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**DESIGN KIT LICENSE AGREEMENT FOR**

**IMEC SILICON PHOTONICS TECHNOLOGIES**

THIS DESIGN KIT LICENSE AGREEMENT is made and entered into by and between:

**IMEC (Interuniversitair Micro-Electronica Centrum) vzw**

Register of Legal Entities Leuven VAT BE 0425.260.668

With its registered office at Kapeldreef 75, 3001 Leuven, Belgium

Hereby duly represented

Hereinafter referred to as “**IMEC**”

and

**Licensee** as named in Exhibit 2

With its registered office detailed in Exhibit 2

Hereby duly represented

Hereinafter referred to as the “**Licensee**”

IMEC and Licensee are hereinafter also referred to individually as a “Party” and collectively as the “Parties."

1. WHEREAS, IMEC offers services in IMEC Silicon Photonics technologies;
2. WHEREAS, Licensee desires to get access to IMEC’s PDK(s) for the Purpose, as defined herein;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, together with other good and valuable consideration, the receipt and sufficiency of which IMEC and Licensee acknowledge, the Parties hereto agree as follows:

**Article 1: DEFINITIONS**

* 1. “**Affiliate**” means any legal entity, which is
1. Controlling a Party, or
2. Under the same Control as a Party or,
3. Controlled by a Party.

A legal entity shall be deemed to be an Affiliate only as long as the Control last.

“**Control**” or “**Controlled**” or “**Controlling**” shall exist through the direct or indirect power to exercise a decisive influence on the appointment of the majority of the directors or managers, who have a decisive vote.

“**Change of Control**” means:

(a) a change of Control over a Party;

(b) a sale, lease, exclusive license or other similar transfer of all or substantially all of a Party’s assets.

All Licensee’s Affiliates relevant for this Agreement are limited to the entities listed in Exhibit 2. Licensee shall inform IMEC without delay in case of a Change of Control over any of its Affiliates, in which case IMEC can decide to remove the Affiliate(s) concerned from the list.

* 1. “**Agreement**” or “**DKLA**” means the present license agreement related to a specific process design kit (PDK(s)) between IMEC and Licensee, as defined below and more specifically in the Exhibit 1.
	2. “**Confidential Information**” means (a) information of IMEC that is not publicly or generally known and that shall, if in written or other tangible form, be marked or designated by IMEC as confidential, sensitive or other similar legend; (b) information, if in oral form or visual form, identified as confidential at the time of disclosure. Confidential Information includes but is not limited to: Technical Data and instantiations thereof, inventions, discoveries, improvements and enhancements (including Derivative Works and Updates), ideas, concepts, designs, drawings, specifications, techniques, models, data, programs, software, source code, object code, documentation, sample products, processes, Know-How, and technical information, including all media carriers containing such information. For the avoidance of doubt, enhancements and improvements to the PDK(s) is Confidential Information belonging to IMEC.
	3. “**Effective Date**” means the date of signature of the last signing Party.
	4. “**Exhibit**” means the following exhibits, which form an integral part of this Agreement:
* Exhibit 1: Technical Annex: Definition and Description of the PDK(s).
* Exhibit 2: Licensee: Contact Details and Affiliate(s).
	1. “**Derivative Works**” mean any revision, enhancement, modification, translation, abridgment, compression, or expansion of copyright protected works, such as but not limited to designs, drawings (incl. technical), layouts (incl. GDS-IIs), manuals, databases, and software.
	2. “**Intellectual Property Rights**” or “**IPR**” means any and all intellectual property rights, whether registered or not, including any applications therefore, such as, without limitation, patents (including but not limited to: divisionals, continuations and re-issuances), copyrights, database rights, design rights, semiconductor products, topographies, industrial designs, utility models and other similar or equivalent forms of protection, recognized under any applicable law in any country worldwide.
	3. “**Know-How**” means the recipes, processes, expertise, practice and experience, factual and technical knowledge.
	4. “**PDK(s)**” means a certain instantiation of Technical Data, as specified in the Exhibit 1 to the corresponding “**IMEC Silicon Photonics Platform**”. The PDK(s) may be provided by IMEC through FTP transfer, by e-mail, via cloud, via CD-Rom or usb-stick, in writing or by other means as the case may require.
	5. “**Personnel**” means employees, consultants, advisors, subcontractors, (PhD) students and postdocs within a Party’s organization, and those within a Party’s Affiliates’ organization.
	6. “**Purpose**”means to design or have designed (under the conditions and limitations as stated below) photonic integrated circuits in IMEC’s Silicon Photonics Platform to be subsequently processed at IMEC or an IMEC selected foundry.
	7. “**Technical Data**” means IMEC’s data concerning IMEC’s Silicon Photonics technologies, which may include design rules, design manuals, documentation, device libraries, schematic process flow, and/or setup files.
	8. “**Updates**” means any updates, enhancements and/or improvements to the PDK(s) which IMEC may provide hereunder at its sole discretion, for the Purpose and during the term of this DKLA. Any Updates delivered to Licensee, form an integral part of the PDK(s).

**Article 2: LICENSE – SCOPE**

2.1 IMEC hereby grants to Licensee and its listed Affiliates (which, for the sake of convenience shall be herein referred to collectively as “Licensee” unless indicated otherwise in this Agreement) a free of charge, non‑exclusive, non‑transferable license, without the right to grant sublicenses, to use the PDK(s) and its Updates (if any), solely for the Purpose. The grant of this license is subject to the following conditions:

1. in the event Licensee decides to have any photonic integrated circuits, based on or containing the PDK(s), manufactured for any purpose whatsoever, such photonic integrated circuits shall be manufactured exclusively at IMEC or an IMEC selected foundry in accordance with IMEC’s specific terms and conditions, unless otherwise agreed by the Parties in writing.
2. **Licensee will not permit any third party,** except to the limited extent expressly permitted and restricted in this Agreement, **to have access to any part of the PDK(s) or to use any part of the PDK(s)** to design any building blocks, devices or photonic integrated circuit(s).

2.2 Licensee understands and acknowledges that IMEC does not provide EDA (Electronic Design Automation) tools and/or licenses to any third-party software. Licensee understands and assumes the risk that any modifications to the PDK not performed by IMEC or provided at the direction of IMEC, may result in photonic integrated circuit designs which are incompatible with IMEC’s manufacturing process(es).

2.3 Licensee agrees that the PDK(s) shall be used only and in compliance with the limited extent expressly permitted in this DKLA and the PDK(s) will be stored in a secure manner, e.g. on the computer system(s) located at the facilities of Licensee or on cloud-based compute/storage resources of data service providers of Licensee provided that such cloud-based services are sufficiently protected according to state-of-the-art industry practices and the PDK(s) stored on such systems is only accessible by the Licensee.

**Article 3: DELIVERY OF PDK**

In response to and within thirty (30) days after Licensee's request(s), IMEC shall provide to Licensee one (1) copy of such item(s) of the PDK(s) as ha(s/ve) been requested by Licensee. All copies of Licensee’s requested items and such items itself, form an integral part of the PDK(s).

**Article 4: REPRODUCTION AND CONFIDENTIALITY**

4.1 Except to the limited extent expressly permitted and restricted herein, Licensee shall not copy the PDK(s). Licensee may copy the PDK(s), if necessary (and subject to the requirements and restrictions of Article 4.3 below), for Licensee's Purpose, provided that: (a) each such copy is kept in the possession of Licensee at all times; and (b) Licensee keep records available to IMEC of the location of each such copy.

4.2 Licensee shall receive and hold the PDK(s) and the Confidential Information (regardless of the form in which any such PDK(s) or Confidential Information is received, held and/or incorporated into other data) in strict confidence, exercising reasonable precautions and undertaking all necessary measures within its ability to prevent the unauthorized disclosure of the same to others in violation of this Agreement.

4.3 Licensee agrees not to provide, disclose or otherwise make available (any part of) the PDK(s) or Confidential Information, in any form, to any person other than Licensee's Personnel who has a need to know for the performance of this Agreement.

Licensee agrees that it will take appropriate action, by instruction, agreement or otherwise with its Personnel to track, safeguard and guarantee permitted access to the PDK(s) and Confidential Information to comply with its obligations under this Agreement, with respect to use, reproduction, protection, security and confidentiality of the PDK(s) and Confidential Information. Licensee also agrees that those appropriate actions or measurements contain confidentiality and use provisions no less restrictive than this Agreement. All Confidential Information and the PDK(s) shall be treated by Licensee with the same degree of care, but at least with a reasonable degree of care, to avoid disclosure to any third party as is used with respect to Licensee’s own information of like importance which is to be kept secret.

4.4 Licensee agrees that it shall not reverse-assemble, reverse-compile or otherwise reverse-engineer the PDK(s) and the Confidential Information in whole or in part, nor authorize any other person or entity to do so. The original and any whole or partial reproduction of the PDK(s) (including Updates and any Derivative Works) and the Confidential Information, regardless of whether merged into other design information or program material, shall be and remain the exclusive property of IMEC. With respect to the PDK(s) and the Confidential Information, Licensee agrees that it shall not take any action or enter into any agreement in derogation of the ownership rights of IMEC or any third party from whom IMEC has acquired license rights. Licensee may not remove, obscure or alter copyright notices, patent notices, trademarks, or other IPR notices affixed to or contained in the PDK. Nothing contained in this Agreement shall be construed as conferring any right upon Licensee (or upon any other person or entity), by implication, estoppel or otherwise, other than the right to use the PDK(s) and Confidential Information as expressly permitted and restricted by this Agreement.

4.5 If Licensee’s Personnel breaches or threaten to breach this Agreement, or attempt to reverse-assemble, reverse-compile, reverse engineer, use, copy, transfer or disclose the PDK(s) and the Confidential Information in any manner contrary to the provisions of this Agreement, or in any manner in derogation of IMEC's proprietary rights, IMEC may, subject to Article 8, immediately terminate this Agreement upon written notice and, in addition to any other remedies IMEC may have at law or in equity, will be entitled to immediate injunctive relief enjoining such action. Licensee specifically acknowledges that money damages alone would be an inadequate remedy.

4.6 The foregoing obligations in this Article shall not apply with respect to any information that (i) is or becomes (through no breach of this Agreement by the Licensee) generally available to the public, or (ii) was in Licensee’s possession or known by it without restriction prior to receipt from IMEC, or (iii) was rightfully disclosed to Licensee by a third party without restriction, or (iv) was or is subsequently independently developed by or for Licensee without use of (any part of) the PDK(s) or the Confidential Information. Licensee may make disclosures required by law or court order provided that Licensee, (i) if possible under the circumstances, notifies IMEC in advance of such disclosure or within a reasonable time frame thereafter and (ii) uses diligent reasonable efforts to limit disclosure and to obtain confidential treatment or a protective order and allows IMEC to participate in the proceeding.

4.7 The confidentiality and restricted use obligations set forth in this Article 4 shall survive termination or expiration of this Agreement unless one or more of the exceptions provided in Article 4.6 applies.

4.8 Nonetheless, it is acknowledged that Licensee may, but is not required to, provide suggestions, comments, ideas, or Know‐How to IMEC relating to the PDK(s) and/or Confidential Information (“**Feedback**”), and any such Feedback may be used by IMEC for any purpose which might lead to Updates.

**Article 5: DISCLAIMER OF WARRANTY**

5.1 IMEC DISCLAIMS ALL WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, WITH REGARD TO THE PDK(S) AND OTHER CONFIDENTIAL INFORMATION (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL WARRANTIES OF FREEDOM FROM CLAIMS OF INTELLECTUAL PROPERTY RIGHTS OR THE LIKE). THE PDK(S) OR OTHER CONFIDENTIAL INFORMATION PROVIDED HEREUNDER IS SUPPLIED "AS IS". THE ENTIRE RISK TO THE QUALITY AND PERFORMANCE OF THE PDK(S) AND OTHER CONFIDENTIAL INFORMATION IS WITH THE LICENSEE.

5.2 IMEC DOES NOT WARRANT THAT THE DESIGNS OR FUNCTIONS CONTAINED IN ANY PDK(S) WILL MEET LICENSEE’S REQUIREMENTS OR THAT THE OPERATION OF THE PDK(S) WILL BE CORRECT.

**Article 6: LIABILITY**

Except in case of willful misconduct, or fraud, IMEC shall not be liable for any damages, in connection with or arising directly or indirectly out of the furnishing, performance, use of the PDK(s) or other Confidential Information, and/or rendering technical or other advice in connection with the PDK(s), including but not limited to loss of profits, loss of data, loss of goodwill or interruption of business. Licensee shall be liable for any and all damages, arising out of Licensee’s (and/or any of its Personnel) breach of the provisions set forth in this Agreement or arising out of Licensee’s (and/or any of its Personnel) negligent or willful act or omission with regard to its obligations under this Agreement.

**Article 7: TERM**

This Agreement and the license granted herein shall commence and be effective as of the Effective Date and shall continue in full force and effect for a period of one (1) year which after expiration of such period will be automatically renewed with successive one (1) year periods unless a Party terminates the Agreement with a sixty (60) calendar days’ prior written notice to the other Party before expiration of the anniversary of the current one-year term.

**Article 8: TERMINATION**

8.1 IMEC shall have the right to terminate this Agreement at any time upon written notice to Licensee for Licensee's material breach of this Agreement, and specifically under Article 4.5 of this Agreement. The Agreement is considered to be terminated as of ten (10) calendar days following the date of the termination notice.

8.2 In the event of Change of Control, (i) Licensee shall promptly notify IMEC in writing of the facts and circumstances surrounding such event, and (ii) IMEC shall have the right to terminate this Agreement during a ninety (90) calendar day period thereafter, upon written notice of termination to Licensee, in the event IMEC has reasonable grounds thereto. The Agreement is considered to be terminated as of ten (10) calendar days following the date of the termination notice.

8.3 Each Party has the right to terminate this Agreement at any time without cause upon a sixty (60) calendar days’ written notice to the other Party. Only in that event, Licensee’s rights granted for the Purpose (to design integrated circuits using or incorporating the PDK(s)), shall survive the termination of this Agreement, only and exclusively limited to those integrated circuits designed prior to termination of the Agreement.

8.4 Upon termination of this Agreement, Licensee shall return to IMEC, or, at IMEC' sole discretion, destroy, the originals of the PDK(s) and all reproductions (including partial reproductions, copies, Updates and Derivative Works thereof, in any form.

8.5 The articles intending to survive the termination or expiration of the Agreement remain in force after its termination or expiration. These articles relate to confidentiality, warranties, liabilities and governing law.

**Article 9: LIMITATION OF RIGHTS AND TITLE**

Nothing contained in this Agreement shall be construed as conferring any right upon Licensee, by implication, estoppel or otherwise, other than the rights expressly granted by this Agreement. No title to or ownership of Intellectual Property Rights or Know-How, the PDK(s) or any Updates are transferred to Licensee or any third party by this Agreement or the license granted hereby. However, configured, IMEC’s Intellectual Property Rights and Know-How, the PDK(s) and any Updates provided by IMEC are and shall remain the exclusive property of IMEC. With respect to the PDK(s), Licensee agrees that it shall take no action nor enter into any agreement in derogation of the ownership rights of IMEC and/or its licensor or any third party from whom IMEC and/or its licensor has acquired license rights.

**Article 10: EXPORT REGULATIONS**

10.1 Licensee assures that it will not use any item including Technical Information, PDK(s) or Update (herein referred to as “Item”) received under this Agreement in (a) design, development, production, stockpiling or use of weapons of mass destruction, such as nuclear, chemical or biological weapons nor for any missiles or UAV that are capable of delivering such weapons; (b) military end-use in a country under arms embargo; or (c) threats to public security, including the prevention of acts of terrorism, cyber-surveillance activities and/or human rights violation.

10.2 Licensee agrees to comply with all applicable export control laws and regulations. Licensee assures that it will not directly or indirectly export any Item to any destination, person or entity or for any end use prohibited or restricted under such export control regulations, without obtaining prior authorization from the applicable government authorities to the extent required by those laws and regulations.

10.3 Under this Agreement, no export-controlled Items will be provided. Therefore, no export control licenses nor license exceptions are required for the export the Item.

10.4 (a) Licensee shall not sell, export or re-export, directly or indirectly, to the Russian Federation and/or Belarus or for use in the Russian Federation and/or in Belarus any items supplied under or in connection with this Agreement that fall under the scope of Article 12g of Council Regulation (EU) No 833/2014 and/or Article 8g of Regulation (EC) No 765/2006.

(b) Any violation of paragraph (a) shall constitute a material breach of this Agreement (per article 8.1), and IMEC shall be entitled to seek appropriate remedies, including, but not limited to termination of this Agreement.

(c) Licensee shall immediately inform IMEC about any problems in applying paragraph (a).  Licensee shall make available to IMEC all information concerning compliance with the obligations under paragraph (a) within two (2) weeks of the simple request of such information.

**Article 11: GOVERNING LAW AND DISPUTE SETTLEMENT**

11.1 This Agreement shall be governed by and construed in accordance with the laws of Belgium; no effect shall be given to any national or international conflict-of-law provisions.

11.2 All disputes between the Parties in connection to this Agreement shall first be discussed in good faith between the Parties in order to try to find an amicable solution. If no solution can be found to settle the dispute within forty-five (45) days after giving notice to the defaulting Party, then the dispute will be submitted to the competent courts of Leuven, Belgium.

**Article 12: MISCELLANEOUS**

12.1 **Prevalence.** Unless otherwise expressly agreed upon in this Agreement, the terms of this Agreement shall supersede without exception. In case the terms of this Agreement conflict with the terms of any present or future request from Licensee concerning the PDK(s) hereunder (including other DKLA’s), the terms of this Agreement shall prevail. Licensee agrees that its acceptance of delivery of any PDK(s) from IMEC is conclusive evidence of Licensee's agreement that the license for such PDK(s) is governed exclusively by the terms of this Agreement. More specifically, in case of conflict between an Exhibit and the terms and conditions of any other document or agreement, except for this Agreement, the Exhibit shall prevail.

12.2 **Necessary powers**. Each Party warrants and represents that it possesses all necessary powers and rights to comply with the obligations set forth in this Agreement.

12.3 **Entire agreement.** This Agreement represents the entire understanding and agreement between the Parties with respect to the subject matter hereof, and supersedes all prior communications, agreements and understandings relating to it.

12.4 **Modification.** The provisions of this Agreement may not be modified, amended, nor waived, except by a written instrument duly executed by both Parties.

12.5 **Assignment.** This Agreement may not be assigned by Licensee without the prior written consent of IMEC.

12.6 **Severability.** The partial or complete invalidity of any of the clauses or provisions set out by this Agreement will not result in the invalidity of the Agreement itself. Any partially or completely invalid clause or provision set out by this Agreement will automatically be substituted by a valid clause or provision concurring with the original intention of the Parties.

12.7 **Captions.** The captions appearing in this Agreement are inserted only as a matter of convenience and as a reference, and in no way define, limit or describe the scope or intent of the Agreement or any of the provisions hereof.

12.8 **English language version.** The exclusive official and binding version of this Agreement shall be in the English language, irrespective of any language into which it may be translated by either Party.

12.9 **Execution.** The signature of Licensee via the transmission of a scanned or digitized image of a handwritten signature (e.g. scan in PDF format) or an electronic signature (e.g. via DocuSign), shall have the same force and effect as an original handwritten signature for the purposes of validity, enforceability and admissibility.  IMEC receives a fully executed copy of the Agreement.  Delivery of the fully executed copy via e-mail by electronic image transmission or via an electronic signature system shall have the same force and effect as delivery of an original hard copy.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives.

**For Interuniversitair Micro-Electronica For Licensee:**

**Centrum vzw:**

(Signature) (Signature)

Name: Name:

Title: Title:

Date: Date:

**EXHIBIT 1**

1. **Definition and description of the PDK**

The PDK provided by IMEC to Licensee concerning IMEC’s SILICON PHOTONICS includes the following:

1. Process Design Kit name:

IMEC’s Silicon Photonics ISIPP50G Process Design Kit (“PDK”)

1. IMEC SILICON PHOTONICS Platform:

IMEC’s Silicon Photonics ISIPP50G technology

1. Description:

The IMEC’s Silicon Photonics Platform consists of predefined fixed process modules. The process modules in ISIPP50G are intended to be useful for prototyping and manufacturing of devices for a wide range of applications, but with a focus on communication devices. The process is fixed and cannot be altered by the customer, except for a number of options that are clearly described. The process described is applicable to every design submitted to IMEC. The process details are the intellectual property of IMEC and are not shared with the customer.

1. Contents:
* Handbook
* Device libraries
* Design samples
* DRC files
* List of design layers
* Design and simulation setup files
1. **Applicable terms and conditions to Updates**

During the Term of the corresponding DKLA to the PDK defined and described under Section A of the Exhibit 1, Updates might be provided by IMEC according to the provisions set forth in that DKLA.

Irrespective of the form in which the Updates are provided and irrespective of the means by which the Updates are delivered to Licensee by IMEC, the description and contents of any Update, will prevail over those defined under Section A of the Exhibit 1 of the DKLA.

Following the above, all Updates are considered to be an integral part of the PDK and as such a license subject of the DKLA. Therefore, Updates are governed by and subject to the same terms and provisions of the fully executed DKLA to the initial PDK defined under Section A of its Exhibit 1.

All Technical Data contained in any Update(s) are IMEC’s Confidential Information.

**EXHIBIT 2**

[to be filled in by the Licensee]

Licensee:  [please fill in your company name and organization form]

With registered office at  [please fill in your official address details, including zip-code and country]

Department: [please fill in your department name]

EUROPRACTICE membership number (if known): [please fill in your EUROPRACTICE membership number]

Licensee’s Affiliates: [please add the limited list of Affiliates (including address) that need to have a sublicense, or indicate ***‘NONE’***)

the definition of Affiliates can be found in paragraph 1.1 of this DKLA]

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**Details of technical contact person to whom the PDK and Updates should be sent(only for permanent staff members, no student/generic/private accounts allowed)** [please fill in the following details]

**First name:**

**Family name:**

**Title:**

**E-mail:**

**Tel:**