**DESIGN KIT LICENSE AGREEMENT
For**

**IMEC SILICON NITRIDE 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 Annex 2

With its registered office detailed in Annex 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 NITRIDE PHOTONICS technologies**;
2. WHEREAS Licensee desires to get access to IMEC’s PDK 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. **“Affiliates”** mean any legal entity, which is
1. Controlling a Party, or
2. under the same Control as a Party, or
3. Controlled by a Party.

Control as referred to in sub items (i), (ii) and (iii) above shall exist through the:

1. direct or indirect ownership of more than 50% of the nominal value of the issued equity share capital or of more than 50% of the shares entitling the holders to vote for the election of directors or persons performing similar functions, or
2. direct or indirect right by any other means to elect or appoint directors, or persons performing similar functions, who have majority vote.

A legal entity shall be deemed to be an Affiliate only as long as the above defined ownership or control last.

Taking into account the abovementioned conditions, the Affiliates for Licensee are limited to the Affiliates listed in Annex 2.

* 1. “**Agreement**” or “**DKLA**” means the present license agreement related to a specific process design kit (PDK) between IMEC and Licensee, as defined below and more specifically in the Annex 1.
	2. “**Annex**” means the following exhibits, which form an integral part of this Agreement:
* Annex 1: Technical Annex
* Annex 2: Contact details of Licensee and List of Affiliates for Licensee when applicable.
	1. “**Confidential Information**” means (a) confidential information of a Party that shall, if in written or other tangible form, be marked or designated by disclosing Party as confidential; (b) disclosed in intangible form such as electronically, orally or by visual inspection, identified as confidential at the time of disclosure and summarized in writing by the Disclosing Party within thirty (30) days of disclosure. Confidential Information includes but is not limited to: Technical Data and instantiations thereof, inventions, discoveries, improvements, ideas, concepts, trade secrets, designs, drawings, specifications, techniques, models, data, programs, software, source code, object code, documentation, sample products, processes, Know-How, customer lists, marketing plans, financial and technical information, including all media carriers containing such information.
	2. **“Effective Date**” means the date of signature of the last signing Party.
	3. “**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.
	4. “**Know-How**” means the recipes, processes, expertise, practice and experience, factual and technical knowledge.
	5. **“PDK**” means a certain instantiation of Technical Data, as specified in the Annex 1 and licensed by IMEC to Licensee, to design into the corresponding “**IMEC SILICON NITRIDE PHOTONICS Platform**”, as defined in the Annex 1 hereto. The PDK may be provided by IMEC through FTP transfer, by e-mail, via a CD-Rom or usb-stick, in writing or by other means as the case may require.
	6. **“Purpose”** means to design or have designed (under the conditions and limitations as stated below) photonic integrated circuits in IMEC’s SILICON NITRIDE PHOTONICS Platform to be subsequently processed at IMEC.
	7. “**Technical Data**” means IMEC’s data concerning IMEC’s IMEC SILICON NITRIDE PHOTONICS technologies, which may include design rules, design manuals, documentation, device libraries or setup files.
	8. “**Updates**” means any updates, enhancements and/or improvements to the PDK, which IMEC may provide hereunder at its sole discretion, for the Purpose and during the term of this Agreement. Any Updates delivered to Licensee, form an integral part of the PDK.

**Article 2: LICENSE – SCOPE**

2.1 IMEC hereby grants to Licensee a free of charge, non‑exclusive, non‑transferable license, with the right to grant sublicenses to its Affiliates (no other sublicensing rights are granted), to use the PDK 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 integrated circuits, based on or containing the PDK, manufactured for any purpose whatsoever, such integrated circuits shall be manufactured exclusively at IMEC 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 or to use any part of the PDK to design any integrated circuit.

2.2 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 circuit designs which are incompatible with IMEC’s manufacturing process(es).

2.3. Licensee agrees that the PDK shall be used only and in compliance with the limited extent expressly permitted in this Agreement, on the computer system(s) located at the facilities of Licensee or at the facilities of its Affiliates 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 stored on such systems is only accessible by the Licensee.

**Article 3: DELIVERY OF PDK – RISK OF LOSS OR DAMAGE**

3.1 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 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.

3.2 Risk of loss of or damage to (a part of) the PDK, shall pass to Licensee upon Licensee's confirmation of receipt of the PDK, and any loss of or damage to (a part of) the PDK thereafter, shall not relieve Licensee from any obligation hereunder. In the event of such loss or damage, IMEC agrees to replace the affected PDK for a reasonable reproduction charge.

**Article 4: REPRODUCTION AND CONFIDENTIALITY**

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

4.2 Licensee shall receive and hold the PDK and the Confidential Information (regardless of the form in which any such PDK 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 or Confidential Information, in any form, to any person other than Licensee's and its Affiliates’ employees, consultants and PhD students, who have 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 and its Affiliates’ employees, consultants and PhD students, to track, safeguard and guarantee permitted access to the PDK and Confidential Information to comply with its obligations under this Agreement, with respect to use, reproduction, protection, security and confidentiality of the PDK and Confidential Information. Licensee also agrees that those appropriate action or measurements contain confidentiality and use provisions no less restrictive than this Agreement. All Confidential Information and the PDK 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 and 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 (including Updates) and 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 and 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. 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 and Confidential Information as expressly permitted and restricted by this Agreement.

4.5 If Licensee (and/or any of its or its Affiliates’ employees, consultants or PhD students) should breach or threaten to breach this Agreement, or attempt to reverse-assemble, reverse-compile, reverse‑engineer, use, copy, transfer or disclose the PDK and 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 independently developed by or for Licensee without use of (any part of) the PDK 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 for a period of five (5) years as from date of termination or expiration. The confidentiality and restricted use obligations set forth in this Agreement do not prevent Licensee from sharing the PDK, Technical Data and Confidential Information with its Affiliates for the Purpose provided that (i) they are bound by the same confidentiality obligations as set forth in this Article; and (ii) Licensee shall remain responsible for compliance with this Agreement by their Affiliates.

**Article 5: DISCLAIMER OF WARRANTY**

5.1 IMEC DISCLAIMS ALL WARRANTIES, STATUTORY, EXPRESS OR IMPLIED, WITH REGARD TO THE PDK 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 OR OTHER CONFIDENTIAL INFORMATION PROVIDED HEREUNDER IS SUPPLIED "AS IS". THE ENTIRE RISK TO THE QUALITY AND PERFORMANCE OF THE PDK AND OTHER CONFIDENTIAL INFORMATION IS WITH THE LICENSEE.

5.2 IMEC does not warrant that the designs or functions contained in any PDK will meet Licensee’s requirements or that the operation of the PDK 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 and/or use of the PDK or other Confidential Information, including but not limited to loss of profits, loss of data, loss of goodwill or interruption of business. No obligation or liability shall arise or flow out of IMEC rendering technical or other advice in connection with the PDK. Licensee shall be liable for any and all damages, arising out of Licensee’s (and/or any of its employee or anyone of its consultants or PhD students, employees, consultants or PhD students of its Affiliates) breach of the provisions set forth in this Agreement or arising out of Licensee’s (and/or any of its employees, consultants, PhD students or anyone of its Affiliates’ employees, consultants or PhD students) negligent or willful act or omission with regard to its obligations under this Agreement. Licensee further agrees that IMEC will not be liable for any claim or demand against Licensee by any third party arising from the furnishing, performance and/or use of the PDK or other Confidential Information.

**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 according to the provisions as stipulated under Article 8.

**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 or its Affiliates’ 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 an acquisition or similar change, causing the direct or indirect taking over or assumption of control of Licensee by any third party, (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 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 Both Parties have the right to terminate this Agreement at any time without cause upon a 30 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), shall survive the termination of this Agreement, only and exclusively limited to those integrated circuits designed prior to termination of the Agreement.

8.4 Within ten (10) calendar days after the termination of this Agreement, Licensee shall return to IMEC, or, at IMEC' sole discretion, destroy, the originals of the PDK and all reproductions, copies, Updates and modifications thereof, in any form, including partial reproductions of the PDK or its Updates.

**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 or Know-How, the PDK 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 and Know-How, the PDK and any Updates provided by IMEC are and shall remain the exclusive property of IMEC. With respect to the PDK, 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**

 Licensee shall be responsible for compliance with all applicable export control laws, rules and regulations. In particular, Licensee shall comply with the Regulations (EU) No. 2021/821 setting up the Community regime for the control of export of dual use items and technology (as may be amended from time to time). Licensee agrees to take all appropriate measures to comply with all applicable export control regulations, including without limitation, obtaining necessary export or re-export licenses. Licensee further certifies that the disclosed Technical Information, PDK or Updates are not intended for and shall not be used in the design, development, production, stockpiling or use of weapons of mass destruction, such as nuclear, chemical or biological weapons or missiles, nor for any use supporting these weapon activities. Licensee has acknowledged that the Technical Information, PDK or Updates may not made available to anyone listed as the denied/designated restricted parties or locations prohibited by any other applicable law. In the event of failure to comply with the above, Licensee shall keep IMEC fully harmless from all damages arising out of or in connection with any violation.

**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 hereunder (including other DKLA’s), the terms of this Agreement shall prevail. Licensee agrees that its acceptance of delivery of any PDK from IMEC is conclusive evidence of Licensee's agreement that the license for such PDK is governed exclusively by the terms of this Agreement. More specifically, in case of conflict between an Annex and the terms and conditions of any other document or agreement, except for this Agreement, the Annex 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.

|  |  |
| --- | --- |
| **IMEC**Name: Steve Beckers Title: Vice PresidentDate:  | **Licensee**Name:      Title:       Date:       |

**Please sign and return in PDF format to**

**mpc@imec.be**

**ANNEX 1**

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

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

1. Process Design Kit name:

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

1. IMEC IMEC SILICON NITRIDE PHOTONICS Platform:

IMEC’s Silicon Nitride Photonics BIOPIX technology

1. Description:

The IMEC’s silicon nitride photonics platform consists of predefined fixed process modules. The process modules in BIOPIX are intended to be useful for prototyping and manufacturing of devices for a wide range of applications in visible light and near infra-red spectrum. 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:
* Technology and Layout Handbook
* Device Libraries
* DRC files
* 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 Annex 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 Annex 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 Annex 1.

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

**ANNEX 2**

[to be filled in by the Licensee]

Licensee:  [please fill in your company/institute 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;

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:**