

Agreement No.: _____

IBM CONFIDENTIAL

Attachment 3

Electronic Form of CoreConnect Bus Customer License Agreement

IMPORTANT: PLEASE READ THIS CORECONNECT LICENSE AGREEMENT CAREFULLY. Your electronic acknowledgment or your actual use of the CoreConnect Bus Structure and/or any related items and documentation licensed hereunder (hereinafter referred to as “Licensed Materials”) indicates your acceptance of the following terms and conditions. If you do not agree to these terms and conditions you may not use the Licensed Materials or exercise any of the rights granted hereunder. In addition, by electronically accepting this license agreement or through your actual use of the Licensed Materials you certify that you have the authority to bind _____ (fill in your company name) (hereinafter referred to as “LICENSEE”) to the terms and conditions set forth in this Agreement

Agreement No.: _____

This CoreConnect Bus License Agreement is made and entered into as of the Effective Date, by and between International Business Machines Corporation ("IBM"), having an office at 2070 Route 52, Hopewell Junction, New York, USA 12533 and (**Company**), having a place of business at (**Company Address**) hereinafter "LICENSEE".

SECTION 1 - DEFINITIONS

- 1.1 **"Agreement"** means the terms and conditions of this CoreConnect Bus License Agreement together with any exhibits or attachments hereto which are incorporated herein by reference.
- 1.2 **"Core"** means the logical and physical design embodiment of a portion of an IC.
- 1.3 **"CoreConnect Bus Structures"** means the IBM 32-bit, 64-bit, or 128-bit processor local bus (PLB) design, the IBM 32-bit, 64-bit or 128-bit on chip peripheral bus (OPB) design, including the PLB Arbiter, OPB Arbiter, and PLB-OPB Bridges, along with associated bus models and tool kits, as set forth in Attachment 1 hereto.
- 1.4 **"CoreConnect Compliance"** means the Successful Execution of a CoreConnect Test Suite, on the register transfer language (RTL) representation of any Core connected to the CoreConnect Bus Structures. "Successful Execution" means the implementation of the test with the PLB and OPB monitors attached and without the production of any error messages in the bus monitor error files.
- 1.5 **"CoreConnect Product"** means any Integrated Circuit produced by or for IBM, an IBM subsidiary and /or an IBM CoreConnect licensee and having a CoreConnect Bus Structure in all or any portion of its design.
- 1.6 **"CoreConnect Test Generator (CTG)"** means a tool which generates a CoreConnect Test Suite based on inputs from the LICENSEE for the design of the register transfer language (RTL) representation of any Core.
- 1.7 **"CoreConnect Test Suite"** means a program, conducted in a simulation environment, implementing bus functional language (BFL) based tests for each Core connected to the CoreConnect Bus Structure.
- 1.8 **"Effective Date"** means the date LICENSEE accepts this Agreement.
- 1.9 **"IBM Confidential Information"** means all information/items identified by IBM as confidential relating to IBM's past, present and future research, development and business activities including, but not limited to, CoreConnect Bus Structures.

1.10 “Integrated Circuit” (or “IC”) shall mean an integral unit that includes a plurality of active and passive circuit elements formed at least in part of semiconductor material arranged on or in a single chip or substrate.

1.11 “Licensed Patent Claims” means the claims of the patents, patent applications and any patents issuing from the patent applications listed in Attachment 2 which are necessarily infringed in the manufacture or sale or other transfer of CoreConnect Bus Structures. The term “Licensed Patent Claims” shall also include the corresponding claims of patents or patent applications of other countries and of any reissued or reexamined patents containing any of the aforesaid claims provided they continue to meet the aforesaid criteria.

1.12 “Licensee Product” means any Integrated Circuit produced by or for LICENSEE and having a CoreConnect Bus Structure included in all or any portion of its design.

1.13 “Manufacturing Test” means the tests that are applied to an IC as part of the IC manufacturing process to ensure that there are no manufacturing defects.

1.14 “Party(ies)” means LICENSEE and/or IBM as the case may be.

1.15 “Technology Mapping” means the process, either automated or manual, of producing a cycle accurate logical and functional equivalent of a CoreConnect Bus Structure in a specific semiconductor fabrication technology.

SECTION 2 - CONFIDENTIAL INFORMATION

2.1 For a period of five (5) years from the date of disclosure, LICENSEE agrees to use the same degree of care and discretion to avoid disclosure, publication or dissemination of IBM Confidential Information outside of LICENSEE as it uses with its own similar information that it does not wish to disclose, publish or disseminate, but no less than a reasonable degree of care and discretion. LICENSEE may use IBM Confidential Information for the sole purpose of effectuating the provisions of this Agreement, and for no other purpose.

2.2 LICENSEE may disclose IBM Confidential Information to: its employees and consultants, subcontractors and customers who have a need to know; and anyone else with IBM’s prior written consent. Before disclosure to any of the above parties, LICENSEE agrees to have a written agreement with such party sufficient to require it to treat Confidential Information in accordance with this Agreement.

2.3 Notwithstanding any other provisions of this Agreement, the nondisclosure and use obligations specified herein shall not apply to any IBM Confidential Information which:

2.3.1 is already in the possession of LICENSEE without obligation of confidence;

- 2.3.2 is independently developed (without use of IBM Confidential Information) by employees of LICENSEE;
 - 2.3.3 becomes publicly available without breach of this Agreement;
 - 2.3.4 is rightfully received by LICENSEE from a third party not under an obligation of confidentiality;
 - 2.3.5 is released for disclosure by IBM ; or
 - 2.3.6 is inherently disclosed in the use, lease, sale, or other distribution of, any available product or service or publicly available supporting documentation therefor by or for LICENSEE.
- 2.4 Disclosure of IBM Confidential Information shall not be precluded if such disclosure is:
- 2.4.1 in response to a valid order of a court or other governmental body; provided, however, that LICENSEE shall first promptly provide IBM notice of the order and make a commercially reasonable effort to obtain a protective order requiring that the IBM Confidential Information so disclosed be used only for the purposes for which the order was issued; or
 - 2.4.2 otherwise required by law; or
 - 2.4.3 necessary to establish LICENSEE's rights under this Agreement.
- 2.5 If any IBM Confidential Information falls under an exception set forth in Sections 2.3.1 through 2.3.6, LICENSEE shall not disclose that IBM hereto was the source of that IBM Confidential Information.

SECTION 3 - INTELLECTUAL PROPERTY AND ARCHITECTURAL COMPLIANCE

- 3.1 IBM hereby grants to LICENSEE a non-exclusive, royalty-free, revocable (pursuant only to the terms of Section 5), nontransferable, worldwide license under all copyrights, mask works, trade secrets and know-how owned by IBM, associated with the CoreConnect Bus Structures, to use, reproduce, display, distribute, and perform the CoreConnect Bus Structures and to make, have made, use, sell, lease and/or otherwise transfer Licensee Product. LICENSEE shall have no right to grant sublicenses under this Section 3.1 to any entity.
- 3.2 IBM hereby grants to LICENSEE a non-exclusive, nontransferable, revocable, royalty-free immunity from any charge or claim of infringement under the Licensed Patent Claims resulting from LICENSEE making, having made, using, selling, offering for sale, importing and/or otherwise transferring Licensee Products, solely to the extent necessary to exercise its license rights as set forth in Section 3.1. No license, immunity or other right is granted under this Section 3.2 by IBM either directly, by implication, estoppel, or otherwise:

3.2.1 other than under the Licensed Patent Claims; or

3.2.2 with respect to any other product or item other than a Licensee Product, whether or not such other product or item is used in or in conjunction with a Licensee Product.

3.3 LICENSEE understands and agrees that no license, immunity or other right is granted herein to LICENSEE, directly or by implication, estoppel or otherwise, with respect to any patents, proprietary information, know-how, mask works, copyrights or other intellectual property rights, except as specifically provided in Sections 3.1 and 3.2, and that no additional licenses, immunity or other rights shall arise from the consummation of this Agreement or from any acts, statements or dealing leading to such consummation.

3.4 The license and immunity granted by IBM to LICENSEE in Sections 3.1 and 3.2 do not include the right of LICENSEE to modify the CoreConnect Bus Structures, other than for the sole purpose of making the minimum changes necessary to perform Technology Mapping and Manufacturing Test unless LICENSEE obtains IBM's prior written approval to make additional modifications. LICENSEE hereby agrees to provide any modifications to IBM and hereby grants to IBM a nonexclusive, royalty-free, worldwide, paid-up, irrevocable license to any such modifications made by LICENSEE and adopted by IBM as part of the CoreConnect Bus Structures, with the unrestricted right to grant sublicenses thereunder.

3.5 The immunity granted to LICENSEE in Section 3.2 shall automatically terminate if:

3.5.1 LICENSEE asserts a claim or action against IBM based on or related to a patent owned or licensable by LICENSEE; or

3.5.2 LICENSEE asserts a claim or action against an IBM CoreConnect licensee based on or related to a patent owned or licensable by LICENSEE and alleging infringement of such patent in the manufacture, use, sale or other transfer of CoreConnect Bus Structures.

3.6 LICENSEE agrees to reference the CoreConnect Bus Structures as the property of IBM on its sales literature, advertising, presentation materials, press materials and exhibits for Licensee Products.

3.7 None of the licenses granted by IBM to LICENSEE include any assurances as to non-infringement of third party intellectual property, including (but not limited to) third party patents, copyrights, trade secrets, trademarks and mask works. LICENSEE acknowledges that in order for it to manufacture and sell Licensee Products, it may be necessary for LICENSEE to obtain patent licenses from other parties, and the obtaining of such licenses shall be at LICENSEE's sole responsibility and shall be at LICENSEE's sole expense. Moreover, IBM makes no representation as to the need for such licenses or their availability.

3.8 LICENSEE agrees to use the CoreConnect Test Generator to create a CoreConnect Test Suite and to use its best efforts to ensure that any and all Licensee Products, including those previously tested in LICENSEE's testing protocol, achieve CoreConnect Compliance prior to any shipment of such Licensee Product(s). The CoreConnect Test Suite must be run with the PLB and OPB monitors attached to the CoreConnect Bus Structures. If a Licensee Product fails to achieve CoreConnect Compliance then LICENSEE shall not label or describe the failed Licensee Product as being compliant with the CoreConnect Bus Structures. Despite the exercise of LICENSEE's best efforts to ensure that a Licensee Product achieve CoreConnect Compliance, if a Licensee Product inadvertently fails to achieve CoreConnect Compliance and business conditions don't allow for correction of the design of such failed Licensee Product, then LICENSEE and/or LICENSEE's customer may ship the Licensee Product (under the above labeling restriction) but LICENSEE agrees to achieve CoreConnect Compliance on the next design of the failed Licensee Product. The Parties intend that shipment of Licensee Products which fail to achieve CoreConnect Compliance shall be an infrequent occurrence and that abuse by LICENSEE of the right to ship Licensee Products which fail to achieve CoreConnect Compliance shall be cause for termination of this Agreement by IBM pursuant to Section 5.2.4. If LICENSEE is experiencing a fundamental problem in achieving CoreConnect Compliance for a Licensee Product, upon request by LICENSEE, IBM agrees to review LICENSEE's design implementation and permit a variance from CoreConnect Compliance where in IBM's sole discretion, such variance is appropriate. If LICENSEE's failure to achieve CoreConnect Compliance for a Licensee Product results from errors in the CoreConnect Test Suite, then LICENSEE may ship Licensee Products which failed to achieve CoreConnect Compliance because of such errors and may designate them as being CoreConnect compliant.

3.9 At IBM's expense, no more frequently than once every twelve month period, IBM, through an independent technical auditor of IBM's choice, acceptable to LICENSEE, shall have the right to audit LICENSEE's testing procedures for achieving CoreConnect Compliance for Licensee Products. The auditor shall deliver a report to IBM of the results of the audit. If the auditor finds that LICENSEE's testing procedures are unacceptable when compared to industry standards, then LICENSEE agrees to cure any defects uncovered by the audit within sixty (60) days. Failure to cure such defects shall be grounds for termination of this Agreement by IBM pursuant to Section 5.2.4.

3.10 LICENSEE hereby grants to IBM the right to publicize in IBM's sales literature, advertising, presentation materials, press materials, exhibits and web pages, the fact that LICENSEE has obtained the license rights to the CoreConnect Bus Structures granted herein.

SECTION 4 - CORECONNECT BUS USER'S GROUP

IBM may form a CoreConnect Bus User's Group. In the event IBM forms such a group, LICENSEE hereby agrees to join the CoreConnect Bus User's Group. The CoreConnect Bus User's Group will, *inter alia*, collect CoreConnect Bus performance feedback from licensees of the CoreConnect Bus Structures and discuss improvements to the CoreConnect Bus Structures. LICENSEE hereby grants to IBM a nonexclusive, royalty-free, worldwide, paid-up, perpetual and irrevocable license to any such improvements made by LICENSEE and adopted by IBM as

part of the CoreConnect Bus Structures, with the unrestricted right to grant sublicenses thereunder.

SECTION 5 - TERM AND TERMINATION

5.1 The term of this Agreement shall begin on the Effective Date, and unless previously terminated as hereinafter set forth, shall remain in force indefinitely.

5.2 IBM shall have the right to immediately terminate this Agreement, including the revocable licenses granted herein, with cause by giving written notice of termination to LICENSEE, upon the happening of any of the following events:

5.2.1 A determination by a court of competent jurisdiction that makes it unlawful for the Parties to continue the relationship contemplated by this Agreement;

5.2.2 If LICENSEE is in default of any of its material obligations under this Agreement and such default is not cured or a cure plan acceptable to IBM is not established, within thirty (30) days after receipt of a written notice from IBM specifying such default.

5.2.3 LICENSEE ceases doing business, is adjudged bankrupt or insolvent or files a petition for bankruptcy.

5.2.4 LICENSEE repeatedly sells Licensee Products that fail to achieve CoreConnect Compliance.

5.3 LICENSEE may terminate this Agreement without cause by giving thirty (30) days written notice of termination to IBM.

5.4 Sections 2, 3.4, 3.5, 3.7, 5.4, 5.5, 5.6, 6, 7, 8, 9, 10 and 11 shall survive and continue after any termination or expiration of this Agreement.

5.5 Promptly after termination of this Agreement, LICENSEE shall return to IBM any IBM Confidential Information in LICENSEE's possession.

5.6 The licenses granted herein to LICENSEE shall terminate upon any termination or expiration of this Agreement and IBM agrees to use commercially reasonable efforts to cease referring to LICENSEE as a licensee of the CoreConnect Bus Structures.

SECTION 6 - REPRESENTATIONS AND WARRANTIES

6.1 THE CORECONNECT BUS STRUCTURES PROVIDED HEREUNDER ARE PROVIDED ON AN "AS IS" BASIS. IBM MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE CORECONNECT BUS STRUCTURES, AND ALL

SUCH WARRANTIES ARE DISCLAIMED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6.2 IBM MAKES NO WARRANTY, STATUTORY, EXPRESS OR IMPLIED, THAT THE CORECONNECT BUS STRUCTURES ARE FREE FROM ANY CLAIM OF OR INFRINGEMENT OF ANY THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS, INCLUDING, BUT NOT LIMITED TO, PATENTS, COPYRIGHTS, MASK WORKS, AND TRADE SECRETS.

Section 7 - INTELLECTUAL PROPERTY INDEMNIFICATION

LICENSEE agrees to indemnify IBM, its officers, agents and employees from and against any and all claims, damages, liabilities (including settlements entered into in good faith), suits, actions, judgments, penalties and taxes, civil and criminal, and all costs and expenses (including without limitation reasonable attorneys' fees) incurred in connection therewith, arising out of any claim that i) the Licensee Product infringes a patent or copyright of a third party or misappropriates a trade secret of a third party, ii) any defect (whether obvious or hidden) in any Licensee Product manufactured or sold by LICENSEE, iii) any act, omission, neglect or default of LICENSEE or its agents on or in connection with the manufacture, sale, distribution, promotion, or marketing of Licensee Products; and/or iv) LICENSEE's failure to comply with applicable laws with respect to the manufacture, sale, distribution, possession or use of any Licensee Product and defend IBM against any such claim at LICENSEE's expense; PROVIDED THAT (1) IBM promptly notifies LICENSEE, in writing, of the charge or claim; and (2) IBM allows LICENSEE to control, and cooperates with LICENSEE in, the defense and any related settlement action, upon the written request of LICENSEE. LICENSEE shall have no liability to IBM and this indemnity shall not apply to any such claim or judgment to the extent that any such claim or judgment is based on the CoreConnect Bus Structures.

SECTION 8 - LIMITATION OF REMEDIES

8.1 In no event shall IBM be liable to LICENSEE for special, indirect, punitive or incidental damages, or for any lost profits, lost savings or any other consequential damages, regardless of whether the claim is for breach of contract, warranty, tort (including negligence), failure of a remedy to accomplish its purpose or otherwise, even if IBM has been advised of the possibility of such damages.

8.2 In no event shall IBM be liable to LICENSEE for any actual damages resulting from any claims relating to this Agreement in excess of ten thousand dollars (\$10,000.00).

8.3 Except as provided in Section 7, in no event shall LICENSEE be liable to IBM for any actual damages resulting from any claims relating to this Agreement in excess of one million dollars (\$1,000,000.00).

8.4 Except as provided in Section 7 hereof, neither Party will be liable for any damages claimed by the other Party based on any third party claim.

SECTION 9 - NOTICES

9.1 Any notice or other communication required or permitted to be made or given to either Party hereto pursuant to this Agreement shall be sent to such Party by facsimile, or by certified or registered mail, postage prepaid, addressed to the person named below and shall be deemed to have been made, given or provided on the date of facsimile transmission or mailing:

IBM: John J. Altavilla
IBM Corporation
2455 South Road
MS-P101
Poughkeepsie, NY 12601
Phone: (845) 433-6786
Fax: (845) 432-3021

With a copy to:
IBM Corporation
2070 Route 52
Internal Zip 483/Building 300
Hopewell Junction, NY 12533
Phone: (845) 892-5230
Fax: (845) 892-5358
Attention: Counsel
Microelectronics Division

LICENSEE:
Contact Name:
Company Name:
Company Address:
Phone:
FAX:
Email:

9.2 A Party hereto may change its address for the purposes of this Section 8 by giving prompt written notice of such change of address to the other Party in the manner herein provided.

SECTION 10 - MISCELLANEOUS

10.1 Except as set forth in Section 3 of this Agreement, nothing contained in this Agreement shall be construed as conferring any right to use in advertising, publicity or other promotional

activities any name, trade name, trademark or other designation of any Party hereto (including any contraction, abbreviation or simulation of any of the foregoing).

10.2 Each Party hereto agrees that the other Party may disclose to others the existence of this Agreement.

10.3 Neither this Agreement nor any activities hereunder will impair any right of IBM or LICENSEE to design, develop, manufacture, market, service or otherwise deal in, directly or indirectly, any products or services. Nothing herein requires either Party to develop any particular product or to continue to market or to refrain from continuing to market any particular product(s). Each Party is free, in its sole discretion, to make its own decisions with respect to the development or discontinuation of the products it develops and the manner in which it markets its products and services. Each Party may pursue activities independently with any third party even if similar to the activities under this Agreement.

10.4 Each Party to this Agreement is an independent contractor and is not an agent of the other Party for any purpose whatsoever. Neither Party will make any warranties or representations on the other Party's behalf, and it will not assume or create any obligation on the other Party's behalf.

10.5 LICENSEE shall not assign its rights or delegate or subcontract its obligations under this Agreement without prior written permission from IBM.

10.6 LICENSEE will comply with all applicable federal, state and local laws, regulations and ordinances of the U.S. Government including, but not limited to, the regulations of the U.S. Government authorities relating to the export of commodities and technical data insofar as they relate to activities under this Agreement. LICENSEE agrees that products, design information, test results and any other technical data provided under this Agreement may be subject to restrictions under the export control laws and regulations of the United States of America, including but not limited to the U.S. Export Administration Act and the U.S. Export Administration Regulations. LICENSEE shall not export any product, design information or other technical data without appropriate government documents and approvals.

10.7 This Agreement will not be binding upon the Parties until the Effective Date. This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter hereof and shall supersede all previous communications, representations, understandings and agreements, whether oral or written, between the Parties or any officer or representative thereof with respect to the subject matter of this Agreement. No amendment or modification of this Agreement shall be valid or binding upon the Parties unless made in writing and signed on behalf of each Party by their respective representatives thereunto duly authorized. The requirement of written form may only be waived in writing.

10.8 Any waiver by either Party of any breach of, or failure to enforce at any time, any of the provisions of this Agreement, shall not be construed as or constitute a continuing waiver of such provision, or a waiver of any other provision of this Agreement, nor shall it in any way affect the validity of this Agreement or any part thereof, or the right of either Party thereafter to enforce each and every provision of this Agreement.

Agreement No.: _____

10.9 If any provision of this Agreement is found by competent authority to be invalid, illegal or unenforceable in any respect for any reason, the availability, legality and enforceability of any such provision in every other respect and the remainder of this Agreement shall continue in effect so long as it still expresses the intent of the Parties. If it no longer expresses the intent of the Parties, the Parties will negotiate a satisfactory alternative to such provision; if, after reasonable efforts, such alternative cannot be found, this Agreement shall either be renegotiated or terminated.

10.10 Either Party hereto shall be excused from the fulfillment of any obligation under this Agreement for so long as and to the extent such fulfillment may be hindered or prevented by any circumstance of force majeure, such as, but not limited to, acts of God, war whether declared or not, riot, lockout, fire, shortages of materials or transportation, power failures, national or local government regulations, or any other circumstances outside its control.

SECTION 11 - GOVERNING LAW AND JURISDICTION

This Agreement shall be construed, and the legal relations created herein between the Parties shall be determined, in accordance with the laws of the United States of America and, specifically, the State of New York, as if said Agreement were executed in, and to be fully performed within, the State of New York. Any proceeding to enforce or to resolve disputes relating to this Agreement shall be brought before a court of competent jurisdiction in the State of New York, including a Federal District Court, sitting within such State. In any such proceeding, neither Party shall assert that such a court lack jurisdiction over it or the subject matter of the proceeding. The Parties hereby expressly waive any right to a jury trial and agree that any proceeding hereunder shall be tried by a judge without a jury.

Attachment 1
Technology Delivery Schedule

CoreConnect Bus Structures include the following deliverables:

- PLB 128-bit Arbiter Verilog RTL net list
- PLB-OPB 128-bit Bridge Verilog RTL net list
- OPB-PLB 128-bit Bridge Verilog RTL net list
- PLB 64-bit Arbiter Verilog RTL net list
- PLB-OPB 64-bit Bridge Verilog RTL net list
- OPB-PLB 64-bit Bridge Verilog RTL net list
- PLB 32-bit Arbiter Verilog RTL net list
- OPB 32-bit Arbiter Verilog RTL net list
- PLB-OLB 32-bit Bridge Verilog RTL net list
- PLB bus tool kit, includes models & monitor
- OPB bus tool kit, includes models & monitor
- DCR bus tool kit, includes models & monitor
- CoreConnect Test Generator (CTG)
- Documentation
- REGS

Attachment 2**IBM patents and patent applications included in Licensed Patent Claims**

<u>Patent / Application Number</u>	<u>Issue Date</u>	<u>File Date</u>
5,862,353	01/19/1999	03/25/1997
5,884,051	03/16/1999	06/13/1997
5,925,118	07/20/1999	10/11/1996
5,926,831	07/20/1999	10/11/1996
6,032,238	02/29/2000	02/06/1998
6,047,336	04/04/2000	03/16/1998
6/052,745	04/18/2000	06/12/1998
6,055,584	04/25/2000	11/20/1997
6,081,860	06/27/2000	11/20/1997
U.S. Ser. No. 08/975,544		11/20/1997
U.S. Ser. No. 09/058,724		04/10/1998
U.S. Ser. No. 09/304,939		05/04/1999
U.S. Ser. No. 09/574,101		05/18/2000
U.S. Ser. No. 09/606,463		06/29/2000
U.S. Ser. No. 09/638,268		08/14/2000
U.S. Ser. No. 09/855,831		05/15/2001