

**UNIVERSITY OF SOUTHERN CALIFORNIA
INFORMATION SCIENCES INSTITUTE**

MOSIS Customer Agreement

This Agreement is made this ____ day of _____, 20__ by and between the UNIVERSITY OF SOUTHERN CALIFORNIA, a California non-profit corporation, acting through its Information Sciences Institute, located at 4676 Admiralty Way, Marina del Rey, California, 90292-6695 (hereinafter referred to as "USC/ISI"), and:

Organization

Department

Street Address

City, State, and Postal (Zip) Code

Country

(hereinafter referred to as "Customer.")

RECITALS

WHEREAS, USC/ISI has developed a computerized system which provides the Customer with integrated circuit fabrication services acquired through third-party vendors (a process hereinafter referred to as "MOSIS"); and,

WHEREAS, MOSIS is a state of the art technology program; and,

WHEREAS, Customer desires to enter into the Agreement with USC/ISI for the provision of such services,

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

1. TERM

Customer shall submit to USC/ISI an order(s) for MOSIS services which shall be subject to written acceptance by USC/ISI and shall only be effective upon such acceptance; such order(s) shall specify the dollar amount limit for services desired by Customer. The standard practice of USC/ISI is to acknowledge acceptance of each order within ten working days by confirming price and shipment date in writing. This order, if accepted by USC/ISI, shall authorize USC/ISI to act as Customer's agent in procuring integrated circuit fabrication services from third-party vendors.

2. SERVICES

- a. USC/ISI shall utilize the MOSIS service to: (1) check that the syntax is correct (but NOT including design validation) and purchase on Customer's behalf wafers, loose die or a set of bonded and packaged integrated circuits (chips) containing the design as submitted by Customer; and (2) purchase on Customer's behalf the fabrication of prototype or small volume quantities of integrated circuits.
- b. Circuits shall either be bonded per Customer instructions or Customer shall be provided with a diagram showing how bonding was done. Individual parts shall be inspected but shall not be tested unless otherwise agreed to in advance, in a separate written instrument signed by both parties.
- c. Each fabrication run shall have passed the vendor's quality assurance and shall have been tested to ensure that it has conformed to MOSIS fabrication requirements. Details are technology specific and are available upon request.
- d. For an additional fee, Customer can request that USC/ISI perform a layout design rule check (DRC). USC/ISI will provide DRC results to Customer and receive approval to proceed prior to fabrication.
- e. With respect to masks purchased or acquired on behalf of Customer by USC/ISI, to the extent any title or ownership of such masks is transferred by the third-party vendor of such masks, such title or ownership shall pass directly to the Customer (and not to USC/ISI) and such masks shall be delivered to the Customer or stored or destroyed by USC/ISI on behalf of such Customer, consistent with this Agreement.

3. RATES

- a. Charges for services provided by MOSIS to Customer shall be set forth in a written quotation or price schedule which upon request will be made available to Customer. The terms of this price schedule, together with any changes or amendments thereto, are fully incorporated into this Agreement by this reference.

- b. The rates set forth in the price schedule are subject to change as USC/ISI in its sole discretion, deems appropriate.
- c. USC/ISI shall notify Customer of any price change fifteen (15) days prior to its effective date. ALL REVISED CHARGES SHALL BE EFFECTIVE WITH NEW PURCHASE ORDERS.

4. WARRANTIES

- a. Customer expressly recognizes that the MOSIS service cannot guarantee Customer generated designs.
- b. Customer warrants that any designs provided by Customer to USC/ISI shall not infringe the intellectual property rights of any third parties.
- c. USC/ISI warrants that the wafers fabricated by vendors selected by ISI on behalf of Customer meet the process specifications as determined by wafer parametric tests performed by USC/ISI.
- d. EXCEPT AS EXPRESSLY SET FORTH HEREIN, USC/ISI EXPRESSLY DISCLAIMS ANY WARRANTY THAT USE OF THE MOSIS SERVICE WILL PROVIDE WORKING OR USABLE PARTS, AND CUSTOMER IS NOT RELYING ON ANY WARRANTY OR ON ANY UNDERSTANDING OR BELIEF THAT THE USE OF THE MOSIS SERVICES WILL PROVIDE WORKING OR USABLE PARTS. USC/ISI EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING THE WARRANTY OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. USC/ISI SHALL NOT BE RESPONSIBLE FOR ANY DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES CUSTOMER OR ANY SUBSIDIARY OR OTHER AFFILIATE OF CUSTOMER MAY SUFFER RELATING TO THE USE OF ANY MOSIS FABRICATION, INCLUDING WITHOUT LIMITATION, THE CONDITION OF THE FABRICATION, ITS MERCHANTABILITY OR ITS FITNESS FOR ANY PARTICULAR PURPOSE. USC/ISI SHALL NOT BE LIABLE FOR, AND CUSTOMER HEREBY ASSUMES THE RISK OF, AND WILL RELEASE AND FOREVER DISCHARGE USC/ISI, ITS AGENTS, OFFICERS AND EMPLOYEES, EITHER IN THEIR INDIVIDUAL CAPACITIES OR BY REASON OF THEIR RELATIONSHIP TO USC/ISI, WITH RESPECT TO ANY EXPENSE, CLAIM, LIABILITY, LOSS, OR DAMAGE (INCLUDING ANY INCIDENTAL OR CONSEQUENTIAL DAMAGE) EITHER DIRECT OR INDIRECT, WHETHER INCURRED, MADE OR SUFFERED BY CUSTOMER OR BY ANY THIRD PARTIES, IN CONNECTION WITH OR IN ANY WAY ARISING OUT OF THE FURNISHING OR USE OF THE MOSIS FABRICATION.
- e. IN ALL CASES, USC/ISI'S LIABILITY TO CUSTOMER ON ANY GROUND WHATSOEVER SHALL NOT EXCEED A SUM EQUAL TO THE FEE PAID TO USC/ISI BY CUSTOMER HEREUNDER.

5. INDEMNIFICATION

Customer agrees to defend, indemnify and hold harmless USC/ISI and its trustees, officers, professional staff, employees and agents and their respective successors, heirs and assigns from all liability, demand, damage, loss or expense that they or any of them may at any time incur by reason of any claims, suits, actions, demands or judgments made against USC/ISI arising from USC/ISI integrated circuit fabrication services performed for Customer based upon Customer generated or provided designs, including, but not limited to, any claim or loss related to any product liability or alleged infringements of any patent, copyright, trademark or other proprietary rights.

6. CONFIDENTIALITY AND PROPRIETARY RIGHTS

- a. Both parties recognize that the information exchanged hereunder is of a confidential and proprietary nature. USC/ISI shall maintain all such confidential and proprietary information provided by Customer hereunder in confidence. As this Agreement envisions transfer of such information to third-party vendors, USC/ISI agrees that it shall require each such vendor to execute a non-disclosure agreement which shall extend to the information provided by the Customer and which shall provide for an obligation of confidentiality commensurate with the obligation called for in this Agreement. USC/ISI further agrees that it shall treat Customer's confidential and proprietary information with the same care with which it treats its own confidential and proprietary information. The obligation of confidentiality shall extend for the duration of this Agreement, or for a period of five (5) years from the date of disclosure by Customer to USC/ISI, whichever is the longer, and to the extent, this obligation shall survive termination of this Agreement.
- b. Notwithstanding the provisions of paragraph 6(a), USC/ISI shall not be obligated with respect to any information which: (1) at the time of disclosure has been published or otherwise is in the public domain; and/or (2) after disclosure, is published or otherwise becomes a part of the public domain through no fault of USC/ISI; and/or (3) is or has been rightfully disclosed to USC/ISI by a party that has no obligation to Customer, directly or indirectly, to keep such information confidential, and/or (4) is independently developed by USC/ISI without use of the confidential and/or proprietary information.
- c. Each party specifically agrees that it shall not disclose any material which may be considered proprietary or confidential material of the other party or of any vendors to any third parties. Proprietary material shall include but shall not be limited to, proprietary vendor information such as yield and parametric data, whether it was provided to customers or extracted by them. Each party agrees that it shall be precluded by 18 U.S.C. 1905 and any and all other appropriate laws and regulations from knowingly divulging the trade secrets of the other party, and/or any third-party vendor.

- d. Nothing in this Agreement shall serve to convey to USC/ISI any proprietary rights in any design submitted by Customer pursuant to this Agreement or in any semiconductor chip fabricated therefrom. All rights, titles and interests in and to designs for integrated circuits submitted by Customer pursuant to this Agreement, as well as all mask works fixed or embodied in any semi-conductor chip fabricated pursuant to this Agreement shall belong entirely to Customer to the extent that Customer has such rights, titles and interests prior to submission to USC/ISI. USC/ISI shall not be responsible for securing any form of statutory protection, whether by patent, copyright, registration under the Semi-Conductor Chip Protection Act, or otherwise unless a separate signed written agreement between Customer and USC/ISI is entered into upon such terms and conditions as the parties may agree.
- e. Each party agrees that it would be difficult and impractical, if not impossible, to calculate the dollar amount of damages which might result from the disclosure by the other party or any employee or agent thereof, or by any third party or any employee or agent thereof of any confidential and/or proprietary information. EACH PARTY THEREFORE AGREES THAT THE OTHER PARTY'S TOTAL LIABILITY FOR ANY DISCLOSURE SHALL BE LIMITED TO THE AMOUNT PAID BY CUSTOMER TO USC/ISI UNDER THE TERMS OF THIS AGREEMENT AND THAT SAID AMOUNT IS REASONABLE COMPENSATION FOR SUCH DAMAGES.

7. LEGAL EXPENSES AND TAXES

- a. In the event that legal action is taken by either party to enforce this Agreement, all costs and expenses, including reasonable attorney's fees, incurred by the prevailing party in exercising any of its rights or remedies hereunder or in enforcing any of the terms, conditions or provisions hereof, shall be paid by the other party.
- b. Any sales tax, use tax, excise tax, transaction tax, gross receipts tax, privilege tax or other tax (other than a tax based on USC/ISI's income or capital) including any related interest or penalty, imposed upon or in any way due as a result of the services or property purchased, used, transferred or acquired pursuant to this Agreement shall be the sole responsibility of the Customer and the Customer agrees to indemnify USC/ISI for such amounts due or owing.

8. SEVERABILITY

If any part, term or provision of this Agreement shall be held illegal, unenforceable or in conflict with any law of a federal, state or local government having proper jurisdiction over this Agreement, the validity of the remaining provisions shall not be effected thereby.

9. GOVERNING LAW, JURISDICTION AND VENUE

This Agreement shall be construed and enforced according to the laws of the State of California. In the event of any controversy, claim, or dispute between the parties hereto arising out of or relating to this Agreement, such controversy, claim, or dispute shall be tried exclusively in the courts of the State of California in the County of Los Angeles or in the United States Federal District Court for the Central District of California, as either party may elect. Each party hereby waives any defense of lack of in personam jurisdiction, improper venue and forum non conveniens, and agrees that service of process of such court may be made upon each of them by personal delivery or by mailing certified or registered mail, return receipt requested, to the other party. Both parties hereby submit to the jurisdiction of the court so selected, to the exclusion of any other court that may have had jurisdiction.

10. MISCELLANEOUS

- a. Customer warrants that unless USC/ISI is notified in advance, in writing, to the contrary, the services provided under this Agreement are for the use of Customer only, and not for any parent, subsidiary or any other third-party entity. Customer further warrants that it is not acting as an agent for any other party in entering into this Agreement. USC/ISI RESERVES THE RIGHT TO NOT PERFORM THE SERVICES CONTRACTED FOR IN THIS AGREEMENT IF THE SERVICES ARE FOR ANY PARENT, SUBSIDIARY OR THIRD-PARTY ENTITY UNLESS ANY SUCH ENTITY SHALL ENTER INTO A DIRECT CONTRACTUAL ARRANGEMENT WITH USC/ISI.
- b. The parties agree to abide by all applicable federal, state and local laws and regulations which regulate the activities envisioned by this Agreement.
- c. This Agreement, together with any signed attachments thereto, contains all of the agreements, representations, and understanding of the parties hereto and supersedes any previous understandings, commitments, or Agreement, except with respect to rates charged for MOSIS services as provided in Section 3 et seq. hereof, which must be in writing and signed by both parties.
- d. USC/ISI may, at its sole option and discretion, allow Customer to cancel any MOSIS fabrication ordered. CUSTOMER SHALL BE REQUIRED TO PAY ALL USC/ISI COSTS ASSOCIATED WITH ANY SUCH CANCELLATION AS SUCH CHARGES MAY BE CALCULATED BY USC/ISI. However, any such cancellation charged shall not exceed the cost to Customer of Customer's fabrication. Cancellation shall only be made and effective upon written approval of USC/ISI, and cancellation is solely discretionary to USC/ISI.
- e. Notwithstanding any other provision of this Agreement, Customer agrees that it will not export, re-export, transfer, hypothecate or give in any fashion, directly or indirectly, any proprietary technical data acquired from USC/ISI, or any vendor, or any fabrication utilizing the MOSIS service to any country restricted by the Export Administration Regulations, or any other country for which the U.S. Government or any agency thereof, at the time of export, requires an export

license or other governmental approval, without first obtaining the express approval from the U.S. Department of Commerce or other appropriate agency of the United States Government, and only when such export, re-export, transfer, or other hypothecation is in full compliance with the laws and regulations of the United States of America.

- f. Except as provided in Section 1, in rendering performance under this Agreement, USC/ISI will function solely as an independent contractor and not as partner, employee or joint venturer with Customer, and nothing in this Agreement shall be deemed or construed to create the relationship of partnership or joint venture.

11. ASSIGNMENT

Neither party shall assign its rights or delegate its duties under this Agreement without the prior written consent of the other party hereto, except to any party succeeding to substantially all of the business interests of the assigning party.

* * *

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date written above.

UNIVERSITY OF
SOUTHERN CALIFORNIA

(Organization)

By: _____
ELIZABETH GARRETT, Vice President
Academic Planning and Budget

By: _____

(Type or Print Name)

(Type or Print Title)

(Date)

(Date)

(Phone)
