

MEMS AND NANOTECHNOLOGY EXCHANGE CUSTOMER AGREEMENT (CA 4.0) (EXAMPLE)

Customer may use the services provided through the MEMS and Nanotechnology Exchange® ("MNX") according to the terms of this Customer Agreement.

1. CUSTOMER AGREEMENT

The Parties to this MNX Customer Agreement (CA 4.0) ("Agreement") are Corporation for National Research Initiatives, having an office at 1895 Preston White Drive, Reston, VA 20191-5434 ("CNRI" or "MEMS and Nanotechnology Exchange") and ("Customer"). Customer represents that it is a domestic entity, i.e., an organization created or organized under the laws of the United States of America ("USA"), or any State therein, Commonwealth or territory thereof, or the District of Columbia, or an individual who is a citizen or permanent resident of the USA.

The Agreement will be effective from the date Customer, or a person duly authorized by Customer to enter into this Agreement on behalf of Customer, clicks the "I Agree" button below and shall continue in force until the Agreement is terminated as provided herein.

2. FEES AND PAYMENT TERMS

Customer agrees to pay for work requested by and performed for Customer through a Work Order Approval Agreement. The MNX will invoice Customer in accordance with the MNX POLICIES & PROCEDURES attached hereto as Appendix A, and incorporated by reference. Payment is due upon receipt of invoice. Except insofar as CNRI itself provides fabrication support services to Customer, a Work Order Approval Agreement is between the Customer and the applicable Fabrication Site(s), and is governed by the terms and conditions therein. The MNX is not liable for any costs arising from the development or performance of Customer's Work Request or Work Order. Terms and conditions included in any purchase order, invoices or other documents furnished to MNX by Customer purporting to change the terms and conditions of a specific Work Order Approval Agreement will not be considered additional terms and conditions applicable to the Work Order Approval Agreement unless signed in writing by both parties as incorporated therein.

3. INTELLECTUAL PROPERTY RIGHTS/ CONFIDENTIALITY

- a. Except as otherwise provided herein, all Intellectual Property Rights matters shall be governed by the MNX POLICIES AND PROCEDURES attached hereto as Appendix A, and incorporated by reference. In addition, any Intellectual Property Rights matters which may arise under individual Work Orders shall be governed by the MNX POLICIES posted at the MNX Internet site on the effective date of such Work Orders.
- b. Except as otherwise provided in a separate written agreement, each Party agrees to use its best efforts to protect the confidential and/or proprietary information ("Confidential/ Proprietary Information") of other Parties to an extent commensurate with its protection of its own Confidential/Proprietary Information, and in no event less than a reasonable level of protection.

The Parties agree to clearly mark as "Confidential/Proprietary Information" any information deemed confidential and/or proprietary, and will use best efforts not to mark as "Confidential/Proprietary Information" information known to the respective Party not to be confidential and/or proprietary. Unless otherwise provided in a separate written non-disclosure agreement, Customer authorizes CNRI to disclose Customer's Confidential/Proprietary Information as necessary for the development or performance of Customer's Work Request(s) or Work Order(s) to the Fabrication Site(s) selected by Customer.

c. Notwithstanding any provisions relating to Confidential/Proprietary Information above, the Parties acknowledge and agree to be bound by the terms and conditions of the general Confidentiality Agreement that appears when logging into the MNX Internet site (www.mems-exchange.org).

4. REPRESENTATIONS/LIABILITY/WAIVER

a. Customer certifies that information provided to CNRI related to each Work Request or Work Order is accurate and sufficiently complete for Fabrication Site(s) and CNRI to determine the process requirements and identify any contamination or damage risks posed by the process materials or that might arise in the evaluation or performance of the Work Request or Work Order. Customer represents that it will cooperate with CNRI in providing additional information reasonably requested by CNRI relating to a Work Request or Work Order.

b. Information provided to Customer on the MEMS and Nanotechnology Exchange Internet Site regarding available processes represents assertions by the Fabrication Sites, and CNRI does not warrant the accuracy or completeness of such information. Further, guidance given to Customer by CNRI is provided for clarification only, and Customer is responsible, after reviewing and verifying information on the various processes offered, to independently determine which process(es) and Fabrication Site(s) is appropriate for Customer's purposes. CNRI MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING BUT NOT LIMITED TO GUIDANCE PROVIDED BY CNRI, THE RESULTS OF ANY PROCESS PERFORMED BY A FABRICATION SITE, THE FITNESS FOR A PARTICULAR PURPOSE OF ANY OF THE PROCESSES POSTED AT THE MEMS AND NANOTECHNOLOGY EXCHANGE INTERNET SITE, OR THE ABILITY OF THE FABRICATION SITE(S) TO MEET A PARTICULAR STANDARD.

c. Neither CNRI nor Fabrication Site shall be liable for incidental, contingent, general, direct, indirect, special, consequential, or other damages or liabilities, even if advised of the possibility thereof, or for claims or expenses (including attorneys' fees), whether directly or by way of contribution or indemnity, made by any person or entity arising from Customer's use of the MEMS and Nanotechnology Exchange, the Fabrication Site(s)' development or performance of a Work Order for Customer, or from Customer's use of processed wafers, masks, or other material, and in no event will CNRI's liability exceed amounts paid by Customer for associated processing services. Customer agrees to indemnify and hold harmless CNRI and the Fabrication Site(s), their officers, employees, and agents, from and against any and all such liabilities, damages, claims, or expenses (including attorneys' fees).

d. The liability for transportation-related loss of process materials shall be in accordance with the MNX POLICIES.

e. The provisions of section 4 shall survive termination of this Agreement.

5. TERMINATION

a. Customer or CNRI may terminate this Customer Agreement by providing the other Party with written notice of such termination.

b. Any misuse of assigned passwords or information obtained from the MNX, misconduct in computing or networking, or other variance by Customer from the terms of this Agreement will be a violation of this Agreement and provide CNRI with the right to immediately terminate the Agreement and any outstanding Work Orders for cause.

c. In the event of the termination of a Work Request or Work Order under section 5 of this Agreement, Customer is responsible for any and all costs associated with work already performed or work which cannot reasonably be avoided by Fabrication Site(s) or CNRI, and if such termination is requested by Customer, Customer will also be responsible for other costs of termination which cannot reasonably be avoided.

6. EXPORT CONTROL

a. Customer is responsible for informing the Fabrication Site(s) if a MEMS or nanotechnology device it is seeking to have fabricated or any technical data related to that device is controlled under either the International Traffic in Arms Regulation (ITAR), 22 C.F.R. Parts 120-130, or the Export Administration Regulation (EAR), 15 C.F.R. Parts 730-774. Customer shall identify in the Work Request and Work Order the export control classification of any export-controlled device it is seeking to have fabricated pursuant to that Work Request or Work Order, and shall identify and clearly mark any export-controlled technical data provided to the Fabrication Site(s) or CNRI.

b. Customer certifies that the information provided to open a business account with CNRI, including, without limitation, state and country of incorporation, or if an individual citizenship and visa status, and registration with the U.S. Department of State as a manufacturer or exporter of defense articles as applicable, is accurate and complete. Customer agrees with respect to each Work Request or Work Order to certify that any previously provided information concerning citizenship, visa status, and State Department registration remains current and unchanged.

7. MISCELLANEOUS

a. Nothing in this Agreement shall be deemed to create any relationship of agency, partnership, or joint venture between the Parties. This Agreement, including the MNX POLICIES AND PROCEDURES, together with any ratified Work Orders, constitutes the entire agreement between the Parties with respect to the matters hereof, and supersedes all prior and contemporaneous agreements, whether oral or in writing, with respect to the matters hereof. This

Agreement may not be amended, or any requirement herein waived, unless the amendment or waiver is made by mutual agreement in writing, signed by both Parties.

b. This Agreement, as well as any disputes brought under this Agreement, shall be interpreted and governed in all respects by applicable Federal law, and the law of the State of Virginia, USA, excluding Virginia conflicts of law provisions.

c. If any article, clause, provision, or section (collectively "Clause") of this Agreement should be held illegal or invalid by any court of competent jurisdiction, the invalidity of such Clause shall not affect any of the remaining Clauses, and this Agreement shall be construed and enforced as if such illegal or invalid Clause had not been contained herein.

d. Neither CNRI nor Customer will assign its rights or delegate its duties or obligations under this Agreement without prior written consent of the other Party, and any attempt to assign any rights or delegate any duties or obligations hereunder without consent shall be a breach of the Agreement.

e. Any and all taxes associated with the transactions contemplated hereby shall be the sole and exclusive responsibility of the Party incurring such tax liability under applicable law.

APPENDIX A

MNX POLICIES AND PROCEDURES (March 5, 2010)

The MEMS and Nanotechnology Exchange® ("MNX") is a cooperative environment for use by Customers and Fabrication Sites, as established and administered by CNRI, for the development of technology facilitating the design, microfabrication, processing, packaging, and testing of MEMS and nanotechnology devices. As an open environment, the MEMS and Nanotechnology Exchange seeks to provide Customers with greater access to MEMS and nanotechnology fabrication capabilities.

Part A

MNX PROCEDURES

1. On the MEMS and Nanotechnology Exchange® ("MNX") Internet Site, www.MEMS-Exchange.org, the MNX provides business forms necessary to open a Business Account and provides MEMS and Nanotechnology fabrication information necessary to submit a Work Request. The business forms include a Customer Agreement and an Account Application. Unless indicated otherwise, all notices and correspondence should be sent to the MEMS and Nanotechnology Exchange via e-mail to business@MEMS-Exchange.org. Facsimiles should be sent to (703) 262-5367, and telephone inquiries should be made at (703) 262-5368.

2. The procedures for accessing services available through the MEMS and Nanotechnology Exchange include the following steps:

- Business Account. For the MNX to proceed with Customer's Work Request, the Customer must submit an Account Application to establish a Business Account, and submit a Customer Agreement to the MNX.
- Work Request. Customer will transmit a Work Request including its desired selection of processing services to the MNX. The Work Request includes the requested processing services, subject to the terms of the Customer Agreement.
- Process Runcard. The MNX will review Customer's Work Request and generate a Process Runcard, which encompasses all of the detailed technical requirements for the Work Request to be completed, and process specific terms and conditions, and will obtain acceptance of the Process Runcard from the applicable Fabrication Site(s). The Process Runcard will show a price which includes shipping, wafers, equipment time, staff time, etc.
- Customer Review of the Process Runcard. Customer must carefully review the Process Runcard for errors, omissions, specific requests or requirements, specific instructions, and general comments. If questions arise, the MNX will facilitate possible modifications in order to meet Customer's process requirements. If modifications are made, the MNX will send a revised Process Runcard to the Customer.
- Work Order. A Process Runcard will become a Work Order effective on the date Customer accepts the terms of the Work Order Approval Agreement.
- Payment. A means of payment (typically a purchase order or credit card number) must be submitted to the MNX in order for processing to begin. Payment is due upon receipt of invoice from MNX as follows: (i) For each Work Order above \$10,000, a payment of 50% of the Total Price of the Work Order will be required prior to the performance of any fabrication work; and MNX will invoice Customer in this amount before work begins. The balance of the Total Price of the Work Order will be invoiced periodically as work is performed. (ii) For each Work Order below \$10,000, the MNX will invoice Customer periodically as costs are incurred, at the discretion of the MNX. Payment is due upon receipt of invoice. No terms and conditions in Customer's purchase order or other payment-related document will be considered additional terms and conditions applicable to the Work Order Approval Agreement unless signed in writing by both parties as incorporated therein.

3. In the event that a Fabrication Site refuses to process a Work Order, the MEMS and Nanotechnology Exchange will provide Customer with an explanation of such refusal and will consult with Customer to revise the Work Order and resubmit the revised version to the Fabrication site. If approval by Fabrication Site of the resubmission is not reached, MNX will consult with Customer and attempt to find alternative processing options to meet Customer's request. If MNX cannot find alternative processing options, the Work Order will terminate. MNX shall not be liable for any costs or damages incurred by Customer resulting from a Fabrication Site's refusal to perform a Work Order

4. Customer is responsible for adequately packaging and arranging the transportation of process materials (e.g., wafers, masks, and other information and material required for performance of a Work Order) to the initial location as instructed by the MNX. Customer must inform the MNX of the transportation arrangements, or may alternatively use transportation services arranged by the MNX. The MNX will arrange transportation of process materials between Fabrication

Site(s), and will only deliver to locations in the United States unless approved by MNX in advance in writing. Each Fabrication Site is responsible for adequately packaging process materials for transportation from its facility after processing. Customer is responsible, at Customer's own discretion, for obtaining sufficient insurance to fully cover any loss for all transportation required, both to and from Customer, and between the Fabrication Site(s). The liability for transportation-related loss of process materials shall be limited to the insurance obtained by Customer. Customer is also responsible for obtaining any U.S. government authorization and making any submissions required for any subsequent export of the process materials, unless otherwise agreed in writing by the parties.

Part B

MNX INTELLECTUAL PROPERTY POLICY

1. Introduction

Intellectual Property (IP) shall refer to any inventions, creations, improvements, technical data, mask works, works of authorship, microfabrication processes and/or process sequences, designs, or other developments including software and improvements thereto, whether patentable, copyrightable, or not. The MEMS and Nanotechnology Exchange ("MNX") strives to effectively diminish IP barriers to the use of the MNX as a trusted intermediary in fabricating MEMS and nanotechnology devices. CNRI may periodically update the IP Policy, and will post such updates on the MEMS and Nanotechnology Exchange Internet Site. In consideration of its participation in the MNX, each party will comply with the following IP provisions:

2. Intellectual Property Ownership

a. Customer, Fabrication Site, and CNRI shall each retain ownership of its respective existing IP. Customer, Fabrication Site, and CNRI, respectively, shall each retain ownership of new IP developed solely by that party. Collaborating parties shall jointly own new IP developed through such collaboration, in accordance with applicable law or with any separate agreement entered into by the applicable collaborating parties with respect to such new IP.

b. Customer shall grant to CNRI a non-transferable, non-exclusive, royalty-free license to use Customer's IP as necessary for the development or performance of its Work Request(s) or Work Order(s). Fabrication Site shall grant to CNRI a non-transferable, non-exclusive, royalty-free license to use Fabrication Site's IP as necessary for the development or performance of a Work Request(s) or Work Order(s) including Fabrication Site's process(es).

c. Notwithstanding the provisions herein, the parties are free to enter into separate IP agreements relating to MEMS and Nanotechnology Exchange activities which do not prejudice the rights of CNRI.

d. Except as provided herein, no party shall use the name, logo, registered or unregistered marks, or other identification of another party in connection with any product, service, promotion, public announcement, or news release without the prior written consent of that other party. The

parties acknowledge that CNRI claims all rights in and to the marks "MNX," "MEMS and Nanotechnology Exchange," and "MEMS EXCHANGE." While parties are encouraged to use the marks MEMS AND NANOTECHNOLOGY, MEMS EXCHANGE or MNX to indicate participation in the MNX, a party's use of the MEMS and Nanotechnology Exchange shall not create any rights in such party with respect to the MNX marks, and any and all rights arising from such use, if any, shall inure to the benefit of CNRI.

3. Third Party Infringement

a. The parties represent that, to the best of their knowledge and belief, their activities related to the MNX do not infringe any IP rights of third parties.

b. Customer and Fabrication Site agree to inform the MNX in writing of any claim by a third party of infringement relating to the activities of the MNX Exchange within ten (10) days, including the nature of such claim. Customer, Fabrication Site, and CNRI agree to cooperate in order to promptly resolve any such claim.