



SIGNONCE
SERVICES AGREEMENT

Professional Design Services Agreement

THIS PROFESSIONAL DESIGN SERVICES AGREEMENT (the "Agreement") is made and entered into as of _____, 200__ (the "Effective Date") by and between _____, a _____ corporation, with a place of business at _____ ("Service Provider"), and _____, with a place of business at _____ ("Customer").

WHEREAS, Service Provider has developed software products and designs, and, based on its expertise in FPGA design, provides design consulting services for such products; and

WHEREAS, Customer wishes to engage Service Provider to perform certain design consulting services as set forth in this Agreement and the attached Statement of Work ("SOW").

NOW, THEREFORE, in consideration of the foregoing premises and the covenants contained herein, the parties hereby agree as follows:

1. DEFINITIONS

In this Agreement, unless the context otherwise requires, the following words and expressions shall have the following meanings:

"Confidential Information" means any information disclosed in any medium by the Disclosing Party to the Receiving Party under this Agreement, in written or other tangible form and marked "confidential" or with words of similar import, and information disclosed orally or visually, provided it is at the time of disclosure identified as confidential, reduced to writing, and promptly delivered to the Receiving Party.

"Deliverables" means the requirements specifications, designs, design database, source code, IP blocks, netlists, materials, devices, products or other information delivered by Service Provider to Customer in connection with performance of the Services which are derived from the Confidential Information of Customer.

"Disclosing Party" means the party disclosing Confidential Information to the other party hereunder.

"IP Rights" means patents, copyrights, trademarks (including service marks), trade secrets, and design rights, whether registered or unregistered, semiconductor topography rights, rights in mask works conferred by the U.S. Semiconductor Chip Protection Act of 1984 or any amendment thereto, and any application for registration of any of the foregoing.

"Licensed Technology" means the materials and technology owned or controlled by Customer, including algorithms, methodologies, techniques, design documents, specifications,

schematics, or drawings, provided in writing to Service Provider for the purpose of performing the Services.

"Milestone Payments" means the milestone payments, if any, set forth in the SOW.

"Payment Schedule" means the payment schedule set out in each SOW with respect to the Services.

"Project Schedule" means the timetable relating to the performance of the Services set out in each SOW.

"Receiving Party" means the party receiving Confidential Information from the other party hereunder.

"Residual Information" means information in the form of knowledge that may be retained by a person who has performed the Services and/or has had access to Confidential Information of the other party, including ideas, concepts or techniques contained therein, excluding any Confidential Information itself.

"Services" means the services described in the SOW.

"Statement(s) of Work" or "SOW" means the description of the Services and Deliverables to be provided hereunder from time to time, that may include single or multiple SOWs.

"Service Provider Technology" means Service Provider's proprietary information and materials relating to electronic designs, electronic product manufacturing, software tools, computer programs and associated documentation, methods, processes, algorithms, methodologies, design flows, cell libraries, IP blocks, databases, mechanical and electronic hardware and components.

2. PROFESSIONAL SERVICES

2.1 **Statements of Work.** Service Provider will provide to Customer the Services that are described in one or more SOW attached hereto under the terms and conditions of this Agreement. Such SOW may be amended or modified by supplementary work orders agreed to in writing by both parties hereto and attached to the SOW, and thereafter, the Services shall be deemed to include the services described in such supplementary work orders.

2.2 **Resources.** Service Provider will provide such resources and utilize such employees and/or such consultants

as it deems necessary to perform the Services. The manner and means used by Service Provider to perform the Services desired by the Customer are in the sole discretion and control of Service Provider. All work shall be performed at Service Provider's designated facilities unless otherwise mutually agreed in the SOW.

2.3 Licensed Technology. Customer agrees to provide Service Provider with the Licensed Technology.

2.4 Time for Performance. Service Provider shall use commercially reasonable efforts to meet the Project Schedules and time of performance of Services set forth in the SOW, and Customer agrees to cooperate in good faith to allow Service Provider to achieve completion of the Services in a timely and professional manner. Customer understands and agrees that Service Provider's provision of the Services may depend on completion of certain Customer tasks or adherence to Customer schedules within Customer's control; consequently, the Project Schedule, time of performance, and Services may require adjustments or changes in the event such Customer tasks or schedules change, are modified, or are not completed as anticipated.

2.5 Deliverables. In performing the Services, Service Provider shall design, develop and/or make for Customer the Deliverables as required in the SOW. Service Provider shall use commercially reasonable efforts in order to ensure that the Deliverables meet the specifications, if any, set forth in the SOW for such Deliverables.

2.6 No License. Service Provider does not, under this Agreement, license to Customer any existing Service Provider software programs or tools. Any such programs or tools shall be licensed only under the terms of a separate license agreement.

3. FEES AND EXPENSES

3.1 Payment. For the Services and Deliverables provided by Service Provider, Customer agrees to pay Service Provider the fees set forth in the Payment Schedule. Customer also shall reimburse Service Provider for actual, reasonable travel and out-of-pocket expenses incurred, as set forth in the SOW, for any Services that must be performed away from Service Provider facilities.

3.2 Milestones. The SOW and any supplements thereto may provide for certain milestone events. Achievement of such milestones by Service Provider will trigger the obligation by Customer to pay the applicable Milestone Payment as listed in the Payment Schedule. Upon achievement of the milestone, Service Provider will provide to Customer a statement showing achievement of the milestone and an invoice for the amount of the applicable Milestone Payment in accordance with the SOW.

3.3 Delays. If achievement of any particular milestone is dependent upon performance and/or completion of tasks within the control of the Customer or by a third party outside Service Provider's control, the projected dates for accomplishing such milestones will be appropriately adjusted to reflect any changes in such tasks or the Project Schedule.

3.4 Taxes. The amounts payable to Service Provider pursuant to this Agreement are exclusive of any sales or use or other taxes or governmental charges. Customer shall be responsible for payment of all such taxes or charges, except for any taxes based solely on Service Provider's net income.

4. INVOICING AND PAYMENT

Service Provider shall invoice Customer for fees for Services owing and expenses. All invoices shall be due and payable thirty (30) days after the invoice date. Overdue amounts shall accrue interest at the rate of two percent (2%) per month, or at the highest legal interest rate, if less. If Customer's procedures require that an invoice be submitted against a purchase order before payment can be made, Customer will be responsible for issuing such purchase order thirty (30) days before the payment due date.

5. INTELLECTUAL PROPERTY RIGHTS

5.1 Customer IP Rights. Customer shall retain exclusive ownership of the IP Rights to the Licensed Technology to the same extent that Customer has such ownership rights prior to the conduct of Services. In addition, subject to the payment of fees under Section 3.1 ("Payment") and the rights of Service Provider under Section 5.2 ("Service Provider IP Rights"), Customer shall own the IP Rights to the Deliverables and Service Provider shall assign ownership to Customer of such IP Rights necessary to achieve the same.

5.2 Service Provider IP Rights. Service Provider shall retain exclusive ownership of the IP Rights to Service Provider Technology existing prior to providing the Services. In addition, Service Provider shall own the IP Rights to Service Provider Technology developed in the course of providing the Services to the extent that the same is developed independently of Confidential Information provided by Customer to Service Provider.

6. LICENSE GRANTS

6.1 License by Customer. Customer hereby grants Service Provider a royalty-free, nonexclusive, worldwide license to use and practice the Licensed Technology for Service Provider to perform the Services and create or develop the Deliverables solely during the term of this Agreement. Customer agrees to obtain for Service Provider the right to use, for the purpose of performing the Services and creating the Deliverables, such third party information, materials and technology, and the IP Rights therein, as Service Provider reasonably requires in order to perform the Services and/or prepare the Deliverables. Customer represents that to the extent Customer provides to Service Provider any Customer or third-party IP Rights hereunder that are incorporated in the Deliverables or covering such Licensed Technology, that it has obtained all necessary licenses to provide such technology to Service Provider.

6.2 License by Service Provider. Subject to compliance with the terms and conditions hereof, Service Provider grants to Customer a worldwide, nonexclusive, nontransferable, perpetual, fully paid-up license for the sole purpose of making,

using, importing, offering for sale and selling the Customer products incorporating the Service Provider Technology included in the Deliverables provided hereunder.

6.3 **No Implied Rights.** There shall be no implied rights or licenses hereunder.

7. LIMITED WARRANTIES AND EXCEPTIONS

7.1 **Services Warranty.** Service Provider warrants that the Services provided hereunder will be performed in a professional manner consistent with the quality of Service Provider's performance of services for similar types of engagements.

7.2 **Disclaimer.** THE WARRANTY ABOVE IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ALL IMPLIED WARRANTIES CONCERNING THE SERVICES OR THE DELIVERABLES OF MERCHANTABILITY, REASONABLE SKILL AND CARE, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, WHICH ARE EXPRESSLY DISCLAIMED TO THE FULL EXTENT PERMITTED BY LAW.

7.3 **Warranty Period.** In order to receive warranty remedies, deficiencies in the Services must be reported to Service Provider in writing within the time period set forth in the SOW, which in no event shall exceed one hundred twenty (120) days from Service Provider's delivery of the milestone related to the Services warranted. Customer shall not make any additions, deletions or modifications to the Deliverables except as specifically set forth in the Service Provider documentation or as authorized in writing by Service Provider. Unauthorized modifications of the Deliverables shall cause immediate termination of any applicable warranty as established above. Customer's sole remedy shall be to have the deficiencies remedied as set forth in the SOW or to receive a refund of the pro-rata amount of the fees allocable to such Services, at Service Provider's option.

7.4 **No Warranty on Reports.** In addition, Service Provider disclaims any warranty as to the accuracy of any report, data, specifications, designs or other material (collectively, "Reports") delivered to Customer or any third party to the extent such Reports incorporate any Customer or any third-party materials.

8. INDEMNIFICATION

8.1 **Indemnity by Service Provider.** Subject to the provisions of Section 8.3 ("Indemnification Procedure"), Service Provider agrees to indemnify, defend and hold Customer, its affiliates, and their respective officers, directors, employees, and agents ("Customer Indemnitees") harmless from and against any and all liabilities, losses, damages, costs, and expenses ("Losses"), and any attorneys' fees and expenses relating to its defense, resulting from any suit or action brought against the Customer Indemnitees due to (a) any injuries suffered by Service Provider employees except for injuries caused by negligence or intentional harm of Customer or its employees or agents, or (b) subject to the provisions of

Sections 9.1 ("Waiver of Indirect Damages") and 9.2 ("Limitation of Liability"), infringement of any third party copyright or trade secret right in the United States or the European Union by Service Provider or its contractors due to the use by the Customer Indemnitees of the Service Provider Technology incorporated in the Deliverables. Service Provider shall not be obligated to defend or be liable for Losses if the infringement claim arises out of (i) compliance with Customer's specifications or requirements, (ii) an addition to or modification by Customer or any third party to the Deliverables that causes the Deliverables to become infringing, or (iii) a combination of the Deliverables with other products or items not supplied by Service Provider, if such infringement could have been avoided either by the use of the Deliverables with commercially acceptable non-infringing products or items. Notwithstanding the foregoing, should any Deliverable become, or in Service Provider's opinion be likely to become, the subject of any such suit or action for infringement, Service Provider may, at Service Provider's option and expense, (1) procure for Customer the right to continue using such Deliverable, (2) replace or modify by such Deliverable so that it becomes non-infringing, which shall extinguish Service Provider's obligations hereunder, or (3) if in Service Provider's judgment neither of such alternatives is commercially reasonable, refund the amount paid by Customer for the applicable Deliverable, amortized on a five-year, straight-line basis.

8.2 **Indemnity by Customer.** Subject to the provisions of Section 8.3 ("Indemnification Procedure"), Customer hereby agrees to indemnify and hold Service Provider, its affiliates, and their respective officers, directors, employees, and agents ("Service Provider Indemnitees") harmless from and against any and all Losses, and all attorneys' fees and expenses relating to its defense, resulting from any suit or action brought against any of the Service Provider Indemnitees due to (a) any injuries suffered by Customer's employees during Service Provider's performance of the Services, except for injuries caused by negligence or intentional harm of Service Provider or its employees or agents, or (b) infringement, including infringement or contributory infringement of any third party copyright or trade secret right in the United States or the European Union due to the use or practice by the Service Provider Indemnitees of the Licensed Technology, or any other information provided to Service Provider by Customer hereunder in connection with Service Provider's performance of the Services to the extent that such use or practice is permitted under the terms of this Agreement. In addition, at Service Provider's request, Customer agrees to defend the Service Provider Indemnitees against any of the foregoing suits or actions.

8.3 **Indemnification Procedure.** If any claim or action is commenced against a party entitled to indemnification under this Section for Losses resulting from such claim or action (a "Claim"), such party shall give written notice to the other party within fifteen (15) days of notice of such Claim. If such party receiving notice is obligated under this Section to defend the other party against such Claim, then the indemnifying

party shall take control of the defense and investigation of the Claim, using such attorneys and other assistance as it selects in its discretion. The indemnified party shall cooperate in all reasonable respects in such investigation and defense, including trial and any appeals, provided that such party may also participate, at its own expense, in such defense. THE FOREGOING STATES THE PARTIES SOLE AND EXCLUSIVE REMEDIES WITH RESPECT TO CLAIMS OF INFRINGEMENT OF PROPRIETARY RIGHTS OF ANY KIND.

9. LIMITATIONS ON LIABILITY

9.1 Waiver of Indirect Damages. IN NO EVENT SHALL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY SPECIAL, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES, OR LOST PROFITS OR FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, CONTRACT, TORT NEGLIGENCE, STRICT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.2 Limitation of Liability. SERVICE PROVIDER'S AGGREGATE CUMULATIVE LIABILITY TO CUSTOMER OR CUSTOMER INDEMNITEES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING WITHOUT LIMITATION DEFENSE COSTS AND ANY OTHER LIABILITY UNDER SECTION 8 ("Indemnification"), SHALL NOT EXCEED THE TOTAL AMOUNT ACTUALLY PAID BY CUSTOMER TO SERVICE PROVIDER UNDER THE APPLICABLE SOW.

9.3 No Product Liability. Except as set forth in Section 8.1 ("Indemnity by Service Provider"), Service Provider shall not be liable for any loss or damages concerning any products, devices, software or applications developed through use of Service Provider's products, the Deliverables, or the Services.

9.4 Limitation on Actions. No action, regardless of form, arising from this Agreement may be brought by either party more than one (1) year after the cause of action has accrued, except that an action for non-payment may be brought within one (1) year after the later of the date of last payment or the date such unpaid amount should have been paid.

10. CONFIDENTIALITY

10.1 Nonuse. Each party agrees that it will use any and all Confidential Information disclosed to it pursuant to this Agreement solely for the purposes of this Agreement.

10.2 Nondisclosure. Service Provider and Customer each agree to hold the other's Confidential Information in confidence for a period of three (3) years following the date of disclosure, using for such purpose, the same degree of care each uses for its own Confidential Information, and not to knowingly disclose such Confidential Information to any third parties (including its parent, subsidiary or other affiliated corporations), or its employees except employees who have a need to know the information disclosed hereunder and are

subject to confidentiality obligations similar to those set forth herein.

10.3 Exceptions. The obligations of confidentiality herein shall not apply to Confidential Information that: (a) is already known to the Receiving Party at the time of disclosure, (b) is or becomes publicly known through no wrongful act of the Receiving Party; (c) is rightfully received by the Receiving Party from a third party without restriction on disclosure and without breach of this Agreement; (d) is approved for release by written authorization of the Disclosing Party; (e) is furnished by the Disclosing Party to a third party without a restriction on disclosure; (f) was developed by the Receiving Party independently and without the use of any of the Confidential Information; or (g) is required to be disclosed by the Receiving Party pursuant to any order or requirement of a court, administrative agency, or any other governmental agency, provided that the Receiving Party shall give the Disclosing Party prompt written notice of such order or requirement and an opportunity to contest or seek an appropriate protective order.

10.4 Other Services. Subject to Service Provider's compliance with the confidentiality provisions stated herein, nothing in this Agreement shall restrict or limit Service Provider from performing such design, consulting or other services to any other entity in any industry, including the semiconductor and electronics industries. Customer agrees that, except as otherwise agreed in this Agreement, Service Provider and its employees may provide design consulting services similar in nature to the Services for any third parties both during and after the term of this Agreement. Customer agrees that Service Provider may utilize for any purpose any Residual Information resulting from the Services.

10.5 No License. No license is granted by the Disclosing Party to the Receiving Party under any copyright, patent, mask work right or trademark owned by or licensed to the Disclosing Party except to the extent required by the Receiving Party for the specific purpose intended by this Agreement. Any use other than for the Purpose by the Receiving Party of any information furnished by the Disclosing Party, whether or not "Confidential Information," will subject the Receiving Party to any rights and remedies available to the Disclosing Party under the copyright, patent, mask work and trademark laws in effect at that time.

10.6 Injunctive Relief. The parties acknowledge and agree that any breach or threatened breach of these confidentiality provisions by the Receiving Party could cause harm to the Disclosing Party for which money damages may not provide an adequate remedy and agree that in the event of such a breach or threatened breach, the Disclosing Party may seek temporary and permanent injunctive relief restraining the Receiving Party from disclosing or using, in whole or in part, any Confidential Information.

10.7 Return of Information. Upon the written request of the Disclosing Party, the Receiving Party shall promptly return to the Disclosing Party all plans, drawings, and other tangible

items of Confidential Information furnished by the Disclosing Party, and all copies thereof.

11. TERM AND TERMINATION

11.1 Term. This Agreement commences on the Effective Date and, unless terminated earlier pursuant to the terms of this Agreement, shall continue in force until completion of the Services.

11.2 Termination for Cause. This Agreement may be terminated by either party upon thirty (30) days prior written notice if the other party materially breaches or fails to perform any material term hereof and the breaching party fails to cure such breach within the thirty (30) day period.

11.3 Termination for Convenience. This Agreement may be terminated by Customer, for convenience, upon ten (10) business day prior written notice to Service Provider. In the event of termination for convenience, Customer shall pay Service Provider for time and materials expended through the date of termination, or, in the case of Services performed for a fixed-price, for a pro rata portion of the total fee based on the percentage of Services completed through the date of termination, as reasonably determined by Service Provider. Notwithstanding the above, upon termination for convenience, in no event shall Customer pay less than 50% of the total fee under the applicable SOW.

11.4 Effect of Termination. Within thirty (30) days of termination of this Agreement for any reason, Service Provider shall submit to Customer an itemized invoice for any fees or expenses accrued and unpaid under this Agreement through the date of such termination

11.5 Survival. Each party's obligations under Sections 4 ("Invoicing and Payment") ~ 10 ("Confidentiality"), 11.4 ("Effect of Termination"), 11.5 ("Survival"), 12 ("Non-Solicitation of Employees"), 13 ("Independent Contractor"), 14 ("Governing Law") and 15 ("Miscellaneous") of this Agreement shall survive termination or expiration of this Agreement.

12. NON-SOLICITATION OF EMPLOYEES

The parties agree that the identities and capabilities of each other's marketing, engineering and technical employees (the "Subject Employees") are highly valued. Therefore, for a one (1) year period commencing on the date of this Agreement neither party will, directly or indirectly, recruit or solicit for employment, nor employ or otherwise retain any of the Subject Employees until at least six (6) months has expired from the end of the Subject Employee's employment. Any breach of this provision shall entitle the other party to liquidated damages in the amount of fifty percent (50%) of the applicable Subject Employee's annual salary.

13. INDEPENDENT CONTRACTOR

Service Provider shall perform the Services as an independent contractor, and nothing contained in this Agreement shall be construed to create or imply a joint venture, partnership, principal-agent or employment relationship between the parties. Neither party shall take any action or permit any

action to be taken on its behalf which purports to be done in the name of or on behalf of the other party and shall have no power or authority to bind the other party, to assume or create any obligation or responsibility express or implied on the other party's behalf or in its name, nor to represent to any one that it has such power or authority.

14. GOVERNING LAW

This Agreement will be governed by the procedural and substantive laws of _____, without regard to its conflicts of laws principles. The United Nations Convention on Contracts for the International Sale of Goods (1980) shall not apply.

15. MISCELLANEOUS

15.1 Notices. Notices to be given or submitted by either party to the other pursuant to this Agreement shall be in writing and directed to the parties at the addresses first written above, Attn: General Counsel.

15.2 Severability. If any term or provision of this Agreement is determined to be invalid or unenforceable for any reason, it shall be adjusted rather than voided, if possible, to achieve the intent of the parties to the extent possible. In any event, all other terms and provisions shall be deemed valid and enforceable to the maximum extent possible.

15.3 Force Majeure. Neither party shall be liable for any loss, damage, or penalty arising from delay due to causes beyond its reasonable control.

15.4 Assignment. Neither party shall assign, delegate, or subcontract any portion of its rights, duties, or obligations under this Agreement and any attempt to do so shall be void without the prior written consent of the other party. As used herein, an assignment includes: (i) any transfer of the rights and/or obligations of a party under this Agreement to a third party, (ii) the dissolution, merger, consolidation, or other reorganization of either party, whether or not such party is the surviving corporate entity; or (iii) the sale or transfer, by one or more transactions, of stock representing more than fifty percent (50%) of the total combined voting power of all classes of a party's capital stock issued, outstanding and entitled to vote for the election of its directors.

15.5 Export Compliance. Each party shall adhere to all applicable export laws and regulations, including those administered by the U.S. Department of Commerce (U.S. Export Administration Regulations 15 CFR 730 *et seq.*), and shall not export, reexport, resell, transfer, or disclose, directly or indirectly, any technical data or products received from the other, or the direct product of such technical data or products, to any proscribed person, entity, or country, or foreign national thereof, unless properly authorized by the U.S. government.

15.6 Modification. Customer agrees that any terms and conditions of any purchase order or other instrument issued by Customer in connection with this Agreement that is in addition to or inconsistent with the terms and conditions of this Agreement shall be of no force or effect. This Agreement may

be modified only by a written instrument duly executed by an authorized representative of Service Provider and Customer.

15.7 No Waiver. The failure of a party to enforce any provision of this Agreement shall not constitute a waiver of such provision or the right of such party to enforce such provision or any other provision.

15.8 Complete Agreement. Customer acknowledges that it has read, understands and agrees to be bound by this Agreement, and that this Agreement, including the attached SOW, is the complete and exclusive statement of the agreement between the parties regarding the subject matter hereof, which supersedes all proposals, oral or written, and all

other communications between the parties relating to such subject matter including, but not limited to, any terms or conditions stated on a purchase order issued by Customer in connection with this Agreement. In the event of any conflict between the Agreement and the SOW or any subsequent attachments hereto, the terms of this Agreement shall control.

15.9 Authorization. This Agreement and any supplement to it shall be binding on the parties only after signing by officers or authorized representatives of Service Provider and Customer.

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

"CUSTOMER"	"SERVICE PROVIDER"
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____