

MERCURY SYSTEMS, INC.
PROFESSIONAL SERVICES AGREEMENT

This PROFESSIONAL SERVICES AGREEMENT ("Agreement"), is effective as of this ____ day of ____, 20__, ("Effective Date"), by and between _____, having a principal place of business at _____ (hereinafter "CUSTOMER") and Mercury Systems, Inc., having a principal place of business at 201 Riverneck Road, Chelmsford, MA 01824 (hereinafter "MERCURY").

Article 1

DEFINITIONS

1.1 "Deliverables" means the tangible work product that is required to be provided by MERCURY to CUSTOMER in connection with Services, as further described in each Statement of Work.

1.2 "Intellectual Property Rights" means copyrights (including rights in software), patents, trademarks, trade names, service marks, business names (including internet domain names), design rights, database rights, semi-conductor topography rights, rights in undisclosed or confidential information (such as know-how, trade secrets, and inventions whether patentable or not), and all other intellectual property or similar proprietary rights of whatever nature (whether registered or not and including applications to register or rights to apply for registration) which may now or in the future exist or apply.

1.3 "Purchase Order" means an order issued by CUSTOMER to MERCURY that has been accepted by MERCURY that authorizes the Services to be performed by MERCURY for CUSTOMER and obligates CUSTOMER to make payment to MERCURY for such Services.

1.4 "Pre-Existing Tools" means MERCURY's proprietary tools and materials developed prior to the performance of Services and used by MERCURY in the performance of the Services.

1.5 "Services" means the services performed and the Deliverables provided by MERCURY to CUSTOMER pursuant to this Agreement, as further described in each Statement of Work.

1.6 "Statement of Work" means an executed statement of work that is attached to this Agreement as an exhibit (or attached to a Purchase Order) that describes the Services to be performed by MERCURY for CUSTOMER.

Article 2

TERM AND TERMINATION

2.1 Term. This Agreement will become effective on the Effective Date and will continue in effect through the completion of each Statement of Work. The initial Statement of Work is attached as Exhibit A.

2.2 Termination. Either party may terminate this Agreement or a Statement of Work upon written notice (“Termination for Cause”) if the other party (i) ceases doing business and its business is not continued by another corporation or entity which has agreed to assume such party’s obligations; (ii) files for or becomes a party to any involuntary bankruptcy, receivership or similar proceeding, and such proceeding is not dismissed within 45 calendar days after filing; (iii) makes an assignment for the benefit of creditors, or (iv) fails to perform any term or provision of this Agreement or a Statement of Work and such failure to perform continues for a period of thirty (30) days after receipt of written notice.

2.3 Survival. In the event of any termination or expiration of this Agreement, Articles 6, 7, 8, 9.3, and 10.2 hereof shall survive and continue in effect.

Article 3

INDEPENDENT CONTRACTOR STATUS

3.1 Relationship of the Parties. Nothing in this Agreement shall be construed to place the parties hereto in an agency, employment, franchise, joint venture, or partnership relationship. Neither party will have the authority to obligate or bind the other in any manner, and nothing herein contained shall give rise or is intended to give rise to any rights of any kind to any third parties. Neither party will make any representations to the contrary, either expressly, implicitly or otherwise.

3.2 Nonexclusive. MERCURY shall retain the right to perform services for others during the term of this Agreement that are the same as or similar to the Services. CUSTOMER shall retain the right to cause services to be performed by its own personnel or other contractors during the term of this Agreement that are the same as or similar to the Services.

Article 4

SERVICES TO BE PERFORMED BY MERCURY

4.1 Purchase Orders/Statements of Work. A Purchase Order authorizes MERCURY to perform Services. Each Purchase Order shall specifically reference a Statement of Work. All Services to be performed by MERCURY shall be described in a Statement of Work. Each Statement of Work shall set forth, at a minimum, the Services to be performed, the Deliverables to be provided, the type of pricing engagement (time and materials or fixed price), and the rates and/or fees for the Services to be performed. No terms and conditions on any Purchase Orders shall have any force or effect, as the terms and conditions applicable to Services shall exclusively be those set forth in this Agreement and the applicable Statement of Work.

4.2 Method of Performing Services. MERCURY will determine the method, details, and means of performing the Services to be performed for CUSTOMER and its clients. CUSTOMER may, however, require MERCURY's personnel to observe the security and safety policies of CUSTOMER and/or those of the CUSTOMER's client when Mercury's personnel are on-site at CUSTOMER's facilities or the facilities of CUSTOMER's client. In addition, CUSTOMER shall be entitled to exercise a broad general power of supervision and control over the results of the Services to be performed by MERCURY to ensure satisfactory performance.

4.3 Assignment of Personnel. CUSTOMER may interview the personnel MERCURY assigns to perform Services for CUSTOMER. Such personnel will have the requisite training and qualifications as reasonably requested by CUSTOMER. If CUSTOMER reasonably determines that such personnel are not appropriate to perform the Services based on their specific or general skills or their background and experience, MERCURY shall make a reasonable effort to assign other qualified personnel.

4.4 Scheduling. MERCURY will try to accommodate the requests of CUSTOMER for the scheduling of the performance of the Services to the extent possible. In the event any personnel of MERCURY is unable to perform the Services as scheduled because of illness, resignation, or other causes beyond MERCURY's reasonable control, MERCURY will attempt to replace such personnel within a reasonable time.

Article 5

COMPENSATION

5.1 Rates/Fees. The Statement of Work shall specify either the hourly time and materials rate(s) for time and materials engagements or the fee(s) for fixed price engagements.

5.2 Estimates. For time and materials engagements, the Statement of Work may specify an estimate of the total fees that will be charged for the completion of the Services under the Statement of Work. In such an event, MERCURY does not guarantee that the Services will be completed prior to reaching such an estimate. MERCURY will, however, notify CUSTOMER as

soon as possible if MERCURY anticipates that it will reach the estimate prior to completing the Services under the Statement of Work. Upon reaching the estimate, MERCURY will cease performing Services unless CUSTOMER authorizes the continuance of the Services by the issuance of an amended or follow-on Purchase Order.

5.3 Invoices. Unless otherwise specified in the Statement of Work, MERCURY shall submit monthly invoices for time and materials engagements for the Services performed during the preceding monthly period. For fixed price engagements, MERCURY shall submit invoices based upon the milestones or payment schedule specified in the Statement of Work.

5.4 Payment Terms, Overdue Payments, Taxes. CUSTOMER shall pay each invoice within thirty (30) days of the date of the invoice. Overdue payments of any fees or charges due under this Agreement shall be subject to a charge of 1-1/2 percent (1.5%) per month, not to exceed any legal maximum rate. The fees and charges set forth in any Statement of Work do not include taxes; therefore, CUSTOMER shall pay or reimburse MERCURY for all sales, use, excise, personal property, value-added, or other federal, state, or local taxes, duties, or any similar assessments based on the Services performed or the Deliverables provided, other than taxes on MERCURY's net income.

5.5 Expenses. For time and materials engagements, CUSTOMER shall reimburse MERCURY for any out-of-pocket expenses. Out-of-pocket expenses shall mean any reasonable expenses actually incurred by MERCURY in connection with the performance of the Services under this Agreement such as travel, meals, and lodgings. All travel by MERCURY personnel shall be in accordance with MERCURY's standard policies governing travel and business expenses. Such expenses shall be invoiced by MERCURY as such expenses are incurred and payment by CUSTOMER shall be due within thirty (30) days of the date of such invoice. For fixed price engagements, except as otherwise agreed in this Agreement or the applicable Statement of Work, MERCURY shall be responsible for all costs and expenses incident to the performance of the Services for CUSTOMER.

Article 6

TREATMENT OF MERCURY PERSONNEL

6.1 Compensation of MERCURY Personnel. MERCURY shall bear the sole responsibility for payment of compensation to its personnel. MERCURY shall pay and report, for all personnel assigned to perform Services for CUSTOMER, federal and state income tax withholding, social security taxes, and unemployment insurance applicable to such personnel as employees of MERCURY. MERCURY shall bear the sole responsibility for any health or disability insurance, retirement benefits, or other welfare or pension benefits, if any, to which such personnel may be entitled. MERCURY agrees to defend, indemnify, and hold harmless CUSTOMER, CUSTOMER's officers, directors, employees and agents, and the administrators of CUSTOMER's benefit plans, from and against any claims, liabilities, or expenses relating to such compensation, tax, insurance, or benefit matters; provided that CUSTOMER shall (1) promptly notify MERCURY of each such claim when and as it comes to CUSTOMER's attention; (2) cooperate with MERCURY in the defense and resolution of such claim; and (3) not

settle or otherwise dispose of such claim without MERCURY's prior written consent, such consent not to be unreasonably withheld.

6.2 Workers' Compensation. Notwithstanding any other workers' compensation or insurance policies maintained by CUSTOMER, MERCURY shall procure and maintain workers' compensation coverage sufficient to meet the statutory requirements of every state in which MERCURY's personnel are engaged to perform Services for CUSTOMER.

6.3 State and Federal Taxes. As neither MERCURY nor its personnel are CUSTOMER's employees, CUSTOMER shall not take any action or provide MERCURY's personnel with any benefits or commitments inconsistent with any of such undertakings by MERCURY. In particular:

- CUSTOMER will not withhold FICA (Social Security) from MERCURY's payments.
- CUSTOMER will not make state or federal unemployment insurance contributions on behalf of MERCURY or its personnel.
- CUSTOMER will not withhold state and federal income tax from payment to MERCURY.
- CUSTOMER will not make disability insurance contributions on behalf of MERCURY.
- CUSTOMER will not obtain workers' compensation insurance on behalf of MERCURY or its personnel.

Article 7

INTELLECTUAL PROPERTY RIGHTS

7.1 Confidentiality. Both parties shall maintain in strict confidence, and shall use and disclose only as authorized by the other party, all information of a competitively sensitive or proprietary nature that it receives in connection with the Services performed pursuant to each Purchase Order. Both parties shall take reasonable steps to identify for the benefit of the other party and its personnel any information of a competitively sensitive or proprietary nature, including by using confidentiality notices in written material where appropriate. These restrictions shall not be construed to apply to (1) information generally available to the public; (2) information already known to the other party as evidenced by tangible documentation; (3) information independently developed or acquired by either party; or (4) information subsequently received by a third party who did not obtain or disclose it in violation of any rights of the disclosing party. Notwithstanding the foregoing restrictions, either party and its personnel may use and disclose any information (1) to the extent required by a judicial order of a court of competent jurisdiction or (2) as necessary for it or them to protect their interest in this Agreement, but in each case only after the other party has been so notified and has had the

opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.

7.2 Ownership of Deliverables, Pre-Existing Tools. MERCURY shall solely and exclusively own and have all right, title, and interest in and to the Deliverables and CUSTOMER acknowledges that MERCURY reserves all Intellectual Property Rights which may subsist in the Deliverables. MERCURY shall solely and exclusively own and have all right, title, and interest in and to the Pre-Existing Tools and CUSTOMER acknowledges that MERCURY reserves all Intellectual Property Rights which may subsist in the Pre-Existing Tools. All Intellectual Property Rights associated with any ideas, concepts, techniques, inventions, processes, or works of authorship developed or created by MERCURY, its agents or its personnel during the course of performing the Services under a Statement of Work shall vest exclusively with MERCURY.

7.3 Software. To the extent that any software, including firmware, is a Deliverable that is provided to CUSTOMER in connection with Services, such software shall be licensed to CUSTOMER in accordance with the terms and conditions of MERCURY's Software License Agreement ("SLA"). The SLA shall be provided to CUSTOMER upon request or may be viewed at: <http://www.mc.com/terms-and-conditions/default.aspx>. The terms of the SLA shall exclusively govern the use of the software provided by MERCURY in connection with the Services.

Article 8

NON-SOLICITATION

Without the prior written consent of MERCURY, CUSTOMER shall not directly or indirectly solicit or hire as an employee or independent contractor of CUSTOMER any personnel of MERCURY who are or have been assigned to perform Services for CUSTOMER under a Statement of Work until one (1) year after the completion of the Statement of Work under which such personnel performed Services for CUSTOMER.

Article 9

LIMITATIONS

9.1 Warranty. MERCURY warrants that the Services provided hereunder will be performed by qualified personnel in a good and workmanlike manner.

9.2 Disclaimer. THE EXPRESS WARRANTY SET FORTH IN SECTION 9.1 IS THE SOLE AND EXCLUSIVE WARRANTY OF MERCURY, AND IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND MERCURY SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9.3 Limitation of Liability. Circumstances may arise where, because of a default on MERCURY's part or other liability, CUSTOMER is entitled to recover damages from MERCURY. In each such instance, regardless of the basis on which CUSTOMER may be entitled to claim damages from MERCURY, (including fundamental breach, negligence, misrepresentation, or other contract or tort claim), MERCURY is liable for no more than the amount of any actual direct damages up to the fees paid by CUSTOMER to MERCURY for the Services under the applicable Statement of Work out of which such liability arises.

UNDER NO CIRCUMSTANCES IS MERCURY LIABLE FOR ANY OF THE FOLLOWING, EVEN IF INFORMED OF THEIR POSSIBILITY:

- (a) LOSS OF, OR DAMAGE TO, DATA;
- (b) SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR EXEMPLARY DAMAGES, OR FOR ANY ECONOMIC CONSEQUENTIAL DAMAGES; OR
- (c) LOST PROFITS, BUSINESS, REVENUE, GOODWILL, OR ANTICIPATED SAVINGS.

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, CUSTOMER ACKNOWLEDGES AND AGREES THAT THE REMEDIES SET FORTH IN THIS AGREEMENT SHALL APPLY EVEN IF SUCH REMEDIES FAIL THEIR ESSENTIAL PURPOSE.

9.4 Force Majeure. No party hereto shall have any liability under this Agreement for such party's failure or delay in performing any of the obligations imposed by this Agreement to the extent such failure or delay is the result of any of the following events (each, a "Force Majeure Event"): (i) any fire, explosion, unusually severe weather, natural disaster or Act of God; (ii) epidemic; any nuclear, biological, chemical, or similar attack; any other public health or safety emergency; any act of terrorism; and any action reasonably taken in response to any of the foregoing; (iii) any act of declared or undeclared war or of a public enemy, or any riot or insurrection; (iv) damage to machinery or equipment; any disruption in transportation, communications, electric power or other utilities, or other vital infrastructure; or any means of disrupting or damaging internet or other computer networks or facilities; (v) any strike, lockout or other labor dispute or action; (vi) any action taken in response to any of the foregoing events by any civil or military authority; or (vii) any other event beyond such party's control; provided that financial inability in and of itself shall not be a Force Majeure Event. In addition, MERCURY shall not be liable to CUSTOMER for any failure or delay caused by CUSTOMER's failure to furnish necessary information in a timely manner.

Article 10

GENERAL PROVISIONS

10.1 Notices. Any notices to be given hereunder by either party to the other may be

effected either by personal delivery in writing, by electronic means or by mail, registered or certified, postage prepaid with return receipt requested to the attention of a party's Director of Contracts. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Agreement, but each party may change such address by written notice in accordance with this paragraph. Notices delivered personally will be deemed communicated as of actual receipt. Mailed notices will be deemed communicated as of two days after mailing. Each of the parties may communicate with the other by electronic means and such communication is acceptable as a signed writing.

10.2 Compliance with Laws. CUSTOMER understands and acknowledges that any sale, export or re-export of the Deliverables or Pre-Existing Tools, or any portion thereof, are subject to the laws and regulations of the United States. MERCURY products or services controlled by the EAR may not be used for the design, development, manufacture, use or repair of nuclear, biological or chemical weapons, or for missile technology. Diversion contrary to US law is strictly prohibited. MERCURY products and services controlled by the ITAR may not be exported or transferred to foreign persons in the United States or abroad without first obtaining proper export authority from the U.S. Department of State. MERCURY products may not be sold, exported or re-exported to any person or entity designated as prohibited or restricted by an agency of the US government. See "Lists to Check" at www.bis.doc.gov for a complete listing. Sales or retransfers of MERCURY products or services may not be made to countries prohibited by the U.S. Government. An End Use Statement signed by the CUSTOMER may be required prior to shipment. For further information contact MERCURY, and see www.pmdetc.state.gov or www.bis.doc.gov. CUSTOMER agrees to indemnify, defend, and hold MERCURY and its third party licensors and suppliers harmless from any claims, damages or suits resulting from its failure to comply with this Section 10.2.

10.3 Partial Invalidity. If any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.

10.4 Parties in Interest. This Agreement is enforceable only by MERCURY and CUSTOMER. The terms of this Agreement are not a contract or assurance regarding compensation, continued employment, or benefit of any kind to any of MERCURY's personnel assigned to perform Services for CUSTOMER, or any beneficiary of any such personnel, and no such personnel, or any beneficiary thereof, shall be a third-party beneficiary under or pursuant to the terms of this Agreement.

10.5 Governing Law; Consent to Jurisdiction. ALL DISPUTES, CLAIMS OR CONTROVERSIES ARISING OUT OF THIS AGREEMENT, OR THE NEGOTIATION, VALIDITY OR PERFORMANCE OF THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE COMMONWEALTH OF MASSACHUSETTS WITHOUT REGARD TO ITS RULES OF CONFLICT OF LAWS. Each of the parties hereto hereby irrevocably and unconditionally consents to submit to the sole and exclusive jurisdiction of the courts of the Commonwealth of Massachusetts and of the United States of America

located in the Commonwealth of Massachusetts (the “Massachusetts Courts”) for any litigation between the parties hereto arising out of or relating to this Agreement, or the negotiation, validity or performance of this Agreement, waives any objection to the laying of venue of any such litigation in the Massachusetts Courts and agrees not to plead or claim in any Massachusetts Court that such litigation brought therein has been brought in any inconvenient forum or that there are indispensable parties to such litigation that are not subject to the jurisdiction of the Massachusetts Courts. Any action against Mercury under this Agreement must be commenced within one (1) year after such cause of action accrues.

10.6 Assignment; Binding Effect. Customer may not assign this Agreement or any interest in it, in whole or in part, by operation of law or otherwise, without the prior written consent of MERCURY. Any attempted assignment, delegation, or transfer by CUSTOMER in violation hereof shall be null and void. Subject to the foregoing, this Agreement shall be binding on the parties and their successors and permitted assigns.

10.7 Delegation by MERCURY. MERCURY may, at its option, delegate the performance of the Services, or a portion of the Services to third parties. In such event, MERCURY shall continue to remain responsible for the performance of the Services.

10.8 Entire Agreement of the Parties. This Agreement supersedes any and all agreements, either oral or written, between the parties hereto with respect to the rendering of Services by MERCURY for CUSTOMER and contains all the covenants and agreements between the parties with respect to the rendering of such Services in any manner whatsoever. Each party to this agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, that are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding. Any modification of this Agreement will be effective only if it is in writing signed by the party to be charged.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their authorized representatives as of the Effective Date set forth above.

For and on behalf of:

CUSTOMER

MERCURY SYSTEMS, INC.

Signed (Duly Authorized)

Signed (Duly Authorized)

Printed Name

Printed Name

Title

Date

Title

Date

Exhibit A – Statement of Work

Description of Customer’s Project

For and on behalf of:

Customer

MERCURY SYSTEMS, INC.

Signed (Duly Authorized)

Signed (Duly Authorized)

Printed Name

Printed Name

Title Date

Title Date