

## AIM Photonics Membership Agreement

This Membership Agreement (“**Membership Agreement**”) is effective as of the date of the last signature below (the “**Effective Date**”) by and between the signing organization (“**Member**”) and The Research Foundation for The State University of New York (“**Foundation**”), acting on behalf of The SUNY Polytechnic Institute (“**SUNY Poly**”). Foundation is the administrator of the Integrated Photonics Institute for Manufacturing Innovation operating under the name of the American Institute for Manufacturing Integrated Photonics (“**AIM Photonics**”). Foundation and Member are sometimes referred to in this Membership Agreement individually as a “**Party**” or collectively as the “**Parties**”.

WHEREAS, Foundation participates in AIM Photonics as an AIM Member (defined below) and is the recipient of The United States of America USAF/AFMC (“**Government**”) Cooperative Agreement Number FA8650-15-2-5220, dated July 9, 2015 (“**Cooperative Agreement**”), to provide funding to AIM Photonics.

Now, therefore, the mutual benefits and considerations each to the other, the Parties agree to the following terms and conditions:

### 1. Definitions

- 1.1 **Affiliate** means any entity that now or hereafter, directly or indirectly, controls, is controlled by, or is under common control with, a Party. The term "control" (including the terms "controlled by" and "under common control with") means ownership of more than fifty percent 50% of the (i) outstanding shares or securities that represent the right to vote for the entity’s managing authority, or (ii) ownership interest representing the right to (a) make the decisions for such entity, or (b) vote for, designate, or otherwise select members of the highest governing or decision making body, managing body or authority of such entity. An entity shall be deemed to be an Affiliate only so long as such ownership or control exists.
- 1.2 **AIM Member(s)** means respectively, a Party or other organization that has signed the Membership Agreement or the Parties and the other organizations that have signed the Membership Agreement collectively.
- 1.3 **Membership Fee** means the non-refundable annual membership fee payable by Member.
- 1.4 **Membership Year** means the period from January 1 to December 31 of each year.
- 1.5 **Small Enterprise** means an entity that satisfies the following conditions: (1) is organized for profit, with a place of business located in the United States, which operates primarily within the U.S. or which makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials or labor; (2) is in the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative, except that if the concern is a joint venture, each entity to the venture must meet the requirements set for in Section 1.5(3); (3) is more than fifty percent directly owned and controlled by one or more individuals (who are citizens or permanent resident aliens of the U.S.), other small business concerns (each of which is more than 50% directly owned and controlled by individuals who are citizens or permanent resident aliens of the U.S.), or any combination of these; and (4) has, including its Affiliates, not more than 500 employees.

## 2. AIM Photonics Membership

- 2.1 AIM Photonics maintains an open membership to encourage widespread participation. All memberships must be aligned with the mission and goals of AIM Photonics.
- 2.2 Member shall comply with the AIM Photonics Bylaws.
- 2.3 The following table represents AIM Photonics membership levels and the associated benefits.

Benefits	Definition of Benefits	Full Active Member	Observer Discovery Member
Standard Engagement	Access to AIM Members meetings and networking events.	✓	✓
Online Networking	Access to secure online AIM Photonics membership networking.	✓	✓
MPW	Special multi-project wafer (“MPW”) pricing.	✓	
Webinars & Workshops	Participation in AIM Photonics webinars & workshops. Ability to participate as a speaker and/or host of AIM Members meeting, webinars, and workshops.	✓	
Proposals	Ability to submit proposals through AIM Photonics for institute specific funding opportunities, including: NIST (Manufacturing USA), National Science Foundation, Department of Defense, Department of Commerce and Air Force Research Laboratory.	✓	
EPDA	Ability to participate in electronic-photonics design automation (“EPDA”) roadmap discussions and activities.	✓	
Working Groups/Projects	Ability to participate in technical working group, technical review board, joint projects, and key product segment reviews, discussions, and activities.	✓	
Marketing	Access to AIM Photonics marketing brand, shared public relations, and communications.	✓	

## 3. Membership Fee, Invoices and Payments

- 3.1 Member will pay the appropriate annual Membership Fee to Foundation for the Membership Year. If the Effective Date of this Membership Agreement does not coincide with the start of a calendar year, the Membership Fee will be prorated based on the number of months remaining in the initial Membership Year. A Member’s obligation to make payments in accordance with the following table remains regardless of the outcome of AIM Photonics.

<u>Membership Type</u>		<u>Membership Fee</u>
Full Active Member	Industry (incl. Small Enterprise)	\$25,000 per Membership Year
	Academic	\$10,000 per Membership Year
	National Lab & Federally Funded Research and Development Center	As set forth in the Cooperative Agreement
Observer Discovery Member	All	\$3,000 per Membership Year

- 3.2 If Member is an Academic or Small Enterprise, Full Active Member, Member can receive a credit towards its current Membership Fee for up to the amount Member books on MPW runs, full wafer runs and/or test, assembly, and packaging, services (“**Work**”) in that Membership Year. To receive the credit, Member must enter into a procurement agreement with Foundation between January 1<sup>st</sup> and June 30<sup>th</sup> of the Membership Year for the Work to be scheduled for performance within the Membership Year. Procurement agreements entered into between July 1<sup>st</sup> and December 31<sup>st</sup> for Work will not be eligible for the Membership Fee credit. Any amount spent on Work in excess of the current Membership Fee will not be eligible for a credit in the subsequent Membership Year. Foundation will invoice Member on July 1st for any remaining balance of Member’s Membership Fee. Payment will be due within thirty (30) days of Member’s receipt of the invoice.
- 3.3 For all other AIM Members, upon the signing of the Membership Agreement, Foundation will invoice Member for the Membership Fee for that year. Payment will be due within thirty (30) days of Member’s receipt of the invoice. Beginning with the next calendar year and in subsequent years, Foundation will invoice Member in December. Payment will be due within thirty (30) days of Member’s receipt of the invoice.
- 3.4 The AIM Photonics Executive Director shall have discretion to accept cash equivalent contributions, including AIM Photonics event sponsorship, that are meaningful and critical to the success of AIM Photonics in lieu of a cash payment for the Membership Fee. To receive credit, Member must provide documentation of the value of such contribution(s), as required by Foundation. All other payments shall be in cash.
- 3.5 The Parties may enter into supplemental agreements or addenda to this Membership Agreement to cover other collaborative activities, including without limitation projects, access to process design kits and any Work.

#### 4. Confidential Information

- 4.1 For a period of five (5) years following the initial date of the disclosure by an AIM Member or the Government (“**Disclosing Party**”), each AIM Member (“**Receiving Party**”) will not publish or disclose to others, including other AIM Members, without the Disclosing Party’s prior written approval any information which it learns from, or which is disclosed to it by reason of its participation in AIM Photonics or in the performance of Work and which is Confidential Information (as defined below) to that Disclosing Party.
- 4.2 Confidential information (“**Confidential Information**”) means information disclosed by a Disclosing Party to a Receiving Party, in writing, orally or by inspection of tangible objects or in

other tangible or intangible form, including without limitation: information regarding existing and future technical, business and marketing plans and product strategies; cost and pricing information; employees' names, titles, job descriptions and salaries; business practices, policies, methodologies and procedures; documents and diagrams; undisclosed proprietary data, know-how, data models, product designs, capabilities, specifications, program code, and software systems and processes; samples and devices; demonstrations; and/or other competition sensitive information, which is clearly and obviously marked as "Confidential" or "Proprietary", if provided in tangible form. Confidential Information in electronic form constitutes information in tangible form and will be adequately marked if the container is marked and if a proprietary legend displays when the information runs on a computer system and when the information is printed from its data file. Confidential Information disclosed orally or in such other form that is not conducive to marking shall be identified as such at the time of disclosure and confirmed in written summary form within thirty (30) days after the initial disclosure to the Receiving Party, and all restrictions provided herein regarding use and/or disclosure shall apply from the date of initial disclosure. Confidential Information also includes the confidential information of an AIM Member's Affiliates, business partners, customers, potential customers and suppliers.

- 4.3 The Receiving Party agrees (1) to use Confidential Information of the Disclosing Party only for the purpose of exercising Receiving Party's rights under this Membership Agreement, for Foundation to perform Work, and/or for Member to have Work performed by Foundation (the "**Purpose**"), and for no other purpose; (2) to exercise the same care and safeguards with respect to Confidential Information disclosed by the Disclosing Party as used to maintain the confidentiality of its own information of like character, but in no event less than a reasonable degree of care; (3) not to make copies, summaries or transcripts of Confidential Information unless it is strictly necessary for the Purpose; (4) not to export the Confidential Information of a Disclosing Party, or permit it to be exported, in breach of any relevant export regulations; (5) to notify the Disclosing Party immediately if it becomes aware that any Confidential Information has been disclosed to, or is in the possession of an unauthorized person; (6) upon request, to immediately return all of the tangible embodiments of Confidential Information of a Disclosing Party to the Disclosing Party or destroy it, if so directed by the Disclosing Party, in which it does not retain an ownership or license interest. The Receiving Party may retain Confidential Information as required by law or regulatory requirement or that may be reasonably impractical to delete from its electronic back-up systems and the provisions of this Membership Agreement will continue to apply to any retained Confidential Information; (7) to only disclose the Confidential Information to its employees and agents where necessary for the Purpose; and (8) to inform its employees and agents of the provisions of this Membership Agreement and take all steps necessary to procure their compliance with them. Each Party reserves the right to refuse to accept Confidential Information, in whole or with respect to any particular piece of Confidential Information.
- 4.4 The obligation of confidentiality and nondisclosure will not apply to any item of such information that (a) at the time of disclosure is, or thereafter, becomes part of the public domain through no fault or action of the Receiving Party; (b) is or has been obtained from a third party who is free to disclose it without an obligation of confidentiality; (c) was lawfully

known to the Receiving Party independently from the Disclosing Party at the time it was disclosed to Receiving Party; (d) is independently developed by or for Receiving Party without use of Confidential Information received by Disclosing Party; or (e) is disclosed by the Receiving Party as the result of a lawful government judicial, legislative or executive subpoena, order or decree properly issued and served on Receiving Party by an authority having jurisdiction thereof, or pursuant to a statutory mandate; provided, however, that Confidential Information disclosed under this Section 4.4(e) shall otherwise remain subject to the confidentiality and nondisclosure obligations in this Membership Agreement. In the event of such service, or notice thereof, Receiving Party will promptly notify the affected Disclosing Party and will afford such Disclosing Party all reasonable cooperation to the end that the proprietary and confidential nature of the Confidential Information may be protected in the event of such service or legal requirement (including using reasonable efforts to obtain the written assurance from the applicable authority that it will afford the Confidential Information a reasonable level of protection).

- 4.5 Notwithstanding the foregoing, Foundation may disclose Confidential Information to third parties, including contractors or suppliers (collectively, “**Representatives**”) so that Representatives are permitted to assist Foundation in the performance of Work, provided that Foundation shall require such Representatives to agree in writing to nondisclosure restrictions at least as protective as those in this Membership Agreement.
- 4.6 Section 4 survives any termination or expiration of the Membership Agreement.
- 4.7 Member and an AIM Member or the Government may negotiate terms in addition to or different from those set forth in Section 4 in a separate agreement to reflect the specific confidentiality needs of Member, the AIM Member and/or the Government related to such parties’ Confidential Information.

## 5. **Export Compliance**

Each Party shall comply with all applicable U.S. export control laws and regulations, including, but not limited to, the requirements of the Arms Export Control Act, 22 U.S.C. 2751-2794, including the International Traffic in Arms Regulation (ITAR), 22 C.F.R. 120 et seq.; and the Export Administration Act, 50 U.S.C. 2401-2420, including the Export Administration Regulations, 15 C.F.R. 730 et seq.; including the requirement for obtaining any export license or agreement, if applicable. Without limiting the foregoing, each Party shall not transfer or disclose any information it receives from the other Party that constitutes an export-controlled item, data, or service to foreign persons employed by or associated with, or under contract to that Party or the Party's suppliers, without the authority of an export license, agreement, or applicable exception.

## 6. **Withdrawal and Termination**

- 6.1 If AIM Photonics is not meeting the needs of Member as communicated in writing to the AIM Photonics Executive Director, then Member may withdraw from AIM Photonics by providing Foundation with written notice of such intent to withdraw no later than September 30<sup>th</sup> for withdrawal at the end of the Membership Year. Member will not be obligated to pay any future

Membership Fees after the effective date of the withdrawal.

- 6.2 If Member materially breaches any material warranty, term or condition of this Membership Agreement and fails to remedy such material breach within thirty (30) days after receipt of notice of such material breach from the AIM Photonics Executive Director, then the Leadership Council has the right to cause the involuntary withdrawal of Member. If such breach is based on Member's failure to pay the Membership Fee, then Foundation, at the direction of the AIM Photonics Executive Director, can cause the involuntary withdrawal of Member without the approval of the Leadership Council. Such withdrawal will be effective immediately upon delivery of a notice from Foundation to Member indicating the election to cause such involuntary withdrawal to occur. In the event of an involuntary withdrawal of Member, Member will not be entitled to the refund of any Membership Fees paid prior to its withdrawal.
- 6.3 Termination or withdrawal from this Membership Agreement will not relieve Member of its non-disclosure and/or confidentiality obligations.
- 6.4 Notwithstanding the provisions in this Section 6 or any other provision of this Membership Agreement, if the Cooperative Agreement is suspended or terminated before expiration or termination of this Membership Agreement, or if AIM Photonics is otherwise unable to obtain appropriate funding, Foundation may terminate this Membership Agreement and Member's membership in AIM Photonics. In such an event, (a) each Party will not be liable for any damages of any kind (whether direct or indirect) incurred by the other Party by reason of such termination; and (b) Member will not be obligated to pay any current or future Membership Fee.
- 6.5 This Membership Agreement may also be terminated:
  - i. By Foundation upon written notice to Member if conditions preclude continuation of AIM Photonics; or
  - ii. By either Party if this Membership Agreement is determined by a court of competent jurisdiction to be illegal or a material part of this Membership Agreement is determined by a court of competent jurisdiction to be illegal or unenforceable and such part cannot be reformed to capture the Parties' original intent.
- 6.6 Upon termination or expiration of this Membership Agreement for any reason, Member will use reasonable efforts to destroy or return to the Disclosing Party, all Government and AIM Member Confidential Information within its possession, including copies and portions thereof and updates and enhancements thereto in any form, including electronic versions contained on storage devices, which it does not retain an ownership or license interest.

## **7. Governing Law**

This Membership Agreement will be interpreted by application of New York law without regard to its conflicts of law provisions, except where Member is a federal entity, in which case federal law will apply as appropriate. Where Member is a governmental entity (including public state universities) and/or a state agency, this Section will be deemed to be deleted and replaced with the following, "Nothing in this Membership Agreement is intended to cause Member to waive the legal immunities and defenses

provided under its enabling laws.”

## 8. Independent Contractor

The relationship of Foundation and Member established by this Membership Agreement is that of independent contractors, and nothing contained in this Membership Agreement will be construed to (a) give Member the power to direct or control the day-to-day activities of Foundation or AIM Photonics, (b) constitute the AIM Members and/or Foundation as partners, joint ventures, co-owners, or otherwise as participants in a joint or common undertaking, or (c) allow Member to create, discharge, or assume any obligation on behalf of another AIM Member, AIM Photonics or Foundation for any purpose whatsoever. Each Member retains the right to engage in independent research and activities that may compete with, or be contrary to, the goals of AIM Photonics.

## 9. Disputes

All disputes and litigation arising out of or related to this Membership Agreement shall be subject to the exclusive jurisdiction of the state courts of Albany County, State of New York or of the Federal courts sitting therein. Each Party hereby irrevocably submits to the personal jurisdiction of such courts and irrevocably waives all objections to such venue. The disputing Party hereby expressly waives any right to a jury trial for any legal action or proceeding brought under this Membership Agreement and agrees that any legal action or proceeding hereunder shall be tried by a judge without a jury. However, if Member is a governmental entity (including public state universities) and/or state agency, this Section will be deemed to be deleted and replaced with the following, “All disputes and litigation arising out of or related to this Membership Agreement shall be brought in the appropriate United States Federal District Court or state court.”

## 10. Disclaimers

Neither Foundation nor anyone acting on its behalf nor any AIM Member:

- (A) MAKES ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, BY STATUTE OR OTHERWISE, RELATING TO ANY INFORMATION PROVIDED UNDER THIS MEMBERSHIP AGREEMENT, AND EACH PARTY TO THIS MEMBERSHIP AGREEMENT SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT, OR WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR
- (B) ASSUMES ANY LIABILITY FOR DIRECT, INDIRECT, FORESEEABLE OR CONSEQUENTIAL LOSS, COST OR DAMAGE RESULTING FROM DEATH, PERSONAL INJURIES, LOSS OR DAMAGE TO PROPERTY, OR IMPAIRMENT OR DAMAGE TO ANY RIGHT, INCLUDING THE RIGHT TO BE PAID FOR LOSS OF TIME, LOSS OF SERVICES, OR ATTORNEYS’ FEES AND OTHER EXPENSES INCURRED, ARISING OUT OF OR AS A CONSEQUENCE OF THIS MEMBERSHIP AGREEMENT OR THE USE OR MISUSE OF ANY INFORMATION RESULTING FROM THIS MEMBERSHIP AGREEMENT.

## 11. Federal Notifications

Member hereby authorizes Foundation to notify the United States Department of Justice and the Federal Trade Commission of this cooperative arrangement and the AIM Members and to review on Member's behalf the notice, which is to be published in the Federal Register pursuant to the National Cooperative Research and Production Act (15 USC 4301).

## 12. General Provisions

- 12.1 If Foundation becomes aware of any conflict between the terms of this Membership Agreement and the Cooperative Agreement, then (a) Foundation will promptly notify Member of the conflict, and (b) seek to amend the Membership Agreement to address the conflict.
- 12.2 If any provision of this Membership Agreement is deemed to be invalid, illegal or unenforceable by any court of competent jurisdiction, such provision will be deemed amended to conform to applicable laws of such jurisdiction so as to be valid and enforceable or, if it cannot be so amended without materially altering the intention of the Parties, it will be stricken and the remainder of this Membership Agreement will remain in full force and effect.
- 12.3 Any notices required to be given under this Membership Agreement must be delivered: (a) in person; (b) by registered, express, or certified mail, postage prepaid, return receipt requested; or (c) by a generally recognized courier or messenger service that obtains the addressee's written acknowledgement of receipt. Documents are deemed delivered when actually delivered to or delivery is refused at the address set forth below for notices. Any Party can furnish, from time to time, replacement addresses for notices.
- 12.4 This Membership Agreement will be binding upon and inure to the benefit of the Parties. This Membership Agreement will not be assigned or transferred by a Party, in whole or in part to any third party without the prior written consent of the other Party, which consent will not be unreasonably withheld, except that Foundation may assign this Membership Agreement to the New York Center for Research, Economic Advancement, Technology, Engineering and Science Corporation (d/b/a NY CREATES).
- 12.5 Member shall not use in any advertising, promotional, or sales literature the name or logo of AIM Photonics or Foundation without prior written consent of Foundation. Member hereby grants Foundation the right to use Member's name and/or logo for the sole purpose of indicating that the Member is a member of AIM Photonics. The Parties will agree in writing prior to releasing any press release or other public statement relating to the subject matter of this Membership Agreement.
- 12.6 This Membership Agreement, the AIM Photonics Bylaws and any addendums to this Membership Agreement (if applicable), embody the entire understandings of the Parties with respect to the subject matter of this Membership Agreement and will supersede all previous communications, representations or understandings, either oral or written between the Member and Foundation relating to the subject matter of this Membership Agreement.



12.7 This Membership Agreement may be executed in any number of counterparts which, when taken together, will constitute one original, and photocopy, facsimile, electronic, or other copies shall have the same effect for all purposes as an ink-signed original. Each Party hereto consents to be bound by photocopy, facsimile or electronic signatures of such Party's representative hereto.

IN WITNESS WHEREOF, the Parties have executed and delivered this Membership Agreement.

**Member/Organization Legal Name:** \_\_\_\_\_

Authorized Representative Signature: \_\_\_\_\_

Authorized Representative Printed Name: \_\_\_\_\_

Authorized Representative Title: \_\_\_\_\_

Full Address: \_\_\_\_\_

Email: \_\_\_\_\_

Date: \_\_\_\_\_

Primary Contact Name and Email: \_\_\_\_\_

Technical Contact Name and Email: \_\_\_\_\_

Intellectual Property Contact Name and Email: \_\_\_\_\_

**Membership Type:**

- Full Active Member
- Observer Discovery Member

**The Research Foundation for SUNY, on behalf of SUNY Poly**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Submit this Membership Agreement and direct any questions to:**

AIM Photonics c/o The Research Foundation, on behalf of SUNY Poly  
257 Fuller Road, Albany, NY 12203  
Attn: Chief Marketing Officer  
EMAIL: [info@aimphotonics.com](mailto:info@aimphotonics.com)

## AIM Photonics Bylaws

### **Article I: Organization**

1. The Research Foundation for The State University of New York ("**Foundation**"), acting on behalf of The SUNY Polytechnic Institute ("**SUNY Poly**"), is the administrator for the Integrated Photonics Institute for Manufacturing Innovation operating under the name of the American Institute for Manufacturing Integrated Photonics ("**AIM Photonics**"). Foundation is the recipient of The United States of America USAF/AFMC ("**Government**") Cooperative Agreement Number FA8650-15-2-5220, dated July 9, 2015 ("**Cooperative Agreement**"), to provide funding to AIM Photonics.
2. AIM Photonics is an unincorporated research and development center. AIM Photonics operates as a program of SUNY Poly, with the Foundation and SUNY Poly providing administrative support to AIM Photonics, and jointly participating in AIM Photonics as an AIM Member (as defined in the AIM Photonics Membership Agreement, hereinafter "**Membership Agreement**").

### **Article II: Mission**

1. AIM Photonics seeks to (1) advance integrated photonic circuit manufacturing technology while simultaneously providing access to state-of-the-art fabrication, packaging, and testing capabilities for commercial enterprises, academia and the government; (2) advocate for the creation of an adaptive integrated photonic circuit workforce capable of meeting industry needs and thus further increasing domestic competitiveness; and (3) meet participating commercial, defense and civilian agency needs in this burgeoning technology area.

### **Article III: Management**

1. Foundation, in its role as the administrator of AIM Photonics, will:
  - a. Provide staffing for finance, legal, procurement/contracting and other general administrative support;
  - b. Assist AIM Photonics with the recruitment, assignment, management and replacement (as appropriate) of the executive officers and the non-executive Chairman of the AIM Photonics Leadership Council;
  - c. Enter into contracts for AIM Photonics and bind AIM Members to the terms and conditions of the Cooperative Agreement, as applicable;
  - d. Assist AIM Photonics in complying with all obligations of the recipient under the Cooperative Agreement; and
  - e. Administer all finance matters related to AIM Photonics.
2. The Executive Director is responsible for day-to-day management of AIM Photonics and the implementation of the strategy, tactics and policies of the Leadership Council.
  - a. Foundation will appoint the Executive Director and may remove the Executive Director at any time by providing written notice of the removal to the Leadership Council. If the Executive Director is removed, Foundation shall designate a replacement.

- b. The Executive Director will appoint the other executive officers and may remove each executive officer from their position at any time. An executive officer may resign their position at any time by delivering their resignation in writing to the Executive Director or the Leadership Council.

#### **Article IV: Leadership Council**

1. The Leadership Council will provide advisory input to the AIM Photonics executive officers and Foundation concerning the operation of AIM Photonics, approve any changes to the Membership Agreement and Bylaws, and designate committees, including a Technical Review Board (“**TRB**”), Roadmapping Committee and Conflict of Interest Subcommittee.
2. Foundation will appoint the non-executive Chairman of the Leadership Council. The Chairman will coordinate Leadership Council meetings and will serve as a non-voting representative of the Leadership Council.
3. The Leadership Council shall be comprised of twelve (12) representatives. The representatives will consist of the following:
  - a. Representatives from the Government, as set forth in the Cooperative Agreement or a similar agreement executed by the Government and Foundation for the Government to provide funding to AIM Photonics, during the term of such agreement;
  - b. If New York State designates a representative to serve, then, upon approval by the Leadership Council, which shall not be unreasonably withheld or delayed, such representative shall serve (must be employed by New York State, a New York State agency or Foundation, acting on behalf of SUNY Poly);
  - c. If Massachusetts designates a representative to serve, then, upon approval by the Leadership Council, which shall not be unreasonably withheld or delayed, such representative shall serve (must be employed by Massachusetts state or a Massachusetts state agency);
  - d. Other representatives at the discretion of the Leadership Council, in collaboration with Foundation; and
  - e. The non-voting, non-executive Chairman of the Leadership Council.
4. Leadership Council representatives will be subject to reasonable confidentiality and conflict of interest policies adopted by the Leadership Council.
5. The Government will hold veto power over all investments, budgets and projects that use federal funding.
6. If a vacancy on the Leadership Council involves a Leadership Council representative designated by the Government, then during the Cooperative Agreement or similar agreement, the Government or Government Program Manager will designate the applicable person to fill the vacancy. If a vacancy on the Leadership Council involves a state representative, the relevant state may designate a replacement representative to serve on the Leadership Council and upon approval by the Leadership

Council, which shall not be unreasonably withheld or delayed, such representative shall serve. If a vacancy on the Leadership Council involves any other Leadership Council representative, the representative will be determined by the Leadership Council, in collaboration with the Foundation.

7. Any Leadership Council representative may resign his or her office at any time by delivering his or her resignation in writing to the Chairman or the Executive Director. The resignation will take effect at the time specified therein or, if no time is specified, it will be effective at the time of its receipt. The acceptance of a resignation will not be necessary to make it effective, unless expressly so provided in the resignation.
8. Any Leadership Council representative designated or employed by an entity that is no longer an AIM Member or is no longer employed by an AIM Member must be removed from the Leadership Council immediately after the corresponding AIM Member ceases to be an AIM Member or employment with the AIM Member ceases.
9. The Leadership Council shall determine the minimum qualifications and requirements for Leadership Council representatives, including term limits, the ability to participate for successive terms and the basis and process for removal of such representative by the Leadership Council.
10. Each Leadership Council representative, other than the non-executive Chairman, will be entitled to one vote on decisions that are the responsibility of the Leadership Council. All decisions will be made by two-thirds vote of the Leadership Council voting members who are present at a meeting at which a quorum is present. Two-thirds of the number of voting Leadership Council representatives serving at the time of any meeting will constitute a quorum for the transaction of business.
11. Any action required or permitted to be taken at any meeting of the Leadership Council, or any committee thereof, may be taken without a meeting if a quorum of Leadership Council representatives or committee representatives, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of the proceedings of the Leadership Council or committee.
12. Representatives of the Leadership Council or any committee thereof, may participate in a meeting of the Leadership Council or committee thereof, by means of a conference telephone or similar communications equipment as long as all persons participating in the meeting can speak with and hear each other. The participation by a representative of the Leadership Council pursuant to this Section will constitute presence in person at such meeting.

#### **Article V: Committees**

1. Technical Review Board. AIM Photonics will have a TRB, an advisory committee to provide advice and feedback to the Leadership Council. The TRB will create a charter that will be approved by the Leadership Council.

#### **Article VI: Projects**

1. Each AIM Member that Participates in a consortium project ("CP") or a Government directed project ("GDP") will enter into a Project Award Agreement with Foundation that will include a project scope

setting forth the specific tasks, milestones and deliverables to be performed, the budget and financial obligations and ownership and licensing of intellectual property developed in the Project. All Projects that are funded in whole or in part by Government funding under the Cooperative Agreement, except as otherwise agreed to in writing by the Government, will be subject to flow-through requirements from the Cooperative Agreement (“**CA Requirements**”).

2. The Government may Participate in CPs funded at least partially by Government funding, fully funded GDPs, workforce development, roadmapping activities and the TRB.

## Article VII: Intellectual Property

### 1. Definitions.

- a. **Background Intellectual Property** or **BIP** means all Intellectual Property that is (i) already established by an AIM Member as of the effective date of such AIM Member’s Membership Agreement, or (ii) developed by an AIM Member outside the scope of the Projects in which the AIM Member is participating, during the term of such AIM Member’s Membership Agreement.
- b. **Intellectual Property** or **IP** means Protectable IP and Technology.
- c. **Participate** means to have specific performance obligations as an AIM Member under a Project Award Agreement.
- d. **Project** means a CP or a GDP.
- e. **Project Award Agreement** means the agreement that governs a Project awarded by Foundation to a Project Participant(s) and that is performed under the terms of the Membership Agreement and these Bylaws.
- f. **Project IP** means all Project Protectable IP and Project Technology.
- g. **Project IP Management Plan** means a plan that forms part of the Project Award Agreement that at a minimum will address IP creation, ownership and management concerns.
- h. **Project IP Owner** means the AIM Member inventing or creating the Project IP unless specified to the contrary in a Project IP Management Plan accepted by the applicable Project Participants through the signature of the relevant Project Award Agreement.
- i. **Project Participant** means an AIM Member who Participates in a Project.
- j. **Project Protectable IP** means all Protectable IP conceived and actually reduced to practice or conceived and merely requiring constructive reduction to practice (in the case of patentable subject matter) or first reduced to tangible form (in the case of copyrightable material) or first fixed on a semiconductor chip product (in the case of mask works), by an AIM Member, any of its employees, any of its students or any employees of AIM Member’s Affiliates (as defined in the Membership Agreement) in the performance of a Project Award Agreement.
- k. **Project Technology** means all Technology made, invented, developed or created by an AIM Member, any of its employees, any of its students or any employees of AIM Member’s Affiliates in the performance of a Project Award Agreement.
- l. **Protectable IP** means patentable inventions, copyrightable works and protectable mask works worldwide arising under statutory or common law or any analogous right in foreign jurisdictions. For purposes of these Bylaws, Protectable IP excludes trademarks, trade names, service marks, trade dress, or other forms of corporate or product identification whether or not recognized.
- m. **Research Sample** means a tangible object embodying or incorporating Project IP made for academic research and other not for profit scholarly purposes by AIM Members and not distributed for commercial purposes.

- n. **Technology** means discoveries, ideas, drawings, improvements, inventions, know-how, knowledge, processes, prototypes, specifications, products, trade secrets or other Intellectual Property which is not Protectable IP. For purposes of these Bylaws, Technology excludes trademarks, trade names, service marks, trade dress, or other forms of corporate or product identification whether or not recognized.
2. Except as and to the extent specifically set forth in this Article VII, nothing in these Bylaws will be construed as conferring by implication, estoppel or otherwise any grant of title, ownership, license or right in or to any IP, BIP, or Confidential Information of any AIM Member, the Government, Foundation or AIM Photonics.
3. NEITHER FOUNDATION NOR ANYONE ACTING ON ITS BEHALF NOR ANY AIM MEMBER MAKES ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, EITHER IN FACT OR BY OPERATION OF LAW, BY STATUTE OR OTHERWISE, RELATING TO (I) ANY RESEARCH CONDUCTED UNDER A PROJECT, (II) ANY INVENTION CONCEIVED AND/OR REDUCED TO PRACTICE IN A PROJECT, OR (III) ANY OTHER INTELLECTUAL PROPERTY DEVELOPED IN A PROJECT.
4. Ownership. Unless otherwise specified in a Project Award Agreement, Project Participants will solely own all Project IP created solely by their respective direct hires, students, and contractors working on the Project; and the Project Participants will jointly own all Project IP created jointly by the respective direct hires, students and contractors working on the Project. Inventorship of patentable Protectable IP shall be determined according to U.S. patent law.
5. Consortium Projects. Effective January 1, 2021, the following terms apply for all legacy CPs:
  - a. Project IP Owner Rights. The Project IP Owner may freely exploit that Project IP subject to its obligations under these Bylaws and a joint Project IP Owner may exploit, license or enforce the jointly owned Project IP without any duty of accounting, without any duty to obtain the joint owner's consent, or without duty to pay any royalties to the joint owner(s).
  - b. Tracking. Each Project IP Owner will provide the executive officer overseeing the Project or their designee with quarterly reports of any Project Protectable IP created in the performance of the Project, including its filing status, and any Project Technology created in the performance of the Project and disclosed to the AIM Member's intellectual property office by its own employees, contractors and students. Each AIM Member that receives Government funding in a Project will be responsible for meeting the patent requirements as set forth in the CA Requirements in the AIM Member's Project Award Agreement.
  - c. Government rights. The Government will have rights in CPs funded at least partially by the Government as set forth in the CA Requirements in the AIM Member's Project Award Agreement.
  - d. Licenses.
    - i. Each Project IP Owner hereby grants each Full Active Member and its Affiliates, and each Full Active Member and its Affiliates hereby accept a worldwide, irrevocable (except for material breach by the licensee as set forth in Article VIII(9)), non-exclusive, non-transferable, royalty-free, perpetual license or right to use under the Project IP Owner's rights in such CP

Protectable IP solely for internal research and development, academic research and other not for profit scholarly purposes. Each Project IP Owner hereby grants each Full Active Member and its Affiliates, and each Full Active Member and its Affiliates hereby accept a worldwide, irrevocable (except for material breach by the licensee as set forth in Article VII(9)), non-exclusive, non-transferable, royalty-free, perpetual right to use under the Project IP Owner's rights in the Project Technology disclosed in a CP, for any purpose; provided that any such use will be in a manner consistent with preserving (i) the patentability of any Protectable IP developed hereunder, and (ii) Project IP Owner's publication rights. If a Research Sample is provided to a Full Active Member in the performance of a Project, the receiving Full Active Member shall only have the right to use such Research Sample in the performance of the Project or for internal research and development, unless otherwise agreed to by the Project IP Owner.

- ii. Each Full Active Member shall have ninety (90) days from first disclosure to such Full Active Member by the Project IP Owner ("**First Election Period**") to request, in writing, a non-exclusive commercial license to any Project Protectable IP that is owned by the Project IP Owner. If a Full Active Member does not timely request a commercial license under this Section, the Project IP Owner shall have no further obligation to grant a commercial license to that Full Active Member. If elected, the Full Active Member and the Project IP Owner will have one hundred eighty (180) days to negotiate an agreement in good faith, provided, however, that if the parties are making reasonable progress toward negotiating such agreement, the parties may extend such time period for up to one year. Such agreement shall be subject to any pre-existing contractual or statutory obligations to third parties, contain fair reasonable terms and conditions consistent with industry standards and shall include reimbursement of out-of-pocket patent costs incurred by the Project IP Owner (which, in the event of multiple licensees at the time the cost is incurred, will be pro-rated among such licensees), a commercially reasonable license fee, a commercially reasonable return based on the amount of product produced, sold, serviced or licensed by that licensee, and a commitment by the licensee to actively develop products and services based on all of the licensed Project Protectable IP. The Full Active Member and Project IP Owner acknowledge that as a guideline as of January 1, 2021, the commercially reasonable return for all non-exclusively licensed Project Protectable IP relevant to the licensee's product will include (a) reimbursement of the amount of the cost share and/or cash equivalent contributions provided by the Project IP Owner to the Project, and (b) a running or earned royalty not to exceed 2% of net sales of the relevant assembly or subassembly. Notwithstanding the foregoing, the commercially reasonable royalty rate will be adjusted, at the request of the Project IP Owner, to comply with Internal Revenue Procedure Ruling 2007-47 or successor IRS guidance for tax-exempt bond financed facilities ("**RP 2007-47**"), when the resulting Project Protectable IP first becomes available for use. The parties understand and agree that the royalty rate is intended to be a competitive arm's-length market-based royalty rate and, in order to comply with RP 2007-47, the appropriate royalty rate will be validated and subject to revision against market rates at the time the resulting technology first becomes available for use. The Project IP Owner shall not grant an exclusive license to the Project Protectable IP to any AIM Member or third party except as follows. If, at any time after the expiration of the First Election Period, the Project IP Owner desires the ability to offer a license to a piece of Project Protectable IP to an AIM Member or any third party on an exclusive basis, the Project IP Owner shall first disclose to each Full Active

Member, in writing, its desire to offer exclusivity. Each Full Active Member shall have ninety (90) days from receipt of such disclosure to request a non-exclusive license as set forth above (“**Second Election Period**”). If, after the expiration of the Second Election Period, no Full Active Member has requested a non-exclusive commercial license, the Project IP Owner may license the piece of Project Protectable IP to an AIM Member or third party on an exclusive basis, subject to the licenses granted to AIM Members and the Government.

- iii. Project IP Owners will disclose any Project IP to the Full Active Members promptly upon receipt of a disclosure to the Project IP Owner’s intellectual property office/representative. AIM Photonics will maintain a list of Full Active Members, including the start and end date of each Full Active Member’s right to access Project results and make the list accessible to AIM Members. Disclosure requirements set forth below shall be deemed to have been met as long as the AIM Member discloses to the appropriate intellectual property representatives in writing or by email as listed on the most current list.
6. Government Directed Projects. GDPs carried out at AIM Photonics will be subject to separate terms and conditions between Foundation, the Government and Project Participants.
  7. New AIM Members. New Full Active Members will have access and rights to CP IP created in Projects after the effective date of their Membership Agreement in which AIM Member is a Full Active Member per these Bylaws. Absent an agreement otherwise, a new AIM Member will have no rights to Project IP generated prior to the effective date of AIM Member’s Membership Agreement, and a Terminating Member will have no rights to Project IP generated after the date Terminating Member’s Membership Agreement terminates.
  8. Other AIM Members Continued Rights. AIM Members who remain as AIM Members after another AIM Member terminates its membership or has its membership terminated (the “**Terminating Member**”) will have continued rights to use the Terminating Member’s BIP and Project IP if and as specified under the terms and conditions under these Bylaws, the Project Award Agreement or a separate agreement between the relevant parties.
  9. Terminating Member. Except as set forth in Article VII(9), a Terminating Member will continue to have all rights to Project IP granted to it in Article VII(5) prior to the effective date of termination; and Terminating Member’s right to Project IP and BIP as set forth in the Project Award Agreement, or any separate license agreements specifically negotiated between Terminating Member and Project IP Owners, will continue in accordance with those agreements or other separate agreements with the BIP owner. Otherwise, no rights to a Project Participant’s BIP, including implied rights to such BIP, are conveyed to such Terminating Member. If Terminating Member’s membership is terminated or involuntarily withdrawn for breach of the confidentiality or IP terms in the Membership Agreement, these Bylaws or a Project Award Agreement, Terminating Member’s licenses and rights to other Project Participant’s Project IP granted to the Terminating Member under Article VII(5) of these Bylaws and Section 4 of the Membership Agreement prior to the effective date of termination and Terminating Member’s licenses and rights to other Project Participant’s Project IP and BIP granted to the Terminating Member in a Project Award Agreement will terminate immediately.



10. Each AIM Member may retain in its possession all IP and/or Project IP in which it has an ownership or license interest. Individual party termination or expiration of the Membership Agreement does not affect the ownership standing in such IP.

#### **Article VIII: Conflicts Of Interest (“COI”)**

1. AIM Photonics, the Government and all AIM Members shall respectively comply with the AIM Photonics COI policy for all AIM Photonics activities.
2. AIM Members will endeavor to avoid any COI. Each AIM Member understands that even the appearance of a COI can cause embarrassment and jeopardize the credibility of AIM Photonics. Any COI, potential COI, or the appearance of a COI shall be reported to the Leadership Council or the Leadership Council’s designee immediately. AIM Members are to maintain independence and objectivity with other AIM Members, vendors, and the community. AIM Members are called to maintain a sense of fairness, civility, ethics, and personal integrity even though law, regulation, or custom does not require them to do so.
3. AIM Photonics and all AIM Members shall respectively comply with all applicable laws and regulations regarding COI in the performance of Projects and other AIM Photonics activities.

#### **Article IX: Export Compliance**

1. Projects may be subject to export control laws and regulations. Project proposals will be required to identify any export controlled information reasonably expected to be disclosed or developed in the Project. AIM Members will comply with all applicable export control laws and regulations of the United States, including the Export Administration Act, the Arms Export Control Act (“**AECA**”), International Traffic in Arms Regulations, 22 CFR § 120 et. seq. (“**ITAR**”), the Department of Commerce Export Administration Regulations (15 C.F.R. Part 730 et seq.) (“**EAR**”), and other U.S. government directives related to export control. AIM Member will not export or re-export any information, technical data, technical know-how, products, goods or related services that are identified on any U.S. export control list (“**Controlled Items**”) in violation of the AECA, ITAR, or EAR. AIM Members will not disseminate (1) any Controlled Item to foreign persons (as defined in the ITAR), or to persons and affiliated entities of foreign governments, foreign government agencies or foreign organizations, in violation of the AECA, ITAR or EAR; and (2) any item to any person or affiliated entity of a person or entity named on the U.S. Department of Treasury Specially Designated Nationals List, the U.S. Department of Commerce Denied Parties List, Entity List and Unverified List, U.S. Department of State’s Debarred Parties List, or any other U.S. government list of persons or entities to which dissemination of items may not be made.
2. Each AIM Member will adopt its own procedures that are in compliance with export control regulations. If the export or re-export of information is restricted by export control regulations without an available license exception, or otherwise authorized under the law, AIM Member shall receive the Government’s approval, with notification to Foundation including such approval, before assigning or granting access to any work, equipment, or technical data generated or delivered under the Membership Agreement, Bylaws or a Project Award Agreement, to foreign persons or their

representatives. The notification shall include the name and country of origin of the foreign person or representative, and the specific work, equipment, or data to which the person will have access.

3. All export controlled information and technology provided by any AIM Member to another AIM Member or the Government shall be clearly marked as **“Export Controlled.”**
4. Each AIM Member acknowledges and understands that because the academic AIM Members are institutions of higher education and have many foreign persons who are students, employees and visitors, some of the academic AIM Members conduct research activities as **“Fundamental Research”** and do not perform export controlled research. While these academic AIM Members may Participate in Projects where certain portions are not considered Fundamental Research, each AIM Member agrees that academic AIM Members will not be required to perform export controlled research or accept export controlled information or technology.

#### **Article X: Foreign Participation**

1. AIM Photonics will follow the Department of Defense policy on foreign participation. (Dated August 6, 2020 and updated from time to time.)

#### **Article XI: Amendments**

1. All proposed amendments to the Membership Agreement or Bylaws will not be implemented unless approved by two-thirds of all the voting representatives of the Leadership Council. Such amendments may not conflict with the provisions of the Cooperative Agreement. If an amendment to the Membership Agreement is approved by the Leadership Council (**“Membership Agreement Amendment”**), the change will be incorporated into a revised draft of the Membership Agreement and distributed to the AIM Members for signature. If an amendment to the Bylaws is approved by the Leadership Council (**“Bylaws Amendment”**), the change will be incorporated into a revised draft of the Bylaws and distributed to AIM Members. AIM Members will not be required to accept or implement any Membership Agreement Amendment or Bylaws Amendment that conflicts with that AIM Member’s policies or any laws applicable to that AIM Member. A Membership Agreement Amendment that alters the financial obligations owed by an AIM Member shall only take effect in the next Membership Year.
2. If an AIM Member, at AIM Member’s discretion, elects not to accept the Membership Agreement Amendment or Bylaws Amendment, then the AIM Member may elect to withdraw its membership in accordance with Section 6 (Withdrawal and Termination) of the Membership Agreement.

#### **Article XII: General**

1. If Foundation becomes aware of any conflict between the terms of these Bylaws and the Membership Agreement or Cooperative Agreement, then (a) Foundation will promptly notify the AIM Members of the conflict, and (b) seek to amend the Membership Agreement and/or the Bylaws to address the conflict.