer for such amount. Unless otherwise paid by preceding, Buyer shall be liable for the Excess (as defined below) and Obsolete (as defined below) based on Section 7. For the purposes of this paragraph, “added value” is calculated based on the Product price in corresponding order and the pro-rated percent of completion of the Product;
- (ii) in addition to (i) above, Buyer shall issue purchase orders to Seller for all WIP (the price of the WIP will be agreed and calculated based on the mechanism in Section 5.2(ii)) and completed Products already manufactured by Seller or in the process of

the production as of the acceptance of the Change Order by Seller;

- (iii) if any abovementioned Materials, WIP or Product is on hold at Seller's facility, Seller will be entitled to charge Buyer 1.5% of the price for the preceding as inventory fee/carrying cost per month; and
- (iv) the cost of Seller's idled, dedicated and/or partially dedicated resources, such as idled dedicated space.

#### **6.2.2. Reschedule**

The table below shows the percentage of scheduled shipments that may be rescheduled. Seller will use commercially reasonable efforts to accommodate the rescheduling requested by Buyer; provided that Buyer shall assume and reimburse Seller all fees, costs, damages and losses in connection with the rescheduling, including the overtime costs, losses for idle period of production, idle manufacturing spaces and other resources invested by Seller to deliver and manufacture the Products based on the original Purchase Order.

Number of Calendar Days' Advance Notice.	Percentage of Scheduled Shipment that may be Rescheduled
0-30 days	0%
31-60 days	Up to 25%
61-90 days	Up to 50%
91 or more days	Up to 100%

Notwithstanding anything to the contrary under this **Section 6**, the schedule of each Purchase Order can only be extended once, and the push out period cannot exceed sixty (60) days from the original customer request date. Buyer may only submit a Change Order in accordance with the above parameters unless otherwise agreed in writing by both Parties. Nothing in this Section 6.2.2 releases Buyer's liabilities for Change Orders under Section 6.2.1.

### **7. Inventory Management**

Seller will, at its discretion, purchase materials, parts or components (collectively, the "Materials") to meet Buyer's Purchase Orders and forecasted demand and such purchase shall take into account the Materials lead times, minimum order quantities imposed by Materials vendors and standard industry purchasing practices. Buyer may request Seller to purchase specific Materials by written instruction; provided that Seller shall be subject to liabilities under this Section 7 for such Materials.

If any Material becomes Excess or Obsolete (as defined below), Seller will use commercially reasonable efforts to return the Materials to vendors (except for non-cancellable-non-returnable Materials), use the Materials for other customers or otherwise mitigate the extent of the Excess/Obsolete inventory. Vendor restocking charges, transportation charges and other direct expenses incurred by Seller to mitigate the Excess/Obsolete Material will be reimbursed to Seller by Buyer. Such mitigation efforts (the "Mitigation Efforts") will not extend beyond 30 days.

#### **7.1. Excess**

"Excess" is defined as any Materials that were purchased or ordered by Seller to meet Buyer's demand in line with the Material vendors' minimum order quantities, and which are (i) not consumed in the manufacturing of the Products after two (2) months following receipt of such

Materials by Seller, and (ii) not cancelled, returned, reused or resold by the Seller after the Mitigation Efforts. Excess may be generated due to a change in Purchase Orders or forecasts, Product phase-out, Engineering Change Order or ECO (as defined below), advanced purchase of long lead-time materials or materials that may result in eventual end-of-life beyond requirements against Purchase Orders or forecast or other events caused by Buyer.

Each month, or other time frame as may be mutually agreed, Seller will review the Materials and present to Buyer a list of Excess, if any. Buyer agrees to mitigate this Excess inventory by:

- (i) within thirty (30) days after any Material is identified as Excess, issuing a purchase order to Seller for the Excess at the price for such Materials stated in the Quoted Price plus carrying costs and holding charges for such Excess which equals to 10% of the price for such Material in the Quoted Price (the “Buy Back Price”); and
- (ii) take possession of the Excess or, if agreed by Seller, consign the Excess at Seller’s location or warehouse. For the latter of the preceding sentence, Seller will charge a management fee of [\$20] per month per line item. Such Excess will be held in a separate warehouse location and at Buyer’s instruction, be absorbed in manufacturing of the Products. When absorbed in manufacturing of the Products, Seller will issue a consumption report to Buyer and issue a credit note at the price for such Materials in the Quoted Price for the Excess absorbed.

## **7.2. Obsolete**

“Obsolete” is defined as any Materials that were purchased or ordered by Seller on behalf of Buyer to meet Buyer’s demand in line with the Material vendor’s minimum order quantities, regardless whether Seller has received such Materials, which are not cancelled, returned, reused or resold by the Seller after the Mitigation Efforts, and which are (i) not covered by any existing Purchase Order, (ii) not used due to cancellation, deletion or decrease of Seller’s demand or forecast, or (iii) reasonably not useful due to removal from bill of materials, Change Order, ECO, change of law, expiration, end of life of the Product or other causes.

Each month, or other time frame as may be mutually agreed, Seller will review the Materials (including Materials under any open orders) and present to Buyer a list of Obsolete Materials, if any. Buyer agrees to mitigate the Obsolete Materials by immediately (in no event later than thirty (30) days following delivery of Seller’s list of Obsolete Materials) issuing a purchase order to Seller with the Buy Back Price for such Obsolete Materials. The Obsolete Materials will be shipped to the Buyer or scrapped at the Buyer’s discretion.

## **7.3. Title Transfer**

Upon (i) full payment of the price for the Excess or Obsolete as provided in Sections 7.1 and 7.2 and (ii) delivery of the Excess or Obsolete to the warehouse agreed by both Parties (including Seller’s own warehouse, if agreed by both Parties) or scrapped as provided in Section 7.1 and 7.2, the title and risk of such fully paid Excess and/or Obsolete shall be passed to Buyer. If any Excess is stored at Seller’s warehouse or place, Buyer may pick up such Excess at its own costs during normal business hours of Seller with prior written notice to Seller.

## **7.4. Additional Charges**

Buyer shall assume all charges in connection with the Excess and Obsolete if not covered by Sections 7.1 and 7.2, including but not limited the storage fees, logistics fees, and insurance fees.

If Buyer does not pay for any Excess or Obsolete in accordance with this Section 7, the Buyer shall

pay to Seller an inventory carrying charge of 1.5% of the aggregate Buy Back Price for all unpaid Excess and Obsolete per month. If Buyer fails to pay for such Excess or Obsolete for more than six (6) months, such inventory carrying charge will be doubled to 3% of the aggregate Buy Back Price for the unpaid Excess and Obsolete per month.

### **7.5. Long Lead Time Materials**

Seller will obtain Buyer's prior written approval to purchase any components with lead-times exceeding [twelve (12)] months. Once Seller has obtained Buyer's approval, Buyer will be liable for these components in accordance with Sections 7.1 to 7.4.

## **8. Statement of Work / Specifications**

Buyer shall provide the Seller with specifications for the Products (the "Specifications"). In the Specifications, the Buyer may request the Seller to purchase specific Materials for the manufacture or assembly of the Products.

Seller shall maintain a database to ensure that all components hereunder comply with AML, provided that the Seller shall not be bound by any changes in the AML unless provided by the Buyer in writing and accepted by Seller.

Seller shall manufacture and assemble each Product at its facility in compliance with Seller's workmanship standards and the Specifications. Seller's workmanship standards shall conform to [IPC 610 Class] unless otherwise stated and agreed to in writing (the "Standards").

Buyer shall provide adequate support in the manufacturing process, including test procedure, trouble-shooting guidelines and onsite training. Products that fail the testing will go through a troubleshooting process.

Products that fail the testing process for a third time will be reviewed with Buyer at a regular monthly meeting.

Buyer and Seller will agree on disposition of defective Products within thirty (30) days following such monthly meeting. If it is determined that the failure is not attributable to a workmanship issue caused by the Seller, and cannot be repaired within a reasonable period of time at Buyer's cost, Buyer will issue a purchase order for such Product within sixty (60) days thereafter and shall be responsible for the payment thereof.

## **9. Changes**

### **9.1. Seller Changes**

Seller shall not make or incorporate any changes in the Specifications without Buyer's prior written approval.

### **9.2. Buyer Changes**

Buyer may request Seller to make engineering changes by issuing written ECOs against the Products to Seller from time to time during the term hereof, describing the details of those engineering changes. Drawings, designs and/or Specifications required thereby shall also be provided by Buyer along with the ECO. Following receipt of any ECO, Seller may determine whether the Price or unit price of any Product, the manufacturing schedule or process, or other Materials or matters in connection with the ECO shall be adjusted or changed. Seller shall submit such adjustment and changes to Buyer in writing before implementing the ECOs, and Buyer will

determine whether to apply such proposed changes within fourteen (14) days following issuance of the preceding written notice. In the event that Buyer fails to reply within the preceding period, Buyer shall be deemed to have rejected implementation of the ECOs. Buyer shall also be liable for Excess or Obsolete incurred by the changes associated with the ECOs in accordance with **Section 7**.

In addition, a processing fee of [\$250 per ECO] shall be charged to the Buyer when the number of ECOs processed exceeds 3 (three) per month. This charge on ECO processing shall not be applicable to Buyer's Prototype builds.

## **10. Tooling and Test Fixtures**

### **10.1. NRE Items**

Seller will itemize for Buyer all of the process tooling, assembly tools and test fixtures necessary or appropriate for Seller to manufacture the Products hereunder (the "NRE Items"). Buyer shall issue a purchase order to Seller and fully pay for all NRE Items prior to Seller's purchase thereof. If Buyer fails to issue a purchase order or fully pay for the NRE Items in a timely manner, thereby delaying production, the Product delivery dates set forth on any pending purchase orders shall be appropriately adjusted. Personal computers, scanner, barcode printers and other special purpose machines that are dedicated to Product related testing shall be considered NRE items.

### **10.2. Consignment of NRE Items**

At Buyer's option, Buyer may ship to Seller on a consignment basis for Seller's use during the term hereof Buyer-approved tooling and test fixtures which constitute all or a portion of the NRE items. Upon termination of this Agreement, Seller shall ship to Buyer at Ex-Works (Incoterms 2020) Seller's manufacturing facility all NRE Items paid for by Buyer and consigned to Seller hereunder.

Notwithstanding the foregoing and any other provisions hereunder:

- (i) process tooling, assembly tools and test fixtures and all intellectual property rights herein and thereto which are not fully paid by Buyer shall be the property of the Seller, and
- (ii) Seller may retain and use the NRE Items needed to perform warranty repair service under this Agreement unless Buyer releases Seller from such warranty obligations. Buyer and Seller will come to an agreement on the costs of initial set up of any special facilities needed to support the manufacturing of the Buyer's Product at the Seller's plant.

## **11. Purchase Price**

### **11.1. Quoted Price**

The pricing for all Products shall be established by Seller's quotation that has been accepted by Buyer (the "Quoted Price"). Notwithstanding the preceding sentence and subject to other requirements below, Seller may propose to adjust the Quoted Price [every calendar quarter] or as otherwise agreed by the Parties. The adjustments to the Quoted Price will be applied due to general market price increase, changes in costs, including but not limited to Material costs (including inventory revaluation), labor costs and inflation, overhead costs and other costs relating to exchange rates, ECOs, Change Orders, and other conditions for this cooperation. The Quoted Price will also be adjusted if the purchase volume of the Buyer does not meet the forecast of demand initially agreed by the Parties when the Seller prepared the calculation of the Quoted Price. The adjustments will



only be valid if mutually agreed by the Parties. Subject to the foregoing, Product pricing shall be detailed in the individual purchase orders submitted by Buyer hereunder.

If, during the term of this Agreement, changed prices are put into effect as mutually agreed, such prices shall apply only to purchase orders issued by Buyer after that effective date; provided that if the Quoted Price is reduced due to decrease of Material costs, the adjusted Quoted Price will take effect upon the latest of the following: (i) the next calendar quarter following the cost reduction, and (ii) the full consumption of higher-priced Material in stock.

### **11.2. Buyer Procured or Controlled Materials**

The Parties will discuss and agree whether any Materials will be procured by Buyer and consigned to Seller (the “Buyer Procured Materials”). The price of the Buyer Procured Materials shall be paid by Buyer to the vendor and shall not be included in the Quoted Price.

For the purpose of this Agreement, “Buyer Controlled Materials” refers to those Materials if their design, specification or vendor is designated by Buyer, or if their purchase terms or conditions are negotiated by Buyer. Buyer shall share on a quarterly basis all the negotiated conditions (supplier’s name and contact details, prices, MOQ, excess, lead time, incoterm, payment terms, cost of tooling, NRE, logistic agreements, etc.) of the Buyer Controlled Materials to Seller, if any. Seller will pay the price of the Buyer Controlled Materials to vendor and such price, including any adjustment to such price, and such price will be included in the Quoted Price. Notwithstanding anything to the contrary in Section 11.1, if the price for the Buyer Controlled Materials is adjusted, such adjustment shall be reflected in the price of the Products which incorporate such Buyer Controlled Materials automatically without further agreement of the Parties.

### **11.3. Purchase Price Variance**

Due to component market conditions (lead-times and allocations), certain Materials may need to be purchased at a price higher than that quoted in the Quoted Price. Seller will notify Buyer of such increase and purchase price variance for the Products (the “**PPV**”) in writing promptly. Buyer may determine whether to accept to assume such PPV within the time period designated in the written notification of Seller. If Buyer agrees to assume the PPV, Buyer shall issue a purchase order for the PPV. Seller will only procure the Materials with such price increase upon receipt of the preceding purchase order. Seller will invoice Buyer for such purchase order upon receipt of the corresponding Materials.

If Buyer fails to reply to Seller’s written notification for PPV within the time period set forth therein, it shall be deemed that Buyer has rejected to assume the PPV. If Buyer fails to assume the PPV, Seller is not obligated to purchase the Materials and shall not be liable for the delay of production or any non-performance caused by the lack of such Materials.

## **12. Payment Terms**

### **12.1. Purchase Price Payment**

Seller shall issue an invoice to Buyer following receipt of the purchase orders issued by Buyer for the Products and for other related charges contemplated hereunder, including but not limited to charges set forth in **Sections 6 and 7** hereunder. The invoices shall be due and payable

- (i) NET (*TBD*) days after invoice date for finished Products;
- (ii) NET ten (10) days after invoice date for Excess, Obsolete and other charges set forth hereunder.

provided that if any amount is in dispute, the Parties will resolve the dispute according to **Section 12.312.2** but such dispute shall in no event release Buyer of the obligations to pay the undisputed amount according to the preceding sentence.

In the event that the average payment term of the suppliers of the Buyer Controlled Materials is less than Net 30 Days, the Seller has the right to adjust the payment term for Buyer to align with the such suppliers' payment term for the purpose of enforcing Section 12.2.

## **12.2. Buyer Controlled Materials Payment**

Buyer shall procure that Seller is not obligated to pay for the Buyer Controlled Materials unless Seller receives payment for the Products in which such Buyer Controlled Materials are incorporated. If the vendor of the Buyer Controlled Materials fails to agree to the preceding arrangement, the payment term of Buyer shall be reasonably adjusted by Seller to ensure that Buyer pays for the Buyer Controlled Materials (as a part of the Quoted Price) before Seller needs to pay for such Buyer Controlled Materials.

## **12.3. Delays and Disputes**

In case Buyer fails to pay any payment in accordance with this Agreement and/or the Purchase Orders, Seller may charge a late fee equal to the higher of [one and one-half percent (1.5%) per month] or the highest rate permitted under applicable law of the then outstanding amount per month. If any payment is delayed for sixty (60) days or more, Seller is entitled to cease production of Products, procurement of Materials or any other performance of this Agreement, the Purchase Order or other agreement with Buyer.

Seller may accept and deposit any checks marked "Payment in Full" or words to the like effect without waiving its right to payment in full hereunder. In case of any disputed amount, Buyer shall give written notice to Seller specifying the amount in dispute and the basis therefore together with necessary supporting documents. The Parties shall then discuss in good faith to reach an agreement on the adjustment of the outstanding purchasing price, or to settle the dispute in accordance with **Section Error! Reference source not found.31**.

## **12.4. No Deduction**

Buyer shall make no deduction from the invoice price on account of any set-off, claim or counterclaim unless otherwise agreed by Seller in writing.

## **13. Taxes**

Buyer shall pay all applicable sales or use taxes or provide Seller with a resale tax certificate (if any) to support any exemption. If the Products are to be exported after delivery to Buyer, Buyer shall arrange for payment by its customer(s) or end-user(s) of all applicable import duties at the destination country.

## **14. Delivery**

### **14.1. Packaging**

Unless otherwise agreed by the Parties in writing, the price for packaging is not included in the Quoted Price. Any packaging requirements shall be further quoted by the Seller and shall be implemented on Buyer's written approval thereof.

## **14.2. Shipping**

Unless otherwise noted in the Product quotation or otherwise agreed to by Seller, all shipments of Products hereunder shall be EXW (Incoterms 2020) Seller's manufacturing facility or warehouse designated by Seller. For the avoidance of doubt, Buyer shall engage logistics service suppliers to pick up the Products at Seller's manufacturing facility. Delivery of the Products to such suppliers shall be deemed due delivery of Products to Buyer by Seller.

## **14.3. Delay of Acceptance**

Buyer shall pull the finished goods of the Products on a timely manner in accordance with the delivery date specified in the Purchase Order or as agreed by the Parties. If any Product is on hold at Seller's facility as a result of Buyer's act, omission or some confusion or dispute caused by Buyer (such as failure of acceptance promptly, ECO, etc.), Seller will have the right to charge Buyer [one and one-half percent (1.5%)] of the price for such Products as inventory fee/carrying cost per month until the matter is resolved to the reasonable satisfaction of Seller. Seller may also invoice Buyer for material plus "added value" (as defined in **Section 6.2.1**) after thirty (30) days on hold.

## **14.4. Export Control and Compliance**

Any and all Products may be subject to export or resale restriction or regulation, and Buyer acknowledges that it will comply with such regulations or restrictions. Buyer further represents to Seller that none of itself, its Affiliates and/or its customers or end-users are listed on any denied party list administered by the United States, Europe Union or other applicable government authority. Buyer shall comply with all applicable laws in connection with anti-corruption and anti-bribery.

## **14.5. Late Delivery**

Seller shall promptly notify Buyer in writing if delivery will be delayed, and will use commercially reasonable efforts to take all measures to remedy the situation. In no event shall Seller be liable for late delivery in the following cases:

- (i) delay attributable to the logistics service supplier,
- (ii) delay caused by a Force Majeure Event (as defined below in Section 29),
- (iii) delay solely caused by Seller's vendors,
- (iv) delay caused by the market situation of the components and materials (shortage of components or abnormally high prices in distribution market or obsolescence as defined in Section 7.2).

# **15. Transfer of title and risk**

## **15.1. Transfer of title**

Notwithstanding any other provision hereunder, ownership of the Products will be transferred to Buyer at the time of payment of the total price.

## **15.2. Transfer of risk**

The risk of damage to or loss of the Products shall pass to Buyer according to the agreed Incoterm as indicated in Section 14.2.

## **16. Inspection**

Subject to the confidentiality provisions in this Agreement, the Buyer shall have the right upon reasonable prior notice and at a mutually agreed time, to inspect, at Seller's facility, the Products, Seller's quality assurance program and materials and relevant manufacturing processes.

## **17. Acceptance and Rejection.**

### **17.1. Acceptance**

All Products shall be subject to inspection and acceptance by Buyer at Buyer's expense within five (5) business days after Buyer receives such Products from Seller.

If the Buyer fails to inspect and accept the Products within the time frame as set forth in this Section 17, the Buyer shall be deemed to have accepted the Products and to waive its rights to claim against Seller:

- (i) the existence of any defect or damage due solely to mishandling by Seller; or
- (ii) claim any quantity shortfall in the delivery that would have been revealed during a reasonable inspection prior to payment.

For the avoidance of doubt, Seller would still be liable for all warranties as specified in Section 18.

### **17.2. Rejection**

Buyer shall give Seller written notice of any rejection based upon the physical condition and/or the quantity of the Products within five (5) business days after Buyer receives such Products from Seller.

Subject to Section 18, if any Product fails to meet the Specifications due to any material defect, the Seller shall retrieve the nonconforming Products and either repair or replace the defective products so that the Products will meet the Specifications in all material respects. Seller shall deliver the repaired or replaced Product to Buyer and the acceptance and rejection provisions set forth in this Section shall be reapplied. This shall be Seller's sole liability and Buyer's exclusive remedy with respect to rejected Products.

## **18. Warranty and Liability**

### **18.1. Warranties**

Within twelve (12) months following the delivery date of any Product (the "Warranty Period"), Seller warrants that such Products:

- (i) have been manufactured and assembled with good workmanship in accordance with the Standards identified in Section 8 above, and
- (ii) conform to their respective Specifications.

(collectively, the "Warranties").

For the avoidance of doubt, if Buyer fails to provide specified product testing, the Warranties will explicitly exclude any guarantee for the functionality of the Products unless Seller fails to comply

with the Sections 18.1(i) and 18.1(ii).

## **18.2. Remedies Process**

On a breach by Seller of any of the foregoing Warranties, Seller's sole liability and Buyer's exclusive remedies therefore shall be as follows under this Section **Error! Reference source not found.**~~18.2.~~

Buyer shall return the defective Product(s) to Seller in accordance with Seller's standard return materials authorization process. Seller and Buyer shall cooperate to evaluate the root cause of any defect of the Products, if the root cause for the defect is Seller's violation of the Warranties, Seller shall, at its own expenses, (i) rework the defective Products at Seller's cost, or (ii) if the defective Products cannot be reworked, at Seller's discretion, replace the defective Products or provide Buyer with credit after 30 days of notification by Seller. For the avoidance of doubt, after such repair and replacement, Seller will undertake the Warranties to the repaired or replaced Products during the remainder of the Warranty Period. All reworked or replaced Products will be delivered to Buyer at Ex-Works Seller's designated site (Incoterms 2020).

If the defect of the Products is not caused by Seller's violation of the Warranties, Buyer will assume the costs relating to the root cause evaluation, and Seller will return the Products to Buyer at Ex-Works Seller's designated site (Incoterms 2020) at Buyer's costs. Notwithstanding the preceding, upon mutual consent, (i) Buyer may request Seller to rework the Products at a price agreed by Seller and Buyer, and (ii) Buyer may not reject delivery of or refuse to pull the Products.

If the root cause cannot be identified within ninety (90) days following return of the defective Product, Buyer will take back the defective Product and either issues a purchase order for a replacement Product or dispose of the Product without replacement.

In the event that Buyer reworks or repairs the alleged non-conforming Products by itself or other third party without the Seller's prior written consent, the Warranties shall be voided and Seller shall be released from its obligations under this Section 18.2.

## **18.3. Exceptions and Limitation**

Seller hereby disclaims and does not make any express, implied or statutory warranty for any Materials, including the Buyer Procured Materials and Buyer Controlled Materials, and Buyer shall claim against the Material suppliers for any defect caused by the Materials. Seller shall use commercially reasonable efforts to assist Buyer in the preceding claims, including but not limited to providing information in connection with the Materials vendors' warranties and assigning rights regarding such warranties, to the extent not diminishing Seller's rights and permitted contractually, to Buyer.

Seller shall not be responsible for any defect caused by product misuse, accident, disaster, neglect, abuse, improper handling, testing, or installation, or by alterations, modifications or repairs by customers or third parties.

Seller hereby disclaims and does not make any express, implied or statutory warranties, including but not limited to any implied warranty of merchantability or fitness for any particular purpose or use or respecting infringement.

Seller shall not be liable to uphold any future warranty status or service obligation upon termination, withdrawal or disengagement of business by or with the Buyer, unless:

- (i) the Parties agree in writing signed by both Parties that such warranty status or obligation shall continue after disengagement, withdrawal, or termination, and

- (ii) Buyer agrees to provide and does provide full support, including staffing support and NRE, to the extent the same were provided or needed in the original manufacture of the Products.

Unless otherwise provided hereunder, Seller does not make any representation or warranty with respect to the Products and its services provided hereunder.

## **19. Indemnification**

### **19.1. Seller Indemnification**

Seller shall indemnify, defend and hold Buyer harmless from and against any and all claims, damages and liability suffered by Buyer, including reasonable attorneys' fees, resulting from bodily injury and/or property damage to third parties caused by Seller's failure to manufacture Products in conformance with Specifications.

### **19.2. Buyer indemnification**

Buyer shall indemnify, defend and hold Seller harmless from and against any and all claims, damages and liability suffered by Seller, including reasonable attorneys' fees, resulting from the Buyer Procured Materials and Buyer Controlled Materials (including rejection of any return of such Materials by its vendor) and Seller's compliance with the design, Specifications and instructions provided by Buyer, including instructions regarding incorporation of a Material, replacement or rework of the Products, Seller's procurement of substitute Materials.

### **19.3. Indemnification Limitation**

Nothing in this Agreement shall exclude or limit a Party's liability in respect of any liability which may not be limited or excluded under applicable law.

Notwithstanding anything to the contrary, but subject to the first paragraph of this Section 19.3.,

- (i) in no event shall Seller be liable and Seller hereby excludes all liability to Buyer in contract, tort, negligence, breach of warranty, breach of statutory duty or under any other cause, for any loss, damage, cost or expenses of any nature whatsoever, if the loss, damage, cost or expenses is (1) indirect, consequential or constitutes special damages or penalties; or (2) constitutes any pure economic loss, loss of profit, loss of business loss of contracts and like loss; and
- (ii) in no event shall Seller's aggregate liability for any claim arising out of or relating to this Agreement, whether in contract, tort, negligence, breach of warranty, breach of statutory duty or under any other cause, exceed the annual turnover made by the Seller from Buyer under this Agreement of \$xxxxxx, whichever is the less.

### **19.4. Process and Condition for Indemnification**

The foregoing indemnities are conditioned on:

- (i) the indemnified Party's prompt written notice of any claim or proceeding subject to indemnity;
- (ii) the indemnifying Party's control of the defense and settlement of any third party claim against the indemnified Party hereunder; and

- (iii) the indemnified Party provided all reasonable cooperation and assistance in the defense and settlement of such claims at the expense of the indemnifying Party. The indemnifying Party shall not be responsible for any costs incurred or compromise made by the indemnified Party without the indemnifying Party's prior written consent.

## **20. Insurances and Other Costs**

Buyer shall assume all insurance fees for the NRE Items, Excess, Obsolete and finished goods of the Products (to the extent that these Products are not picked up by Buyer according to this Agreement or Purchase Order). Buyer may purchase insurance for such items by itself. In case Buyer requests Seller to purchase any insurance for such items, all such insurance fees will be invoiced to Buyer by Seller.

Buyer shall assume all duties and tariffs associated with the Products, including duties and tariffs incurred by the Seller upon import of the Materials and the delivery of the Products.

Without limiting the generality of any other Sections hereunder, Buyer shall assume all Seller's costs incurred due to ECOs, changes of Specification, design or product validation for manufacturing process, including but not limited to costs relating to new product introduction (NPI), resources, and development.

Seller will issue an invoice to Buyer on a monthly basis for the costs and fees under this Section. The payment term for such invoices shall be Net TBD days.

## **21. Intellectual Property**

### **21.1. Ownership**

Each Party retains title, ownership and intellectual property rights to all of its Background IP (as defined below). "Background IP" refers to (i) all Intellectual Property (as defined below) created, invented, conceived, or otherwise developed solely by such Party which are not fully funded by the other Party, and (ii) all Intellectual Property created, invented, conceived, or otherwise developed by or for such Party (alone or with others) prior to the date of this Agreement, or otherwise outside of its performance of this Agreement. For the avoidance of doubt, Seller's Background IP shall include all manufacturing process and procedures, or any know-how in connection with the manufacturing process or procures in connection with the Products including data from Seller's information systems.

Other than the Background IP, all Intellectual Property created, invented, conceived, or otherwise developed in the course of the performance of this Agreement which are fully funded by Buyer shall belong to Buyer after payment by Buyer in full.

For the purpose of this Agreement, "Intellectual Property" means inventions, creations, know-how, processes, designs, design information, databases, schematics, integrated circuit and layout designs and design files, schematics, topographies, netlists, register transfer level (RTL) files and designs, design databases, files, masks and mask designs and files, (hard and soft) cores, IP blocks, test methodologies, Verilog files, emulation and simulation reports, instructions, cells, libraries, and other manufacturing, design, validation, and testing technology and tools, interface information, specifications, algorithms, software (in object code and source code format), product prototypes and samples, parts, technical information, and other information, data, materials, and technology.

## **21.2. IP Seller Obligation**

Seller represents and warrants that the manufacturing processes employed in the manufacturing of the Products do not infringe any Intellectual Property of any third party, and that Seller is unaware of any claim or infringement, either threatened or pending.

Seller shall indemnify, defend and hold Buyer harmless from and against any claim or liabilities if any of its Background IP is determined to have infringed any third party's Intellectual Property right if such Background IP is incorporated into the Products. Seller will also, at its option and sole expense, either make such Background IP non-infringing or procure the rights to continue to use such Background IP; provided that, if Seller is unable to do either of the foregoing, Buyer may terminate this Agreement without any further obligation or liability to Seller.

## **21.3. IP Buyer Obligation**

Buyer represents and warrants that (i) it owns, or has the legal right to use the Specifications, the designs and standard it provided to Seller to manufacture the Products, and its Background IP which are incorporated into the Products, (ii) such Specifications, designs and standard and Background IP do not infringe on any Intellectual Property, and (iii) Buyer is unaware of any claim of infringement for such designs, Specifications and standards, and Background IP either threatened or pending.

Buyer shall defend, indemnify and hold Seller harmless from and against any claim or liabilities for, or by reason of, any actual or alleged infringement of any Intellectual Property caused by Seller's use and reliance upon any Product Specification, design or standard, or Background IP of Buyer in manufacturing the Product, or arising out of the Products being incorporated by or at the request of Buyer into another product or system which infringe upon any Intellectual Property right.

## **22. Confidentiality**

### **22.1. News Release**

It is understood and agreed that the terms of this Agreement are confidential, and no news release, advertisement or public announcement, or denial or confirmation of the same, concerning any part of the subject matter of this Agreement shall be made by either Party hereto without the prior written consent of the other Party in each instance except to the extent that such disclosure is needed in any legal, administrative or governmental action or proceedings or is otherwise required by applicable law or governmental order.

### **22.2. Confidential Information**

Each Party (the "Recipient") hereto acknowledges that, during the term hereof, it may become aware of confidential, secret or proprietary information pertaining to the other Party (the "Discloser") and its operations (including, without limitation, information with respect to bidding, pricing, suppliers and customers or lists thereof, research, development and engineering, and internal operations, inventory control, data processing, technical data, and other procedures and systems, collectively, the "Confidential Information"). Confidential Information shall not include any following information:

- (i) independently developed by the Recipient without the use of the Confidential Information of the Discloser; or
- (ii) is known or becomes known to the general public without breach of this Agreement; or



- (iii) was known to the Recipient at the time of disclosure by the Discloser;
- (iv) is approved for release by written authorization of the Discloser, but only to the extent of and subject to such conditions as may be imposed in such written authorization; or
- (v) is disclosed in response to a valid order to a court, arbitration institution, regulatory administrative agency, stock exchange or other governmental agency, but only to the extent and for the purposes stated in such order; provided, however, that the Recipient shall first notify the Discloser in writing of the order and cooperate with the Discloser if the Discloser desires to seek an appropriate protective order; or
- (vi) is received by the Recipient from a third party who is not subject to any confidentiality obligation with respect to such information.

### **22.3. Restrictions**

The Recipient shall (i) use the Confidential Information only to perform its obligations and exercise its rights under this Agreement, and (ii) not disclose the Confidential Information to any third party without the Discloser's written consent except to those third parties who have a need to know the Confidential Information to perform the Recipient's obligations or exercise the Recipient's rights under this Agreement; provided that the Recipient may only disclose the Confidential Information to such third parties on a need-to-know basis and such third parties shall be subject to contractual, legal or professional confidentiality obligations with respect to such Confidential Information.

### **22.4. Survival**

Notwithstanding anything to the contrary, the confidentiality provisions set forth in this Section 22 shall survive any termination of this Agreement for a period of three (3) years.

## **23. Assignment**

Neither Party may assign this Agreement in whole or in part without the prior written consent of the other Party, which will not be unreasonably withheld. Notwithstanding the preceding, either Party may assign this Agreement without the prior consent of the other Party in connection with a transfer of all or substantially all of its business or assets, whether by corporate reorganization, acquisition, sale of assets or merger; provided that such transferring Party has provided thirty (30) days' notice to the other Party.

## **24. Amendment**

This Agreement represents the entire agreement between the Parties concerning the subject matter hereof, and may not be modified except in writing signed by both Parties.

## **25. Severability**

If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect, and the Parties will negotiate in good faith to amend (and the Parties will authorize the competent court or arbitrator to interpret) this Agreement to effect the original intent of the parties as closely as possible.

## **26. Construction and attorney's fees and cost**

This Agreement has been negotiated by the Parties and their respective counsel and shall be interpreted fairly in accordance with its terms and without any strict construction in favour of or against either Party.

The article and paragraph headings contained in the Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of the Agreement.

If any action or proceeding is brought to enforce or interpret the terms or provisions of this Agreement, the prevailing Party shall be entitled to an award of reasonable attorneys' fees and costs.

## **27. Waiver**

Any waiver of any provision of this Agreement must be in writing and signed by the Party alleged to have waived such provision, and any single waiver shall not operate to waive subsequent or other defaults.

## **28. Notice**

All notices and other communications given or made pursuant to this Agreement shall be in writing and shall be deemed effectively given upon the earlier of actual receipt or (i) when delivered, if sent by personal delivery to the party to be notified, (ii) when sent, if sent by electronic mail or facsimile during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, or (iii) two (2) business days after deposit with an internationally recognized overnight courier. All communications given or made pursuant to this Agreement shall be addressed as follows or to such e-mail address or address as subsequently modified by written notice given in accordance with this Section 28.

	Seller	Buyer
Attn :		
Email:		
Telephone:		
Address:		
Cc. :		

## **29. Force Majeure**

### **29.1. Force Majeure Event**

A "Force Majeure Event" refers to an event or circumstance that is beyond the reasonable control of and could not reasonably be avoided or overcome by the affected Party, including but not limited to war (whether declared or not), hostilities, extensive military mobilization, riot, rebellion, revolution, usurped power, insurrection, act of terrorism, sabotage, piracy, act or order of authority, embargo, sanction, expropriation, condemnation, seizure of works, requisition, nationalization, plague, epidemic or pandemic, natural disaster, explosion, fire, prolonged break-down of transport, telecommunication, information system or energy, general labor disturbance, strike and lock-out or any act of God.

### **29.2. Restriction of Liabilities**

Except for Buyer's payment obligations under this Agreement, neither Party will be liable to the other Party for any failure to fully perform this Agreement to the extent that such failure is caused by a Force Majeure Event.

### **29.3. Termination based on Force Majeure Event**

If any Force Majeure Event affecting any Party continues for a period exceeding six (6) consecutive months without a prospect of a cure of such event, the other Party shall have the option, in its sole discretion, to terminate this Agreement. Such termination shall take effect immediately upon the written notice from the other Party to the Party affected by the Force Majeure Event.

### **30. Relationship of Parties**

The Parties are and shall be independent contractors to one another, and nothing herein shall be deemed to cause this Agreement to create an agency, partnership, joint venture or any other relationship between the Parties.

### **31. Third Party Beneficiary**

This Agreement is intended for the benefit of the Parties and their respective permitted assignee and no other persons shall be entitled to rely upon this Agreement or be entitled to any benefits hereunder.

### **32. Governing Law and Dispute Resolution**

This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of California (United States of America), excluding that body of laws known as conflict of laws. The Parties acknowledge that the United Nations Convention on Contracts for the International Sale of Goods (1980) is specifically excluded from application to this Agreement.

All disputes between the Parties arising out of or relating to this Agreement or the breach or alleged breach thereof (other than actions seeking only equitable remedies) shall be settled by the Court of Alameda County.

### **33. Counterparts**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Facsimile and e-mailed photocopies of signatures (including wet ink signatures and electronic signatures) shall be deemed to be originals for purposes of the effectiveness of this Agreement.

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**IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by the duly authorized representatives of each of the Parties.**

**SUBA TECHNOLOGY, INC.**

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Name:

Title:

Date:

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**IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by the duly authorized representatives of each of the Parties.**

[.....]

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Name:

Title:

Date: